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ABANDONED AND CAPTURED PROPERTY ACT.

Under the act which gives to "the *owner*" of any abandoned and captured property a right, after it has been sold by the government, to recover the proceeds of it in the Treasury of the United States, a factor who has merely made advances on the property—there being another person who has the legal interest in the proceeds—is not to be regarded as "the owner;" at least not to be so regarded beyond the extent of his lien. *United States* v. *Villalonga*, 35.

"ABSENT FROM DUTY WITH LEAVE." See *Army Officer.*

Meaning of the expression within the act of March 3d, 1863. *United States* v. *Williamson*, 411.

ACCEPTANCE, QUALIFIED. See *Life Insurance.*

ACCIDENTAL FIRE. See *Anchor-ground; Principal and Agent; Towing Tug.*

ACCORD AND SATISFACTION. See *Omnia præsumuntur rite esse acta; Pleading*, 2.

ACKNOWLEDGMENT OF DEED. See *Feme Covert.*

ADMIRALTY. See *Anchor-ground; Collision; Evidence*, 1, 3; *Pilot; Principal and Agent; Proceeding in rem; Salvage; Ship-master; Towing Tug.*

AGENT. See *Principal and Agent.*

ALIEN. See *Estoppel; Practice*, 8.

ALLUVION.

1. Means an addition to riparian land, gradually and imperceptibly made, through causes either natural or artificial, by the water to which the land is contiguous. *County of St. Clair* v. *Lovingston*, 46.
2. The test of what is gradual and imperceptible is that, though the witnesses might see from time to time that progress has been made, they could not perceive it while the process was going on. *Ib.*
3. It matters not whether the addition be on streams which overflow their banks or those that do not. In each case it is alluvion. *Ib.*

AMENDMENT. See *Practice*, 13.

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ANCHOR-GROUND.

A vessel anchored in the Hudson, opposite to the Hoboken wharves, if anchored three hundred and fifty yards from their river front, is anchored so far from shore that in case of a collision with a vessel towed in flames out of the Hoboken docks, no allegation can be made that she is anchored too near the shore. *The Clarita*, 1.

ANCHOR-WATCH.

A vessel at anchor having an anchor light and one man on deck, though not strictly an anchor-watch, is guilty of no fault in not being better lighted or watched. *The Clarita*, 1.

ARBITRATION AND AWARD. See *Pleading*, 2.

ARMY OFFICER.

1. One who is ordered, even on his own request, to proceed to a particular place, including his home, and "there *await orders*," reporting thence by letter to the Adjutant-General of the Army and to the headquarters of the department to which he then belongs, is not an officer "absent from duty with leave" within the act of Congress of March 3d, 1863, which enacts that "any officer absent from duty with leave, except from sickness or wounds, shall during his absence receive half of the pay and allowances prescribed by law, and no more." *United States* v. *Williamson*, 411.
2. The action of army officers in matters of a judicial character, especially when done in the wilds of the West, to be favorably construed and so that they may have effect rather than perish. *United States* v. *Shrewsbury*, 508.

ASSIGNMENT OF ERRORS.

Quære. Whether a general assignment of errors, on a special case, "that the judgment below was for the wrong party," is a sufficient assignment. *Scholey* v. *Rew*, 331.

"AWAITING ORDERS." See *Army Officer.*

The meaning of the expression in connection with the act of Congress of March 3d, 1863. *United States* v. *Williamson*, 411.

BANKRUPT ACT.

1. Where a person has bought land subject to a vendor's lien, and has given his notes for payment of the purchase-money, the obligation of another person who buys the land from him and assumes to pay the notes, will be discharged so far as the notes are concerned, by his discharge under the Bankrupt Act; but the vendor's lien is not discharged. *Lewis* v. *Hawkins*, 120.
2. When District Courts sitting in bankruptcy mean to order a sale of the real estate of the bankrupt which he has mortgaged, in such a way as to discharge it of all liens, and so that the purchaser have a title unincumbered, it is indispensable that the mortgagee have notice of the purpose of the court to make such an order; or that in some other way he have had the power to be heard, in order that he may show why the sale should not have the effect of discharging his lien.

BANKRUPT ACT (*continued*).

And if a sale be made without any notice to him, his mortgage is not discharged. *Ray* v. *Norseworthy*, 128.

3. What cases are cases in equity within the eighth section of the Bankrupt Act, which gives an appeal to the Circuit Court from cases in equity, and what are *not* cases for the general supervisory jurisdiction given in the second section of the act. *Stickney* v. *Wilt*, 150.
4. What cases, on the other hand, are *not* "cases in equity" and capable of being taken on appeal into the Circuit Court as cases in equity under the eighth section of the Bankrupt Act, but must be taken there, if taken at all, under the supervisory jurisdiction given by the second section of the act. *Sandusky* v. *National Bank*, 289.
5. The Supreme Court has no jurisdiction to review the action of the Circuit Court when acting under this general supervisory jurisdiction, given by the second section of the Bankrupt Act. *Ib.*
6. The Circuit Court has no jurisdiction under this second section to review a case which is really a case "in equity." *Stickney* v. *Wilt*, 150.
7. Neither does an appeal to hear and determine the merits lie to this court from the action of the Circuit Court, if it undertake to review such a case; though where a party against whom the District Court has decreed, has taken into the Circuit Court a case really one in equity,—taken it, as above said, improperly,—and obtained a reversal of such decree, this court, to prevent injustice, will so far take cognizance of the case as to reverse the judgment of the Circuit Court and remand the case with directions to dismiss the suit. *Ib.*

BANKS. See *National Banks.*

BILL IN EQUITY,

Cannot by colorable allegations be made the means of recovering land open to an action of ejectment. *Lewis* v. *Cocks*, 466.

BOUNDARY. See *Alluvion.*

Where a survey begins "on the bank of a river" and is carried thence "to a point in the river," the river-bank being straight and running according to this line, the tract surveyed is bounded by the river. It is even more plainly so when it begins at a post "on the bank of the river, thence north 5 degrees east up the river and binding therewith." *County of St. Clair* v. *Lovingston*, 46.

CAPTURED AND ABANDONED PROPERTY ACT.

A mere factor cannot be considered "owner"—at least not beyond the extent of his lien, in a proceeding to recover the proceeds in the treasury of property sold under this act; the act giving to "the owner" alone a right to recover them. *United States* v. *Villalonga*, 35

CHANCERY. See *Equity; Laches.*

COLLISION. See *Anchor-ground; Anchor-watch.*

1. In cases of, where there is a great conflict of testimony, the court must be governed chiefly by undeniable and leading facts, if such exist in the case. *The Great Republic*, 20.

COLLISION (*continued*).

2. A pilot, when he is close to a vessel before him making movements which are not intelligible to him, ought not, in a case which is in the least critical, to be governed by his "impressions" of what the vessel is going to do; but should make and exchange signals, and ascertain positively her purposed movements and manœuvres. *The Great Republic*, 20.
3. A steamer close to the right bank of a broad river—one, *ex. gr.*, half a mile broad—which means to cross over and land on the left shore, is not bound, in the first instance, to give *three or more* whistles, which is the signal for landing. It is enough that she give *two* whistles, which is the signal that she is going to the left. *Ib.*
4. Constructions not favorable put on the testimony and manœuvres of a pilot who, it was proved, was "addicted to drinking when ashore," and who confessed to having been drinking on the day when his vessel left port, and within an hour of which time a collision occurred; though he swore that he had not taken any drink for six hours before his boat left its dock. *Ib.*
5. Similar constructions put on the conduct of a captain whose watch it was, but who, instead of being engaged in a proper place in superintending the navigation of his vessel, was on the lower deck conversing with a passenger. *Ib.*
6. A large and fast-sailing steamer is bound to act cautiously when overtaking and getting near to a small and slow one; and a collision having occurred between two steamers of this sort, a minor fault of the small and slow steamer was held not to make a case for division of damages where such fault bore but a little proportion to many faults of the large and fast one. *Ib.*
7. When, in a case of collision, it appears that one of the vessels neglected the usual and proper measures of precaution, the burden is on her to show that the collision did not occur through her neglect. *Ib.*
8. A steamer held to be exclusively responsible for a collision with a sailing-vessel; the collision having occurred on a night when the stars were plainly visible, and when, though a little haze was on the water, the night was to be called clear; there having apparently been some want of vigilance in the lookout of the steamer, who did not discern the sailing-vessel until the steamer was close upon her, at which time orders, which, as the result proved, tended to bring on a collision, were given on board the steamer. *The Sea-Gull*, 165.
9. Two steam vessels, one an iron steamship (an ocean vessel of twenty-five hundred tons), coming from sea up the Mississippi to New Orleans, and the other a small river steamer of one hundred and thirty-five tons, trading up and down the river below New Orleans from plantation to plantation, and carrying passengers, and getting market produce for the city just named, *held*, in a case of collision, to be equally in fault for running at full speed in a very dark and foggy night, after they had learned by signals from each other of their respective existences in the river, and while they were in doubt as to what respectively were their courses and manœuvres. *The Teutonia*, 77.

COLLISION (*continued*).

10. The rule of navigation prescribed by the act of Congress of April 29th, 1864, "for preventing collisions on the water," which requires "when sailing-ships are meeting end on, or nearly so, the helms of both shall be put to port," is obligatory from the time that necessity for precaution begins, and continues to be applicable so long as the means and opportunity to avoid the danger remain. *The Dexter*, 69.

11. In a collision at sea, happening on a bright moonlight night, and when the approaching vessel was seen by the officer in charge of the deck long before the collision: *Held*, that the absence of a lookout was unimportant, if his presence would have done nothing to avert the catastrophe. *Ib.*

COMMERCIAL BROKER. See *Internal Revenue*, 3.

CONSTITUTIONAL LAW.

The "succession tax," imposed by the acts of June 30th, 1864, and July 13th, 1866, on every "devolution of title to any real estate," was not a "direct tax," within the meaning of the Constitution; but an "impost or excise," and was constitutional and valid. *Scholey* v. *Rew*, 331.

CONSTRUCTION, RULES OF.

I. AS APPLIED TO STATUTES OR CONSTITUTIONS.

A badly expressed and apparently contradictory enactment interpreted by reference to the Journals of Congress, where it appeared that the peculiar phraseology was the result of an amendment introduced without due reference to language in the original bill. *Blake* v. *National Banks*, 308.

II. AS APPLIED TO CONTRACTS.

Where—on the sale of a steamboat whose then owners had contracted various debts in building and furnishing her, some of which debts were liens on the boat and some not—certain persons, friends of the purchaser, agreed to "defend and save the said vendor, free and harmless of any and all claims and demands that *may* arise or be brought against said steamboat," *held*, that the expression referred to debts existing at the date of the sale, and not to debts that might be contracted after it; and meant to protect the owner from all liability arising from his part-ownership of the boat, irrespectively of the fact whether the debts were liens on the boat or not. *Moran et al.* v. *Prather*, 492.

CONTRACT. See *Evidence*, 2–4; *Life Insurance*.

When to be interpreted by the light of surrounding circumstances. *Moran et al.* v. *Prather*, 492.

COSTS.

Where confessedly the title of a party claiming land as owner, and who has agreed to sell, is denied by the vendee and a dispute has taken place about title, so that a tender of a deed would be a useless ceremony, costs on a bill filed to enforce the payment of the purchase-money must abide the result of the suit. *Lewis* v. *Hawkins*, 119.

COURT OF CLAIMS. See *Practice*, 11.

CUMBERLAND COUNTY, PENNSYLVANIA. See *National Banks*, 2.

CUSTOMS OF THE UNITED STATES.

1. The act of May 22d, 1846, enacting that "in all computations at the custom-house, the franc of France . . . shall be estimated at eighteen cents and six mills," is repealed by the act of March 3d, 1873, "to establish the custom-house value of the sovereign or pound sterling of Great Britain, and to fix the par of exchange." *Held*, accordingly, that the Director of the Mint having, in pursuance of the latter act, estimated the value of the franc of France at nineteen cents and three mills, and the Secretary of the Treasury having on the 1st of January, 1864, proclaimed it as of that value accordingly, goods invoiced in French francs and entered in a custom-house here in March of that year, were to be charged at the new valuation of the franc. *The Collector* v. *Richards*, 246.

2. "Silk ties" are chargeable under the Tariff Act of July 30th, 1864, with a duty of 50 per cent. *ad valorem*. *Smythe* v. *Fiske*, 374.

DAMAGES. See *Liquidated Damages*.

A company having coal-mines at a place on the Mississippi, *eighty miles above* Cairo, agreed to deliver at the mines a quantity of coal, the product of the mines, to P. & S., during the year 1870. There was no other market at the place for the purchase of coal but that of the company itself. The company broke its contract. No coal was delivered. On suit by P. & S. against the company, for breach of contract, *Held*,

1st. That the measure of damages (in view of the fact that there was no market for the purchase of coal at the place of delivery but that of the company itself) was the price which P. & S. would have had to pay for coal of the sort in the quantities in which they were entitled to receive it from the company under the contract, at the nearest available market where it could have been obtained. *Grand Tower Company* v. *Phillips et al.*, 471.

2d. That the cash value of similar coal, at Cairo, or at points below it on the Mississippi River, after deducting the contract price of it, and the cost and expenses of transporting it thither, was not a true measure of value, and that it was error to allow such value to be shown to the jury, so long as any more direct method was within reach. *Ib.*

DECREES IN FORECLOSURE.

This court calls the attention of the Circuit Courts to what was said by Taney, C.J., in *Forgay* v. *Conrad* (6 Howard, 201), as to the care which ought to be exercised in the preparation of decrees of foreclosure; and observes that much time of this court and much expense to litigants will be saved if more attention is given to the form of decrees when entered. *Railroad Company* v. *Swasey*, 406.

DEED. See *Feme Covert*.

DIRECT TAX. See *Constitutional Law*.

DISCHARGE OF LIEN. See *Bankrupt Act*, 1, 2.

DUTIES. See *Customs of the United States.*

EJECTMENT. See *Bill in Equity.*

EMINENT DOMAIN.

1. The taking of private property in order that a railroad may be made, belongs to the class of things which in proper cases are to be regarded as public necessities. *Secombe* v. *Railroad Company*, 109.
2. The *mode* of exercising the right of eminent domain, in the absence of any provision of organic law prescribing a contrary course, is within the discretion of the legislature, upon whose power in this respect there is no limitation if the purpose be a public one, and if just compensation be paid or tendered to the owner for the property taken. *Ib.*
3. A judgment of condemnation in a matter of eminent domain rendered by a competent court, charged with a special statutory jurisdiction, and when all the facts necessary to the exercise of the jurisdiction are shown to exist, is not subject to impeachment in a collateral proceeding. *Ib.*

EQUITY. See *Bill in Equity; Costs; Feme Covert; Laches; Vendor's Lien.*

In a court of conscience deliberate concealment is equivalent to deliberate falsehood. When a living man speaks in such a court to enforce a dead man's contract with himself against parties who he knows are ignorant of the facts, he must be frank in his statements, unless he is willing to take the risk of presumptions against him. *Crosby* v. *Buchanan*, 420.

ESTATE FOR LIFE. See *Shelley's Case, Rule in.*

ESTOPPEL. See *Omnia præsumuntur rite esse acta; Pleading; Practice*, 13.

An alien to whom a devise of an interest in real estate has been made, and who has received its value in proceedings for partition, is estopped to set up against a demand for a succession tax thereon, that by the law of the State where the estate is, the devise is absolutely null and void. *Scholey* v. *Rew*, 331.

EVIDENCE.

1. Where there is great contradiction in the testimony in a case (a thing very common in causes in admiralty for collision), the court must be governed chiefly by leading and undeniable facts, if any such exist in the case. *The Great Republic*, 20.
2. The right of a partner to sign the firm name to a contract of indemnity in favor of third persons must be strictly proved; but it need not necessarily be proved by a written authority to him. *Moran et al.* v. *Prather*, 492.
3. Where a firm, with several persons styling themselves, as a firm in the case now here indexed did, "creditors of the steamboat B.," agreed to release P. (owner of $\frac{17}{32}$ parts of the boat, the rest being owned by two other persons) "from all indebtedness due us by the said steamboat *so far as the said P. is concerned*," and where, on P.'s being about to sell to C. for a price greatly below its value had it been

EVIDENCE (*continued*).

clear of debts, his interest in the steamer, on condition that C. would assume and pay all debts, the firm executed an agreement by which they bound themselves to defend and save the said P. free and harmless of any and all claims and demands that *may arise or be brought against said steamboat* excepting those above signed. *Held,*

(*a*) That it was not allowable to show by oral testimony that the expression "steamboat debts" was a well-known term among steamboat men and merchants in the port where the vessel was, and meant "debts that made a lien on the boat for supplies and material," though only for six months; and that when a debt could not be enforced by any of the conservatory processes allowed by the laws of the State, it ceased to be "a debt of the boat," though it might remain a debt of the owner. *Moran* v. *Prather*, 492.

(*b*) That it was allowable to show that the boat was a very valuable one, and that the money price paid for her was insignificant in comparison with it, in order to infer that the purchaser had assumed the payment of existing debts against her. *Ib.*

4. On a suit against a company for breach of contract in not having delivered coal according to the contract, letters passing between the president of the company and the local agent at the place where the coal was delivered, containing private instructions to such agent, cannot be read to fix the measure of damages; the reasons and motives which the company or its officers had in not furnishing coal to the plaintiffs not being in issue. *Grand Tower Company* v. *Phillips et al.*, 471.

FACTOR.

Under the Abandoned and Captured Property Act, which gives to "the owner" of any such property a right, after it has been sold by the government, to recover the proceeds of it in the Treasury of the United States, a factor who has merely made advances on the property—there being another person who has the legal interest in the proceeds—is not to be regarded as "the owner;" at least not to be so regarded beyond the extent of his lien. *United States* v. *Villalonga*, 35.

FEME COVERT. See *Shelley's Case, Rule in.*

A defectively acknowledged deed for land held, on a suit by a woman for dower, to be validated by a curative act of Assembly; the husband having received the purchase-money for the land sold, and the whole of it having, on his death, passed to his wife. *Randall* v. *Kreiger*, 137.

FINAL DECREE. See *Jurisdiction*, 4, 5, 6, 7, 8.

FIRE.

The obligation of tugs whose business it is to tow vessels on fire stated. Other principles of law in the case of burning vessels also stated. *The Clara and The Clarita*, 1.

FORECLOSURE. See *Decrees in Foreclosure.*

FRANC OF FRANCE. See *Customs of the United States*, 1.

GUARANTEE. See *Evidence*, 2.

HUDSON RIVER. See *Anchor-ground.*

INSURANCE. See *Life Insurance.*

INTEREST REIPUBLICÆ UT FINIS SIT LITIUM. See *Laches.*

INTERNAL REVENUE. See *Constitutional Law; Estoppel; National Banks.*

1. Under the seventy-ninth section of the Internal Revenue Act of 1864, as amended by the act of July 13th, 1866, persons who sell goods in their own name, at their own store, on commission, and have possession of the goods as soon as the sales are made, and who deliver or send them off to their customers—such sales being to an extent exceeding $25,000 per annum—are to be taxed as "wholesale dealers," not less than persons who sell to that amount on their own account. *Slack* v. *Tucker & Co.*, 321.
2. The fact that the manufacturers of the goods paid the five per cent. known as the "manufacturers' tax" does not change the case. *Ib.*
3. Persons selling goods in the way stated in the first paragraph above, are not "commercial brokers" within the fourteenth clause of the said section. Such brokers are those persons who, as brokers merely, negotiate sales or purchases for others, and not in their own names nor on their own account. *Ib.*
4. A devise of an equitable interest in real estate, in which personal property had been invested by the trustee with the assent of the devisor, before the making of the will, was a "devolution of real estate" within the meaning of the acts of June 30th, 1864, and July 13th, 1866, and the devisee is liable to the "succession tax" imposed thereby, in respect of it, if he has received its value, although in proceedings for partition he has had assigned to him only personal property. *Scholey* v. *Rew*, 331.

JOURNALS OF CONGRESS.

Sometimes used to explain an otherwise unintelligible or scarce intelligible act of Congress. *Blake* v. *National Banks*, 308.

JUDICIAL COMITY.

When the question is whether, under the constitution and laws of a particular State, a company professing to be a corporation, is legally so, this court will receive as conclusive of the question, the decision of the highest court of the State deciding, in a case identical in principle, in favor of the corporate existence. *Secombe* v. *Railroad Company*, 108.

JUDICIAL SALE. See *Bankrupt Act*, 2.

JURISDICTION. See *Judicial Comity; Practice*, 5; *Proceeding in rem; Res Judicata.*

OF THE SUPREME COURT OF THE UNITED STATES.

(*a*) It HAS jurisdiction,

Under section 709 of the Revised Statutes, and as embracing a Federal question,

JURISDICTION (*continued*).

1. When in a suit by a person who seeks to recover property on the ground that a judgment and execution on it by a court of the United States, interpreting a statute of the United States, has deprived him of the property in violation of the first principles of law—the defendant sets up a title under that judgment and execution, and the decision is against the title so set up. *Gregory* v. *McVeigh*, 294.

(*b*) It has NOT jurisdiction,

Under section 709 of the Revised Statutes, and as embracing a Federal question,

2. When the matter in the court below (the highest court of the State) involved nothing but the propriety of dissolving an ordinary injunction, although in a court inferior to that one—an inferior State court, and in whose decision on the matter both parties acquiesced—a Federal question may have been involved. *Fashnacht* v. *Frank*, 416.

3. Nor where the case is really rested on the fact of a trust proved and on the extent of a State court's equitable jurisdiction (matters confessedly not within the section), even though the court, in deciding against the party now plaintiff in error here, say: "The most that can be said is that the transaction was in violation of an act of Congress;" it adding "but that would not give a Court of Chancery jurisdiction to hold the second purchaser a trustee, and make him accountable as such." *Smith* v. *Adsit*, 368.

Nor as of *final* decree,

4. Of a decree dissolving an injunction, unless there be a dismissal of the bill. *Thomas & Co.* v. *Wooldridge*, 284.

5. Nor until the whole case below is disposed of. *Crosby* v. *Buchanan*, 420.

6. Nor of an order of the Circuit Court remanding, for want of jurisdiction to hear it, a case removed from a State court into it. *Railroad Company* v. *Wiswall*, 507.

7. Nor of a decree of foreclosure and sale so long as the amount due upon the debt must be determined and the property to be sold ascertained and defined. *Railroad Company* v. *Swasey*, 405.

8. Nor of a part of a case only. The whole case must come if any. *Crosby* v. *Buchanan*, 420.

LACHES. See *Statute of Limitations.*

Where the transactions out of which a case now before the court arose, occurred sixty-five years ago—litigation about them having been going on all the while—and the particular one before the court was begun thirty-five years ago, the court declared it to be high time that the case was ended, and that the court was not inclined to add to its length of years by looking after matters of mere form (objections of which were apparently now first made), in order to avoid substance. *Crosby* v. *Buchanan*, 420.

LIENS. See *Bankrupt Act*, 1, 2; *Evidence*, 3; *Vendor's Lien.*

LIFE INSURANCE.

Where A. by memorandum made an application to a life insurance company, in a distant city, to insure his life, and the company, as the case

LIFE INSURANCE (*continued*).

which was found by the court, showed, "accepted" the application, but sent him a policy which "did not in terms agree with the memorandum, as to the date and time of payment"—*held*, that the acceptance was a qualified acceptance, and that A. having died before there was evidence that he actually received and assented to the change in the policy, the company was not bound. *Insurance Company* v. *Young's Administrator*, 85.

LIGHTS ON VESSELS. See *Anchor-watch.*

LIQUIDATED DAMAGES.

A contract provided that A. should deliver monthly to B., at a price named, a certain number of tons of coal, with a proviso that if A. did not so deliver the coal, he should pay to B. twenty-five cents for each ton not delivered, "OR," continued the contract, "instead thereof B. may elect to receive all or any part of the coal so in default in the next succeeding month." Coal rose suddenly in value. A. did not deliver any in the first month that he was bound to, and B. elected to take it in the next; but A. delivered none in either month. *Held*, that B. was entitled to actual damages, and could not be made to take the twenty-five cents per ton. *Grand Tower Company* v. *Phillips et al.*, 471.

"LOOKOUT." See *Anchor-watch; Collision*, 8.

At sea. The absence of not important in a question of collision, when it is plain that the presence of one would not have averted the catastrophe. *The Dexter*, 69.

MANDAMUS.

Not writ of error, the proper remedy when a Circuit Court, bound to entertain from a State court and hear a case originally brought in the latter court, remands and refuses to hear it. *Railroad Company* v. *Wiswall*, 507.

MANUFACTURER'S TAX. See *Internal Revenue*, 2.

MONUMENTS. See *Alluvion; Boundary.*

MOTION TO DISMISS. See *Practice*, 2, 3, 4.

NATIONAL BANKS.

1. Under the act of Congress of February 10th, 1868, and the act of the legislature of Pennsylvania of March 31st, 1870, shares in National banks may be valued for taxation for county, school, municipal, and local purposes, at an amount above their par value. *Hepburn* v. *The School Directors*, 481.

2. This is true of shares in a National bank in Cumberland County, Pennsylvania. *Ib.*

3. Under the Internal Revenue Act of July, 1870, interest paid and dividends declared during the last five months of the year 1870, are taxable, as well as those declared during the year 1871. *Blake* v. *National Banks*, 307.

OFFICER OF THE ARMY. See *Army Officer.*

"OMNIA PRÆSUMUNTUR RITE ESSE ACTA."

1. Where, under a contract entered into between the government and a transporter of military stores, in the wilds of the West, it was provided that a board of survey, composed of military officers, should on the arrival of the stores at their place of delivery, examine the quantity and condition of the stores transported, and "in cases of loss, deficiency, or damage, *investigate the facts and report the apparent causes, assess the amount of loss and injury, and state whether it was attributable to neglect or want of care on the part of the contractor or to causes beyond his control,*" "a copy of which," said the contract, "shall be furnished to the contractor, shall be attached to the bill of lading, and shall conclude the payments to be made:" *Held*, that a report that did not report investigation of facts and the apparent causes, nor state whether the loss was attributable to neglect or the want of care on the part of the contractor or to causes beyond his control, but which merely on its face found the deficiency and charged it accordingly, would be supported; the contractor not having, at the time when it was made, objected either as to the form or the substance of the report; and objecting only when he came and got his money; when witnesses were scattered and gone, and most of them difficult if not impossible to be found; and then notifying to the quartermaster nothing more definite than that he, the contractor, would claim a readjustment and full damages. *United States* v. *Shrewsbury*, 508.
2. Where in a pending suit a patentee and a party charged with infringing agree to refer the question of infringement to a third person as arbitrator, and to be bound by his award, this court will presume, until the contrary is shown, that an award made is correctly made; and must so presume if, disregarding the award, the complainant goes on with his suit, and the case on coming here comes with a record that exhibits neither the patent of the complainant nor any description of the machine which was alleged to infringe it. *Reedy* v. *Scott*, 352.

OWNER. See *Factor.*

PAROL EVIDENCE. See *Evidence*, 3.

PARTIES.

If the purchaser from a vendee of lands sold to such vendee subject to the vendor's lien, and not conveyed by deed, be dead, leaving a widow his executrix, and heirs-at-law to whom with her his real estate has descended, they ought to be made parties defendant to any bill by the original vendor to foreclose the right to pay and claim a deed. *Lewis* v. *Hawkins*, 119.

PARTNERSHIP.

The right of a partner to sign the firm name to a contract of indemnity in favor of third persons must be strictly proved; but it need not necessarily be proved by a written authority to him. *Moran et al.* v. *Prather*, 492.

PATENTS. See *Omnia præsumuntur rite esse acta*, 2; *Pleading*.

I. GENERAL PRINCIPLES RELATING TO.

1. An invention described in an application for a patent filed in the Patent Office is not of itself a bar to a subsequent patent therefor to another. Such an application may have a bearing on the question of the defence of prior invention or discovery, but will not of *itself* take such prior invention or discovery out of the category of unsuccessful experiments. *Corn-Planter Patent*, 181.
2. Certain reissues of an original patent held to be good as being for things contained within the machines and apparatus described in the original patents, although not claimed therein. Any question of fraud in obtaining these reissues is to be regarded as settled by the act of the Commissioner of Patents in granting them. *Ib.*
3. The use of the words "substantially as and for the purposes set forth," in a claim, throws it back to the specification, for qualification of words otherwise general. *Ib.*
4. A defendant held to have infringed a claim, in a complainant's patent, where parts of the machine patented were combined by a hinged joint, although in the defendant's machine the hinge was located at a different part of the machine; *the office, purpose, operation, and effect being the same.* A change a little more or less backward or forward held not to change the substantial identity. *Ib.*
5. A patentee, by his claim as to what he regards as new, disclaims by necessary implication the rest as old, and such remaining parts are to be regarded as old or common and public. *Ib.*
6. Where a claim, if construed in one way, would probably be held void as claiming a mere result irrespective of the means by which it was accomplished, will, if construed as claiming the accomplishment of the result by substantially *the means described* in the specification, become free from that objection, such claim should be construed in this limited manner, if possible, in order to save the patent. *Ib.*
7. Where the defendant (who was alleged to infringe Graham's patent of October 16th, 1860, "for picker-staff motion in looms"), employed a combination of a rocker with a bed by loose journals projecting on each side the picker-staff, and the combination was effected by means of a journal-bearing arm, it was *held* to be unimportant that the form of his journal-bearing arm was unlike that of the complainant's, or that its mode of attachment was different, so long as it performed the same function in substantially the same way. *Mason* v. *Graham*, 261.
8. Where the defendant had been in the habit of selling the infringing picker-staff motion both separately and in a form where they were attached to looms: *held*, that regard should be had, in ascertaining his profits upon those sold with the looms, to his profits upon those sold separately, rather than to the aggregate profits made by him upon the loom and attachment combined. *Ib.*
9. If a defendant has cheapened the cost of producing the infringing device by an improvement of his own, he is entitled to a corresponding

PATENTS (*continued*).

credit in the ascertainment of the profits, which a complainant is entitled to recover. *Mason* v. *Graham*, 261.

10. A manufacture or a product of a process may be no novelty, and, therefore, unpatentable; while the process or agency by which it is produced may be both new and useful. *The Wood-Paper Patent*, 568.
11. In cases of chemical inventions, when the manufacture claimed as novel is not a new composition of matter, but an extract obtained by the decomposition or disintegration of material substances, it is of no importance, in considering its patentability, to inquire from what it has been extracted. *Ib.*
12. When the substance of two articles produced by different processes is the same, and their uses are the same, they cannot be considered different manufactures. *Ib.*
13. Paper-pulp extracted from wood by chemical agencies alone is not a different manufacture from paper-pulp obtained from vegetable substances by chemical and mechanical processes. *Ib.*
14. The purpose of a reissue being to render effectual the actual invention for which the original patent should have been granted, and not to introduce new features, parol testimony is not admissible, in an application for reissue, to enlarge the scope of the invention beyond what was described, suggested, or substantially indicated in the original specification, drawings, or Patent Office model. *Collar Company* v. *Van Dusen*, 530.
15. Whether a reissued patent is for the same invention as the original, depends upon whether the specification and drawings of the reissued patent are substantially the same as those of the original; and, if not, whether the omissions or additions are or are not greater than the law allows to cure the defect of the original. *Ib.*
16. Where an original patent for improvement in paper shirt-collars stated the invention to consist, first, in making the collars of parchment-paper, or paper prepared with animal sizing; and second, in coating one or both sides of the collar with a thin varnish of bleached shellac, to give smoothness, strength, and stiffness, and to repel moisture; the claim being for "a shirt-collar made of parchment-paper, and coated with varnish of bleached shellac, substantially as described, and for the objects specified:" *Held*, that a reissue thereof which describes a paper other than parchment-paper, or one prepared with animal sizing, and which does not require either side of the collars to be coated with a varnish of bleached shellac for any purpose, the claim being for "a collar made of long-fibre paper, substantially such as is above described," is for a different invention from that embodied in the original patent. *Ib.*
17. Articles of manufacture may be new in the commercial sense when they are not new in the sense of the patent law. *Ib.*
18. New articles of commerce are not patentable as new manufactures unless it appears in the given case that the production of the new article involved the exercise of invention or discovery beyond what was necessary to construct the apparatus for its manufacture. *Ib.*

PATENTS (*continued*).

19. It appearing that the collars made by one Evans, apart from the paper composing them, were identical in form, structure, and arrangement with collars previously made of linen paper of different quality, and of other fabrics, and that Evans did not invent the special paper used by him, nor the process by which it was obtained: *Held*, that he was not entitled to a patent for the collars as a new manufacture. *Collar Company* v. *Van Dusen*, 530

20. The relations of an employer and a party employed by him, in regard to the origin of invention, stated. *Ib.*

21. The object in turning down a collar on a curved line instead of a straight line is precisely the same, whether the collar be all paper, paper and linen, or all linen. Hence, where it appeared that linen collars had been turned over on a curved line, to prevent wrinkling, and to afford space for the cravat: *Held*, that it was not patentable to apply the same mode of turning down to collars of paper or paper and linen. *Ib.*

22. The defendants, vendors of organs generally, and selling sometimes organs having a patented invention consisting of a combination of what was called a "tremolo attachment," with the organ, and selling sometimes organs without the attachment, were decreed guilty in their sales of organs with the attachment of infringing the complainant's patent: *Held*, that in the ascertainment of profits made by them from sales of the organs with the tremolo attachment, it was proper to let them prove the general expenses of their business in effecting sales of organs generally, and deduct a ratable proportion from the profits made by the tremolo attachment. *The Tremolo Patent*, 518.

23. The principles on which general expenses should be ascertained. *Ib.*

II. PARTICULAR PATENTS, VALIDITY OF.

24. Certain reissues of patents to G. W. Brown for improvements in corn-planting machines declared void and certain others valid. *The Corn-Planter Patent*, 181.

25. The patent to E. H. Graham, of May 28th, 1867 (original October 16th, 1860), for "an improvement in picker-staff motion for looms," declared valid. *Mason* v. *Graham*, 261.

26. A reissued patent to Ladd & Keen, April 7th, 1863 (original July 18th, 1854, to Watt & Burgess), for a pulp suitable for the manufacture of paper made from wood or other vegetable substances, declared void. *Wood-paper Patent*, 568.

27. Reissued patent to Ladd & Keen, dated April 7th, 1863 (original July 18th, 1854, to Watt & Burgess), for "improvements in pulping and disintegrating wood," declared void. *Ib.*

28. Reissued patents to Andrew Evans, for "improvement in paper shirt-collars," July 10th, 1866 (original May 26th, 1863) declared void. *Collar Company* v. *Van Dusen*, 530.

29. Reissued patent to Solomon Gray, "for improvement in turnover shirt-collars," March 29th, 1864 (original June 23d, 1863), declared void. *Ib.*

PATENTS (*continued*).

III. PARTICULAR PATENTS, CONSTRUCTION OF.

30. The reissued patent to E. H. Graham, May 28th, 1867 (original October 16th, 1860), "for picker-staff motion in looms," embraces every combination of a rocker with a bed and loose journal-bearing arms, arranged so as to produce the result described in the specification as effected by the combination. *Mason* v. *Graham*, 261.

31. The two boiler patents granted to Morris L. Keen, the one dated September 13th, 1850, and the other June 16th, 1863, held to be for combinations. *The Wood-paper Patent*, 568.

32. The patent granted May 26th, 1857, to Marie Amedée Mellier, covers the process claimed, when applied to wood as well as when applied to straw. *Ib.*

33. The "*internal pressure*," as described in the specification, is to be ascertained by deducting from the pressure marked by the steam-gauge, the weight of one atmosphere. *Ib.*

PILOT.

1. Bound, when there is a possibility of collision, not to be governed by "impressions" of what the neighboring vessel intends to do, but bound to make and exchange signals. *The Great Republic*, 20.

2. If not strictly temperate in the use of strong drinks, when on shore, liable to have unfavorable constructions put on his acts, if accident happens to his vessel soon after leaving port, in charge of the wheel. *Ib.*

PLEADING. See *Practice*, 13.

1. Though as a general rule suits for infringement of a patent are defeated by the surrender of the patent, and a new original bill—not a supplemental bill—is the proper sort of bill by which to proceed for an infringement under the reissue, yet where there has been a surrender and reissue, and the patentee has proceeded by a supplemental bill—the defendant making no objection to this sort of proceeding, but allowing proofs to be taken and the suit to proceed otherwise to a conclusion, as if the irregularity were wholly unimportant; the two parties proceeding respectively throughout the trial upon the assumption and concession that the reissued patent was substantially for the same invention as that embodied in the original patent—all objection to the irregularity in proceeding by a supplemental bill instead of by a new original one must be considered as waived. *Reedy* v. *Scott*, 352.

2. Where, pending a bill in a Federal court for the infringement of a patent, the parties have agreed to submit the question whether a machine made by the defendant was an infringement, to a solicitor of patents, and to abide by his decision, and that if he decides that it is not, then that the bill in said suit shall stand dismissed; and the referee does decide that there is no infringement, but the complainant instead of having his original bill dismissed and filing a new original bill, files a supplemental bill alleging a surrender and reissue, and that the reissue is "for the same invention" as was secured by the

PLEADING (*continued*).

original patent: in such case if it appear that the parties throughout the trial have treated the invention secured by the reissue, as substantially the same invention as that secured by the original letters, and have raised no issue about exact specification or any of those differences which may properly exist between a claim in an original patent and a claim in a reissue, but on the contrary have impliedly admitted substantial identity, having taken the issue on other matters, the matters, to wit, whether the complainant was not deceived when agreeing to refer, and whether the right of the referee to make any award was not legally revoked before any award was made by him, and whether, therefore, the award was not void: in such case if the court be satisfied that there was no deception, and that the award was made, and validly, then the plea of the award and agreement to be bound by it, may be properly pleaded to the supplemental bill as it might have been to the original one. *Reedy* v. *Scott*, 352.

PRACTICE. See *Costs; Decrees in Foreclosure; Jurisdiction; Parties.*

(*a*) *In cases generally.*

1. A rehearing will not be granted on the ground that the record on which the case was heard was imperfect, it appearing by an examination of the parts which on the original hearing were left out, but which were now brought up, that they presented nothing but matter which did not affect the merits of the case, or matter which only further established that which the court in giving its decree considered to be already otherwise abundantly proved. *Ambler* v. *Whipple*, 278

2. The court will not, generally speaking, refuse to hear a motion to dismiss, before the term to which, in regular order, the record ought to be returned, if the record be printed and the rules of court about motions of that sort have been complied with by the party making the motion. *Thomas & Co.* v. *Wooldridge*, 283.

3. Though a failure of the party making a motion to dismiss, to send a copy of his brief to the counsel of the other side within the time required by the amendment made at December Term, 1871, to Rule 6, would entitle such counsel of the other side to ask to postpone the hearing in order to give time for further preparation, yet if he have himself before the hearing filed a full argument upon the merits of the motion, the failure of his opposing counsel to have complied with the amendment to the rule would hardly warrant an objection that the notice of the motion was insufficient. *Ib.*

4. A motion to dismiss an appeal in equity may properly be made by one of several appellees, he being the only one who has any interest in the suit, and the only one who filed an answer below. *Ib.*

5. Where, by the laws of a State, an appeal can be taken from an inferior court of the State to the highest court of the same, only with leave of this latter or of a judge thereof, and that leave has been refused in any particular case, in the regular order of proceeding—the refusal not being the subject of appeal to this court—a writ of error, if there be in the case a "Federal question," properly lies, under

PRACTICE (*continued*).

section 709 of the Revised Statutes, to the inferior court, and not to the highest one. *Gregory* v. *McVeigh*, 294.

6 Cases cannot be brought up to this court in parts. The whole case must come, if any part of it come. *Crosby* v. *Buchanan*, 420.

7 *Quære.* Whether a general assignment of errors that the judgment below on a special case was for the wrong party, is sufficient. *Scholey* v. *Rew*, 331.

8. *Semble.* That an objection that a devise is void because of the alienage of the devisee, cannot first be taken by him in this court on a writ of error to the judgment of a Circuit Court on a special case, although the record discloses the fact of alienage. *Ib.*

9. The order of a Circuit Court remanding, for want of jurisdiction to hear it, a case removed from a State court into it, is not a "final judgment" in that sense which authorizes a writ of error. *Railroad Company* v. *Wiswall*, 507.

10. Nor is a decree of foreclosure and sale, in the sense which allows an appeal from it, so long as the amount due upon the debt must be determined, and the property to be sold ascertained and defined. *Railroad Company* v. *Swasey*, 405.

11. Where on certain facts found by the Court of Claims—it refusing to find as a fact a certain allegation which the petitioner in the suit requested it so to find—that court has given judgment against the petitioner, and the petitioner has taken the record to this court, which, upon considering the case found, reverses the judgment of the Court of Claims and remands the cause "for further proceedings in conformity with law and justice," there is nothing which prevents the Court of Claims from setting aside the findings of fact which it had made on the first trial and from trying the case *de novo*. *Ex parte Medway*, 504.

12. In administering justice under a new, complicated, and sometimes not very well expressed statute (as *ex. gr.*, the Bankrupt Act), which gave a party an appeal from the District Court to the Circuit Court in one class of cases, provided he proceeded in one special way, and an appeal in another class, if he proceeded in another special way, but confined each of the two classes of cases to its own special mode of proceeding, this court—in a suit where the case which was capable of being taken properly into the Circuit Court in one form was taken in fact and improperly there by the other—while it held that no appeal lay to *it* to hear and determine merits, and that it could only reverse the judgment and remand the case to the Circuit Court, with directions to dismiss the petition—the effect of which would be, owing to the loss of time, to leave the appellant without the ability to get his case into the Circuit Court, in the right way—this court thought it fitting to suggest that perhaps, on a proper application, the District Court would grant a review of the decree that *it* had rendered, which review, if granted, would lay the foundation, in case of an adverse decision, as before, upon the merits, for an appeal in proper form to the Circuit Court. *Stickney* v. *Wilt*, 150.

PRACTICE (*continued*).

(*b*) *In chancery.* (See *supra*, 4.)

13. An amendment which changed the character of a bill allowed even after final decree, the circumstances being peculiar and the cause having been in fact tried exactly as it would have been if the bill had originally been in the amended form. *The Tremolo Patent*, 518.

14. When a bill in equity, making colorable allegations of equitable grounds of jurisdiction, seeks to recover land which the complainants is out of possession of, but shows plainly, on the proofs being heard, a case where, if the complainant has a remedy, it is by ejectment, the court *suâ sponte* and without demurrer, plea, or answer setting up the impropriety of asking equitable aid, should recognize the fact and give effect to it. *Lewis* v. *Cocks*, 466.

PRESUMPTION. See *Omnia præsumuntur rite esse acta.*

PRINCIPAL AND AGENT. See *Towing Tug.*

The owners of a vessel in flames towed by a tug and no longer in command of her own captain and crew, are not liable for injury done by her to another vessel, by the negligence of the captain of the tug; the said owners not having employed the tug, she being a tug whose regular business was the assistance of vessels in distress, and she having gone, of her own motion, to the extinguishment of the fire in this case. *The Clarita*, 1.

PROCEEDING IN REM. See *Res Judicata.*

In a proceeding *in rem*, a valid seizure and actual control of the *res* by the marshal gives jurisdiction, and an improper removal of it from his custody, as by an order of court improvidently made, does not destroy the jurisdiction. *The Rio Grande*, 458.

RECEIPT. See *Omnia præsumuntur rite esse acta.*

REHEARING.

Will not be granted on the ground that the record on which the case was heard was imperfect, if it appear by an examination of the parts which, on the original hearing, were left out, but which were now brought up, that they present nothing but matter which does not affect the merits of the case, or matter which only further establishes that which the court in giving its decree considered to be already otherwise abundantly proved. *Ambler* v. *Whipple*, 278.

REMAINDER. See *Shelly's Case, Rule in.*

RES JUDICATA. See *Eminent Domain; Judicial Comity.*

Where, on a libel *in rem* in the admiralty for repairs, a vessel had been seized, and, on hearing, the libel was dismissed, but on the same day an appeal to the Circuit Court was moved and allowed, a motion made on the next day by the claimants and improvidently granted, to restore the vessel to them, does not divest the Circuit Court of its jurisdiction to hear the appeal, and in such a case a decree by the Circuit Court that the vessel was a foreign vessel—an issue whether it was so or not having been raised in the pleadings—if pleaded or put

RES JUDICATA (*continued*).

in evidence in the District and Circuit Courts of another circuit, to which the case finally gets on a new libel *in rem* by the original libellants against the vessel, which on a subtraction of it from the first district and circuit they have pursued into a new district and circuit, and seized anew, is conclusive of the foreign character of the vessel. *The Rio Grande*, 458.

REVERSAL AND REMAND. See *Practice*, 11.

REVISED STATUTES OF THE UNITED STATES.

The following sections referred to, commented on, and explained.

Section 709. See *Jurisdiction; Practice*, 5.
" 4916. See *Patents*, 14–16; 27.

RIPARIAN RIGHTS. See *Alluvion; Boundary.*

SALVAGE.

The owners of a vessel who through their own carelessness (or that of their captain) set fire to another vessel, cannot claim salvage for putting that fire out. *The Clara*, 1.

SHELLY'S CASE, RULE IN.

Does not apply to a case where a husband and wife conveyed lands in trust for the sole and separate use of the wife and for the children of the two parties, during the wife's life in absolute property, as if she were a *feme sole*, and free and clear of "any right, title, and estate, whether as tenants by the curtesy or otherwise of her present or any future husband, and from his control from any liability for his debts, and upon trust and to hold and dispose of and convey the said premises in such manner and to such uses, interest, and purposes as his wife may from time to time direct by any last will and testament, or other testamentary writing of what form soever, which she, the wife, notwithstanding her present or any future coverture, shall and may direct, limit, and appoint; and in the absence of any such direction, limitation, or appointment, or subject thereto, or remainder after her death, to her heirs-at-law of the wife." *Green* v. *Green*, 486.

SHIPMASTER.

If given to drinking spirituous liquors, even while on shore, liable to have unfavorable construction put on his management of a ship where an accident, which may have happened through his fault, has happened soon after his vessel has left port. *The Great Republic*, 20.

"SILK TIES."

Are chargeable under the Tariff Act of July 30th, 1864, with a duty of 50 per cent. *ad valorem*. *Smythe* v. *Fiske*, 374.

STATUTE OF LIMITATIONS.

Barring suits for the recovery of real estate after a certain lapse of time, does not apply to the case of a suit brought by a vendor of land having a vendor's lien, and who has never made a deed but only agreed to make one, against a purchaser from the original vendee. Both the original vendee and the purchaser from him, stand in the relation of a trus-

STATUTE OF LIMITATIONS (*continued*).

tee to the vendor for the unpaid purchase-money (or, as the matter is looked upon in some States, stand in that of a mortgagee), against whom the statute does not run. *Lewis* v. *Hawkins*, 120.

STATUTES. See *Construction, Rules of*, I.

STATUTES OF THE UNITED STATES.

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

1789. September 24th. See *Jurisdiction; Proceeding in rem.*
1803. March 3d. See *Jurisdiction.*
1822. May 7th. See *Surveyors of Ports.*
1831. March 2d. See *Surveyors of Ports.*
1836. July 4th. See *Patents.*
1841. March 3d. See *Surveyors of Ports.*
1842. August 3d. See *Customs of the United States.*
1846. May 22d. See *Customs of the United States.*
1846. July 30th. See *Customs of the United States.*
1857. March 3d. See *Surveyors of Ports.*
1861. May 2d. See *Customs of the United States.*
1863. March 3d. See *Army Officer.*
1863. March 12th. See *Abandoned and Captured Property Act.*
1864. April 29th. See *Collision*, 8, 10.
1864. June 30th. See *Internal Revenue; National Banks*, 1.
1864. July 30th. See "*Silk Ties.*"
1866. July 13th. See *Internal Revenue.*
1866. July 27th. See *Jurisdiction*, 2.
1866. July 30th. See *Customs of the United States.*
1867. March 2d. See *Bankrupt Act.*
1868. February 10th. See *National Banks*, 1, 2.
1870. July 8th. See *Patent.*
1870. July 14th. See *National Banks.*
1872. June 8th. See *Surveyor of Ports.*
1873. March 3d. See *Customs of the United States.*

STEAMBOAT DEBTS. See *Evidence*, 3.

STEAMERS AND SAILING VESSELS.

Their respective obligations when there is a possibility of collision at sea. *The Sea-Gull*, 165.

SUCCESSION TAX. See *Internal Revenue*, 4.

SURVEYORS OF PORTS.

Performing the duties of collectors of the customs in ports other than those ports enumerated in the fifth section of the act of May 7th, 1822 (3 Stat. at Large, 693), that is to say of ports other than Boston, New York, Philadelphia, Baltimore, Charleston, Savannah, and New Orleans, are entitled to a salary of but $5000 a year, even though the ports in which such surveyors may be performing the duties of collectors had no existence on May 7th, 1822, and, like the port of St. Louis, were not created till 1831. The system of classes, established

SURVEYORS OF PORTS (*continued*).
for salary purposes by the above-mentioned act of 1822, extends to surveyors doing collectors' duty in ports subsequently created. *Donovan* v. *United States*, 383.

TARIFF. See *Customs of the United States.*

TENDER OF DEED. See *Costs.*

TOWING-TUG. See *Anchor-ground; Principal and Agent.*
A vessel whose business it is to give relief to vessels on fire is bound to have chain hawsers or chain attachments on board, and if having only manilla hawsers she is compelled to tow a vessel out of its dock with such a hawser, which is burnt, so that the vessel on fire gets loose from the tug, and, drifting, sets fire to another vessel, the tug is liable for the damages caused. *The Clarita*, 1.

VENDOR'S LIEN.
1. Where a party agrees to sell land to another and as consideration therefor the vendee gives his promissory notes payable at a future date named, and the vendor gives his bond conditioned that on the payment of the notes he will convey the premises in fee to the vendee, but makes no deed, the legal estate remains, until the payment of the purchase-money, in the vendor, and he has, by the law of those States where such liens are recognized, a "vendor's lien." The vendee has an equitable title only; one indeed which he can sell or devise, but one which if the purchase-money is unpaid he cannot sell so as to exclude the vendor's right to have payment of it. Any purchaser from the vendee who assumes to pay the notes takes the same title that the vendee had, that is to say an equitable title, the land being still charged with the payment of the purchase-money. *Lewis* v. *Hawkins et al.*, 119.
2 If the notes are not paid, the vendor may apply by bill in equity against the vendee and the purchaser from him, tendering a good deed, and ask that they pay the purchase-money at short date or be foreclosed from setting up any right to the land, and that it be sold and the proceeds applied to paying the purchase-money. *Ib.*

VESSELS ON FIRE.
The obligation of tugs undertaking to tow them stated, as also the law in other particulars relating to the general subject. *The Clara and The Clarita*, 1.

WAIVER. See *Omnia præsumuntur rite esse acta; Pleading; Practice*, 13.

WATCH AT SEA. See *Anchor-watch; Lookout.*

WHOLESALE DEALERS. See *Internal Revenue*, 1.

WRIT OF ERROR. See *Practice*, 5.

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