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ABANDONED AND CAPTURED PROPERTY.

No suit can be maintained against the United States under the Abandoned and Captured Property Act (12 Stat. 820), if the property in question was neither captured, seized, nor sold pursuant to its provisions, and the proceeds were not paid into the treasury. *Spencer* v. *United States*, 577.

ACCEPTANCE. See *Bills of Exchange*, 1, 2.

ADMINISTRATION, LETTERS OF. See *Evidence*, 1.

ADMINISTRATORS. See *Equity*, 1; *Evidence*, 1.

ADMIRALTY. See *Jurisdiction*, 7; *Practice*, 6.

1. It is the duty of a steamer to keep out of the way of a sailing vessel when they are approaching in such directions as to involve a risk of collision. The correlative obligation rests upon the sailing vessel to keep her course, and the steamer may be managed upon the assumption that she will do so. *The "Free State,"* 200.

2. Where a sailing vessel, ascending the Detroit River in a direction nearly north, bore two or three points to the west, while an ascending steamer overtook and passed her, to give a wider berth to such steamer, which steamer passed to the east of a descending steamer, — *Held*, 1. That the descending steamer had the right to assume that the sailing vessel would hold her westerly course, and that she was in the right in shaping her course to the east for the purpose of passing the sailing vessel; and that a subsequent change of the course of the sailing vessel to the east when within three hundred feet of the descending steamer was unjustifiable, and that the collision resulting therefrom was solely the fault of the sailing vessel. 2. That there was no fault in the descending steamer in not slackening or stopping until such change of course in the sailing vessel rendered a collision probable. *Id.*

3. It is not the rule of law, under the sixteenth of the articles enacted by Congress to avoid collisions, when a steam-vessel is approaching another vessel, and where a collision may be produced by a departure of the latter from the rules of navigation, that the former vessel is bound to slacken her speed, or stop and reverse. Each vessel

ADMIRALTY (*continued*).

may assume that the other will reasonably perform its duty under the laws of navigation; and if, upon this assumption, there could be no collision, the case under the sixteenth article does not arise. The steamer is not bound to take measures to avoid a collision until some danger of collision is present. *Id.*

4. If a sailing vessel, when approaching a steamer, fails to adopt all reasonable precautions to prevent a collision, she will not be excused, even though she displays her proper signal-lights; and is entitled, in the absence of exceptional circumstances or special danger, to keep her course. *The "Sunnyside,"* 208.
5. A collision occurred on Lake Huron, about three miles from the shore, near the head of St. Clair River, between a steam-tug and a sailing vessel. The former, heading east by north half north, waiting for a tow in conformity with a well-known usage in those waters, with her machinery stopped, but with her signal-lights burning as the law requires of a steamer under way, was drifting at the rate of a mile and a half per hour. The sailing vessel, with all her sails set and displaying her proper signal-lights, was heading north half west at a speed of nine miles per hour. *Held*, that it was the duty of the sailing vessel, in view of the special circumstances, to put up her helm and go to the right, or to put it down and suffer the steam-tug to drift past in safety; and, both vessels being at fault, the damages were equally apportioned between them. *Id.*
6. The doctrine announced in *The Continental*, 14 Wall. 345, reaffirmed. *Id.*
7. The decree of a district court, dismissing a cross-libel for want of merit, from which no appeal was taken, determines the questions raised by such cross-libel, but does not dispose of the issues of law or of fact involved in the original suit. *The "Dove,"* 381.
8. By such dismissal, without appeal, both parties to the cross-libel are remitted to the pleadings in the original suit; and every issue therein is open on appeal as fully as if no cross-libel had ever been filed. Id.
9. At night, during a dense fog, a collision occurred on Lake Huron between a bark of 420 tons, bound down, and a propeller of 1,500 tons, bound up, the lake. The wind was from the south. The bark, well manned and equipped, having competent lookouts, properly stationed and vigilant in the performance of their duty, and with her foresail and light sails furled, was, at a speed not exceeding four miles an hour, sailing by the wind, close-hauled on her starboard tack, heading south-east by east, displaying the proper lights, and, as required by law and the custom of the lakes, giving frequent signals of two blasts from her fog-horn, which could be heard at a distance of half a mile; which signify in that locality that she was on her starboard tack, close-hauled. She held this course, until, a collision becoming inevitable, her helm was put to starboard. The propeller, with but

ADMIRALTY (*continued*).

one lookout and an insufficient watch on deck, was heading north-north-west, and moving at the rate of five or six miles per hour. The officer in charge of the propeller heard but one blast of the bark's fog-horn when the vessels were near each other, and ported her helm; but then, hearing two blasts of a second signal, ordered her helm hard a-starboard. Before this order had much effect, she struck the bark, at an angle of about forty-five degrees, on her starboard side, nearly opposite the mainmast, thereby causing the total loss of that vessel and her cargo. *Held*, that the propeller was responsible for the disaster. *The "Colorado,"* 692.

10. Where, in a collision between a propeller and a sailing vessel, the proofs show that the latter kept her course, the presumption of fault on the part of the propeller, arising in the absence of evidence tending to bring the case within any of the exceptions in the nineteenth article of the sailing rules, can only be overcome by showing that she took every reasonable precaution to meet any emergency which might arise, and that she was not guilty of the want of ordinary care, caution, or maritime skill. *Id.*

AD VALOREM DUTIES. See *Imports*, 3.

ADVANCE, MOTIONS TO. See *Practice*, 4, 13.

AFFIDAVITS. See *Record*, 1.

AGENTS. AGENCY. See *Bankruptcy*, 8; *Bills of Exchange*, 4; *Bills of Lading*, 1, 2; *Corporations*, 1–4; *District of Columbia*, 2, 3.

AGREED STATEMENT OF FACTS. See *Record*, 1.

AGREEMENT. See *Contracts*, 5, 12, 13.

ALLOWANCES. See *Collectors of Internal Revenue*, 1.

"ALONG ITS ROUTE." Meaning of this phrase. See *Damages*, 2.

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy*, 1, 5, 9; *Jurisdiction*, 9, 10; *Practice*, 11; *Will*, 1, 2.

ASSIGNMENT. See *Bankruptcy*, 9.

ASSIGNMENTS OF ERROR. See *Practice*, 20.

ASSUMPSIT. See *Covenant, Action of*, 1.

ATTORNEY-AT-LAW. See *Bankruptcy*, 8; *Claims Commission*, 1.

BAILMENT. See *Bills of Exchange*, 5, 6.

BANKERS.

1. The substance of the business of a banker, as defined by the acts of Congress approved June 30, 1864 (13 Stat. 252), and March 3, 1865 (id. 472), is having a place of business where deposits are received

BANKERS (*continued*).
and paid out on checks, and where money is loaned upon security. *Warren et al.* v. *Shook*, 704.
2. While the sale by a person doing a banking business only of a security received by him for the repayment of a legitimate loan does not make him a broker, and subject him to taxation as such, yet, when it is his business, the statute properly holds all such acts, whether in the name of himself ostensibly or in the name of others, to be those of a broker. *Id.*
3. Congress, by enacting "that all brokers, and bankers doing business as brokers, shall be subject" to the duties specified, plainly intended to include the entire class of persons engaged in the business of buying and selling stocks and coin. *Id.*

BANKRUPTCY. See *Evidence*, 5, 6; *Jurisdiction*, 6, 8–10; *Practice*, 12; *Trusts and Trustees*, 1; *Will*, 1, 2.
1. Where, in a district court of the United States, a corporation was adjudged a bankrupt, an assignee appointed, and an order made that the balance unpaid upon the stock held by the several stockholders should be paid to him by a certain day, that notice of the order should be given by publication in a newspaper or otherwise, and that in default of payment he should collect the amount due from each delinquent stockholder, and it appearing that he had given the notice required, and that the defendant below had failed to make payment pursuant to the order, — *Held*, that the order was conclusive as to the right of the assignee to bring suit to enforce such payment. *Sanger* v. *Upton, Assignee*, 56.
2. The court pronouncing the decree of bankruptcy had jurisdiction and authority to make the order; and it was not necessary that the stockholders should have received actual notice of the application therefor. In contemplation of law, they were before the court in all the proceedings touching the corporation of which they were members. *Id.*
3. It was competent for the court to order payment of the unpaid stock subscriptions, as the directors, under the instructions of a majority of the stockholders, might, before the decree in bankruptcy, have done. *Id.*
4. The capital stock of an incorporated company is a fund set apart for the payment of its debts. *Id.*
5. As the company might have sued a stockholder for his unpaid subscription at law, the assignee succeeding to all its rights has the same remedy. *Id.*
6. It appearing in evidence that two certificates of stock in blank as to the stockholder's name were issued and delivered to the plaintiff in error, that she had paid to the company all that was then payable and received a dividend, and that her name was placed upon the stock list, she was estopped from denying her ownership. *Id.*

BANKRUPTCY (*continued*).

7. As the exchange of a valid security for one of equal value within four months prior to the filing of a petition in bankruptcy, even when the creditor and debtor know of the insolvency of the latter, takes nothing away from the other creditors, and is, therefore, not in conflict with the thirty-fifth section of the Bankrupt Act, — *Held*, that a chattel mortgage, taken within that period of time by a creditor in exchange for a prior valid bill of sale of the same property, and recorded pursuant to the laws of the State where the transaction took place before any rights of the assignees in bankruptcy accrued, cannot be impeached by them as a fraudulent preference within the meaning of that act. *Sawyer et al.* v. *Turpin et al.*, 114.

8. An account or money demand having been delivered by its owners to a collection agency with instructions to collect the debt, that agency transmitted the claim to an attorney, who, knowing the insolvency of the debtor, persuaded him to confess judgment. The money collected was transmitted to the collection agency, but never reached the creditors. Proceedings in bankruptcy were instituted against the debtor within four months after such confession, and were prosecuted to a decree. *Held*, that as the attorney was the agent of the collection agency which employed him, and not of the creditors, his knowledge of the insolvency of the debtor was not chargeable to them in such sense as to render them liable to the assignee in bankruptcy for the money collected on the judgment. *Quære*, would they have been so liable had the money reached their hands? *Hoover, Assignee*, v. *Wise et al.*, 308.

9. An assignment by an insolvent debtor of his property to trustees for the equal and common benefit of all his creditors is not fraudulent, and, when executed six months before proceedings in bankruptcy are taken against the debtor, is not assailable by the assignee in bankruptcy subsequently appointed; and the assignee is not entitled to the possession of the property from the trustees. *Mayer et al.* v. *Hellman*, 496.

10. The creditor of a manufacturing corporation, which was duly adjudicated a bankrupt, who proved his claim and received a dividend thereon, does not thereby waive his right of action for so much of the claim as remains unpaid. *New Lamp Chimney Company* v. *Ansonia Brass and Copper Company*, 656.

11. A decree adjudging a corporation bankrupt is in the nature of a decree *in rem* as respects the *status* of the corporation, and, if the court rendering it has jurisdiction, can only be assailed by a direct proceeding in a competent court, unless it appears that the decree is void in form, or that due notice of the petition was not given. *Id.*

BILLS OF EXCHANGE. See *Bills of Lading*, 1, 2; *Practice*, 12, 18; *Rebellion, The*, 2.

BILLS OF EXCHANGE (*continued*).

1. Where a bill of exchange was drawn by a party in Chicago upon a firm in St. Louis, and verbally accepted by a member of the firm then present in Chicago, — *Held*, that the validity of such acceptance was to be determined by the law of Illinois. *Scudder* v. *Union National Bank*, 406.
2. In Illinois, a parol acceptance of a bill of exchange is valid, and a parol promise to accept it is an acceptance thereof. *Id.*
3. A party discounting a draft, and receiving therewith, deliverable to his order, a bill of lading of the goods against which the draft was drawn, acquires a special property in them, and has a complete right to hold them as security for the acceptance and payment of the draft. *Dows et al.* v. *National Exchange Bank of Milwaukee*, 618.
4. Where such party forwarded the draft, with the bill of lading thereto attached, to an agent, with instructions, by special indorsement on the bill and by letter, to hold the wheat in the bill mentioned, against which the draft had been drawn, until payment of the draft should be made, the agent had no power, prior to such payment, to make a delivery which would divest the ownership of his principal. *Id.*
5. Where the agent directed the carrying vessels, on which the wheat was shipped, to deliver it to the Corn Exchange Elevator, the proprietor whereof accepted the wheat in bailment under express instructions that it was to "be held subject to and delivered only on the payment of the draft," — *Held*, that such proprietor, although the drawee of the draft, acknowledged, by the act of receiving the wheat, that it was not placed in his hands as the owner thereof, and that the title of the bailors was not transferred. *Id.*
6. The drawee, having, under such circumstances, possession of the wheat as a mere warehouseman, and not as a vendee, his subsequent sale and delivery thereof conferred no title thereto on the purchaser. *Id.*

BILLS OF LADING. See *Bills of Exchange*, 3, 4; *Practice*, 18.

1. A bill of lading of merchandise, deliverable to order, when attached to and forwarded with a time draft, sent without special instructions to an agent for collection, may be surrendered to the drawee on his acceptance of the draft. It is not the agent's duty to hold the bill after such acceptance. *National Bank of Commerce of Boston* v. *Merchants' National Bank of Memphis*, 92.
2. The holder of a bill of lading, who has become such by indorsement and by discounting the draft drawn against the consigned property, succeeds to the rights of the shipper. He has the same right to demand acceptance of the accompanying draft, and no more; and, if the shipper cannot require such acceptance without surrendering the bill of lading, neither can the holder. *Id.*

BILLS OF EXCEPTION. See *Record*, 2.

BILLS OF SALE. See *Invoice*, 1.

BLANK STOCK CERTIFICATES. See *Bankruptcy*, 6.

BOARD OF PUBLIC WORKS. See *District of Columbia*, 4, 5.

BONDS, MATURITY OF. See *Union Pacific Railroad*, 1–3.

BROKERS. See *Bankers*, 2, 3.

1. By the acts of June 30, 1864 (13 Stat. 252), and March 3, 1865 (id. 472), a broker is defined to be one whose business it is to negotiate purchases or sales of stocks, exchange, bullion, coined money, bank-notes, promissory notes, or other securities, for himself or for others. *Warren et al.* v. *Shook*, 704.
2. The words "whose business it is," employed in the ninth subdivision of the seventy-ninth section of the act of 1864, qualify all parts of the definition of a broker as given in the act; so that a person becomes a broker, within the meaning of the statute, only when making sales and purchases is his business, trade, profession, means of getting his living, or making his fortune. *Id.*

BURLAPS. See *Imports*, 1, 3.

CAPITAL STOCK OF CORPORATIONS. See *Bankruptcy*, 4.

CARONDELET. See *Public Lands*, 1.

CLAIMS COMMISSION.

A commission called together, in pursuance of treaty stipulations or otherwise, to settle and adjust disputed claims, with a view to their ultimate payment and satisfaction, is, for that purpose, a *quasi* court; and there is nothing illegal, immoral, or against public policy, in an agreement by an attorney-at-law to present and prosecute a claim before it, either at a fixed compensation, or for a reasonable percentage upon the amount recovered. *Wright* v. *Tebbitts*, 252.

COLLECTION AGENCY. See *Bankruptcy*, 8.

COLLECTORS OF INTERNAL REVENUE.

The twenty-fifth section of the act of June 30, 1864 (13 Stat. 231), authorizes the Secretary of the Treasury to make, in his discretion, just and reasonable allowances to collectors of internal revenue, in addition to their salaries, commissions, and certain necessary charges. A claim for such allowances, unless it be sanctioned by him, cannot be admitted by the accounting officers of the treasury. *Hall et al.* v. *United States*, 559.

COLLISION. See *Admiralty*, 1–6, 9, 10; *Damages*, 4, 5.

COMMERCE, INTER-STATE. See *License Tax*, 1, 2.

1. The power to regulate commerce with foreign nations and among the several States was vested in Congress to insure uniformity of commercial regulation against discriminating State legislation. It covers property which is transported as an article of commerce from foreign

COMMERCE, &c. (*continued*).

countries, or among the States, from hostile or interfering State legislation, until it has mingled with and become a part of the general property of the country, and protects it even after it has entered a State from any burdens imposed by reason of its foreign origin. *Welton* v. *The State of Missouri*, 275.

2. The non-exercise by Congress of its power to regulate commerce among the several States is equivalent to a declaration by that body that such commerce shall be free from any restrictions. *Id.*

COMMERCIAL INTERCOURSE. See *Rebellion, The*, 1.

COMMERCIAL USAGE. See *Imports*, 1, 2.

COMPENSATORY DAMAGES. See *Damages*, 4.

CONDEMNATION OF LAND. See *Eminent Domain*, 1–3.

CONFEDERATE CURRENCY. See *Contracts*, 1–3.

CONFISCATED PROPERTY, PROCEEDS OF. See *Confiscation*, 4.

CONFISCATION. See *Pardon*, 1.

1. The proclamation of the President of the United States, bearing date Sept. 7, 1867, did not work the dismissal of legal proceedings against property seized under the confiscation act of July 17, 1862, or provide for the restoration of all rights of property to persons engaged in the rebellion. *Semmes* v. *United States*, 21.
2. Property so seized became the property of the United States from the date of the decree of condemnation. *Id.*
3. A condition annexed to a pardon, that the recipient shall not by virtue of it claim any property, or the proceeds of any property, sold by the order, judgment, or decree of a court, under the confiscation laws of the United States, does not preclude him from applying to the court for the proceeds of a confiscated money-bond secured by mortgage, which were collected by the officers of the court in part by voluntary payment by the obligors, and in part by sale of the lands mortgaged. The condition is only intended to protect purchasers at judicial sale, decreed under the confiscation laws, from any claim of the original owner for the property sold or the purchase-money. *Osborn* v. *United States*, 474.
4. The proceeds of property confiscated, paid into court, are under its control until an order for their distribution is made, or they are paid into the hands of the informer entitled to them, or into the treasury of the United States. *Id.*

CONNECTICUT, RECORDING ACTS OF. See *Practice*, 9.

CONSENT DECREE. See *Florida, State of*, 5.

CONSTITUTIONAL LAW. See *Commerce, Inter-State*, 1, 2.

CONSTRUCTION OF LAW. See *Union Pacific Railroad*, 1–7; *Practice*, 1, 4.

CONSULS. CONSULAR COURTS. See *Pleading*, 2.

1. Judicial powers are not necessarily incident to the office of consul, although usually conferred upon consuls of Christian nations in Pagan and Mahometan countries, for the decision of controversies between their fellow-citizens or subjects residing or commorant there, and for the punishment of crimes committed by them. *Dainese* v. *Hale*, 13.
2. The existence and extent of such powers depend on the treaty stipulations and positive laws of the nations concerned. *Id.*
3. The treaty between the United States and the Ottoman Empire, concluded June 5, 1862 (if not that made in 1830), has the effect of conceding to the United States the same privilege, in respect to consular courts and the civil and criminal jurisdiction thereof, which are enjoyed by other Christian nations; and the act of Congress of June 22, 1860, established the necessary regulations for the exercise of such jurisdiction. *Id.*
4. But as this jurisdiction is, in terms, only such as is allowed by the laws of Turkey, or its usages in its intercourse with other Christian nations, those laws or usages must be shown in order to know the precise extent of such jurisdiction. *Id.*

CONTRACTS. See *Bills of Exchange*, 2; *Claims Commission*, 1; *Corporations*, 1; *Evidence*, 2.

1. Contracts made during the war in one of the Confederate States, payable in Confederate currency, but not designed in their origin to aid the insurrectionary government, are not, because thus payable, invalid between the parties. *Wilmington and Weldon R.R. Co.* v. *King*, *Executor*, 3.
2. In actions upon such contracts, evidence as to the value of that currency at the time and in the locality where the contracts were made is admissible. *Id.*
3. A statute of North Carolina of March, 1866, enacting that in all civil actions "for debts contracted during the late war, in which the nature of the obligation is not set forth, nor the value of the property for which such debts were created is stated, it shall be admissible for either party to show on the trial, by affidavit or otherwise, what was the consideration of the contract, and that the jury, in making up their verdict, shall take the same into consideration, and determine the value of said contract in present currency in the particular locality in which it is to be performed, and render their verdict accordingly," in so far as the same authorizes the jury in such actions, upon the evidence thus before them, to place their own estimate upon the value of the contracts, instead of taking the value stipulated by the parties, impairs the obligation of such contracts, and is, therefore, within the inhibition upon the State of the Federal Constitution. Accordingly, in an action upon a contract for wood

CONTRACTS (*continued*).

sold in that State during the war, at a price payable in Confederate currency, an instruction of the court to the jury, that the plaintiff was entitled to recover the value of the wood without reference to the value of the currency stipulated, was erroneous. *Id.*

4. Where a contract provides for the transportation of military stores and supplies from certain posts, dépôts, or stations, or from and to any other posts, dépôts, or stations, that might be established within a described district, or from one point to another within the route, — *Held*, that Fort Phil. Kearney, being a military post, although not specifically named in the contract, nor established after the date thereof, was "a point" where the contractor was required to receive military stores and supplies for transportation to another point within the route, and that he was entitled to payment under the contract and at the rates therein mentioned for the distance they were actually carried, but not to additional compensation for the travel of his unloaded teams in reaching that fort. *Black et al.* v. *United States*, 267.

5. An agreement between a telegraph company and the State of Georgia, sole owner of a railroad, which provides that the company shall put up and set apart on its poles, along said railroad, a telegraph wire for the exclusive use of the railroad, equip it with as many instruments, batteries, and other necessary fixtures, as may be required for use in the railroad stations, run the wire into all the offices along the line of road, and put the same in complete working order, fixes the terms upon which officers of the road may transmit and receive messages through the connecting lines of the company, recognizes the right of way of the company along the line of road, regulates the use of the wire and the compensation for it, and binds the State to pay the cost of constructing the wire, and equipping the same at railroad stations not already supplied with instruments, batteries, and other necessary fixtures, does not constitute a sale of such wire, batteries, and other instruments, to the State, but is merely a contract for her exclusive use thereof. *Western Union Telegraph Co.* v. *Western and Atlantic R.R. Co.*, 283.

6. As the ownership of such wire and instruments is in the telegraph company, a lease of the railroad by the State confers upon her lessees only such rights as she acquired under her contract with the company. *Id.*

7. Where the Secretary of the Navy possesses the power, under the legislation of Congress and the orders of the President, to enter into contracts for work connected with the construction, armament, or equipment of vessels of war, he can suspend the work contracted for when from any cause the public interest may so require; and, where such suspension is ordered, he is authorized to settle with the contractor upon the compensation to be paid for the partial perform-

CONTRACTS (*continued*).
ance of the contracts. *United States* v. *Corliss Steam Engine Co.*, 321.
8. When a settlement in such a case is made upon a full knowledge of all the facts, without concealment, misrepresentation, or fraud, it is equally binding upon the government and the contractor. *Id.*
9. Where a party under his contracts with the United States was entitled to "all hides of beef-cattle slaughtered for Indians" which the Superintendent of Indian Affairs should decide were not required for their comfort, and where the Commissioner of Indian Affairs directed that the cattle be turned over to the agent who gave them out from time to time to the Indians, by whom they were killed, — *Held*, that the order of the commissioner was in effect a decision that the hides were required for the comfort of the Indians, and excused the United States from delivery to the contractor. *Lobenstein* v. *United States*, 324.
10. The estimate of the number of hides, — about two thousand, more or less, and about four thousand, more or less, — as made in the contracts, does not create an obligation on the part of the United States to deliver that number, as the conditions of the agreement rendered it impossible for either party to determine how many would be reserved for the Indians. Therefore the number specified could not have been understood to be guaranteed. *Id.*
11. Matters bearing upon the execution, interpretation, and validity of a contract are determined by the law of the place where it is made. Matters connected with its performance are regulated by the law prevailing at the place of performance. Matters respecting the remedy depend upon the law of the place where the suit is brought. *Scudder* v. *Union Nat. Bank*, 406.
12. Where a party, in order to effect an insurance upon his life, agreed that if the proposal, answers, and declaration made by him — which he declared to be true, and which were made part and parcel of the policy, the basis of the contract, and upon the faith of which the agreement was entered into — should be found in any respect untrue or fraudulent, then, and in such case, the policy should be null and void, — *Held*, that the company was not liable if the statements made by the insured were not true. *Ætna Life Insurance Co.* v. *France et al.*, 510.
13. The agreement of the parties that the statements were absolutely true, and that their falsity in any respect should void the policy, removes the question of their materiality from the consideration of the court or jury. *Id.*
14. A., who had covenanted with the supervisors of a county to construct a jail subject to the approval of a superintendent, who was authorized to stop the work if it and the materials furnished did not conform to certain plans and specifications, entered into a contract

CONTRACTS (*continued*).

with B. to manufacture and erect in its proper position all the wrought-iron work for the jail, according to such plans and specifications. *Held*, that B. was entitled to recover on his contract the value of the work done and materials furnished by him, if he substantially complied with the plans and specifications, or a strict compliance therewith had been waived by A., although the supervisors, in the exercise of the power reserved in their contract with A., condemned B.'s work, and required A. to replace a portion of it. *Woodruff et al.* v. *Hough et al.*, 596.

15. A., who had undertaken to build a railroad for a company, entered July 18, 1872, into a sealed contract with B. for building a hundred and sixty miles of the road. The contract, among other things, provided that B. should complete the first section, of forty miles, on or before the first day of September then next ensuing; the third section, of twenty miles, by the fifteenth day of that month; the fourth section, of twenty miles, on the fifteenth day of the following November; the fifth section, of twenty miles, on the fifteenth day of December; and so on; the whole to be completed May 1, 1873. Payment was to be made to B. as the work progressed, the 15th of each month, on monthly estimates, by the engineer of the railroad company, of the work done the previous month, except fifteen per cent after the completion of forty miles, which was to be retained as security for the performance by B. until the work should be completed, and to be forfeited to A., and applied to any claim for damages which he might sustain by the failure of B. to have the stipulated work completed at the time specified. Fifteen per cent of the estimates on the first forty miles, and a liquidated sum of $15,000 agreed to be paid for extra work on that section, were to be retained as security for the completion of the first sixty miles. B. failed to finish any portions of the work by the specified time; but A., although authorized by the contract to declare it forfeited, excused the failure, paid B. the estimate for the work then done, and permitted him to proceed with the work. B. continued to do so until A. failed to pay the large sums due him by the estimates for work done in October and November. B. then learned from A. that the latter was unable to pay those estimates, and would probably be unable for a time to pay future monthly estimates. B. thereupon ceased to do any further work, and brought this suit. *Held*, 1. That the declaration of B. was sufficient on demurrer, as it averred, in substance, that from the time he entered upon the performance of the contract in July, 1872, until the fifteenth day of December of that year, when A. wholly failed to make the stipulated payment for the work then actually done, he, with a large force and with suitable equipments along the whole line of the road, had prosecuted the work with all the energy and skill that he pos-

CONTRACTS (*continued*).

sessed, and that A. had expressed satisfaction at the manner in which the work was done. 2. That A. so far waived absolute performance on the part of B. as to consent to be liable on his covenant for the contract price of the completed work, but did not waive his right to whatever damages he may have sustained by the failure of B. to perform such work by the specified time, and that A. might set up such damages by way of cross-demand against B. 3. The court below erred in charging the jury that time was not of the essence of the contract sued on, and that such damages could not, therefore, be recovered; but, inasmuch as there was no legal evidence of such damages, the misdirection of the court worked no prejudice to A., and affords no ground for reversing the judgment. 4. That B. was not required, after A. had defaulted on a payment due, to proceed with the work at the hazard of further loss; and that he was entitled to recover the contract price of the work done, together with the fifteen per cent on the estimates, and the $15,000, both of which had been retained by A. as a security for B.'s performance of the contract. *Phillips and Colby Construction Co.* v. *Seymour et al.*, 646.

CORPORATIONS. See *Bankruptcy*, 1.

1. The original holder of stock in a corporation is liable for unpaid instalments of stock, without an express promise to pay them; and a contract between a corporation or its agents and him, limiting his liability therefor, is void both as to the creditors of the company and its assignee in bankruptcy. *Upton, Assignee*, v. *Tribilcock*, 45.
2. Representations by the agent of a corporation as to the non-assessability of its stock, beyond a certain percentage of its value, constitute no defence to an action against the holder of the stock to enforce payment of the entire amount subscribed, where he has failed to use due diligence to ascertain the truth or falsity of such representations. *Id.*
3. The word "non-assessable" upon the certificate of stock does not cancel or impair the obligation to pay the amount due upon the shares created by the acceptance and holding of such certificate. At most, its legal effect is a stipulation against liability from further assessment or taxation after the entire subscription of one hundred per cent shall have been paid. *Id.*
4. Assuming the representations of the agent of the company, as to the non-assessment of the stock, to be a fraud which would avoid the contract, the question arises, whether the defendant discharged his duty in discovering the fraud, and repudiating the contract on that account, and not on account of another fraud not in issue. *Held*, that the plaintiff was entitled to the opinion of the jury on that precise question. *Id.*

CORPORATIONS (*continued*).

5. The doctrine announced in *Upton* v. *Tribilcock*, *supra*, that the original holders of the stock of a corporation are liable for the unpaid balances at the suit of its assignee in bankruptcy, without any express promise to pay, reaffirmed. *Webster* v. *Upton*, *Assignee*, 65.
6. The transferee of stock is liable for calls made after he has been accepted by the company as a stockholder, and his name registered on the stock books as a corporator; and, being thus liable, there is an implied promise that he will pay calls made upon such stock while he continues its owner. *Id.*
7. A purchase of stock is of itself authority to the vendor to make a legal transfer thereof to the vendee on the books of the company. *Id.*
8. A director of a corporation is not prohibited from lending it moneys when they are needed for its benefit, and the transaction is open, and otherwise free from blame; nor is his subsequent purchase of its property at a fair public sale by a trustee, under a deed of trust executed to secure the payment of them, invalid. *Twin-Lick Oil Co.* v. *Marbury*, 587.
9. The right of a corporation to avoid the sale of its property by reason of the fiduciary relations of the purchaser must be exercised within a reasonable time after the facts connected therewith are made known, or can by due diligence be ascertained. As the courts have never prescribed any specific period as applicable to every case like the Statute of Limitations, the determination as to what constitutes a reasonable time in any particular case must be arrived at by a consideration of all its elements which affect that question. *Id.*
10. The property in controversy in the present suit had been appropriated and used for the production of mineral oil from wells, — a species of property which is, more than any other, subject to rapid, frequent, and extreme fluctuations in value. The director who bought it committed no actual fraud, and the corporators knew at the time of his purchase all the facts upon which their right to avoid it depended. They refused to join him in it, or to pay assessments then made on their stock; and it was nearly four years thereafter when the hazard was over, and his skill, energy, and money had made his investment profitable, that any claim to, or assertion of right in, the property was made by the corporation or the stockholders. *Held*, that the court below properly dismissed the bill of complaint of the corporation, praying that the purchaser should be decreed to hold as its trustee, and to account for the profits during the time he had the property. *Id.*

CORPORATIONS, CAPITAL STOCK OF. See *Bankruptcy*, 4.

CORPORATIONS, MUNICIPAL. See *District of Columbia*, 1–4.

A municipal corporation, holding a voluntary charter as a city or village, is responsible for its mere negligence in the care and management of

CORPORATIONS, &c. (*continued*).

its streets. In this respect, there is a distinction between the liability of such a corporation and that of a *quasi* corporation like a county, town, or district. Whether or not this distinction is founded on sound principle, it is too well settled to be disturbed. *Barnes* v. *District of Columbia*, 540.

COUNTERFEIT NOTES. See *Treasury Notes*, 1–3.

COURT AND JURY. See *Court of Claims*, 2; *Jurisdiction*, 14.

COURT OF CLAIMS.

1. Where Congress has not provided, and no special reasons demand, a different rule, the rules of evidence, as found in the common law, ought to govern the action of the Court of Claims. *Moore* v. *United States*, 270.
2. The general rule of the common law, disallowing a comparison of handwriting as proof of signature, has exceptions equally as well settled as the rule itself. One of the exceptions is, that if a paper admitted to be in the handwriting of the party, or to have been subscribed by him, is in evidence for some other purposes in the cause, the signature or paper in question may be compared with it by the jury. The Court of Claims determines the facts as well as the law, and may make the comparison in like manner as the jury. *Id.*
3. The claim of the heirs and legal representatives of Colonel Francis Vigo against the United States, on account of supplies by him furnished in 1778 to the regiment under the command of George Rogers Clarke, who was acting under a commission from the State of Virginia, was, by an act of Congress approved June 8, 1872 (17 Stat. 687), referred to the Court of Claims, with the direction that the court, in settling it, should be governed by the rules and regulations theretofore adopted by the United States in the settlement of like cases, and without regard to the Statute of Limitations. *Held*, that the act removes the bar of the lapse of time; and that, as the case is like those in which interest was to be allowed by the fifth section of the act of Aug. 5, 1790 (1 Stat. 178), the claimants are entitled to recover the principal sum, with interest thereon. *United States* v. *McKee et al.*, 442.

COVENANT, ACTION OF.

In an action of covenant, evidence of a parol contract is inadmissible. Had the declaration averred such a contract, it would have been bad on demurrer in the courts of Illinois, as the common-law rules of pleading and the distinction between forms of action prevail in that State. *Phillips and Colby Construction Co.* v. *Seymour et al.*, 646.

COVERTURE, SETTLEMENT DURING. See *Wife's Separate Estate*, 1–3.

CRIMES. See *Postal Money-Order System*, 1, 2.

CRIMINAL CASES, REVIEW OF. See *Jurisdiction*, 12.

CRIMINAL CAUSES, MOTIONS TO ADVANCE. See *Practice*, 11.

CROSS-LIBEL. See *Admiralty*, 7, 8.

DAMAGES. See *Admiralty*, 5; *Contracts*, 15; *District of Columbia*, 4; *Evidence*, 8, 9; *Practice*, 5, 19.

1. In a suit by a judgment creditor of the town of Waldwick against the supervisors of said town for refusing to place upon the tax-list thereof the amount of his judgments as provided by the statutes of Wisconsin, it appeared in evidence, that, since the institution of the suit, the defendants had so placed the only judgment proved in the case. *Held*, that the plaintiff was entitled to recover only nominal damages. *Dow* v. *Humbert et al.*, 294.
2. Where the statute of a State provides, that, "when an injury is done to a building or other property by fires communicated by a locomotive-engine of any railroad corporation, the said corporation shall be responsible in damages for such injury," and have an insurable interest in such property "along its route," — *Held*, that the phrase "along its route" means in proximity to the rails upon which the locomotive-engines run; and that the corporation is liable for such an injury to buildings or other property along its route, whether they are outside of the lines of its roadway, or lawfully within those lines. *Grand Trunk Railway Co.* v. *Richardson et al.*, 454.
3. The statute applies to an injury to such buildings and property which is caused by fire spreading from other buildings to which it was first communicated by the locomotive. *Id.*
4. A passenger in a railway-car who has been injured in a collision caused by the negligence of the employés of the company, is not, as a general rule, entitled in an action against the company to recover damages beyond the limit of compensation for the injury actually sustained. *Milwaukee and St. Paul Railway Co.* v. *Arms et al.*, 489.
5. Exemplary damages should not be awarded for such injury, unless it is the result of the wilful misconduct of the employés of the company, or of that reckless indifference to the rights of others which is equivalent to an intentional violation of them. *Id.*

DAMAGES, APPORTIONMENT OF. See *Admiralty*, 5.

DECREE. See *Bankruptcy*, 11; *Mortgage*, 2.

DEMURRER. See *Contracts*, 15; *Covenant, Action of*, 1; *Pleading*, 1.

DEPOSITIONS. See *Practice*, 6; *Record*, 1.

DEVISE. See *Will*, 1–5.

DISCRIMINATING STATE LEGISLATION. See *Commerce, Inter-State*, 1, 2.

"DISMISSED AGREED" EFFECT OF ENTRY. See *Practice*, 16.

DISMISS, MOTIONS TO. See *Practice*, 4.

DISTRICT OF COLUMBIA. See *Corporations, Municipal*, 1; *Liens*, 2; *Slander*, 1, 2; *Wife's Separate Estate*, 1–3.

1. A municipal corporation in the exercise of its duties is a department of the State. Its powers may be large or small; they may be increased or diminished from time to time at the pleasure of the State, or the State may itself directly exercise in any locality all the powers usually conferred upon such a corporation. Such changes do not alter its fundamental character. *Barnes* v. *District of Columbia*, 540.
2. The statement that a municipality acts only through its agents does not mean that it so acts through subordinate agents only. It may act through its mayor or its common council, its superintendent of streets, or its board of public works. *Id.*
3. Whether the persons thus acting are appointed by the governor or president, or are elected by the people, does not affect the question whether they are or are not parts of the corporation and its agents. Nor is it important, on that question, from what source they receive their compensation. *Id.*
4. The act of Congress of Feb. 21, 1871 (16 Stat. 419), creates a "municipal corporation" called "The District of Columbia." It provides for the appointment of an executive officer called a governor, and for a legislative assembly. It creates a board of public works, which is invested with the entire control of the streets of the District, their regulation and repair; and is composed of the governor of the District and four other persons appointed by the President of the United States, by and with the advice and consent of the Senate, to hold their offices for the term of four years, unless sooner removed by the President. The board is empowered to disburse all moneys appropriated by Congress or the District, or collected from property-holders in pursuance of law, for the improvement of streets, avenues, &c.; and is required to make a report to the legislative assembly of the District, and to the governor, who is directed to lay the same before the President for transmission to Congress. *Held*, that the board of public works is not an independent body acting for itself, but is a part of the municipal corporation; and that the District of Columbia is responsible to an individual who has suffered injury from the defective and negligent condition of its streets. *Id.*
5. If the proper officer gives a permit for the erection of certain specially described buildings in Washington City, a clear case of danger to the public safety, or of departure from the permit, must be made before the party acting under it can be arrested midway in the construction of them, and required to remove them. *Dainese* v. *Cooke et al.*, 580.

DIVORCE. See *Wife's Separate Estate*, 3.

"DRY AND ORANGE MINERAL." See *Imports*, 5.

DURESS.

Where, in time of war, a bank was, notwithstanding the protest of its officers, put in liquidation by order of the commanding general of the United States forces, and its effects transferred to commissioners appointed by him, who, during their administration, sold for less than their face value choses in action held by the bank as collateral security at the time of the transfer, — *Held*, that as the proceedings of the commanding general and the commissioners constituted "superior force," which no prudent administrator of the affairs of a corporation could resist, the bank was neither responsible for those proceedings, nor for a loss thereby occasioned. *McLemore* v. *Louisiana State Bank*, 27.

DUTIES ON IMPORTS. See *Imports*, 1–5.

EMBEZZLEMENT. See *Postal Money-Order System*, 1, 2.

EMINENT DOMAIN.

1. The right of eminent domain exists in the government of the United States, and may be exercised by it within the States, so far as is necessary to the enjoyment of the powers conferred upon it by the Constitution. *Kohl et al.* v. *United States*, 367.
2. Where Congress by one act authorized the Secretary of the Treasury to purchase in the city of Cincinnati a suitable site for a building for the accommodation of the United States courts and for other public purposes, and by a subsequent act made an appropriation "for the purchase at private sale, or by condemnation of such site," power was conferred upon him to acquire, in his discretion, the requisite ground by the exercise of the national right of eminent domain; and the proper Circuit Court of the United States had, under the general grant of jurisdiction made by the act of 1789, jurisdiction of the proceedings brought by the United States to secure the condemnation of the ground. *Id.*
3. Where proceedings for the condemnation of land are brought in the courts of Ohio, the statute of that State treats all the owners of a parcel of ground as one party, and gives to them collectively a trial separate from the trial of the issues between the government and the owners of other parcels; but each owner of an estate or interest in each parcel is not entitled to a separate trial. *Id.*

EQUITABLE LIEN. See *Florida, State of*, 2.

EQUITY. See *Final Decree*, 1; *Florida, State of*, 1, 2, 5; *Jurisdiction*, 2; *Practice*, 1–3; *Trusts and Trustees*, 1, 2.

1. A. recovered in the Circuit Court of the United States for the Southern District of Mississippi a judgment against the administrator of B., to the payment whereof he songht, by appropriate proceedings in Louisiana, to subject certain lands there situate. C., who was not a party to the judgment, claimed them under an alleged convey-

EQUITY (*continued*).
ance to his ancestor from B. *Held*, that C., inasmuch as the judgment was not a lien upon the lands, nor binding in any sense upon him, could not sustain a bill in chancery to set it aside. *Stone* v. *Towne et al.*, 341.
2. A court of equity is not bound to shut its eyes to the evident character of a transaction where its aid is sought to carry into effect an unconscionable bargain, but will leave the party to his remedy at law. *Mississippi and Missouri R.R. Co.* v. *Cromwell*, 643.

ERROR. *See Writs of Error*, 2.
Instructions given by the court are entitled to a reasonable interpretation, and are not, as a general rule, to be regarded as the subject of error, on account of omissions not pointed out by the excepting party. *First Unitarian Society of Chicago* v. *Faulkner et al.*, 415.

ESTATE, CESSER OF. See *Will*, 1.

ESTIMATED NUMBER. See *Contracts*, 10.

ESTOPPEL. See *Bankruptcy*, 6; *Practice*, 16.
If judgment is rendered for the defendant on demurrer to the declaration, or to a material pleading in chief, the plaintiff can never after maintain against the same defendant or his privies any similar or concurrent action for the same cause upon the same grounds as were disclosed in the first declaration; but, if the plaintiff fails on demurrer in his first action from the omission of an essential allegation in his declaration which is supplied in the second suit, the judgment in the first suit is not a bar to the second. *Gould* v. *Evansville and Crawfordsville R.R. Co.*, 526.

EVASION OF TAX. See *Taxation, State*, 1.

EVIDENCE. See *Admiralty*, 10; *Bankruptcy*, 1; *Court of Claims*, 1, 2; *Covenant, Action of*, 1; *Invoice*, 1; *Patents*, 2; *Pleading*, 1, 2; *Practice*, 1, 18.
1. In a suit brought by the plaintiff in his individual character, and not as administrator, to recover a debt upon a contract between him and the defendant, where the right of action depends upon the death of a third person, letters of administration upon the estate of such person granted by the proper Probate Court, in a proceeding to which the defendant was a stranger, afford no legal evidence of such death. *Mutual Benefit Life Insurance Company* v. *Tisdale*, 238.
2. In the absence of fraud, accident, or mistake, the rule is the same in equity as at law, that parol evidence of an oral agreement alleged to have been made at the time of the drawing, making, or indorsing a bill or note, cannot be permitted to vary, qualify, or contradict, or to add to or subtract from, the absolute terms of the written contract. *Forsythe* v. *Kimball*, 291.

EVIDENCE (*continued*).

3. Where a judgment is described in the declaration as having been rendered in the Circuit Court for the *District* of Wisconsin, a judgment of the *Circuit* Court for the *Eastern* District of Wisconsin is not admissible in evidence under the plea of *nul tiel record*. *Dow* v. *Humbert et al.*, 294.
4. Where conversations of a third party were admitted in evidence on the assurance of counsel that they expected to prove that such third party was the agent of the defendant, which, however, was not done, nor the attention of the court afterwards called to the subject, — *Held*, that upon the hypothesis of the case submitted to the jury in the charge of the court, the evidence becoming immaterial, an exception to its admission was properly overruled. *First Unitarian Society of Chicago* v. *Faulkner et al.*, 415.
5. Where, in a suit by an assignee in bankruptcy to recover moneys paid a creditor within four months prior to the filing of the petition in bankruptcy, the evidence tended to prove that the payment was the result of a conspiracy between the bankrupt and the creditor to give the latter a fraudulent preference within the meaning of the Bankrupt Act, — *Held*, that the declarations of the bankrupt at and prior to the time of such payment, although made in the absence and without the knowledge of the creditor, were, when offered by the assignee, admissible in evidence. *Nudd et al.* v. *Burrows, Assignee*, 426.
6. The assignee claimed that a partnership formerly existing between the bankrupt and other parties had been dissolved prior to a certain transaction; and that, consequently, that transaction was had with the bankrupt individually, and not with the firm. The defendants, insisting to the contrary, offered the declarations of such other parties touching the points in controversy. *Held*, that such declarations were not evidence. *Id.*
7. The erection of buildings by the permission of a railroad company within the line of its roadway by other parties, for convenience in delivering and receiving freight, is not inconsistent with the purposes for which the charter was granted; and a license by the company to such other parties is admissible to show its consent to the occupation of its premises. *Grand Trunk Railroad Company* v. *Richardson et al.*, 454.
8. In an action for an injury done to a building or other property by fires communicated by a locomotive-engine of a railroad corporation, evidence was offered by the plaintiff, that, at various times during the same summer before the fire in question occurred, the defendant's locomotives scattered fire when going past the buildings, without showing that either of those which he claimed communicated the fire in question was among the number, or was similar to them in its make, state of repair, or management. *Held*, that the evidence

EVIDENCE (*continued*).
was admissible, as tending to prove the possibility, and a consequent probability, that some locomotive caused the fire, and to show a negligent habit of the officers and agents of the corporation. *Id.*
9. The determination of an issue, as to whether the destruction of property by fire communicated by a locomotive was the result of negligence on the part of a railroad company, depends upon the facts shown as to whether or not it used such caution and diligence as the circumstances of the case demanded or prudent men ordinarily exercise, and not upon the usual conduct of other companies in the vicinity. *Id.*

EXCHANGE OF SECURITIES. See *Bankruptcy*, 7.

EXEMPLARY DAMAGES. See *Damages*, 5.

EXTRA COMPENSATION. See *Government Printing-Office*, 1.

FACTORS' LIENS. See *Liens*, 3.

FEDERAL QUESTION. See *Jurisdiction*, 3–5, 8, 11–13; *Record*, 3.

FEME COVERT. See *Wife's Separate Estate*, 1, 2; *Wife, Settlement upon*, 1.

FIDUCIARY RELATIONS. See *Corporations*, 8–10.

FINAL DECREE. See *Practice*, 21.
Where the Supreme Court of the District of Columbia, at the general term thereof, rendered a decree vacating and setting aside a judicial sale of lands which had been confirmed by an order of the special term of said court, and directing a resale of them, — *Held*, that the decree was not final, and that no appeal would lie therefrom to this court. *Butterfield* v. *Usher*, 246.

FINAL JUDGMENT. See *Jurisdiction*, 1; *Practice*, 21.
1. Where the Supreme Court of California reversed the judgment of an inferior court, and directed a modification thereof as to the amount of damages, but without permitting further proceedings below, if the defendants consented to the modification, and the record shows that such consent was given, — *Held*, that the judgment of the Supreme Court is final within the meaning of the act of Congress, and that the writ of error was properly directed to that court. *Atherton et al.* v. *Fowler et al.*, 143.
2. Where the Supreme Court of a State on appeal overruled an exception which had been sustained in a lower court, and, on setting aside the judgment below, remanded the case to be proceeded with according to law, — *Held*, that the judgment of such Supreme Court was not final, and that the writ of error must be dismissed. *Zeller et al.* v. *Switzer*, 487.

"FLOOR-CLOTH CANVAS." See *Imports*, 1, 2.

FLORIDA, STATE OF.

1. The State has a direct interest in a railroad by reason of holding the $1,000,000 of bonds which are a statutory lien on the road. As the title to the lands composing the internal improvement fund were vested in the trustees merely as the agents of the State for a particular purpose, her interest is sufficient to give her a standing in court whenever the interests of that fund are brought before a court for inquiry. It is competent for her, therefore, in seeking equitable relief against citizens of another State for the protection of her interests, to file an original bill in this court. *State of Florida* v. *Anderson et al.*, 667.
2. The equitable lien for the unpaid purchase-money accruing upon the sale by the trustees resulted primarily to them as vendors, and became binding on the road in the hands of all subsequent purchasers taking with notice of the non-payment. *Id.*
3. As the bonds guaranteed by the State import on their face an absolute promise to pay, the company giving them is primarily liable to the holder thereof for principal and interest as they respectively become due; and while he can, upon a breach of such promise, bring suit against the company, he cannot, as the primary right to proceed under the statutory lien is in the trustees, avail himself of that lien directly, as he could if it were a mortgage given to secure the bonds alone, but must induce the trustees to act in the mode pointed out by the statute. Upon their refusal so to act at the proper time, he may either compel them by *mandamus*, or file a bill in equity to obtain the relief to which he may be entitled. *Id.*
4. Where a sale is made by the trustees for the non-payment of interest or instalments due the sinking fund, and the principal of the bonds is not due, they have an option, after satisfying the arrears of interest, either to purchase up and retire the bonds, or to pay the balance into the sinking fund, and postpone the payment of the principal until the bonds arrive at maturity. By the purchase of a portion of the bonds, an obligation to purchase the remainder is not imposed upon the trustees, nor are they precluded from changing a resolution so to purchase. *Id.*
5. Holders of bonds so guaranteed, by procuring with the consent of the company a decree for the sale of the road to pay the interest, and especially the principal thereof, when the bonds contain no stipulation that the principal shall become due by the non-payment of interest, in a proceeding in which neither the State nor the trustees were represented, and when the latter were pursuing their lawful remedy to subject the road to the payment of the purchase-money at a sale made by them, was an inequitable interference with, and a fraud upon, their rights. *Id.*

"FORT PHIL. KEARNEY." See *Contracts*, 4.

FRAUDS, STATUTE OF. See *Parol Promise*, 1.

FRAUDULENT PREFERENCE. See *Bankruptcy*, 7; *Evidence*, 5; *Liens*, 3.

GOVERNMENT PRINTING-OFFICE.

The government printing-office not being a bureau or division of either of the executive departments, or mentioned in the joint resolution of Congress of Feb. 28, 1867 (14 Stat. 569), the employés thereof are not entitled to the additional compensation authorized by that resolution. *United States* v. *Allison*, 303.

GUARANTEED NUMBER. See *Contracts*, 10.

GUARANTEED RAILROAD BONDS. See *Florida, State of*, 1–5.

GUARDIAN. See *Infant's Estate.*

HUSBAND AND WIFE. See *Wife's Separate Estate*, 1–3.

ILLINOIS, PRACTICE ACT OF. See *Practice*, 8.

IMMATERIAL EVIDENCE, EXCEPTIONS TO. See *Evidence*, 4.

IMPORTS.

1. The term "burlaps," used in the revenue statutes, does not in commercial usage, by which descriptive terms applied to articles of commerce must be construed, mean "oil-cloth foundations," or "floor-cloth canvas." *Arthur* v. *Cumming et al.*, 362.
2. "Oil-cloth foundations" and "floor-cloth canvas" are in commerce convertible terms for designating the same article; and it is clear that Congress intended that they should be so understood. *Id.*
3. While the act of June 6, 1872 (17 Stat. 232), provides that an import duty of thirty per cent *ad valorem* shall be levied "on all burlaps and like manufactures of flax, jute, or hemp, or of which flax, jute, or hemp shall be the component material of chief value, except such as may be suitable for bagging for cotton," the fact that such burlaps are suitable, and can be and are used for oil-cloth foundations, or for any other purpose except bagging for cotton, is entirely immaterial, and does not subject them to an *ad valorem* duty of forty per cent. *Id.*
4. Where, in the act of June 6, 1872, to reduce the duties on imports (17 Stat. 230), Congress provided that on and after Aug. 1, 1872, but ninety per centum of the duties theretofore levied should be collected and paid upon all metals not therein otherwise provided for, "and all manufactures of metals of which either of them is the component part of chief value," . . . *Held*, that the words "manufactures of metals" refer to manufactured articles in which metals form a component part, and not to articles in which they have lost

IMPORTS (*continued*).
their form entirely, and have become the chemical ingredients of new forms. *Meyer et al.* v. *Arthur*, 570.
5. White lead, nitrate of lead, oxide of zinc, and dry and orange mineral, are not manufactures of metals within the meaning of that act. *Id.*

INCOME, CESSER OF. See *Will*, 1.

INCORPORATED COMPANIES, CAPITAL STOCK OF. See *Bankruptcy*, 4.

INDIANS, SUPPLIES FOR. See *Contracts*, 9, 10.

INDICTMENT. See *Postal Money-Order System*, 1, 2.

INFANT'S ESTATE.
1. Where, upon a bill filed for that purpose in the proper court by the guardian of infants, a decree for the sale of the real property, whereof their father died seized, was obtained with the consent of his widow, no inquiry, so far as her rights are involved, can be had touching the validity of the sale, if made pursuant to the decree, and approved by the court. *Knotts et al.* v. *Stearns et al.*, 638.
2. Where the interest of the children then in being, or the enjoyment of the dower right of the widow, requires the conversion of such property into a personal fund, a child *en ventre sa mère* does not, until born, possess any estate therein which can affect the power of the court to pass a decree directing such conversion. Whatever estate devolves upon such child at his birth is an estate in the property in its then condition. *Id.*
3. Under the laws of Virginia, parties in being, possessing an estate of inheritance in property, are regarded as so far representing all persons, who, being afterwards born, may have interests therein, that a decree for the sale thereof binding them will also bind the latter persons. *Id.*
4. The requirement of the statute of Virginia, which, as an additional security against improvident proceedings for the sale of an infant's estate, provides that all those, who, were he then dead, would be his heirs or distributees, shall be parties, was met, in the present case, by making the mother and her other children parties. *Id.*

INJUNCTION. See *Jurisdiction*, 6.

INSOLVENT DEBTORS, ASSIGNMENTS BY. See *Bankruptcy*, 9.

INSURANCE. See *Contracts*, 12, 13.

INTEREST. See *Court of Claims*, 3; *National Banks*, 1; *Union Pacific Railroad*, 1, 3.

INTERNATIONAL LAW. See *Consuls*, 2–4.

INVENTION. See *Patents*, 1–5, 8.

INVOICE.

An invoice is neither a bill of sale, nor evidence of a sale, and, standing alone, furnishes no proof of title. *Dows et al.* v. *National Exchange Bank of Milwaukee*, 618.

IOWA BRANCH UNION PACIFIC RAILROAD. See *Union Pacific Railroad*, 5, 6.

JUDGMENT. See *Estoppel*, 1; *Process*.

JUDGMENT CREDITOR, SUIT BY. See *Damages*, 1.

JUDGMENT LIENS. See *Liens*, 2.

JUDICIAL SALE.

The title of a purchaser at a judicial sale is not affected by an order of the court touching the investment of the purchase-money. *Knotts et al.* v. *Stearns et al.*, 638.

JURISDICTION. See *Bankruptcy*, 2, 3, 8; *Consuls*, 1–4; *Eminent Domain*, 2; *Record*, 3.

1. The judgment of the supreme court of a State reversing that of a court of common pleas, and remanding the cause for "further proceedings according to law," is not final; nor can the judgment subsequently rendered by the inferior court be re-examined here. *McComb, Executor*, v. *Commissioners of Knox County, Ohio*, 1.
2. In confiscation proceedings, a writ of error from a circuit to a district court invests the former with complete jurisdiction over the matter in controversy. It is competent, therefore, for the circuit court to pass such a decree in the matter as the district court could have passed. *Semmes* v. *United States*, 21.
3. This court has no jurisdiction to review the decision of a State court against a right and a title under a statute of the United States, unless such right and title be specially set up and claimed by the party for himself, and not for a third person under whom he does not claim. *Long et al.* v. *Converse et al.*, 105.
4. So far as it relates to the above point, sect. 709 of the Revised Statutes, which authorizes this court, in certain cases, to re-examine upon a writ of error the judgment or decree of a State court, does not differ from the twenty-fifth section of the Judiciary Act of 1789. *Id.*
5. Former decisions of this court upon said twenty-fifth section cited and examined. *Id.*
6. Except where otherwise provided by the Bankrupt Law, the courts of the United States are expressly prohibited by sect. 720 of the Revised Statutes from granting a writ of injunction to stay proceedings in a State Court. *Haines et al.* v. *Carpenter et al.*, 254.
7. Where the libellant recovered in the District Court a decree for $500, which, upon appeal by the adverse party, was reversed by the Cir-

JURISDICTION (*continued*).

cuit Court and the libel dismissed, and the libellant thereupon appealed to this court, — *Held*, that, the amount in controversy in the Circuit Court and here being but $600, the appeal must be dismissed. *The "D. R. Martin,"* 365.

8. Where, in a State court, both parties to a suit for the recovery of the possession of lands claimed under a common grantor whose title under the United States was admitted, and where the controversy extended only to the rights which they had severally acquired under it, — *Held*, that, as no Federal question arose, this court has no jurisdiction. *Romie et al.* v. *Casanova*, 379.
9. Under the Bankrupt Act of March 2, 1867 (14 Stat. 517), an assignee in bankruptcy, without regard to the citizenship of the parties, could maintain a suit for the recovery of assets in a circuit court of the United States in a district other than that in which the decree of bankruptcy was made. *Lathrop, Assignee*, v. *Drake*, 516.
10. The jurisdiction conferred upon the Federal courts for the benefit of an assignee in bankruptcy is concurrent with and does not divest that of the State courts in suits of which they had full cognizance. *Eyster* v. *Gaff*, 521.
11. This court has no jurisdiction to re-examine the judgment of a State court where a Federal question was not in fact passed upon, and where a decision of it was rendered unnecessary in the view which the court below took of the case. *McManus* v. *O'Sullivan et al.*, 578.
12. This court can only review the final judgments of the Supreme Court of the Territory of Washington in criminal cases, when the constitution or a statute or treaty of the United States is drawn in question. *Watts* v. *Territory of Washington*, 580.
13. This court has no jurisdiction to re-examine the judgment or decree of a State court, unless it appears from the record that a Federal question presented to that court was in fact decided, or that the decision was necessarily involved in the judgment or decree as rendered. *Bolling* v. *Lersner*, 594.
14. Where the charge of the court below covers the whole ground necessary to enable the jury to apply the law to the matters in issue, and is not subject to any just exception, so that, if there be any error in the proceedings, it was committed solely by the jury, this court has no jurisdiction to retry the cause as if it were both court and jury, but must affirm the judgment. *Woodruff et al.* v. *Hough et al.*, 596.

LAND DEPARTMENT, POWER OF OFFICERS THEREOF. See *Public Lands*, 6, 7.

LAND GRANTS. See *Public Lands*, 2–4.

LEX FORI. See *Contracts*, 11.

LEX LOCI CONTRACTUS. See *Bills of Exchange*, 1; *Contracts*, 11.

LICENSE. See *Evidence*, 7.

LICENSE TAX. See *Commerce*, *Inter-State*, 1, 2.

1. A license tax required for the sale of goods is in effect a tax upon the goods themselves. *Welton* v. *The State of Missouri*, 275.
2. A statute of Missouri which requires the payment of a license tax from persons who deal in the sale of goods, wares, and merchandise which are not the growth, produce, or manufacture of the State, by going from place to place to sell the same in the State, and requires no such license tax from persons selling in a similar way goods which are the growth, produce, or manufacture of the State, is in conflict with the power vested in Congress to regulate commerce with foreign nations and among the several States. *Id.*

LIENS.

1. Where a party furnished materials for the construction of a building, under an agreement that the owner thereof, by way of payment for them, would convey to him certain real estate at a stipulated price per foot, — *Held*, that on the refusal of the owner so to convey, or in lieu thereof to pay for such materials, the party is entitled to his lien, provided that in due time he gives the notice required by law. *McMurray et al.* v. *Brown*, 257.
2. A judgment at law is not a lien upon real estate in the District of Columbia, which, before the judgment was rendered, had been conveyed to trustees with a power of sale to secure the payment of the debts of the grantor described in the deed of trust. *Morsell et al.* v. *First National Bank*, 357.
3. In an action by the assignee in bankruptcy to recover certain moneys and the proceeds of property, the defendants claimed that they appropriated such money and proceeds, in the exercise of a factor's lien, to satisfy a prior indebtedness alleged to be due them by the bankrupt. *Held*, that the attempt to set up such a lien, when the creditor knew that the debtor was on the eve of bankruptcy, and thus secure a preference over other creditors, was a fraud upon the Bankrupt Act. *Nudd et al.* v. *Burrows*, *Assignee*, 426.

LIFE INSURANCE. See *Contracts*, 12, 13.

LIMITATION. See *Will*, 1.

LIMITATIONS, STATUTE OF. See *Court of Claims*, 3; *Postal Money-Order System*, 2.

LOUISIANA, PARTNERSHIPS UNDER LAWS OF. See *Partnership*, 1–4.

MECHANICS' LIENS. See *Liens*, 1.

MILITARY STORES, TRANSPORTATION OF. See *Contracts*, 4.

MISSOURI, LICENSE LAW OF. See *License Tax*, 1, 2.

MORTGAGE.

1. Where it is clearly implied by the terms of a mortgage executed by a railroad company that the latter was to hold possession and receive the earnings of the road until the mortgagees should take it or the proper judicial authority intervene, such possession gives the right to the whole fund derived therefrom, and renders it, therefore, liable to the creditors of the company as if no mortgage existed. *Gilman et al.* v. *Illinois and Mississippi Telegraph Company*, 603.
2. A decree, silent as to the profits and possession of the mortgaged premises from its date until the sale thereby ordered, does not affect the right to such profits and possession during that period. *Id.*

NATIONAL BANKS.

1. The only forfeiture declared by the thirtieth section of the act of June 3, 1864 (13 Stat. 99), is of the *entire interest* which the note, bill, or other evidence of debt, carries with it, or which has been agreed to be paid thereon, when the rate knowingly received, reserved, or charged by a national bank is in excess of that allowed by that section; and no loss of the entire debt is incurred by such bank, as a penalty or otherwise, by reason of the provisions of the usury law of a State. *Farmers' and Mechanics' National Bank* v. *Dearing*, 29.
2. National banks organized under the act are the instruments designed to be used to aid the government in the administration of an important branch of the public service; and Congress, which is the sole judge of the necessity for their creation, having brought them into existence, the States can exercise no control over them, nor in any wise affect their operation, except so far as it may see proper to permit. *Id.*

NAVY, SECRETARY OF. See *Contracts*, 7.

NEGLIGENCE. See *Damages*, 4; *Evidence*, 9.

NITRATE OF LEAD. See *Imports*, 5.

"NON-ASSESSABLE," EFFECT OF, WHEN INDORSED ON CERTIFICATES OF STOCK. See *Corporations*, 3, 4.

NONSUIT. See *Practice*, 14.

NORTH CAROLINA, CIVIL ACTIONS IN. See *Contracts*, 3.

NOVELTY. See *Patents*, 1, 5, 6.

NUL TIEL RECORD. See *Evidence*, 3.

OHIO, CONDEMNATION FOR THE USES OF THE UNITED STATES OF LAND IN. See *Eminent Domain*, 1–3.

"OIL-CLOTH FOUNDATIONS." See *Imports*, 1, 2.

ORIGINAL BILL IN THIS COURT. See *Florida, State of*, 1.

OTTOMAN EMPIRE. See *Consuls*, 3; *Pleading*, 2.

OXIDE OF ZINC. See *Imports*, 5.

PARDON. See *Confiscation*, 3.

Subject to exceptions therein prescribed, a pardon by the President restores to its recipient all rights of property lost by the offence pardoned, unless the property has by judicial process become vested in other persons. *Osborn* v. *United States*, 474.

PAROL EVIDENCE. See *Record*, 1.

PAROL PROMISE. See *Bills of Exchange*, 1, 2.

As the provision of the English Statute of Frauds touching promises made in consideration of marriage is in force in Georgia, a promise there made, but not in writing, to settle property upon an intended wife, is void. Such promise after marriage is also void for want of consideration. *Loyd et al.* v. *Fulton*, 479.

PARTIAL PERFORMANCE. See *Contracts*, 7, 8.

PARTIES. See *Bankruptcy*, 2; *Infants' Estate*, 3, 4.

PARTNERS, DECLARATIONS OF. See *Evidence*, 6.

PARTNERS, LIABILITY OF. See *Rebellion, The*, 2.

PARTNERSHIP. See *Rebellion, The*, 2.

1. An agreement provided that the party of the first part should obtain in his own name, but for the joint account of himself and the parties of the second part, a lease of a railroad, and manage the same at a designated salary, for their mutual benefit; and that the parties of the second part should furnish the money necessary to carry out the enterprise, to be reimbursed, with interest, out of its annual profits; and then declared, that, after the payment of the capital thus invested and interest, the annual profits should be equally divided between all the parties, and that all losses should be equally borne between them. *Held*, that the agreement constituted a partnership. *Beauregard* v. *Case*, 134.
2. According to the law of Louisiana, the partnership in this case being an ordinary one, as distinguished from those which are commercial, each partner is only bound individually for his share of the partnership debts; but to that extent a debt contracted by one partner, even without authority of the others, binds them, if it be proved that the partnership was benefited by the transaction. *Id.*
3. By operation of law, a partnership debt is not extinguished or compensated by the indebtedness of the creditor to one of the partners; although such partner may, by way of defence or by exception, as it is termed in the practice of Louisiana, offset or oppose the compensation of *his* demand to that of the creditor. *Id.*
4. Where the petition prayed for a judgment against all the defendants

PARTNERSHIP (*continued*).

in solido for the whole amount of the partnership debt, but the facts alleged by the pleadings and disclosed by the proofs showed that the partnership was not a commercial but an ordinary one within the law of Louisiana, — *Held*, that a verdict against each defendant for his proportionate share of such debt, and the judgment rendered thereon, were not vitiated by such a departure from the issues. *Id.*

5. A member of a partnership, residing in one State, not served with process and not appearing, is not personally bound by a judgment recovered in another State against all the partners after a dissolution of the firm, although the other members were served, or did appear and caused an appearance to be entered for all, and although the law of the State where the suit was brought authorized such judgment. *Hall et al.* v. *Lanning et al.*, 160.
6. After a dissolution of a partnership, one partner has no implied authority to cause the appearance of another partner to be entered to a suit brought against the firm. *Quære*, whether such implied authority exists during the continuance of the partnership. *Id.*

PASSENGERS, RAILWAY. See *Damages*, 4.

PATENTS.

1. The application by the patentee of an old process to a new subject, without any exercise of the inventive faculty, and without the development of any idea which can be deemed new or original in the sense of the patent laws, is not the subject of a patent. *Brown et al.* v. *Piper*, 37.
2. Evidence of what is old and in general use at the time of an alleged invention is admissible in actions at law under the general issue, and in equity cases, without any averment in the answer touching the same. *Id.*
3. The court can take judicial notice of a thing in the common knowledge and use of the people throughout the country. *Id.*
4. The doctrine announced in *Smith* v. *Nichols*, 21 Wall. 112, — that "a mere carrying forward or new or more extended application of the original thought, a change only in form, proportions, or degree, doing substantially the same thing in the same way, by substantially the same means, with better results," is not such an invention as will sustain a patent, — reaffirmed. *Roberts* v. *Ryer*, 150.
5. It is no new invention to use an old machine for a new purpose. The inventor of a machine is entitled to the benefit of all the uses to which it can be put, no matter whether he had conceived the idea of the use or not. *Id.*
6. Patents No. 34,928, dated April 8, 1862, and No. 35,274, dated May 13, 1862, issued to Isaac Winslow for a new and useful improvement in preserving Indian corn, are void for want of novelty. *Sewall* v. *Jones*, 171.

PATENTS (*continued*).

7. To entitle a party to recover for the violation of a patent, he must be the original inventor, not only in relation to the United States, but to other parts of the world. *Id.*
8. When a patentee recommends in his specifications a particular method, he does not thereby constitute it a portion of his patent. *Id.*

PETITION FOR WRIT OF ERROR. See *Record*, 3.

PLEADING. See *Admiralty*, 7, 8; *Consuls*, 4; *Contracts*, 15; *Covenant, Action of*, 1; *Estoppel*, 1; *Evidence*, 3; *Practice*, 12, 16; *Slander*, 2.

1. A court cannot ordinarily take judicial notice of foreign laws and usages: a party claiming the benefit of them by way of justification must plead them. *Dainese* v. *Hale*, 13.
2. The defendant, as Consul-General of Egypt, in 1864, issued an attachment against the goods of the plaintiff, there situate. The plaintiff, and the persons at whose suit the attachment was issued, were citizens of the United States, and not residents or sojourners in the Turkish dominions. For this act the plaintiff brought suit to recover the value of the goods attached. The defendant pleaded his official character, and, as incident thereto, claimed jurisdiction to entertain the suit in which the attachment was issued. *Held*, that the plea was defective for not setting forth the laws or usages of Turkey upon which, by the treaty and act of Congress conferring the jurisdiction, the latter was made to depend, and which alone would show its precise extent, and that it embraced the case in question. *Id.*

POSTAL MONEY-ORDER SYSTEM.

1. The act entitled "An Act to establish a postal money-order system," approved May 17, 1864 (13 Stat. 76), is not a revenue law within the meaning of the act entitled "An Act in addition to the act entitled 'An Act for the punishment of certain crimes against the United States,'" approved March 26, 1804 (2 Stat. 290). *United States* v. *Norton*, 566.
2. A person cannot be prosecuted, tried, or punished for the embezzlement of money belonging to the postal money-order office, unless the indictment shall have been found within two years from the time of committing the offence. *Id.*

PRACTICE. See *Admiralty*, 7, 8; *Abandoned and Captured Property*, 1; *Bankruptcy*, 3; *Corporations*, 4; *Eminent Domain*, 3; *Evidence*, 3, 4; *Infants' Estate*, 1–4; *Patents*, 3; *Pleading*, 1; *Union Pacific Railroad*, 4.

1. This court cannot, after an appeal in equity, receive new evidence; nor can it upon motion set aside a decree of the court below, and grant a rehearing. *Roemer* v. *Simon et al.*, 149.
2. The court below can grant a rehearing during the term at which the

PRACTICE (*continued*).

final decree was rendered, but not thereafter; and an application therefor must be addressed to that court. *Id.*

3. Should the court below, after the record has been filed here, request a return thereof for the purpose of further proceedings in the cause, this court would, in a proper case and under suitable restrictions, make the necessary order. *Id.*
4. A cause will not, on the ground that it has no merits, be advanced for argument; nor will it be dismissed on motion simply because the court may be of opinion that it has been brought here for delay only. *Amory* v. *Amory et al.*, 356.
5. The court will not hesitate to exercise its power to adjudge damages where it finds that its jurisdiction has been invoked merely to gain time. *Id.*
6. Depositions taken under a commission from a circuit court in an admiralty case, after an appeal to this court, will not be made a part of the record, unless a sufficient excuse be shown for not taking the evidence in the usual way before the courts below. *The "Juniata,"* 366.
7. Where the judgment in favor of the defendants upon a special finding by the Circuit Court, embracing only part of the issues, was reversed here, and the case remanded, "with instructions to proceed in conformity with the opinion," — *Held*, that the court below is precluded from adjudging in favor of the defendants upon the facts set forth in that finding, but can in all other respects proceed in such manner as, in its opinion, justice may require. *Ex parte French*, 423.
8. The Practice Act of Illinois provides that the court shall instruct the jury only as to the law; and that the jury shall, on their retirement, take the written instructions of the court, and return them with their verdict. In this case, the court below, while it commented upon the evidence, but without withdrawing from the jury the determination of the facts, refused to allow the jury to take to their room the written instructions given them. *Held*, that the act of Congress of June 1, 1872, sect. 5 (17 Stat. 197), has no application to the case, and that there was no error in the action of the court below. *Nudd et al.* v. *Burrows, Assignee*, 426.
9. This court is bound to follow the courts of the State of Connecticut in their uniform decisions, in construing the recording acts of that State, that a mortgage must truly describe the debt intended to be secured; and that it is not sufficient that the debt be of such a character that it might have been secured by the mortgage had it been truly described. *Townsend* v. *Todd et al.*, 452.
10. Where moneys belonging to the registry of the court are withdrawn from it without authority of law, the court can, by summary proceedings, compel their restitution; and any one entitled to the

PRACTICE (*continued*).

moneys may apply to the court by petition for a delivery of them to him. *Osborn* v. *United States*, 474.

11. Where the assignee in bankruptcy of a mortgagor is appointed during the pendency of proceedings for the foreclosure and sale of the mortgaged premises, he stands as any other purchaser would stand on whom the title had fallen after the commencement of the suit. If there be any reason for interposing, the assignee should have himself substituted for the bankrupt, or be made a defendant on petition. *Eyster* v. *Gaff et al.*, 521.
12. A court cannot take judicial notice of the proceedings in bankruptcy in another court; and it is its duty to proceed as between the parties before it, until, by some proper pleadings in the case, it is informed of the changed relations of any of such parties to the subject-matter of the suit. *Id.*
13. A motion to advance a criminal cause made on behalf of the United States must state the facts in such manner that the court may judge whether the government will be embarrassed in the administration of its affairs by delay. *United States* v. *Norton*, 558.
14. The entry of a judgment, "that the suit is not prosecuted, and be dismissed," is nothing more than the record of a nonsuit. *Haldeman et al.* v. *United States*, 584.
15. The words "dismissed agreed," entered as the judgment of a court, do not of themselves import an agreement to terminate the controversy, nor imply an intention to merge the cause of action in the judgment. *Id.*
16. If the agreement under which the suit was dismissed settled or released the matter in controversy, that fact must be shown by the plea to render it available as a bar to a second suit in respect of the same matter. *Id.*
17. Where a trial by the court below was not had under the act of March 3, 1865 (13 Stat. 501), the rulings excepted to in the progress of such trial cannot be reviewed here. *Gilman et al.* v. *Illinois and Mississippi Tel. Co.*, 603.
18. Where neither the evidence received nor offered tended to rebut the intent exhibited in the bills of lading, and confirmed throughout by the indorsement thereon and the written instructions, to retain the ownership of the wheat until the payment of the draft, — *Held*, that there was no necessity of submitting to the jury the question, whether there had been a change of ownership. *Dows et al.* v. *National Exchange Bank of Milwaukee*, 618.
19. The court below properly charged the jury, that on the refusal of the party in possession of the wheat to deliver it to the owner, when thereunto requested, the latter was entitled to recover the value thereof, with interest from the date of such refusal. *Id.*
20. Fifty-two assignments of error were filed in this case. The court

PRACTICE (*continued*).

condemns such a practice as a flagrant perversion of the rule on that subject. *Phillips and Colby Construction Co.* v. *Seymour et al.*, 646.

21. As the appellate jurisdiction of this court over the State courts is confined to a re-examination of the final judgment or decree in any suit in the highest court of a State in which the decision of a suit could be had, the writ of error sued out here should be sent only to such court; unless the latter, after pronouncing judgment, sends its record and judgment, in accordance with the laws and practice of the State, to the inferior court, where they thereafter remain. In such case, the writ may be sent either directly to the latter court, or to the highest court, in order that, through its instrumentality, the record may be obtained from the inferior court having it in custody or under control. *Atherton et al.* v. *Fowler et al.*, 143.

PROCESS. See *Partnership*, 5, 6.

Where the statute of a State provided, that, during the absence of a party and all the members of his family, notice of a suit might be posted upon the front door of his "usual place of abode,"—*Held*, that a notice posted upon a house seven months after it had been vacated by the defendant and his family, and while they were residing within the Confederate lines, was not posted upon his "usual place of abode," and that a judgment founded on such defective notice was absolutely void. *Earle et al.* v. *McVeigh*, 503.

PUBLIC DUTY. See *Mandamus*, 1.

PUBLIC GROUNDS.

The salary of watchmen on the public grounds in the city of Washington, which are under the charge of the chief engineer of the army, was fixed at $720 *per annum* by the act approved March 3, 1869 (15 Stat. 283). *United States* v. *Ashfield*, 317.

PUBLIC LANDS.

1. Whenever, in the disposition of the public lands, any action is required to be taken by an officer of the land department, all proceedings tending to defeat such action are impliedly inhibited. Accordingly, where an act of Congress of 1812 directed a survey to be made of the out-boundary line of the village of Carondelet, in the State of Missouri, so as to include the commons claimed by its inhabitants, and a survey made did not embrace all the lands thus claimed, the lands omitted were reserved from sale until the approval of the survey by the land department, and the validity of the claim to the omitted lands was thus determined. *Shepley et al.* v. *Cowan et al.*, 330.

2. Where a State seeks to select lands as a part of the grant to it by the eighth section of the act of Congress of Sept. 4, 1841, and a settler seeks to acquire a right of pre-emption to the same lands, the party taking the first initiatory step, if the same is followed up to patent,

PUBLIC LANDS (*continued*).

acquires the better right to the premises. The patent relates back to the date of the initiatory act, and cuts off all intervening claimants. *Id.*

3. The eighth section of the act of Sept. 4, 1841, in authorizing the State to make selections of land, does not interfere with the operation of the other provisions of that act regulating the system of settlement and pre-emption. The two modes of acquiring title to land from the United States are not in conflict with each other. Both are to have full operation, that one controlling in a particular case under which the first initiatory step was had. *Id.*
4. Whilst, according to previous decisions of this court, no vested right in the public lands as *against the United States* is acquired until all the prerequisites for the acquisition of the title have been complied with, parties may, as against each other, acquire a right to be preferred in the purchase or other acquisition of the land, when the United States have determined to sell or donate the property. In all such cases, the first in time in the commencement of proceedings for the acquisition of the title, when the same are regularly followed up, is deemed to be the first in right. *Id.*
5. Where a party has settled upon public land with a view to acquire a right of pre-emption, the land being open to settlement, his right thus initiated is not prejudiced by a refusal of the local land-officers to receive his proofs of settlement, upon an erroneous opinion that the land is reserved from sale. *Id.*
6. The rulings of the land department on disputed questions of fact, made in a contested case as to the settlement and improvements of a pre-emption claimant, are not open to review by the courts when collaterally assailed. *Id.*
7. The officers of the land department are specially designated by law to receive, consider, and pass upon proofs presented with respect to settlements upon the public lands, with a view to secure rights of pre-emption. If they err in the construction of the law applicable to any case, or if fraud is practised upon them, or they themselves are chargeable with fraudulent practices, their rulings may be reviewed and annulled by the courts when a controversy arises between private parties founded upon their decisions. But, for mere errors of judgment upon the weight of evidence in a contested case before them, the only remedy is by appeal from one officer to another of the department, and perhaps, under special circumstances, to the President. *Id.*

PUBLIC POLICY. See *Claims Commission*, 1.

PURCHASE-MONEY, INVESTMENT OF. See *Judicial Sale.*

PURCHASERS AT JUDICIAL SALE. See *Confiscation*, 3; *Judicial Sale.*

RAILWAY-TRACK. See *Evidence*, 7.

"REASONABLE TIME." See *Corporations*, 9, 10.

REBELLION, THE. See *Contracts*, 1.

1. It was not until the 16th of August, 1861, that all commercial intercourse between the States designated as in rebellion and the inhabitants thereof, with certain exceptions, and the citizens of other States and other parts of the United States, became unlawful. *Matthews* v. *McStea*, 7.
2. A partnership between a resident of New York and other parties, residents of Louisiana, was not dissolved by the late civil war as early as April 23, 1861; and all the members of the firm are bound by its acceptance of a bill of exchange bearing date and accepted on that day, and payable one year thereafter. *Id.*

RECORD. See *Practice*, 6, 21.

1. Affidavits, depositions, and matters of parol evidence, though appearing in the transcript of the proceedings of a common-law court, do not form part of the record unless they are made so by an agreed statement of facts, a bill of exceptions, a special verdict, or a demurrer to the evidence. *Baltimore and Potomac R.R. Co.* v. *Trustees of Sixth Presbyterian Church*, 127.
2. Where the court below rendered judgment upon a finding, and at the next term, in the absence of any special circumstances in the case, and without the consent of parties or any previous order on the subject, allowed and signed a bill of exceptions, and directed it to be filed as of the date of the trial, — *Held*, that the bill, although returned with the record, cannot be considered here as a part thereof. *Müller et al.* v. *Ehlers*, 249.
3. The petition for the allowance of a writ of error forms no part of the record of the court below; and this court has no jurisdiction to determine a Federal question presented in such petition, but not disclosed by the record sent here from the State court. *Warfield* v. *Chaffe*, 690.

REHEARING. See *Practice*, 1–3.

REVENUE LAW. See *Postal Money-Order System*, 1, 2.

REVISED STATUTES OF THE UNITED STATES.

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

Sect. 709. See *Jurisdiction*, 4.
Sect. 720. See *Jurisdiction*, 6.
Sect. 1005. See *Writs of Error*, 3.

SAILING RULES. See *Admiralty*, 3, 10.

SALE. See *Contracts*, 5.

SET-OFF.

In a suit on the official bond of a collector of internal revenue to recover a balance found to be due from him to the United States on a settlement of his accounts by the accounting officers, items of set-off for his extra services and expenses were properly excluded. *Hall et al.* v. *United States*, 559.

SETTLEMENT. See *Contracts*, 7, 8.

SETTLEMENT AND PRE-EMPTION. See *Public Land*, 2, 3, 5, 7.

SLANDER.

1. Spoken words charging a woman with fornication in the District of Columbia are not actionable *per se*, as the misconduct they impute, although involving moral turpitude, is not an indictable offence. *Pollard* v. *Lyon*, 225.
2. In an action for such words, inasmuch as the right to recover depends solely upon the special loss or injury which the plaintiff has sustained, it is not sufficient to allege that she "has been damaged and injured in her name and fame;" but such special loss or injury must be particularly set forth; and, if it is not, the declaration is bad in substance. *Id.*

SOUTH CAROLINA.

The special order, issued May 28, 1868, by the officer in command of the forces of the United States in South Carolina, wholly annulling a decree rendered by a court of chancery in that State in a case within its jurisdiction, was void. It was not warranted by the acts approved respectively March 2, 1867 (14 Stat. 428), and July 19 of the same year (15 id. 14), which define the powers and duties of military officers in command of the several States then lately in rebellion. *Raymond* v. *Thomas*, 712.

SPECIAL VERDICT. See *Record*, 1.

SPECIFICATIONS. See *Patents*, 8.

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

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

1789. Sept. 24. See *Eminent Domain*, 2.
1790. Aug. 5. See *Court of Claims*, 3.
1804. March 26. See *Postal Money-Order System*, 1.
1812. June 13. See *Public Lands*, 1.
1841. Sept. 4. See *Public Lands*, 2, 3.
1860. June 22. See *Consuls*, 3.
1862. July 1. See *Pacific Railroad*, 1, 5.
1862. July 17. See *Confiscation*, 1.
1863. March 3. See *Abandoned and Captured Property.*
1864. May 17. See *Postal Money-Order System*, 1.

STATUTES, &c. (*continued*).
1864. June 3. See *National Banks*, 1.
1864. June 30. See *Bankers*, 1; *Brokers*, 1, 2; *Collectors of Internal Revenue*.
1864. July 2. See *Union Pacific Railroad*, 1.
1865. March 3. See *Bankers*, 1; *Brokers*, 1, 2.
1865. March 3. See *Practice*, 17.
1866. Aug. 12. See *Treasury Notes*, 1, 3.
1867. Feb. 28. See *Government Printing-Office*.
1867. March 2. See *South Carolina*.
1867. March 2. See *Jurisdiction*, 9.
1867. July 19. See *South Carolina*.
1869. March 3. See *Public Grounds*.
1871. Feb. 21. See *District of Columbia*, 4.
1872. June 6. See *Imports*, 3, 4.
1872. June 8. See *Court of Claims*, 3.

STOCKHOLDERS, LIABILITY OF. See *Bankruptcy*, 1–3; *Corporations*, 5–7.

SUPERIOR FORCE. See *Duress*, 1.

TAXATION, STATE.

Where, for the purpose of evading the payment of a tax on his money on deposit, which the law of a State required to be listed for taxation March 1 in each year, a party withdrew it Feb. 28 from a bank where it was subject to his check, converted it into notes of the United States, and deposited them to his general credit March 3, and the State court passed a decree dismissing the bill in equity by him filed to restrain the collection of the tax thereon, — *Held*, that the decree was correct; and that, although such notes were exempt from taxation by or under state or municipal authority, a court of equity would not use its extraordinary powers to promote such a scheme devised for the purpose of enabling a party to escape his proportionate share of the burdens of taxation. *Mitchell* v. *Board of Commissioners of Leavenworth Co.*, *Kansas*, 206.

TITLE BY JUDICIAL SALE. See *Judicial Sale*.

TOWN-AUDITORS. See *Mandamus*, 2.

TRANSFEREE OF STOCK. See *Corporations*, 6.

TRANSPORTATION OF MILITARY STORES. See *Contracts*, 4.

TREASURY-NOTES.

1. Where notes purporting to be 7-30 treasury-notes, indorsed by the holders thereof "to the order of the Secretary of the Treasury for redemption," were purchased, before their maturity, under the authority of the act of Aug. 12, 1866 (14 Stat. 31), by an assistant-treasurer of the United States, — *Held*, that the payment by him

TREASURY-NOTES (*continued*).
therefor did not, without the further order of the Secretary of the Treasury, retire them. Until such order be given, or until it ought to have been given, the government does not accept the notes as genuine. *Cooke et al.* v. *United States*, 389.
2. Where such notes, indorsed as aforesaid, and sold and delivered at different times between Sept. 20 and Oct. 8 at the office of the subtreasury of the United States in New York, were returned Oct. 12 by the Treasury Department, as spurious, to the assistant-treasurer in that city, who had purchased or redeemed them with the money of the United States, and due notice was given the following day to the party from whom he had received them, — *Held*, that there was no such delay in returning the notes as would preclude the United States from recovering the money paid therefor. *Id.*
3. The ruling of the district judge, that though the notes may be printed in the department from the genuine plates, and may be all ready to issue, yet, if they are not in fact issued by an officer thereunto authorized, they do not come within the statute of Aug. 12, 1866, and the United States are not bound to redeem them, — *Held* to be error. *Id.*

TREATY. See *Consuls*, 2, 3; *Pleading*, 2.

TRIAL BY THE COURT. See *Practice*, 17.

TRUSTEES' SALE. See *Corporations*, 8; *Florida, State of*, 4.

TRUSTS AND TRUSTEES. See *Liens*, 2; *Will*, 2–4.
1. No case is cited or known to the court which goes so far as to hold that an absolute discretion in trustees under a will — a discretion which, by the express language of the instrument, they are under no obligation to exercise in favor of the bankrupt — confers such an interest on the latter as can be successfully asserted in any court by him or his assignee in bankruptcy. *Nichols, Assignee*, v. *Eaton et al.*, 716.
2. When trustees are in existence, and capable of acting, a court of equity will not interfere to control them in the exercise of a discretion vested in them by the instrument under which they act. *Id.*

TURKEY, CONSULS IN. See *Consuls*, 1–4; *Pleading*, 2.

UNION PACIFIC RAILROAD. See *Mandamus*, 1.
1. The solution of the question, whether the Union Pacific Railroad Company is required to pay the interest before the maturity of the principal of the bonds issued by the United States to the company, depends on the meaning of the fifth and sixth sections of the original act of 1862 "to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to

UNION PACIFIC RAILROAD (*continued*).

the government the use of the same for postal, military, and other purposes," and of the fifth section of the amendatory act of 1864. *Held*, upon consideration of said sections, of the scheme of said original act, and of the purposes contemplated by it, that it was not the intention of Congress to require the company to pay the interest before the maturity of the principal of the bonds. *United States* v. *Union Pacific R.R. Co.*, 72.

2. As commonly understood, the word "maturity," in its application to bonds and other similar instruments, applies to the time fixed for their payment, which is the termination of the period they have to run. *Id.*
3. A provision in the charter that the grants thereby made are upon the condition that the company "shall pay said bonds at maturity," while it implies an obligation to pay both principal and interest when the bonds shall become due, does not imply an obligation to pay the interest as it semi-annually accrues. *Id.*
4. In construing an act of Congress, the court may recur to the history of the times when it was passed, in order to ascertain the reason for, as well as the meaning of, particular provisions in it; but the views of individual members in debate, or the motives which induced them to vote for or against its passage, cannot be considered. *Id.*
5. The initial point of the Iowa branch of the Union Pacific Railroad was fixed by the act of Congress of July 1, 1862 (12 Stat. 489), on the Iowa bank of the Missouri River. *Union Pacific Railroad Co.* v. *Hall et al.*, 343.
6. The order of the President of the United States, bearing date the seventh day of March, 1864, established and designated in strict conformity to law the eastern terminus of said branch at a point "on the western boundary of Iowa east of and opposite to the east line of section 10, in township 15, north of range 13, east of the 6th principal meridian, in the Territory of Nebraska." *Id.*
7. The bridge constructed by the Union Pacific Railroad Company over the Missouri River, between Omaha in Nebraska and Council Bluffs in Iowa, is a part of the railroad. The company was authorized to build it only for the uses of the road, and is bound to operate and run the whole road, including the bridge, as one connected and continuous line. *Id.*

USURY. See *National Banks*, 1.

VIOLATION OF PATENT RIGHTS, RECOVERY FOR. See *Patents*, 7.

WAR OF THE REBELLION. See *Rebellion, The*, 1, 2.

WAREHOUSEMEN. See *Bills of Exchange*, 4, 5.

WHITE LEAD. See *Imports*, 5.

WIFE'S SEPARATE ESTATE.

1. Although, by the common law, the money which the wife has at the time of her marriage, not secured to her by a settlement or contract, and that which she subsequently earns, belong to the husband, it is competent and lawful for him to allow its investment in the purchase and improvement of real property for her separate use, if the rights of existing creditors are not thereby impaired. *Jackson* v. *Jackson*, 122.
2. The doctrine of resulting trusts has no application to an investment of this kind: it constitutes a voluntary settlement upon the wife, whether made through the husband, or directly by the wife with his consent. *Id.*
3. A divorce granted to the wife for cruel treatment by the husband is not of itself sufficient reason for awarding to him any portion of the property thus settled upon her. *Id.*

WIFE, SETTLEMENT UPON.

The indebtedness of a husband at the time of his execution of a conveyance by way of settling property in trust for the sole and separate use of his wife and children is only a presumptive proof of fraud which may be explained and rebutted; and this being the established doctrine in Georgia, where the property in question is situate, such a conveyance was upheld against existing creditors where the debtor reserved property greater in value than two and a half times the amount of his debts, and where the transaction rested upon a basis of good faith, and was free from the taint of any dishonest purpose. *Lloyd et al.* v. *Fulton*, 479.

WILL. See *Trusts and Trustees*, 1, 2.

1. A devise of the income from property, to cease on the insolvency or bankruptcy of the devisee, is good; and a limitation over to his wife and children, upon the happening of such contingency, is valid, and the entire interest passes to them; but if the devise be to *him* and his wife or children, or if he has in any way a vested interest thereunder, that interest, whatever it may be, may be separated from that of his wife or children, and paid over to his assignee in bankruptcy. *Nichols, Assignee*, v. *Eaton et al.*, 716.
2. Where, upon certain trusts therein limited and declared, a devise of real and personal property to trustees directed them to pay the income arising therefrom to A., and provided, that if he should alienate or dispose of it, or should become bankrupt or insolvent, the trust expressed respecting it should thereupon cease and determine, and authorized them, in the event of such bankruptcy or alienation, to apply it to the support of the wife, child, or children, of A., and, if there were none, to loan or reinvest it in augmentation of the principal sum or capital of the estate until his decease, or until he should

WILL (*continued*).

have a wife or children capable of receiving the trust forfeited by him; and also provided that the trustees might at any time, in their discretion, transfer to him any portion not exceeding one-half of the trust-fund; and in case, after the cessation of income on account of any cause specified in the will other than death, it should be lawful for the trustees, in their discretion, but without its being obligatory upon them, to pay to or apply for the use of A., or that of his wife and family, the income to which he would have been entitled in case the forfeiture had not happened, — *Held*, that the bankruptcy or insolvency of A. terminated all his legal vested right in the estate, and left nothing in him to which his creditors or his assignee in bankruptcy could assert a valid claim. *Held*, *further*, that a payment voluntarily made to A. after his bankruptcy by the trustees under the terms of the discretion reposed in them cannot be subjected to the control of his assignee. *Id.*

3. While the will in question is considered valid in all its parts upon the extremest doctrine of the English Chancery Court, this court does not wish it understood that it accepts the limitations which that court has placed upon the power of testamentary disposition of property by its owner; nor does it sanction the doctrine that the power of alienation is a *necessary* incident to a devisee's life-estate in real property, or that the rents and profits of real and the income and dividends of personal property cannot be given and granted by a testator to a person free from all liability for the debts of the latter. *Id.*
4. If that doctrine be sustained at all, it must rest exclusively on the rights of creditors; but, in this country, all wills or other instruments creating such trust-estates are recorded in public offices, where they may be inspected by every one. The law, in such cases, imputes to all persons concerned notice of all the facts which they might know by inspection. When, therefore, it appears by the record of a will that the devisee holds either a life-estate, or the income, dividends, or rents of real or personal property payable to him alone, to the exclusion of the alienee or creditor, the latter knows that he has no right to look to that estate, or to such income, dividends, or rents, as a fund to which he can resort to enforce the payment of a claim against the devisee. In giving the latter credit, he is neither misled nor defrauded when the object of the testator is carried out by excluding him from any benefit of such a devise. *Id.*
5. American cases cited and examined. *Id.*

WRITS OF ERROR. See *Error*, 1; *Final Judgment*, 1; *Jurisdiction*, 2, 4, 5; *Practice*, 21; *Record*, 3.

1. The power of amending a writ of error returnable to the Circuit Court is vested in that court as fully as it is in the Supreme Court on writs of error returnable to it. *Semmes* v. *United States*, 21.

WRITS OF ERROR (*continued*).

2. The judgment of the Circuit Court ought not to be reversed for defects of form in the process returnable on error to that court, which are amendable by the express words of an act of Congress. *Id.*
3. Under the authority of sect. 1005 of the Revised Statutes, a writ of error may be amended by inserting the proper return day. *Atherton et al.* v. *Fowler et al.*, 143.

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