# INDEX.

ABEYANCE.

The maxim, that a fee cannot be in abeyance, is not of universal application; nor has it any weight in an inquiry as to the intent and effect of the act of July 17, 1862 (12 Stat. 589), and the joint resolution of even date therewith, for the confiscation of enemies' property. *Wallach et al.* v. *Van Riswick*, 202.

ADMIRALTY. See *General Average.*

1. Sailing rules and regulations prescribed by law furnish the paramount rule of decision, whenever they are applicable; but where, in any case, a disputed question of navigation arises, in regard to which neither they, nor the rules of this court regulating the practice in admiralty, have made provision, evidence of experts as to a general usage regulating the matter is admissible. *The "City of Washington,"* 31.
2. Where two vessels under steam, meeting end on, or nearly end on, neglect, until it is too late to avoid a collision, to comply with the rule requiring each to port her helm, it is no defence for either to prove that she ported her helm before the collision actually occurred. The act of compliance must be seasonable; otherwise it is without substantial merit. *The "America,"* 432.
3. In this case, as both vessels were in fault, the damages, and the costs in the courts below, should be apportioned between them. *Id.*
4. Where, in order to avoid a collision between two vessels propelled by steam, one going with and the other against the tide, it is conceded that one should stop, it is the duty of the vessel proceeding against the tide to do so, as her movements can be controlled with less difficulty than those of the other vessel. *The "Galatea,"* 439.
5. Where a collision occurs at sea, each vessel being at fault, and damage is thereby done to an innocent party, a decree should be rendered, not against both vessels *in solido* for the entire damage, interest, and costs, but against each for a moiety thereof, so far as the stipulated value of each extends; and it should provide that any balance of such moiety, over and above such stipulated value of either vessel, or which the libellant shall be unable to collect or enforce, shall be

ADMIRALTY (*continued*).
paid by the other vessel, or her stipulators, to the extent of her stipulated value beyond the moiety due from her. *The "Alabama" and the "Game-Cock,"* 695.

AGENCY. See *Contracts*, 6.

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AMNESTY.
The amnesty proclamation of the President of the United States of Dec. 25, 1868, did not give back property which had been sold under the Confiscation Act, or any interest in it, either in possession or expectancy. *Wallach et al.* v. *Van Riswick*, 202.

APPEALS. See *Jurisdiction*, 6.

"APPLICATION AND DEMAND." See *Pleading*, 3; *Power of Attorney.*

"APPROPRIATE LEGISLATION." See *Constitutional Law*, 3, 6.

ARGUMENTS TO A JURY, OPEN AND CLOSE OF. See *Practice*, 17.

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy*, 2; *Jurisdiction*, 11–13; *Set-off*, 2.

ASSIGNOR. See *Bills of Exchange and Promissory Notes.*

BANKRUPTCY. See *Evidence*, 2; *Federal Question; Jurisdiction*, 11–14.
1. W. & Co., having recovered judgment in a State court, sued out an execution thereon, which was levied upon the property of the defendant. He was subsequently declared a bankrupt, and an injunction issued by the District Court of the United States restraining W. & Co. and the sheriff from disposing of that property. W. & Co. thereupon filed their petition in the latter court, praying that the injunction be so modified as to allow the sheriff to sell. An order was made granting the prayer of the petition, prescribing the time and manner of the sale, and directing that the proceeds should be brought into the District Court. This order was served upon the sheriff, who, pursuant thereto, sold the property, and paid the proceeds into court. *Held*, that the sheriff was not liable to W. & Co. for not paying the money to them upon their execution. *O'Brien* v. *Weld et al.*, 81.
2. A., relying upon the representations of D., that the firm of B., C., and

BANKRUPTCY (*continued*).

D., of which he was a member, was perfectly solvent, and that B. was wealthy, sold it goods. D. having, without the knowledge of A., retired from the firm, an arrangement was entered into whereby the proceeds of the sale of such goods remaining in the hands of the agents of the firm of B., C., and D., were applied to discharge the debt due to A., and the unsold portion of such goods returned to him. A., at the time, believed that B. and C. were insolvent; and they were within four months from such arrangement adjudged bankrupts. *Held*, that the representations of D. were a fraud upon A., on account of which he could have rescinded the contract of sale, and followed the goods wherever he could find them; and the goods not having lost their identity, nor become part of the permanent stock of B. and C., upon which they obtained credit, their assignee cannot, in the absence of actual fraud in the arrangement for the payment of such proceeds, recover them in a suit against A. *Montgomery, Assignee*, v. *Bucyrus Machine Works*, 257.

3. The United States is entitled to priority of payment out of the effects of its bankrupt or insolvent debtor, whether he be principal or surety, or be solely, or only jointly with others, liable, and it is immaterial where the debt was contracted. *Lewis, Trustee*, v. *United States*, 618.

4. The United States was the creditor of a firm, A., B., & Co., doing business in London, and consisting of several persons, some of whom resided there. The others resided in this country, and, with another partner, constituted the firm of A. & Co. The members of the latter firm were duly declared bankrupt, and a trustee was appointed under the forty-third section of the Bankrupt Act of March 2, 1867. *Held*, that the relations of the bankrupt members of the firm of A., B., & Co. to the United States are the same as if they were severally liable to the United States; and that the United States is entitled to the payment of its debt out of their separate property, in preference and priority to all other debts due by them or either of them, or by the firm of A. & Co. *Id.*

BELLIGERENCY. See *Insurrection.*

BILL OF REVIEW. See *Practice*, 13.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

By the statute of Illinois, the assignor of a promissory note is liable on his contract of assignment, only in case the assignee has, by the exercise of due diligence, obtained judgment against the maker, and a return of *nulla bona*, unless such suit would have been impracticable or unavailing. *Wills et al.* v. *Claflin et al.*, 135.

BOARD OF EQUALIZATION. See *State Railroad Tax*, 6.

BOARD OF LIQUIDATION. See *Louisiana Consolidated Bonds.*

BONDHOLDERS. See *Equity*, 2; *Municipal Bonds*, 2–4, 8, 10–13.

BOUNTY. See *Allowances.*

BURDEN OF PROOF. See *Deed; Municipal Bonds*, 3.

Where, in an action against a life-insurance company brought by an administrator on a policy purporting to insure the life of the intestate, one of the defences set up was that the answers of the latter to certain questions propounded to him at the time of his application touching his habits of life, &c., were untrue, the burden of proving the truth of such answers does not rest on the plaintiff. *Piedmont and Arlington Life Insurance Co.* v. *Ewing, Administrator*, 377.

CAPTURE. See *Captured or Abandoned Property*, 3–6; *Insurrection.*

CAPTURED OR ABANDONED PROPERTY. See *Court of Claims*, 2; *Insurrection.*

1. Certain premises in Louisiana, belonging to a citizen of that State, were, during his absence therefrom, seized as abandoned property by the military authorities of the United States, who compelled the lessee then in possession to enter into a new lease, and to pay to them the rent thereafter due. *Held*, that the owner could not recover of the lessee the rent for the period during which he had paid it to the military authorities. *Harrison* v. *Myer, Executrix*, 111.
2. A. sold cotton to the Confederate States, accepted their bonds in payment therefor, but remained in possession of it until its seizure by the agents of the United States, who sold it, and paid the proceeds into the treasury. *Held*, that A. cannot recover such proceeds in an action against the United States. *Whitfield* v. *United States*, 165.
3. Notwithstanding active hostilities had ceased in Georgia, cotton, although private property, captured by the military forces of the United States, in obedience to an order of the commanding general, during their occupation and actual government of that State, was taken from hostile possession within the meaning of that term, and was, without regard to the *status* of the owner, a legitimate subject of capture. *Lamar, Exr.*, v. *Browne et al.*, 187.
4. What shall be the subject of capture, as against his enemy, is always within the control of every belligerent. It is the duty of his military forces in the field to seize and hold that which is apparently so subject; leaving the owner to make good his claim, as against the capture, in the appropriate tribunal established for that purpose. In that regard, they occupy on land the same position that naval forces do at sea. *Id.*
5. Unless restrained by governmental regulations, the capture of movable property on land changes the ownership of it without adjudication. It was authorized by law, in any State or Territory in rebellion against the government of the United States. Provision was made (12 Stat. 820) as well for the collection of captured or abandoned property as for its conversion into money to be deposited

CAPTURED OR ABANDONED PROPERTY (*continued*).
in the national treasury, and the claimant allowed within a prescribed time to sue in the Court of Claims, and to receive the net proceeds, on proof to its satisfaction, of his loyalty, and of his right to them. *Id.*

6. Neither the captors, nor the special agents of the treasury to whom they delivered the captured property, are liable to the owner thereof in an action at law for any thing by them done within the scope of their delegated powers. Acting for the government, they are protected by its authority; and he must look to it, not to them, for indemnity. *Id.*
7. It is incumbent upon a claimant, under the Captured or Abandoned Property Act, to establish by sufficient proof that the property captured or abandoned came into the hands of a treasury agent; that it was sold; that the proceeds of the sale were paid into the treasury of the United States; and that he was the owner of the property, and entitled to the proceeds thereof. *United States* v. *Ross*, 281.
8. Because the claimant's property was captured and sent forward by a military officer, and there is an unclaimed fund in the treasury derived from sales of property of the same kind, a court is not authorized to conclude, as matter of law, that the property was delivered by that officer to a treasury agent, that it was sold by the latter, and that the proceeds were covered into the treasury. *Id.*

CARONDELET COMMONS.
The deed of conveyance executed to the United States on the twenty-fifth day of October, 1854, by the city of Carondelet, of a part of the commons of Carondelet upon which Jefferson Barracks are situate, having been based upon an equitable compromise of a long-pending and doubtful question of title, is valid. *City of St. Louis* v. *United States*, 462.

CESTUI QUE TRUST. See *Parties*, 1.

CHARGE TO THE JURY. See *Court and Jury.*

CITIZENS. See *Constitutional Law*, 8–10.

COLLATERAL SECURITIES.
A creditor holding collaterals is not bound to apply them before enforcing his direct remedy against his debtor. *Lewis, Trustee*, v. *United States*, 618.

COLLISION. See *Admiralty*, 2–5.

COMMERCE. See *International Law*, 1–4.

1. The case of the *City of New York* v. *Miln*, 11 Pet. 103, decided no more than that the requirement from the master of a vessel of a catalogue of his passengers landed in the city, rendered to the mayor on oath, with a correct description of their names, ages, occupations, places of birth, and of last legal settlement, was a police regulation

COMMERCE (*continued*).
within the power of the State to enact, and not inconsistent with the Constitution of the United States. *Henderson et al.* v. *Mayor of the City of New York et al.*, 259.
2. The result of the *Passenger Cases*, 7 How. 283, is that a tax demanded of the master or owner of the vessel for every such passenger is a regulation of commerce by the State, in conflict with the Constitution and laws of the United States, and therefore void. *Id.*
3. These cases criticised, and the weight due to them as authority considered. *Id.*
4. A statute which imposes a burdensome and almost impossible condition on the ship-master as a prerequisite to his landing his passengers, with an alternative payment of a small sum of money for each one of them, is a tax on the ship-owner for the right to land such passengers, and, in effect, on the passenger himself, since the ship-master makes him pay it in advance as part of his fare. *Id.*
5. Such a statute of a State is a regulation of commerce, and, when applied to passengers from foreign countries, is a regulation of commerce with foreign nations. *Id.*
6. It is no answer to the charge, that such regulation of commerce by a State is forbidden by the Constitution, to say that it falls within the police power of the States; for, to whatever class of legislative powers it may belong, it is prohibited to the States if granted exclusively to Congress by that instrument. *Id.*
7. Though it be conceded that there is a class of legislation which may affect commerce, both with foreign nations and between the States, in regard to which the laws of the States may be valid in the absence of action under the authority of Congress on the same subjects, this can have no reference to matters which are in their nature national, or which admit of a uniform system or plan of regulation. *Id.*
8. The statutes of New York and Louisiana, here under consideration, are intended to regulate commercial matters which are not only of national, but of international concern, and which are also best regulated by one uniform rule, applicable alike to all the seaports of the United States. They are therefore void, because legislation on the subjects which they cover is confided exclusively to Congress by the clause of the Constitution which gives to that body the "right to regulate commerce with foreign nations." *Id.*
9. The constitutional objection to this tax on the passenger is not removed because the penalty for failure to pay does not accrue until twenty-four hours after he is landed. The penalty is incurred by the act of landing him without payment, and is, in fact, for the act of bringing him into the State. *Id.*
10. The court does not, in this case, undertake to decide whether or not a State may, in the absence of all legislation by Congress on the same subject, pass a statute strictly limited to defending itself

COMMERCE *(continued)*.

against paupers, convicted criminals, and others of that class, but is of opinion that to Congress rightfully and appropriately belongs the power of legislating on the whole subject. *Id.*

11. The statute of California, which is the subject of consideration in this case, does not require a bond for every passenger, or commutation in money, as do the statutes of New York and Louisiana, but only for certain enumerated classes, among which are "lewd and debauched women." *Chy Lung* v. *Freeman et al.*, 275.
12. But the features of the statute are such as to show very clearly that the purpose is to extort money from a large class of passengers, or to prevent their immigration to California altogether. *Id.*
13. The statute also operates directly on the passenger; for, unless the master or the owners of the vessel give an onerous bond for the future protection of the State against the support of the passenger, or pay such sum as the Commissioner of Immigration chooses to exact, he is not permitted to land from the vessel. *Id.*
14. The powers which the commissioner is authorized to exercise under this statute are such as to bring the United States into conflict with foreign nations, and they can only belong to the Federal government. *Id.*
15. If the right of the States to pass statutes to protect themselves in regard to the criminal, the pauper, and the diseased foreigner, landing within their borders, exists at all, it is limited to such laws as are absolutely necessary for that purpose; and this mere police regulation cannot extend so far as to prevent or obstruct other classes of persons from the right to hold personal and commercial intercourse with the people of the United States. *Id.*
16. The statute of California extends, in this respect, far beyond the necessity in which the right, if it exists, is founded, and invades the right of Congress to regulate commerce with foreign nations. It is, therefore, void. *Id.*

COMMISSIONER OF PATENTS, DECISIONS OF. See *Patents*, 1.

CONCESSIONS OF LAND BY THE MEXICAN OR SPANISH GOVERNMENT. See *Public Lands*, 9.

1. The Board of Land Commissioners, under the act of March 3, 1851 (9 Stat. 631), passed in 1855 a decree confirming a grant for all the land asked for in the petition, which was acquiesced in until 1872, when a petition praying that the estimate of quantity in the original petition be stricken out, and that the land as now claimed be confirmed, was presented to the District Court, — *Held*, that the claimants are without remedy under any act of Congress. *Williams et al.* v. *United States*, 457.
2. In an action of ejectment for land in California, where both parties assert title to the premises, — the plaintiff under a concession of the former government, confirmed by the tribunals of the United States,

CONCESSIONS OF LAND BY THE MEXICAN OR SPANISH GOVERNMENT (*continued*).

and an approved survey under the act of Congress of June 14, 1860, and the defendant under a patent of the United States issued upon a similar confirmed concession, — the inquiry of the court must extend to the character of the original concessions to ascertain which of the two titles gave the better right to the premises; and, if these do not furnish the means for settling the controversy, reference must be had to the proceedings before the tribunals and officers of the United States by which the claims of the parties were determined. *Miller et al.* v. *Dale et al.*, 473.

3. Where the original concessions in such cases were without specific boundaries, being floating grants for quantity, the one first located by an approved survey appropriated the land embraced by the survey. *Id.*

CONDITION PRECEDENT. See *Equity*, 1; *Land Grants*, 2; *Municipal Bonds*, 2–6, 8, 10–13.

CONFISCATION. See *Amnesty*.

1. The act of July 17, 1862 (12 Stat. 589), is an act for the confiscation of enemies' property, and provides for the seizure and condemnation of all their estate. When it has been carried into effect by appropriate proceedings in any given case, the offender has no longer any interest or ownership in the thing forfeited which he can convey, or any power over it which he can exercise in favor of another. *Wallach et al.* v. *Van Riswick*, 202.
2. The joint resolution of even date with that act was designed only to qualify, and not defeat it. The provision therein, that "no proceedings shall work a forfeiture beyond the life of the offender," obviously means that they shall not affect the ownership of the land after the termination of his natural life ; and that, after his death, it shall pass and be owned as if it had not been forfeited. It was intended for the exclusive benefit of his heirs, and to enable them to take the inheritance after his death. *Id.*

CONSOLIDATED BONDS. See *Louisiana Consolidated Bonds*.

CONSOLIDATION OF COMPANIES. See *Corporations*, 1–7.

CONSTITUTIONAL LAW. See *Commerce*, 1–16; *Duty on Exports*, 1; *State Railroad Tax*, 2.

1. A trial by jury in suits at common law pending in the State courts is not a privilege or immunity of national citizenship which the States are forbidden by the Fourteenth Amendment of the Constitution of the United States to abridge. *Walker* v. *Sauvinet*, 90.
2. Rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and manner of that protection may be such as Congress, in the legitimate exercise of its legislative discretion, shall provide, and may be

CONSTITUTIONAL LAW (*continued*).

varied to meet the necessities of a particular right. *United States* v. *Reese et al.*, 214.

3. The Fifteenth Amendment to the Constitution does not confer the right of suffrage; but it invests citizens of the United States with the right of exemption from discrimination in the exercise of the elective franchise on account of their race, color, or previous condition of servitude, and empowers Congress to enforce that right by "appropriate legislation." *Id.*

4. The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment, and can be exercised by providing a punishment only when the wrongful refusal to receive the vote of a qualified elector at such elections is because of his race, color, or previous condition of servitude. *Id.*

5. The third and fourth sections of the act of May 31, 1870 (16 Stat. 140), not being confined in their operation to unlawful discrimination on account of race, color, or previous condition of servitude, are beyond the limit of the Fifteenth Amendment, and unauthorized. *Id.*

6. As these sections are in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, and cannot be limited by judicial construction so as to make them operate only on that which Congress may rightfully prohibit and punish, — *Held*, that Congress has not provided by "appropriate legislation" for the punishment of an inspector of a municipal election for refusing to receive and count at such election the vote of a citizen of the United States of African descent. *Id.*

7. The State of Louisiana passed an act entitled "An Act to regulate proceedings in contestations between persons claiming a judicial office."

Sect. 1 provided that "in any case in which a person may have been appointed to the office of judge of any court of this State, and shall have been confirmed by the senate, and commissioned thereto, . . . such commission shall be *prima facie* proof of the right of such person to immediately hold and exercise such office."

Sect. 2 provides "that if any person, being an incumbent of such office, shall refuse to vacate the same, and turn the same over to the person so commissioned, such person so commissioned shall have the right to proceed by *rule* before the court of competent jurisdiction, to have himself declared to be entitled to such office, and to be inducted therein. Such rule shall be taken contradictorily with such incumbent, and shall be made returnable within twenty-four hours, and shall be tried immediately without jury, and by preference over all matter or causes depending in such court; . . . and the judgment thereon shall be signed the same day of rendition."

The next section provides that an appeal, if taken, shall be applied for within one day after the rendition of the judgment, and be made

CONSTITUTIONAL LAW (*continued*).

returnable to the Supreme Court within two days. The appeal has preference over all other business in that court, and the judgment thereon is final after the expiration of one day. *Held*, that the State, by proceedings under this act, which resulted in a judgment adverse to the title of the plaintiff in error to a certain judicial office, did not, through her judiciary, violate that clause of the Fourteenth Amendment to the Constitution of the United States which declares, "nor shall any State deprive any person of life, liberty, or property, without due process of law." *Kennard* v. *Louisiana ex rel. Morgan*, 480.

8. Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights. The duty of a government to afford protection is limited always by the power it possesses for that purpose. *United States* v. *Cruikshank et al.*, 542.

9. There is in our political system a government of each of the several States, and a government of the United States. Each is distinct from the others, and has citizens of its own, who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State; but his rights of citizenship under one of these governments will be different from those he has under the other. *Id.*

10. The government of the United States, although it is, within the scope of its powers, supreme and beyond the States, can neither grant nor secure to its citizens rights or privileges which are not expressly or by implication placed under its jurisdiction. All that cannot be so granted or secured are left to the exclusive protection of the States. *Id.*

11. The right of the people peaceably to assemble for lawful purposes, with the obligation on the part of the States to afford it protection, existed long before the adoption of the Constitution. The first amendment to the Constitution, prohibiting Congress from abridging the right to assemble and petition, was not intended to limit the action of the State governments in respect to their own citizens, but to operate upon the national government alone. It left the authority of the States unimpaired, added nothing to the already existing powers of the United States, and guaranteed the continuance of the right only against Congressional interference. The people, for their protection in the enjoyment of it, must, therefore, look to the States, where the power for that purpose was originally placed. *Id.*

12. The right of the people peaceably to assemble, for the purpose of petitioning Congress for a redress of grievances, or for any thing

CONSTITUTIONAL LAW (*continued*).
else connected with the powers or duties of the national government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States. The very idea of a government republican in form implies that right, and an invasion of it presents a case within the sovereignty of the United States. *Id.*
13. The right to bear arms is not granted by the Constitution; neither is it in any manner dependent upon that instrument for its existence. The second amendment means no more than that it shall not be infringed by Congress, and has no other effect than to restrict the powers of the national government. *Id.*
14. Sovereignty, for the protection of the rights of life and personal liberty within the respective States, rests alone with the States. *Id.*
15. The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws; but it adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforcement of this guaranty. *Id.*
16. In *Minor* v. *Happersett*, 21 Wall. 178, this court decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States have no voters of their own creation in the States. In *United States* v. *Reese et al.*, *supra*, p. 214, it held that the Fifteenth Amendment has invested the citizens of the United States with a new constitutional right, which is, exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. The right to vote in the States comes from the States; the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been. *Id.*

CONTESTED CLAIMS, ADJUSTMENT OF. See *National Banks*, 1, 2.

CONTRABAND OF WAR. See *International Law*, 1–4.
Money, silver-plate, and bullion, when destined for hostile use or for the purchase of hostile supplies, are contraband of war. Where a foreign vessel entered New Orleans under the license of the President's proclamation of May 12, 1862, the determination of the question whether such articles, part of her outward-bound cargo, were

CONTRABAND OF WAR (*continued*).
contraband, devolved upon the commanding general at that city. Believing them to be so, he was authorized to order them to be removed from her, and her clearance to be withheld until his order should be complied with. *United States* v. *Diekelman*, 520.

CONTRACTS. See *Bankruptcy*, 2 ; *Bills of Exchange and Promissory Notes; Court of Claims*, 1 ; *Legal Representatives*, 2 ; *Municipal Bonds*, 5–7, 9 ; *Pleading*, 1 ; *Rewards*, 2 ; *Warranty*, 1, 2.

1. Where a party, knowing the pecuniary condition of a debtor, purchased a claim against him of an ascertained amount, an opinion, however erroneous, expressed by the seller as to the value of the claim, does not affect the validity of the sale. Under such circumstances, each party is presumed to rely upon his own judgment. *Blease* v. *Garlington*, 1.
2. Prior to the abolition of slavery in Mississippi, a contract there made between a slave and his master neither imposed obligations nor conferred rights upon either party. *Hall* v. *United States*, 27.
3. An action cannot be maintained against the government, in the Court of Claims, upon a contract for secret services during the war, made between the President and the claimant. *Totten, Administrator*, v. *United States*, 105.
4. An agreement between the agent of an insurance company and an applicant for insurance, whereby the former, without authority from the company, accepted articles of personal property by way of satisfaction of a premium payable in money, is a fraud upon the company, and no valid contract against it arises therefrom. *Hoffman* v. *John Hancock Mutual Life Insurance Co.*, 161.
5. While negotiations were still pending between an agent of the company and the applicant, touching the precise terms of a contract of insurance, the amount of premium, and the mode of payment, a friend paid the premium, but concealed from the agent the condition of the applicant, who was then *in extremis*, and died in a few hours. The agent, in ignorance of the facts, delivered the policy. *Held*, that no valid contract arose from the transaction. *Piedmont and Arlington Life Insurance Co.* v. *Ewing, Administrator*, 377.
6. The following memorandum of a contract of sale signed by the agents of the purchaser and the seller, to wit, —

"New York, July 10, 1867.

"Sold for Messrs. Butler & Co., Boston, to Messrs. A. A. Thomson & Co., New York, seven hundred and five (705) packs first quality Russia sheet-iron, to arrive at New York, at twelve and three quarters (12¾) cents per pound, gold, cash, actual tare.

"Iron due about Sept. 1, '67.

"White & Hazard, *Brokers.*"

— binds both parties thereto. *Butler* v. *Thomson et al.*, 412.
7. A certain instrument of writing (inserted in the report of the case) —

CONTRACTS (*continued*).

*Held*, not to be a mere power of attorney revocable at the pleasure of the maker ; but a contract under which rights for a specified time were acquired. *Burdell et al.* v. *Denig et al.*, 716.

8. Where an inventor signed several different agreements with the same party, on the same day, for the sale of his invention and for a license to use it, they must all be construed together ; and if it is apparent that he intended to convey the right to use a new invention in connection with former patents, under any renewal or extension of the former, the grantee or assignee is protected, though the improvement was never patented, and though the reissued patent was extended afterwards. It is a question of intention to be gathered from all the instruments of writing in the case. *Hammond et al.* v. *Mason and Hamlin Organ Co.*, 724.

CONTRACTS, OBLIGATIONS OF.

The constitution of a State cannot impair the obligation of a contract. *County of Moultrie* v. *Rockingham Ten-Cent Savings-Bank*, 631.

CONTRIBUTION.

Where the legislature of Wyoming Territory organized two new counties, and included within their limits a part of the territory of an existing county, but made no provision for apportioning debts or liabilities, — *Held*, that the old county, being solely responsible for the debts and liabilities it had previously incurred, has, on discharging them, no claim upon the new counties for contribution. *Commissioners of Laramie Co.* v. *Commissioners of Albany Co. et al.*, 307.

CORPORATIONS.

1. The consolidation of two companies does not necessarily work a dissolution of both, and the creation of a new corporation. Whether such be its effect, depends upon the legislative intent manifested in the statute under which the consolidation takes place. *Central Railroad and Banking Company* v. *Georgia*, 665.

2. An act of the legislature authorized two railroad companies (C. and M.) to unite and consolidate their stocks, and all their rights, privileges, immunities, property, and franchises, under the name and charter of C., in such manner that each owner of shares of the stock of M. should be entitled to receive an equal number of the shares of the stock of the consolidated companies. The act also declared that all contracts of both companies should be assumed by and be binding upon C., that its capital should not exceed their aggregate capital, and that all their benefits and rights should accrue to it. It was further enacted, that, upon the union and consolidation, each stockholder of M. should be entitled to receive a certificate for a like number of shares of the stock of C., upon his surrender of his certificate of stock in M. *Held*, that consolidation under this act was not a surrender of the existing charters of the two companies, and

CORPORATIONS (*continued*).

that it did not work the extinction of C., nor the creation of a new company. *Held further*, that the consolidated company continued to possess all the rights and immunities which were conferred upon each company by its original charter. *Id.*

3. Exemption from liability to any greater tax than one-half of one per centum of its net annual income having been conferred upon C. by its charter, — *Held*, that it is not in the power of the legislature to impose an increased tax after the consolidation was effected. *Held further*, that inasmuch as M. possessed no such immunity under its charter, the power of the legislature to tax its franchises, property, and income, remained unimpaired after its consolidation with C. *Id.*
4. The purpose and effect of the consolidating act were to provide for a merger of M. into C., and to vest in the latter the rights and immunities of the former, not to enlarge them. Therefore, M. having held its franchises and property subject to taxation, C., succeeding to the ownership, held them alike subject. *Id.*
5. In *Tomlinson* v. *Branch*, 15 Wall. 460, and *City of Charleston* v. *Branch*, id. 470, this court held that the respective roads and property of the two companies, which had become consolidated in the hands of the South Carolina Railroad Company, retained their original *status* towards the public and the State the same as if the consolidation had not taken place; that the entire line of road between Branchville and Charleston was subject to taxation; and that *prima facie* the railroad terminus and dépôt in Charleston and the property accessory thereto belonged to the South Carolina Canal and Railroad Company portion of the joint property. *Branch et al.* v. *City of Charleston et al.*, 677.
6. The holding, that, if it could be fairly shown that any of that company's property in Charleston was acquired by the South Carolina Railroad Company for the accommodation of the business belonging to its original roads, or for the joint accommodation of the entire system of roads under its control, such property would, *pro tanto* and in fair proportion, be exempt from taxation, was intended to meet the case of such property as the present company might have acquired in Charleston, either separately or in conjunction with the old company, had no consolidation taken place, and had the line between Branchville and Charleston used by both remained the property of the old company. *Id.*
7. In carrying out that principle, any repairs or improvements made on the old line or the property of the old company would become a part thereof, and be subject to taxation. An item, therefore, for replacing tracks and side-tracks within the city limits, as it fairly belongs to the old road, should have been taxed *in toto* and not *pro tanto*. *Id.*

COUNTY BONDS. See *Municipal Bonds.*

COUNTY, DIVISION OF. See *Contribution; Legislative Power.*

COUNTY WARRANTS.

Warrants issued on the county treasurer subsequently to the year 1860 by order of the board of supervisors of a county in Iowa, and duly signed by their clerk, were not, unless sealed with the county seal, genuine and regularly issued, and the treasurer was not authorized to pay them. *Smeltzer* v. *White*, 390.

COUPONS. See *Interest*.

The holder of coupons attached to town bonds, where the latter recite that they are issued in pursuance of a duly authorized subscription for stock of a railroad company, which before the subscription was actually made had become consolidated with another, thereby forming a third company, and the authority to subscribe was limited to the first company, is not entitled to recover thereon, as sufficient notice of the objection to the validity of the bonds is contained in their recitals. *Harshman* v. *Bates County*, 569.

COURT AND JURY.

1. Where the evidence merely tended to prove certain disputed facts in issue, it was error for the court to assume in its charge that they had been proved, and thus withdraw from the jury the right to weigh the evidence bearing upon such facts. *Burdell et al.* v. *Denig et al.*, 716.
2. In a suit upon acceptances amounting to $4,500, the defendants pleaded as a set-off the plaintiff's draft for a like sum, which had been indorsed to them by A., the payee thereof, and protested for non-payment. The plaintiff replied that his draft was given as a part of the proceeds of a discount by him of A.'s draft for $5,000, which had been procured by A. upon false and fraudulent representations, and that the consideration for it had wholly failed, of all which the defendants, when they received it, had notice. There was evidence at the trial that the plaintiff had, in a suit against A., recovered $4,000 on account of the $5,000 draft. The court instructed the jury that the issues were those tendered by the plaintiff, and that, if either was found in his favor, he was entitled to recover. *Held*, that while the instruction, so far as given, was correct, its general effect was misleading, as it tended to withdraw from the notice of the jury the evidence that the failure of consideration for the plaintiff's draft was only partial. *Hall et al.* v. *Weare*, 728.

COURT OF CLAIMS. See *Contracts*, 3.

1. Contractors for the transportation of the mails between New York and New Orleans, touching at Havana, and between Havana and Chagres, having subsequently established a direct line between New York and Chagres, which made the passage between the latter points in a shorter time, by two days, than the mail-ships running under the contract by way of Havana, consented to take the Chagres and

COURT OF CLAIMS (*continued*).

California mails outward and homeward by the direct steamers, without requiring from the Post-Office Department a prior stipulation to pay for the extra service, but without precluding themselves from applying to Congress for such compensation as it might deem just and reasonable. To this arrangement the Postmaster-General assented, with the understanding that his department did not thereby become responsible for any additional expense. Application was made to Congress for equitable relief, and an act passed referring the claim to the Court of Claims, with directions to examine the same, and determine and adjudge what, if any, amount was due for extra service. *Held*, that the Court of Claims is authorized to adjudge such an allowance as is required *ex æquo et bona* by all the circumstances of the case. *Roberts et al., Trustees*, v. *United States*, 41.

2. The Court of Claims found that cotton in large quantities captured from the respective owners thereof in Mississippi by the military forces of the United States was subsequently intermingled and stored in a common mass, and then sent forward and sold by the treasury agents in the same intermingled condition, and the proceeds thereof paid into the treasury as a common fund; that court further found as a fact that the cotton of each of the claimants in these suits contributed to and formed a part of the mass so intermingled and sold. Having ascertained the amount of that fund remaining in the treasury after deducting payments theretofore made to other claimants, the number of bales sold to create the fund for which payment had not already been made, and the number of bales contributed by each of the plaintiffs to the common mass, — the court thereupon gave judgment in favor of the plaintiff in each case for a sum which bore the same proportion to the whole fund still on hand that the number of his bales did to the whole number then represented by the fund. *Held*, that the judgment was proper. *Intermingled Cotton Cases*, 651.
3. While the Court of Claims cannot delegate its judicial powers, and must itself hear and determine all causes which come before it for adjudication, no reason exists why it may not use such machinery as courts of more general jurisdiction are accustomed to employ under similar circumstances to aid in their investigations. *Id.*
4. Where that court in certain cases before it, in which complicated accounts and facts were to be passed upon, referred them to a special commissioner to state the accounts, marshal the assets, and adjust the losses, "so that equal and exact justice should be done to all;" and upon consideration of his report, and after due deliberation, approved it, — *Held*, that the judgments as rendered are the result of the deliberation of the court, and not that of the commissioner alone. *Id.*

COVENANT. See *Lease.*

CREDITOR. See *Collateral Securities; Settlement.*

CRIMINAL LAW.

1. The counts of an indictment which charge the defendants with having banded and conspired to injure, oppress, threaten, and intimidate citizens of the United States, of African descent, therein named; and which in substance respectively allege that the defendants intended thereby to hinder and prevent such citizens in the free exercise and enjoyment of rights and privileges granted and secured to them in common with other good citizens by the constitution and laws of the United States; to hinder and prevent them in the free exercise of their right peacefully to assemble for lawful purposes; prevent and hinder them from bearing arms for lawful purposes; deprive them of their respective several lives and liberty of person without due process of law; prevent and hinder them in the free exercise and enjoyment of their several right to the full and equal benefit of the law; prevent and hinder them in the free exercise and enjoyment of their several and respective right to vote at any election to be thereafter by law had and held by the people in and of the State of Louisiana, or to put them in great fear of bodily harm, and to injure and oppress them, because, being and having been in all things qualified, they had voted at an election theretofore had and held according to law by the people of said State, — do not present a case within the sixth section of the Enforcement Act of May 31, 1870 (16 Stat. 141). To bring a case within the operation of that statute, it must appear that the right the enjoyment of which the conspirators intended to hinder or prevent was one granted or secured by the constitution or laws of the United States. If it does not so appear, the alleged offence is not indictable under any act of Congress. *United States* v. *Cruikshank et al.*, 542.
2. The counts of an indictment which, in general language, charge the defendants with an intent to hinder and prevent citizens of the United States, of African descent, therein named, in the free exercise and enjoyment of the rights, privileges, immunities, and protection, granted and secured to them respectively as citizens of the United States, and of the State of Louisiana, because they were persons of African descent, and with the intent to hinder and prevent them in the several and free exercise and enjoyment of every, each, all, and singular the several rights and privileges granted and secured to them by the constitution and laws of the United States, do not specify any particular right the enjoyment of which the conspirators intended to hinder or prevent, are too vague and general, lack the certainty and precision required by the established rules of criminal pleading, and are therefore not good and sufficient in law. *Id.*
3. In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right "to be informed of the nature and cause of the accusation." The indictment must set forth the offence with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged; and every

CRIMINAL LAW (*continued*).

ingredient of which the offence is composed must be accurately and clearly alleged. It is an elementary principle of criminal pleading, that, where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition, but it must state the species, — it must descend to particulars. The object of the indictment is, — first, to furnish the accused with such a description of the charge against him as will enable him to make his defence, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances. *Id.*

4. By the act under which this indictment was found, the crime is made to consist in the unlawful combination with an intent to prevent the enjoyment of any right granted or secured by the Constitution, &c. All rights are not so granted or secured. Whether one is so or not is a question of law, to be decided by the court. The indictment should, therefore, state the particulars, to inform the court as well as the accused. It must appear from the indictment that the acts charged will, if proved, support a conviction for the offence alleged. *Id.*

DAMAGES. See *Admiralty*, 3, 5; *International Law*, 4; *Patents*, 8–12.

DEALING IN STOCKS. See *National Banks*, 1–3.

DEED.

Where a party alleges that a deed executed by his attorney, under a power to convey, is invalid for matters not apparent on its face, the burden of proving them is on such party. *Clements* v. *Macheboeuf et al.*, 418.

DESERTION. See *Honorable Discharge.*

DISTRICT OF COLUMBIA.

Since 1847, pursuant to the act of Congress of the preceding year, the State of Virginia has been in *de facto* possession of the county of Alexandria, which, prior thereto, formed a part of the District of Columbia. The political department of her government has, since that date, uniformly asserted, and the head of her judicial department expressly affirmed, her title thereto. Congress has, by more than one act, recognized the transfer as a settled fact. A resident of that county, in a suit to recover the amount by him paid under protest for taxes upon his property there situate, is, therefore, estopped from raising the question as to the validity of the retrocession. *Phillips* v. *Payne*, 130.

DUE PROCESS OF LAW. See *Constitutional Law*, 7, 15.

DUTY ON EXPORTS.

1. The acts of Congress of July 20, 1868 (15 Stat. 157), and June 6, 1872 (17 id. 254), so far as they relate to snuff and tobacco intended for exportation, do not impose a tax or duty on exports within the meaning of that clause of the Constitution which declares that "no tax or duty shall be laid on articles exported from any State." *Pace* v. *Burgess*, *Collector*, 372.
2. The stamp thereby required was a means devised for the prevention of fraud by separating and identifying the tobacco intended for exportation; thus relieving it from the taxation to which other tobacco was subjected. *Id.*
3. The proper fees accruing in the due administration of the laws and regulations necessary for the protection of the government against imposition and frauds likely to be committed under the pretext of exportation, are, in no sense, a duty on exports. They are simply the compensation given for services properly rendered. *Id.*

DUTY ON IMPORTS.

The act of Feb. 26, 1845 (5 Stat. 727), prescribing the time and manner of making protest to a collector of customs in cases therein mentioned, continued in force until the passage of the act of June 30, 1864 (13 id. 202). *Barney*, *Collector*, v. *Watson et al.*, 449.

ENEMIES' PROPERTY. See *Captured or Abandoned Property*, 3–5; *Confiscation*, 1, 2.

ENFORCEMENT ACT. See *Criminal Law*, 1, 4.

ESTOPPEL. See *District of Columbia; Municipal Bonds*, 2, 3, 8, 10, 13.

EQUITY. See *Jurisdiction*, 10; *Practice*, 1–5; *South Carolina*, *Statute of Limitations of*; *Taxes*, *Collection of*, *Powers of Courts to Restrain*, 1–4.

1. Where a conveyance of a plantation had been obtained by fraud, and the only consideration alleged by the grantee was the cancellation of a certain bond executed by the grantor, and the court below set aside the deed and ordered that the bond, unaffected by any indorsement of credit or payment thereon, should be returned, and that it and the mortgage therewith given should have the same force and effect as if the conveyance had not been made and the bond had not been cancelled, — *Held*, that the decree was proper in not making the payment of the bond a condition precedent to the reconveyance of the plantation. *Neblett* v. *Macfarland*, 101.
2. Where land is conveyed to the State by a corporation as indemnity against losses on her bonds loaned to it, the bondholders have no equity for the application of the land to the payment of the bonds which can be enforced against the State, and her grantees take

EQUITY (*continued*).
the property discharged of any claim of the bondholders. *Chamberlain* v. *St. Paul and Sioux City Railroad Co. et al.*, 299.

EVIDENCE. See *Admiralty*, 1; *Burden of Proof; Captured or Abandoned Property*, 7; *Practice*, 1–4.

1. Where the lessors executed a lease and demised the lands in their own names, and not as agents, and the covenants of the lessee were all to them personally, and he entered into the lands, and remained in possession during the time specified in the lease, — *Held*, notwithstanding the recital in the lease that "the lessors were acting as a church-extension committee by authority and on behalf of the General Assembly of the Presbyterian Church, Old School," that the lease was competent evidence in an action brought by the lessors in their individual right to recover the rent; and that the lessee, having had the full benefit of the contract, could not dispute the title of the lessors. *Held further*, that the recital is not inconsistent with a holding of the legal title by the lessors in trust to enable them to better discharge their duties touching the property; and, as their act presupposes the prior act necessary to make it effectual, every reasonable presumption is to be made in favor of the validity of the lease. *Stott et al.* v. *Rutherford*, 107.
2. Where the declaration against the assignor of a promissory note upon his contract of assignment made in Illinois avers that a suit against the maker of the note would have been unavailing, and the defendant takes issue thereon, the record of an adjudication in bankruptcy against the maker of the note before suit could have been brought thereon is not only competent, but conclusive, evidence for the plaintiff. *Wills et al.* v. *Claflin et al.*, 135.
3. The presumption that public officers have done their duty does not supply proof of independent and substantive facts. *United States* v. *Ross*, 281.
4. The rule that where profits are the true measure of damages for the infringement of a patent, such profits as the infringer has made or ought to have made, govern, and not those which the *plaintiff* can show that *he* might have made, applies peculiarly and mainly to cases in equity. In actions at law, the rate at which sales of licenses of machines were made, or the established royalty, constitutes the primary and true criterion of damages. In the absence of satisfactory evidence of that class which is more appropriate in the forum where the case is pending, the other class may be resorted to as furnishing one of the elements on which the damages, or the compensation, may be ascertained. *Burdell et al.* v. *Denig et al.*, 716.
5. As a receipt for the use of four of plaintiff's machines, executed after the institution of the suit, was a valid acquittance of any claim for such use, it was properly admitted in evidence under the general issue, to reduce the amount of damages. *Id.*

EXCEPTIONS. See *Practice*, 9.

EXPERTS, EVIDENCE OF. See *Admiralty*, 1.

EXPORTS. See *Duty on Exports*, 1–3.

EXTRA ALLOWANCES. See *Court of Claims*, 1.

EXTRA SERVICES. See *Court of Claims*, 1.

FEDERAL QUESTION. See *Jurisdiction*, 5, 7.

The question, whether, under the Bankrupt Act, the District Court had authority to make an order enjoining a sheriff from selling, under an execution sued out on a judgment obtained in a State court, the property of a debtor, who, subsequently thereto, was adjudicated a bankrupt, and then modifying its previous order, and directing the sheriff to sell, and pay the proceeds of the sale into the District Court, and the decision of the highest State court adverse to that authority, are sufficient to sustain the Federal jurisdiction. *O'Brien* v. *Weld et al.*, 81.

FEE. See *Abeyance.*

FICTION OF LAW.

The fiction of law, that a term consists of but one day, cannot be invoked to antedate the judicial rejection of a claim, so as to render operative a grant which would otherwise be without effect. *Newhall* v. *Sanger*, 761.

FINAL DECREE. See *Practice*, 12, 13.

FINAL JUDGMENT. See *Jurisdiction*, 2.

FORFEITURE. See *Confiscation*, 1, 2.

Where a grant of land and connected franchises is made to a corporation for the construction of a railroad by a statute, which provides for their forfeiture upon failure to perform the work within a prescribed time, the forfeiture may be declared by legislative act without judicial proceedings to ascertain and determine the failure of the grantee. Any public assertion by legislative act of the ownership of the State after the default of the grantee — such as an act resuming control of the road and franchises, and appropriating them to particular uses, or granting them to another corporation to perform the work — is equally effective and operative. *Farnsworth et al., Trustees*, v. *Minnesota and Pacific Railroad Company et al.*, 49.

FRAUD. See *Bankruptcy*, 2; *Contracts*, 4; *Duty on Exports*, 2, 3; *Equity*, 1; *Insurance; Liens; Pleading*, 1; *Practice*, 14; *Settlement.*

GENERAL AVERAGE.

A vessel bound to the United States, having loaded at one of the guano islands where clearances were not granted, was on her way to Callao

GENERAL AVERAGE (*continued*).

for one, when she was badly injured by a collision with another vessel. Proceeding in distress to that, the nearest port, she came to anchor at the anchorage of vessels calling at that port for clearances. A survey revealed the fact that her damaged condition was such as to require her to be unladen and extensively repaired before prosecuting her voyage. She was, therefore, removed to a hulk nearer the pier, where most of her cargo was discharged, and thence to a dock for repairs. After they were finished, she was, with reasonable despatch, reloaded, and completed her voyage. Before the delivery of her cargo, the consignees gave an average bond, whereby they agreed to pay the owner of the ship their respective proportions of the expenses and charges incurred by him in consequence of such collision, as soon as the average should be adjusted conformably to law and the usages of the port of New York. *Held*, that as the services of her crew were necessary for her preservation and safety in hauling her to and from the hulk for unloading and reloading, and in moving her while in dock undergoing repairs, their wages and provisions, during the time they were so employed, were properly allowed in general average. *Held further*, that an adjustment of the amount paid for the services, board, travelling and incidental expenses of an agent sent by the owner of the ship, in good faith, to Callao to advise and assist the master, for the benefit of the ship and cargo, having been made in conformity with the usage of the port of New York, the charge was properly allowed. *Hobson et al.* v. *Lord*, 397.

GENERAL USAGE. See *Admiralty*, 1.

GEORGIA, STATUTE OF LIMITATIONS OF.

The insolvency of a bank having occurred prior to June 1, 1865, an action against a stockholder, under the individual liability clause of its charter, not commenced by Jan. 1, 1870, is barred by the Statute of Limitations of the State of Georgia of March 16, 1869. *Terry* v. *Tubman*, 156.

GOVERNMENT OF THE STATES. See *Constitutional Law*, 9–11, 13–16.

GOVERNMENT OF THE UNITED STATES. See *Constitutional Law*, 9–13, 15, 16.

GRANT. See *Fiction of Law; Public Lands*, 3–10.

1. Where rights claimed under the United States are set up against it, they must be so clearly defined that there can be no question of the purpose of Congress to confer them. *Leavenworth, Lawrence, and Galveston Railroad Co.* v. *United States*, 733.
2. The rule announced in the former decisions of this court, that a grant by the United States is strictly construed against the grantee,

GRANT (*continued*).
applies as well to grants to a State to aid in building railroads as to one granting special privileges to a private corporation. *Id.*

"GRANT" AND "DEMISE," EFFECT OF THESE WORDS IN A LEASE FOR YEARS. See *Lease.*

HABEAS CORPUS. See *Jurisdiction*, 6.

HEIRS. See *Confiscation*, 2; *Legal Representatives*, 1.

HONORABLE DISCHARGE. See *Allowances.*
An honorable discharge of a soldier from service does not restore to him pay and allowances forfeited for desertion. *United States* v. *Landers*, 77.

HOSTILE POSSESSION. See *Captured or Abandoned Property*, 3.

ILLINOIS, CONSTITUTION OF. See *Municipal Bonds*, 5, 6, 9.

ILLINOIS, CONTRACTS OF ASSIGNMENT IN. See *Bills of Exchange and Promissory Notes.*

IMPORTS. See *Duty on Imports; Questions of Fact.*

INCOME TAX. See *Statute of Limitations.*

INDICTMENT. See *Criminal Law*, 1–4.

INDIVIDUAL LIABILITY OF STOCKHOLDERS. See *Georgia, Statute of Limitations of.*
Where the charter of a bank contained a provision binding the individual property of its stockholders for the ultimate redemption of its bills in proportion to the number of shares held by them respectively, the liability of the stockholders arises when the bank refuses or ceases to redeem and is notoriously and continuously insolvent. *Terry* v. *Tubman*, 156.

INFRINGEMENT. See *Patents*, 4, 5, 8–12.

INJUNCTION. See *Louisiana Consolidated Bonds; Mandamus; Taxes, Collection of, Powers of Courts to Restrain*, 1–4.

INSURANCE. See *Burden of Proof; Contracts*, 4, 5.
A. having bought goods at an auction-store, and made part payment therefor, and having the disposal of them, permitted them to remain there for sale by and under his direction. He agreed that the first proceeds of the sale, to the amount of $3,150, should be paid to the vendor; and that the auctioneers, if they advanced money upon the goods, should retain the possession and control thereof as security. No advance was made. A. procured an insurance upon the goods for $2,500, representing that no other person was interested therein; that they were unincumbered; and that he estimated their value to be $12,000. Part of the goods were sold; and, the remainder having

INSURANCE (*continued*).

been destroyed by fire, A. brought suit against the company for the amount of the policy. The company set up by way of defence, that his statement as to the freedom of the goods from incumbrance was untrue; that he, knowing of its rule not to insure goods at more than three-fourths of their value, had overvalued them; and that they were, in fact, worth but $6,000. The jury found that the value of the goods destroyed was $7,204. *Held*, that the facts of the case do not justify the claim that the property was incumbered, or that the title of the insured therein was not absolute. *Held further*, that, as nothing appeared at the trial to show that the estimate of the value of the goods by A. was not an honest one, the charge of the court below, that such valuation, if made in good faith, and without intention to mislead or defraud the company, would not defeat a recovery, was without error. *Franklin Fire Insurance Co.* v. *Vaughan*, 516.

INSURER, VALUATION OF PROPERTY BY. See *Insurance.*

INSURRECTION.

The United States, in the enforcement of its constitutional rights against armed insurrection, has all the powers not only of a sovereign, but also of the most favored belligerent. As belligerent, it may by capture enforce its authority; and, as sovereign, by pardon, and restoration to all rights, civil as well as political, recall its revolted citizens to allegiance. *Lamar, Ex'r*, v. *Browne et al.*, 187.

INTEREST.

The holder of a coupon is entitled to recover interest thereon from the time it fell due. *Town of Genoa* v. *Woodruff et al.*, 502.

INTERNATIONAL LAW.

1. Unless treaty stipulations provide otherwise, a merchant vessel of one country visiting the ports of another for the purpose of trade, is, so long as she remains, subject to the laws which govern them. *United States* v. *Diekelman*, 520.
2. Where, in time of war, a foreign vessel, availing herself of a proclamation of the President of May 12, 1862, entered the port of New Orleans, the blockade of which was not removed, but only relaxed in the interests of commerce, she thereby assented to the conditions imposed by such proclamation that she should not take out goods contraband of war, nor depart until cleared by the collector of customs according to law. *Id.*
3. As New Orleans was then governed by martial law, a subject of a foreign power entering that port with his vessel under the special license of the proclamation became entitled to the same rights and privileges accorded under the same circumstances to loyal citizens of the United States. Restrictions placed upon them operated equally upon him. *Id.*

INTERNATIONAL LAW (*continued*).

4. Where the detention of the vessel in port was caused by her resistance to the orders of the properly constituted authorities whom she was bound to obey, she preferring such detention to a clearance upon the conditions imposed, — *Held*, that her owner, a subject of Prussia, is not "entitled to any damages" against the United States, under the law of nations or the treaty with that power. 8 Stat. 384. *Id.*

INVENTION. See *contracts*, 8; *Patents*, 13.

JUDGMENT IN A STATE COURT. See *Bankruptcy*, 1.

JUDICIAL COMITY. See *Practice*, 15.

1. When the construction of the constitution or the statutes of a State has been fixed by an unbroken series of decisions of its highest court, the courts of the United States accept and apply it in cases before them. *Township of Elmwood* v. *Marcy*, 289.
2. The Supreme Court of the State of Illinois having decided that a law of her legislature is valid under her constitution, and having construed the statute, this court adopts the decision of that court as a rule to be followed in the Federal courts. *State Railroad Tax Cases*, 575.

JUDICIAL POWERS, DELEGATION OF. See *Court of Claims*, 2, 3.

JURISDICTION. See *Special Finding*.

I. Of The Supreme Court.

1. Where suit was commenced, Nov. 16, 1868, for rent claimed to be due up to Aug. 8, 1865, and where, throughout the whole intervening time, the district within which the cause of action, if any, arose, was under the control of the Federal authorities, and the defendant could be served there with process, — *Held*, that the decision of the Supreme Court of the State, that the suit was barred by the Statute of Limitations, is not subject to re-examination here. *Harrison* v. *Myer, Executrix*, 111.
2. The judgment of a circuit court, reversing that of a district court and ordering a new trial, is not final; and this court has no jurisdiction to review it. *Baker et al., Assignees*, v. *White*, 176.
3. This court has no jurisdiction to re-examine the judgment of a State court in a case where the pleadings and the instructions asked for and refused present questions as to the effect, under the general public law, of a sectional civil war upon the contract which was the subject of the suit, and when it was not contended that that law, as applicable to the case, had been modified or suspended by the constitution, laws, treaties, or executive proclamations, of the United States. *New York Life Insurance Co.* v. *Hendren*, 286.
4. The decision of the highest State court in which such decision could

JURISDICTION (*continued*).

be had, adverse to a right under an act of Congress set up in a chancery suit or in any other case, where all the evidence becomes a part of the record in that court, the same record being brought here, can be re-examined upon the law and the facts, as far as may be necessary to determine the validity of that right. In a common-law action, where the facts are passed upon by a jury, or by a State court, or by a referee, to whom they have been submitted by waiving a jury, where the finding is by the State law conclusive, this court has the same inability to review those facts as it has in a case coming from a circuit court of the United States. *Republican River Bridge Co.* v. *Kansas Pacific Railroad Co.*, 315.

5. To give this court jurisdiction over the judgment of a State court, it must appear that the decision of a Federal question presented to that court was necessary to the determination of the cause, and that it was actually decided, or that, without deciding it, the judgment as rendered could not have been given. *Brown* v. *Atwell, Administrator*, 327.
6. Writs of error and appeals lie to this court from the Supreme Court of the Territory of Montana only in cases where the value of the property or the amount in controversy exceeds the sum of one thousand dollars, and from decisions upon writs of *habeas corpus* involving the question of personal freedom. Rev. Stat., sect. 1909. *Potts et al.* v. *Chumasero et al.*, 358.
7. Where, in ejectment for a part of the lands confirmed to the city of San Francisco by an act of Congress, the validity and operative effect of which were not questioned, the judgment of the Supreme Court of the State of California was adverse to the defendant, who endeavored to make out such possession as would, under the operation of the city ordinance and the act of the legislature, transfer, as he claimed, the title of the city to him, — *Held*, that this court has no jurisdiction. *McStay* v. *Friedman*, 723.

II. Of the Circuit Courts.

8. In cases where the judicial power of the United States can be applied only because they involve controversies between citizens of different States, it rests with Congress to determine at what time and upon what conditions the power may be invoked, — whether originally in the Federal court, or after suit brought in the State court; and, in the latter case, at what stage of the proceedings, — whether before issue or trial by removal to a Federal court, or after judgment upon appeal or writ of error. *Gaines* v. *Fuentes et al.*, 10.
9. As the Constitution imposes no limitation upon the class of cases involving controversies between citizens of different States, to which the judicial power of the United States may be extended, Congress may provide for bringing, at the option of either of the parties, all such controversies within the jurisdiction of the Federal judiciary. *Id.*

JURISDICTION (*continued*).

10. A suit to annul a will as a muniment of title, and to restrain the enforcement of a decree admitting it to probate, is, in essential particulars, a suit in equity; and if by the law obtaining in a State, customary or statutory, such a suit can be maintained in one of its courts, whatever designation that court may bear, it may be maintained by original process in the Circuit Court of the United States, if the parties are citizens of different States. *Id.*
11. A bill in chancery was filed in the Circuit Court of the United States for the District of Louisiana by a citizen of Louisiana, the executrix of a deceased member of a firm, against the surviving partner, a citizen of Wisconsin, for an account as part of the partnership assets of the proceeds of a judgment recovered by the latter in said court, in his individual name, for a debt which she alleged was due the firm. The defendant, prior to the service of process on him, had on his petition been declared a bankrupt by the District Court of the United States for the District of Wisconsin; but, answering to the merits, he denied that the debt was due to the partnership. An amended and supplemental bill was afterwards filed, making a defendant the assignee in bankruptcy, who adopted in a separate answer the defence set up by the original defendant. He, in an answer subsequently filed, claimed that the said District Court had exclusive jurisdiction in the cause. During its progress, a receiver was appointed, who collected the amount due on the judgment. The Circuit Court dismissed the cause for want of jurisdiction. *Held*, that notwithstanding the proceedings in bankruptcy, and although the assignee thereunder may have been appointed and the assignment made to him prior to filing said bill, the Circuit Court, having possession of the subject-matter in controversy as well as jurisdiction of the parties, had jurisdiction of the cause, and should have decided it upon its merits. *Burbank* v. *Bigelow et al.*, 179.
12. Under sect. 4979 of the Revised Statutes, the Circuit Court of the United States has, without reference to the citizenship of the parties, jurisdiction of a suit against an assignee in bankruptcy, brought by any person claiming an adverse interest touching any property, or rights of property, transferable to or vested in such assignee. *Id.*
13. *Lathrop, Assignee*, v. *Drake et al.*, 91 U. S. 516, and *Eyster* v. *Gaff et al.*, id. 521, cited and approved. *Id.*
14. The United States was the creditor of the firm of A., B., & Co., doing business in London, and consisting of several persons, some of whom resided there. The others resided in this country, and, with another partner, constituted the firm of A. & Co. The members of the latter firm were duly declared bankrupt, and a trustee appointed under the forty-third section of the Bankrupt Act of March 2, 1867. *Held*, that the United States was under no obligation to pursue the partnership effects of A., B., & Co. before filing a bill against the trustee of the bankrupt members of the firm of A. & Co., to sub-

JURISDICTION (*continued*).

ject their separate property in his hands to the payment of the debt due to the United States from A., B., & Co.; and the Circuit Court had original jurisdiction of the case thereby made, although the fund arose, and the trustee was appointed, under the Bankrupt Act. *Lewis, Trustee*, v. *United States*, 618.

"LAND," CONSTRUCTION OF THE TERM IN A GRANT BY THE UNITED STATES. See *Public Lands*, 4–6.

LAND GRANTS. See *Forfeiture; Public Lands*, 4–10.

1. On the 3d of March, 1857 (11 Stat. 195), Congress passed an act granting certain lands to the Territory of Minnesota, for the purpose of aiding in the construction of several lines of railroad between different points in the Territory. The act declared that the lands should be exclusively applied to the construction of that road on account of which they were granted, and to no other purpose whatever; and that they should be disposed of by the Territory or future State only as the work progressed, and only in the manner following: that is to say, a quantity of land, not exceeding one hundred and twenty sections for each of the roads, and included within a continuous length of twenty miles of the road, might be sold; and when the governor of the Territory or the future State should certify to the Secretary of the Interior that any continuous twenty miles of any of the roads were completed, then another like quantity of the land granted might be sold; and so, from time to time, until the roads were completed. *Held*, that the construction of portions of the road on account of which lands were granted, as thus designated, was a condition precedent to a conveyance by the Territory or future State of any of the lands beyond the first one hundred and twenty sections. Accordingly, an act of the Territory, transferring to a railroad company these lands in advance of any work on its road, only conveyed title to the first one hundred and twenty sections. *Farnsworth et al., Trustees*, v. *Minnesota and Pacific Railroad et al.*, 49.
2. The act of Congress of March 3, 1857, granting certain lands to the Territory of Minnesota for the purpose of aiding in the construction of several lines of railroad between different points in the Territory, only authorized for each road, in advance of its construction, a sale of one hundred and twenty sections. No further disposition of the land along either road was allowed, except as the road was completed in divisions of twenty miles. *Chamberlain* v. *St. Paul and Sioux City Railroad Co. et al.*, 299.

LEASE. See *Evidence*, 1.

The words "grant" and "demise" in a lease for years create an implied warranty of title and a covenant for quiet enjoyment. *Stott et al.* v. *Rutherford*, 107.

LEGAL REPRESENTATIVES.

1. In 1802 a concession of six thousand arpents of land was made to S. by the acting Spanish governor of Upper Louisiana. An official survey, made by the officer designated in the concession, and in part fulfilment thereof, gives the boundaries of a tract situate on the river Des Pères, about eight miles from St. Louis, containing four thousand and two arpents. Another survey was made by the same surveyor, under the same concession, of another tract, upon the river Meramac, about twenty miles south-west of St. Louis, supposed to contain fourteen hundred arpents. The claim of S. was rejected in 1811 by the board of commissioners, but was confirmed by the recorder of land-titles for the quantity contained in a league square (seven thousand and fifty-six arpents), situate on the river Des Pères, and the decision of that officer, embraced in his report of February, 1816, was confirmed by an act of Congress, April 29, 1816. The surveyor of the United States for the Territory of Missouri surveyed for S., on the sixth and seventh days of May, 1818, a tract containing one league square, and including the four thousand and two arpents covered by the previous survey, and it was designated on the plat of the township as survey No. 1953. The recorder of land-titles made his certificate No. 1033, dated Sept. 13, 1825, setting forth that S. was entitled to receive a patent for the tract containing seven thousand and fifty-six arpents as contained in said survey No. 1953, and transmitted it to the Commissioner of the General Land-Office for a patent. The latter declined to issue it, as it varied from the original survey, and included land not therein embraced. S., by deed bearing date Aug. 29, 1818, conveyed to H. certain lands therein specifically described, which had been previously confirmed, and also the interest of said S. in all the land to which said S. was entitled by virtue of concessions under the Spanish government, ratified by act of Congress. S. died in 1824. Congress in 1842 directed a patent to issue to S., or his legal representatives, for seven thousand and fifty-six arpents, pursuant to patent certificate No. 1033, Sept. 13, 1825, and to the survey No. 1953. The patent was accordingly issued Feb. 1, 1869. *Held*, that by virtue of the deed of S. his grantee H. became his legal representative, and acquired as against the heirs-at-law of S. the title to all the tracts of land described in said patent. *Morrison et al.* v. *Jackson*, 654.
2. A contract concerning the use of a patented invention bound the "parties and their legal representatives to the covenants and agreements of the contract." A plea alleged that the defendants "are the legal representatives and successors and assignees in business and interest" of one of the parties. The question being on the sufficiency of this plea, *Held*, that the defendants were the legal representatives of that party within the meaning of the contract. *Hammond et al.* v. *Mason and Hamlin Organ Co.*, 724.

LEGISLATIVE POWER.

Unless the constitution of a State or the organic law of a Territory otherwise prescribes, the legislature has the power to diminish or enlarge the area of a county, whenever the public convenience or necessity requires. *Commissioners of Laramie Co.* v. *Commissioners of Albany Co. et al.*, 307.

LIENS. See *Mortgage*, 3–5.

A person cannot avail himself of a lien, the discharge of which has been fraudulently prevented by his own acts. *Carey et al.* v. *Brown*, 171.

LOCATION. See *Public Lands*, 1, 2.

LOUISIANA CONSOLIDATED BONDS.

On the 24th of January, 1874, the legislature of Louisiana passed "the Funding Act," which created a board of liquidation, consisting of the governor and other State officers. Its principal stipulations, aside from that which provided that, prior to the year 1914, the entire State debt should never be increased beyond the sum of fifteen million dollars, are: *First*, that the "consolidated bonds," the issue of which is thereby authorized, shall not exceed in amount fifteen million dollars, or so much thereof as may be necessary for the purpose of consolidating and reducing the floating and bonded debt of the State, amounting to twenty-five million dollars, and consisting of valid outstanding bonds, and valid warrants of the auditor theretofore issued; *secondly*, that they shall only be used for exchange for said debt at the rate of sixty cents in consolidated bonds for one dollar in such bonds and warrants; *thirdly*, that a tax of five and a half mills on the dollar of the assessed value of all the real and personal property of the State shall be annually levied and collected for paying the interest and principal of the bonds, and is set apart and appropriated for that purpose, and no other, any surplus beyond paying interest to be used for the purchase and retirement of the bonds; *fourthly*, that the power of the judiciary, by means of *mandamus*, injunction, and criminal procedure, shall be exerted to carry out the provisions of the act. An amendment of the constitution was subsequently adopted, which declared that the issue of the consolidated bonds should create a valid contract between each holder thereof and the State, which the latter should not impair; and directed that the tax should be levied and collected without further legislation. Thereafter, on the 2d of March, 1875, the legislature passed an act authorizing the board of liquidation to issue a portion of such consolidated bonds to the Louisiana Levee Company, in liquidation of a debt claimed to be due it under a contract made in 1871. This debt was not one of those to fund which the consolidated bonds had been issued; but the act, under which that contract was made, provided and set apart certain taxes, to be levied and collected throughout the State, to meet the payments

LOUISIANA CONSOLIDATED BONDS (*continued*).

which would accrue to the company. The Circuit Court, upon a bill filed for that purpose by a citizen of Delaware, who had surrendered his old bonds, and taken sixty per cent of the amount in consolidated bonds, two millions of which had then been issued, granted an injunction restraining the board from using the consolidated bonds, and from issuing any other State bonds in payment of said pretended debt. *Held*, that as the proposed funding of the levee debt at par in the consolidated bonds destroys all benefits anticipated from the funding, on which benefits those who accepted its terms had a right to rely, and makes an unjust discrimination between one class of creditors and another, the injunction, so far as it restrained the funding of said debt in consolidated bonds issued, or to be issued, under the act of Jan. 24, 1874, was properly granted. *Board of Liquidation et al.* v. *McComb*, 531.

LOUISIANA, PRACTICE CODE OF.

1. Under the Code of Practice in Louisiana, a suit may be brought and distinct judgments rendered against a defendant, as administratrix of her deceased husband, as widow in community, and as tutrix of his minor heirs. *Kittredge* v. *Race et al.*, 116.
2. There was no error in this case in rendering judgment against the minor heirs, declaring that each is liable for his or her proportional share of the father's half of the estate, with benefit of inventory. The legal effect is the same as if the judgment had been against the defendant as tutrix ; nor was there error in rendering judgment for all the costs against her and the minor heirs *in solido*. *Id.*

MANDAMUS.

Although a State, without its consent, cannot be sued by an individual, nor can a court substitute its own discretion for that of executive officers, in matters belonging to their proper jurisdiction, yet, when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases, the writs of *mandamus* and injunction are somewhat correlative to each other. In either case, if the officer plead the authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ. An unconstitutional law will be treated by the courts as null and void. *Board of Liquidation* v. *McComb*, 531.

MARTIAL LAW. See *International Law*, 3.

MECHANICAL EQUIVALENT. See *Patents*, 4.

MERGER. See *Corporations*, 1–4.

MINNESOTA, GRANT OF LANDS TO. See *Land Grants*, 1, 2.

MISSISSIPPI. See *Contracts*, 2.

MISSOURI, CONSTITUTION OF.

Sect. 14 of art. 11 of the Constitution of Missouri, adopted in 1865, declaring that "The general assembly shall not authorize any county, city, or town, to become a stockholder in, or to loan its credit to, any company, association, or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent thereto," extends as well to townships as to counties, cities, and towns. *Harshman* v. *Bates County*, 569.

"MONEY, SILVER-PLATE, AND BULLION." See *Contraband of War*.

MORTGAGE.

1. Where mortgaged property is sold under a power, the absence of objection on the part of the mortgagor to the sale as made cures any defect which exists therein, and gives it validity. *Markey et al.* v. *Langley et al.*, 142.
2. Where the mortgagees are expressly authorized to sell for cash or on credit, they may do either, or combine them in the sale; nor is a sale for part in cash and part on credit under a power requiring it to be made for cash invalid, if the departure from the terms of the power is beneficial to the mortgagor. It is immaterial whether such arrangement for payment is made before or after the sale. *Id.*
3. Where property, subject to mortgage and other liens, is sold by the first mortgagee, he becomes the trustee for the benefit of all concerned. If he regards the interest of others as well as his own, seeks to promote the common welfare, and keeps within the scope of his authority, a court of equity will in no wise hold him responsible for mere errors of judgment or results, however unfortunate, which he could not reasonably have anticipated. *Id.*
4. Upon the sale of such property, the liens attach to the proceeds thereof in the same manner, order, and effect as they bound the premises before the sale, the new securities standing in substitution for the old. *Id.*
5. Where the Cairo and Fulton Railroad Company accepted certain bonds issued under an act of the general assembly of the State of Missouri, which declared that they "should constitute a first lien and mortgage upon the road and property" of the company, — *Held*, that the word "property" included all the lands of the said company, and that a valid lien on them was created by the act. *Wilson* v. *Boyce*, 320.
6. The title of a subsequent purchaser from the company of its lands is destroyed by the sale of them under the mortgage. *Id.*

MUNICIPAL BONDS. See *Missouri, Constitution of.*

1. This court, conformably to the opinion of the Supreme Court of Illinois, holds that the bonds issued April 27, 1869, by the supervisor and town-clerk of the township of Elmwood, in that State, by way of payment for an additional subscription of $40,000 of stock of the Dixon, Peoria, and Hannibal Railroad Company, over and above the amount authorized by the original charter of said company, are not binding on the township. *Township of Elmwood* v. *Marcy*, 289.
2. Where, by legislative enactment, authority has been given to a municipality, or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the enactment that the officers of the municipality were invested with power to decide whether that condition has been complied with, their recital that it has been, made in the bonds issued by them and held by a *bona fide* purchaser, is conclusive of the fact, and binding upon the municipality; for the recital is itself a decision of the fact by the appointed tribunal. *Town of Coloma* v. *Eaves*, 484.
3. An act of the legislature of New York authorized the supervisor of any town in the county of Cayuga, and the assessors of such town, who were thereby appointed to act with the supervisor as commissioners, to borrow money to the amount of $25,000 to aid in the construction of a railroad passing through the town, and execute the bonds of the town therefor. The act, however, provided that the supervisor and commissioners should have no power to issue the bonds until the written assent of two-thirds of the resident tax-payers, as appearing on the assessment-roll of such town next previous to the time when such money may be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of said county, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed comprise two-thirds of all the resident tax-payers of said town on the assessment-roll of such town next previous thereto. Subsequently a written assent to the effect required was filed in that office, the persons who signed it representing themselves to be such resident tax-payers. Upon this instrument was indorsed the affidavit of the supervisor and one of the commissioners, that the persons whose names were subscribed to the assent composed two-thirds of all the resident tax-payers of said town. The bonds were issued, signed by the supervisor and commissioners, reciting that, in pursuance of said act of the legislature, "and the written assent of two-thirds of the resident tax-payers of said town obtained and filed in the office of the clerk of the county of Cayuga," said town promised to pay the sum of money therein named to bearer. *Held*, 1. That it was the appointed

MUNICIPAL BONDS (*continued*).

province of the supervisor and commissioners to decide the question, whether the condition precedent to the exercise of their authority had been fulfilled; that they did decide it by issuing the bonds; and that the recital in the bonds was a declaration of their decision. 2. That the supervisor and commissioners, who procured what purported to be the written assent of the tax-payers, had means of knowledge touching the genuineness of the signatures to the paper, which, from the nature of the case, the purchaser could not have; and that, in a suit by a *bona fide* holder of the bonds, the town was estopped from disputing their validity, and that he was not bound to prove the genuineness of the signatures to the written assent. *Town of Venice* v. *Murdock*, 494.

4. Pursuant to the authority conferred by the act of the legislature of the State of Kansas, and by virtue of a popular election thereby authorized, the mayor and council of the "City of Fort Scott" were empowered to issue $25,000 of bonds of the city for the purpose of procuring the right of way for the Missouri, Kansas, and Texas Railway Company through that city, and also procuring grounds for dépôts, engine-houses, machine-shops, and yard-room, and donating the same to the company, provided that the company, in the judgment of the mayor and council, had first given evidence of their intention to comply with certain specified conditions. The company complied with the conditions. The mayor and council then, upon an understanding with the company, agreed to deliver to it the $25,000 of bonds in lieu of said grounds and right of way, and in full satisfaction of all the obligations resting on the city in relation thereto. The bonds were duly issued, and registered in the office of the State auditor, who certified upon each that it had been regularly and legally issued, that the signature to it was genuine, and that it had been duly registered in accordance with the State law. They were thereupon delivered to the railroad company. *Held*, that they were binding on the city. *Converse* v. *City of Fort Scott*, 503.

5. An act of the general assembly of the State of Illinois in force March 7, 1867, authorized towns acting under the Township Organization Law of the State — of which the town of Concord was one — to appropriate money to aid in the construction of a certain railroad, to be paid to said company as soon as its track should have been located and constructed through such towns. At a popular election held in the town of Concord, on the 20th of November, 1869, the proposition to make such appropriation was submitted to the legal voters thereof, as required by the act; and the town voted the appropriation, provided the company would run its road through the town. On the 20th of June, 1870, the company gave notice of its acceptance of the donation; and on the 9th of October, 1871, town bonds representing such donation were issued by the supervisor and town-clerk. *Held*, 1. That under the statute the town could not make an appropriation

MUNICIPAL BONDS (*continued*).
or donation in aid of the company until its road was located and constructed through the town. 2. That the constitution of the State, which came into operation July 2, 1870, annulled the power of any city, town, or township, to make donations or loan its credit to a railroad company, and, after that date, rendered the act of 1867 ineffective. 3. As the town had no authority to make a contract to give, and the acceptance by the company was an undertaking to do nothing which it was not bound to do, before the authority of the town to make or to engage to make a donation came into existence, no valid contract arose from such offer and acceptance. 4. That the bonds so issued are void. *Town of Concord* v. *Portsmouth Savings-Bank*, 625.

6. An act of the general assembly of the State of Illinois, approved March 26, 1869, authorized the board of supervisors of Moultrie County to subscribe to the stock of the Decatur, Sullivan, and Mattoon Railroad Company, to an amount not exceeding $80,000, and to issue bonds therefor when the road should be opened for traffic between the city of Decatur and the town of Sullivan. In December, 1869, the board of supervisors ordered that a subscription to the stock of that company, in the sum of $80,000, be made by the county; and that, in payment therefor, bonds payable to said company should be issued and delivered to it, when the road should be so open for traffic. No subscription was actually made on the books of the company; but its president and clerk entered of record the resolution of the board of supervisors, and the company, by a contract made April 15, 1870, appropriated the bonds that would be received in payment of that subscription. The bonds were delivered to the company and the road was so open to traffic early in 1873. By the constitution of the State, which took effect July 2, 1870, counties were prohibited from subscribing to the capital stock of any railroad or private corporation, or from making donations to or loaning their credit in aid of such corporations. *Held*, that whether the action of the board in December, 1869, be in substance and legal effect a subscription, or only an undertaking to subscribe which was accepted by the company, a valid contract existed between the county and the company, which, when the new constitution took effect, authorized the subsequent delivery of the bonds. *County of Moultrie* v. *Rockingham Ten-Cent Savings-Bank*, 631.

7. The board of supervisors, acting under the authority of the act in question, could bind the county by a resolution, which, in favor of private persons interested therein, might, if so intended, operate as a contract; and the obligation thereby assumed would continue in force after July 2, 1870, although the power to *enter* into such a contract was, *after that date*, withdrawn. *Id.*

8. The holder of the bonds purchased them before their maturity, and without notice of any defence. They recite that they are issued by

MUNICIPAL BONDS (*continued*).

the county in pursuance of the subscription of the capital stock of said company, made by the board of supervisors of the county, December, 1869, in conformity to the provisions of an act of the general assembly above mentioned. The purchaser was thus assured that the subscription was made when they had authority to make it; and it would be tolerating a fraud to permit the county, when called upon for payment, to set up that it was not made until after July 2, 1870, when their authority had expired. *Id.*

9. The constitution of a State cannot impair the obligation of a contract; but the Constitution of Illinois declares that the contracts of bodies corporate shall continue to be as valid as if it had not been adopted. The power to subscribe carried with it authority to issue bonds for the sum subscribed, and, the subscription being valid, the bonds are equally so. *Id.*

10. An act of the legislature of Kansas of Feb. 25, 1870, provides, that whenever fifty of the qualified voters, being freeholders of any municipal township in any county, shall petition the board of county commissioners of such county to submit to the qualified voters of the township a proposition to take stock in any railroad proposed to be constructed into or through such township, and shall designate in the petition the railroad company, and the amount of stock proposed to be taken, it shall be the duty of the board to cause an election to be held, to determine whether such subscription shall be made; provided, that the amount of bonds voted shall not be above such a sum as will require a levy of more than one per cent per annum on the taxable property of the township, to pay the yearly interest on the amount of bonds issued. In the event of the vote being favorable, the board of county commissioners were to issue the bonds in the name of the township. The bonds in question here were regularly executed by the chairman of the board, and attested by the county-clerk and seal of the county. They recite that they are issued in accordance with said act, and in pursuance of the votes of three-fifths of the legal voters of the township at a special election duly held. *Held*, that in a suit brought on some of the coupons by a *bona fide* holder for value, it cannot be shown as a defence to a recovery, that, at the time of voting and issuing the bonds, the value of the taxable property of the township was not in amount sufficient to authorize the voting and issuing of the whole series of them. *Marcy* v. *Township of Oswego*, 637.

11. All prerequisite facts to the execution and issue of the bonds were, by the statute, referred to the board of county commissioners; and the plaintiff was not bound, when he purchased, to look beyond the legislative act and the recitals of the bonds. *Id.*

12. A bond of the tenor following, —

"Be it known that Humboldt Township, in the county of Allen and State of Kansas, is indebted to the Fort Scott and Allen County

MUNICIPAL BONDS (*continued*).

Railroad Company, or bearer, in the sum of $1,000, lawful money of the United States, with interest at the rate of seven per cent per annum, payable annually on the first days of January in each year, at the banking-house of Gilman, Son, & Co., in the city of New York, on the presentation and surrender of the respective interest-coupons hereto annexed. The principal of this bond shall be due and payable on the thirty-first day of December, A.D. 1901, at the banking-house of Gilman, Son, & Co., in the city of New York. This bond is issued for the purpose of subscribing to the capital stock of the Fort Scott and Allen County Railroad, and for the construction of the same through said township, in pursuance of and in accordance with an act of the legislature of the State of Kansas, entitled 'An Act to enable municipal townships to subscribe for stock in any railroad, and to provide for the payment of the same,' approved Feb. 25, A.D. 1870; and for the payment of said sum of money and accruing interest thereon, in manner aforesaid, upon the performance of the said condition, the faith of the aforesaid Humboldt Township, as also its property, revenue, and resources, is pledged.

"In testimony whereof, this bond has been signed by the chairman of the board of county commissioners of Allen County, Kan., and attested by the county-clerk of said county, this twelfth day of October, 1871.

"Z. WISNER,
"*Chairman County Commissioners.*
"Attest: W. E. WAGGONER, *County-Clerk.*"

— is negotiable, and a *bona fide* holder is entitled to the rights of a holder of negotiable paper taken in the ordinary course of business before maturity. *Humboldt Township* v. *Long et al.*, 642.

13. Although the election authorizing the issue of the bonds was held within less than thirty days after the day of the order calling it, they are not thereby rendered invalid in the hands of a *bona fide* holder for value, who, without any knowledge of the process through which the legislative authority was exercised, relied upon the recitals in them that they had been issued in accordance with law. The recitals are conclusive in a suit brought by him against the township. *Id.*

MUNICIPAL BONDS, EFFECT OF RECITAL IN. See *Coupons; Municipal Bonds*, 2, 3, 8, 10, 11, 13.

MUNICIPAL ELECTIONS. See *Constitutional Law*, 4–6.

MUNICIPAL OFFICERS, ACTS OF. See *Municipal Bonds*, 1.

NATIONAL BANKS.

1. In adjusting and compromising contested claims against it growing out of a legitimate banking transaction, a national bank may pay a

NATIONAL BANKS (*continued*).

larger sum than would have been exacted in satisfaction of them, so as to thereby obtain a transfer of stocks of railroad and other corporations, in the honest belief, that, by turning them into money under more favorable circumstances than then existed, a loss which it would otherwise suffer from the transaction, might be averted or diminished. So, also, it may accept stocks in satisfaction of a doubtful debt, with a view to their subsequent sale or conversion into money in order to make good or reduce an anticipated loss. *First National Bank of Charlotte* v. *National Exchange Bank of Baltimore*, 122.

2. Such transactions would not amount to dealing in stocks, and they come within the general scope of the powers committed to the board of directors and the officers and agents of a national bank. Subject to such restraints as its charter and by-laws impose, they may do in this behalf whatever natural persons can lawfully do. *Id.*
3. Dealing in stocks by a national bank is not expressly prohibited; but such a prohibition is implied from the failure to grant the power. *Id.*

NEGOTIABLE BONDS. See *Municipal Bonds*, 13.

NEGOTIABLE INSTRUMENT, AUTHORITY TO FILL BLANKS IN, IMPLIED BY THE DELIVERY OF IT TO ANOTHER PARTY. See *Municipal Bonds*, 12.

1. Where a party to a negotiable instrument intrusts it to another for use as such with blanks not filled, it carries on its face an implied authority to complete it by filling them, but not to vary or alter its material terms by erasing what is written or printed as a part thereof, nor to pervert its scope or meaning by filling the blanks with stipulations repugnant to what was plainly and clearly expressed in the instrument. *Angle* v. *North-Western Mutual Life Insurance Co.*, 330.
2. It is a principle of universal application, that an unauthorized material alteration of a written instrument renders it void. *Id.*

NEW-MADRID CERTIFICATE. See *Public Lands*, 2.

NEW TRIAL, REFUSAL OF A COURT TO GRANT. See *Practice*, 17.

OFFICIAL DUTY. See *Mandamus*.

OSAGE INDIAN RESERVATION. See *Public Lands*, 7, 8.

PARTIES.

1. Where a suit, brought by a trustee to recover trust-property, or to reduce it to possession, in no wise affects his relations with his *ces-*

PARTIES (*continued*).

*tuis que trust*, it is unnecessary to make them parties. *Carey et al.* v. *Brown*, 171.

2. Where the want of parties does not appear on the face of a bill in equity, the objection must be set up by plea or answer, and cannot be made for the first time in this court. *Id.*

PASSENGERS. See *Commerce*, 1–16.

PATENTS. See *Contracts*, 8; *Legal Representatives*, 2.

1. The decision of the Commissioner of Patents in the allowance and issue of a patent creates a *prima facie* right only; and, upon all the questions involved therein, the validity of the patent is subject to examination by the courts. *Reckendorfer* v. *Faber*, 347.
2. A combination, to be patentable, must produce a different force, effect, or result in the combined forces or processes from that given by their separate parts. There must be a new result produced by their union; otherwise it is only an aggregation of separate elements. *Id.*
3. A combination, therefore, which consists only of the application of a piece of rubber to one end of the same piece of wood which makes a lead-pencil is not patentable. *Id.*
4. Where an improvement in sawmills, for which letters-patent were issued, consists of the combination of the saw with a pair of curved guides at the upper end of the saw, and a lever, connecting-rod or pitman, straight guides, pivoted cross-head, and slides or blocks and crank-pin, or their equivalents, at the opposite end, whereby the toothed edge of the saw is caused to move unequally forward and backward at its two ends while cutting, and the claim is, "giving to the saw in its downward movement a rocking or rolling motion by means of the combination of the cross-head working in the curved guides at the upper end of the saw, the lower end of which is attached to a cross-head, working in straight guides and pivoted to the pitman below the saw, with the crank-pin substantially as described," the use by another party of guides consisting of two straight lines representing two consecutive cords of the curve of the guides of the patentee, and arranged in other respects in the same manner as this curve, is clearly the employment of a mechanical equivalent, and is an infringement of the patent. *Ives et al.* v. *Hamilton, Executor*, 426.
5. It is not a change in principle to pivot the lower end of the saw to the pitman *below* the cross-head, and, by a reverse motion of the crank or driving-wheel, produce the same motion of the saw as when the pitman is pivoted above the cross-head. *Id.*
6. The description in a patent for an improvement, is sufficient, if a practical mechanic, acquainted with the construction of the old machine in which the improvement is made, can, with the patent and diagram before him, adopt such improvement. *Id.*
7. The essence of the improvement does not consist in the precise posi-

PATENTS (*continued*).
tion in which any part is placed, but in a combination of mechanical means for producing a certain result. *Id.*
8. In cases where profits are the proper measure of damages for the infringement of a patent, such profits as the infringer has made, or ought to have made, govern, and not those which the *plaintiff* can show that *he* might have made. *Burdell et al.* v. *Denig et al.*, 716.
9. The above rule applies peculiarly and mainly to cases in equity, and is based upon the idea that as to such profits the infringer of the patent should be treated as a trustee for the owner thereof. On the other hand, in actions at law, it has been repeatedly held that the rate at which sales of licenses of machines were made, or the established royalty, constitutes the primary and true criterion of damages. *Id.*
10. In the absence of satisfactory evidence of that class which is more appropriate in the forum where the case is pending, the other class may be resorted to, as furnishing one of the elements on which the damages, or the compensation, may be ascertained. *Id.*
11. A certain instrument (*supra*, p. 717), held not to be a mere power of attorney, revocable at the pleasure of the maker, but a contract under which rights for a specified time were acquired. *Id.*
12. As a receipt for the use of four of plaintiffs' machines, executed after the institution of the suit, was a valid acquittance of any claim for such use, it was properly admitted in evidence, under the general issue, to reduce the amount of damages. *Id.*
13. The rights growing out of an invention may be sold, including the right to use it, though no patent ever issues for it. *Hammond et al.* v. *Mason and Hamlin Organ Co.*, 724.

PLEADING. See *Criminal Law*, 2–4; *Legal Representatives*, 2; *Parties*, 1, 2; *South Carolina*, *Statute of Limitations of*.
1. In a suit by a company organized under the laws of the State of New York against citizens of the State of Alabama, on a bond conditioned for the faithful performance of duty, and the payment of money received for it, executed by the agent of the company who transacted business as such in the city of Mobile, where he resided, and by them as his sureties, the latter pleaded that the company, as a condition upon which it would retain in its employment the agent then largely indebted to it, required such bond, and also his agreement to apply all his commissions thereafter earned to his former indebtedness to it; that the agreement was made, and the commissions were so applied; that the company knew that the agent had no property, and depended upon his future acquisitions for the support of himself and family; that the defendants were ignorant of such indebtedness and agreement; that, had they been informed thereof, they would not have executed the bond; that the agreement as to the commissions and its performance were a fraud on them; and that the bond as to

PLEADING (*continued*).

them was thereby avoided. *Held*, that the plea was bad, as it set forth neither the circumstances attending the delivery of the bond, nor averred misrepresentations, fraudulent concealment, opportunities to make disclosure on the part of the company, inquiries by the sureties before the bond was delivered, or knowledge by the company that the sureties were ignorant of the facts complained of. *Held further*, that this agreement had no such connection with the undertaking of the sureties as to give them a right to be informed thereof, except in answer to inquiries. As none were made, the company was under no obligation to volunteer the disclosure. *Magee et al.* v. *Manhattan Life Insurance Co.*, 93.

2. In a suit against the assignor of a promissory note by the assignee thereof under an assignment made in Illinois, the non-averment of any special fact or reason why a suit against the maker would have been unavailing renders the declaration bad on demurrer; but the defect is cured by verdict. *Wills et al.* v. *Claflin et al.*, 135.

3. An allegation in a declaration that a patentee refused to manufacture and furnish his invention as he had agreed to do, is equivalent to an allegation of a demand on him to do so, and a refusal. *Hammond et al.* v. *Mason and Hamlin Organ Co.*, 724.

POSSESSION OF LAND OWNED BY THE UNITED STATES.

Mere possession of public land, though open, exclusive, and uninterrupted, creates no impediment to a recovery by the government or by one who receives its conveyance. The statute only begins to run after the title has passed from the government to its grantee. *Oaksmith's Lessee* v. *Johnston*, 343.

POWER OF ATTORNEY. See *Burden of Proof; Deed.*

Where a party, holding a patent from the United States for certain lands, authorized by a power of attorney, his agent "to act upon the application and demand of any person actually owning" town-lots in Denver City, within the limits of the lands, and to execute and deliver deeds to such persons who "may apply for the same within three months from" a certain date, — *Held*, that the "application and demand" must be made within that time; but the authority of the agent to adjudicate the claims was not so limited. *Clements* v. *Macheboeuf et al.*, 418.

POWER OF SALE. See *Mortgage*, 1–4.

POWER TO CONVEY. See *Deed.*

POWERS RESERVED TO THE UNITED STATES. See *Commerce*, 6–16; *Constitutional Law*, 10, 11, 13–15.

PRACTICE. See *Admiralty*, 1; *Parties*, 2.

1. Cases in equity come here from the circuit courts, and the district courts sitting as circuit courts, by appeal, and are heard upon the

PRACTICE (*continued*).

proofs sent up with the record. No new evidence can be received here. *Blease* v. *Garlington*, 1.

2. So much of the Judiciary Act of 1789 as relates to the oral examination of witnesses in open court in causes in equity was not expressly repealed until the adoption of the Revised Statutes, sect. 862 of which provides that "the mode of proof in causes of equity and of admiralty and maritime jurisdiction shall be according to the rules now or hereafter prescribed by the Supreme Court, except as herein specially provided." *Id.*
3. While this court does not say, that, even since the Revised Statutes, the circuit courts may not in their discretion, under the operation of existing rules, permit the examination of witnesses orally in open court upon the hearing of cases in equity, it does say that they are not now by law required to do so. If such practice is adopted in any case, the testimony presented in that form must be taken down, or its substance stated in writing, and made part of the record, or it will be entirely disregarded here on an appeal. *Id.*
4. If testimony is objected to and ruled out, it must still be sent here with the record, subject to objection, or the ruling will not be considered. A case will not be sent back to have the rejected testimony taken, even though this court might, on examination, be of opinion that the objection ought not to have been sustained. *Id.*
5. The act of 1872 (17 Stat. 197; Rev. Stat., sect. 914), so far as it relates to matters of practice, has no application to a case in equity. *Id.*
6. Questions presented by the assignment of error cannot be considered here, unless the record shows that they were brought to the attention of the court below. *Walker* v. *Sauvinet*, 90.
7. Where an objection to the institution of a suit in a circuit court of the United States for the District of Louisiana, against the defendant in three distinct capacities, — as administratrix, widow in community, and tutrix of her minor children, — even if it would have been valid, was not taken in the court below at any stage in the case, it cannot be taken here. *Kittredge* v. *Race et al.*, 116.
8. The exception that a suit in equity was pending in which the plaintiffs asked for a decree for the same money, was no ground for abatement of this action at law, as the result of the action may be necessary for the perfecting of a decree in that suit. *Id.*
9. An exception is waived by going to trial on the merits. *Id.*
10. Since the passage of the act which gives the presiding judge the casting vote in cases of division, and authorizes a judgment in accordance with his opinion (Rev. Stat., sect. 650), this court, if it finds that the judgment as rendered is correct, need do no more than affirm it. If, however, that judgment is reversed, all questions certified, which are considered in the final determination of the case here, should be answered. *United States* v. *Reese et al.*, 214.

PRACTICE (*continued*).

11. Congress, by joint resolution, granted to the defendant, subject to the approval of the President, "fractional section one" on the west side of a military reservation, provided the usefulness of the latter would not, in his opinion, be impaired for military purposes. The President, by an executive order, set aside to the defendant said fractional section as designated on a map of survey accompanying the letter of the Secretary of the Interior. The court which tried the facts having found that the fractional section was inside of the reservation, was in the possession of the defendant, and was the land claimed in this action, held that the title thereto was vested in the defendant. *Held*, that the finding being upon a mixed question of law and fact, largely depending for its correctness on surveys not produced here, and there being no plat in the record, was not open to inquiry here. *Republican River Bridge Co.* v. *Kansas Pacific Railroad Co.*, 315.
12. The holder of the notes of an insolvent bank, the stockholders whereof are liable for so much of the just claims of creditors as remain unpaid after the assets of the bank shall be exhausted, filed a bill in equity to wind up the affairs of the institution under the provisions of its charter. The stockholders were not made parties, nor served with process; nor was any motion, petition, or prayer filed to subject them to liability. *Held*, that so much of the final decree as discharged them from all liability for and on account of any debt or demand against them or the bank was erroneous. *Terry* v. *Commercial Bank of Alabama*, 454.
13. Where, after a final decree on the merits had been rendered upon the report of the receiver and upon the reports of the master to whom it had been referred, all of which had been confirmed without exception, the complainant filed a petition supported by his affidavit asserting that his solicitor had deserted his interests, failed to except to the reports, and improperly consented to the decree, — *Held*, that this court cannot consider the alleged errors in the reports of the master, or review the action of the court below in refusing to set aside the decree upon an application addressed mainly to its discretion. *Id.*
14. If the complainant desired to place the case in a position where the action of the court below could be reviewed here, he should have filed his bill of review, and supported it by depositions. Such a bill is also the appropriate remedy where a decree has been obtained by fraud. *Id.*
15. The decisions of the Court of Appeals of the State of New York on cases arising upon the statute authorizing the issue of town bonds, and a similar state of facts to those involved in this case, are not conclusive on this court, as such decisions do not present a case of statutory construction. *Town of Venice* v. *Murdock*, 494.
16. Where the questions of fact in a suit in chancery are involved in great

PRACTICE *(continued)*.

doubt by conflicting or insufficient evidence, it is proper for the court to send the issues to be tried at law. The findings of the jury upon such issues are regarded as influential, but not conclusive in an appellate court. *Garsed* v. *Beall et al.*, 684.

17. The decision of a court below, granting counsel the right to open and close arguments to a jury, will not be reviewed here; nor is a refusal to grant a new trial assignable in error. *Hall et al.* v. *Weare*, 728.

PRE-EMPTION. See *Public Land*, 1, 2.

PRESUMPTION. See *Evidence*, 1, 3.

PRESUMPTION OF A GRANT FROM THE GOVERNMENT.

1. In this country there can seldom be occasion to invoke the presumption of a grant from the government, except in cases of very ancient possessions running back to colonial days, as, since the commencement of the present century, a record has been preserved of all such grants, and of the various preliminary steps up to their issue; and provision is made by law for the introduction of copies of the record when the originals are lost. *Oaksmith's Lessee* v. *Johnston*, 343.

2. In ejectment for a lot in Washington City, both parties admitted that the original title was in the United States. The plaintiff relied principally upon evidence of title arising from uninterrupted and exclusive possession by his lessor, and the parties through whom he claims from 1828 to 1867. During the latter year the defendant entered. He traced title through a conveyance of the mayor of Washington, executed in October, 1866, in completion of a sale made under the act of Congress of May 7, 1822 (3 Stat. 691), and an ordinance of the city of the same year, creating a board of commissioners to carry the act into effect, and direct the sales of lots. The act required the deeds executed to the purchasers by the mayor to be recorded among the land-records of the county of Washington within the time prescribed for the recording of conveyances of real estate. The ordinance provided that the board should keep regular minutes of their acts and proceedings, and lay the same before the board of aldermen and common council at the commencement of every session of the council. The records and minutes were not produced, nor proof of their contents offered by the plaintiff. *Held*, that no presumption can legitimately arise that any other deed of the demanded premises was executed by the mayor than the one put in evidence, and that the possession created no title upon which the plaintiff can recover. *Id.*

PRESUMPTION OF LAW. See *Captured or Abandoned Property*, 8.

PRIORITY OF PAYMENT. See *Bankruptcy*, 3.

"PROPERTY," CONSTRUCTION OF THE TERM IN A MORTGAGE. See *Mortgage*, 5.

PROTEST. See *Treasury Notes*, 1, 2.

PRUSSIA, TREATY WITH. See *International Law*, 1, 5.

PUBLIC LANDS. See *Land Grants*.

1. The third section of an act of Congress, approved April 20, 1832 (4 Stat. 505), which is still in force, enacts that four sections of land, including the hot springs in Arkansas, shall be reserved for the future disposal of the United States, and shall not be entered, located, or appropriated for any other purpose whatever. The Indian title to them was not extinguished until Aug. 24, 1818, nor were the public surveys extended over them until 1838, nor has the sale of them ever been authorized by law. No part of said sections was, therefore, ever subject to pre-emption or to location; and no claim thereto has been validated or confirmed by any act of Congress. *Hot Springs Cases*, 698.
2. The "Act for the relief of the inhabitants of the late county of New Madrid in Missouri Territory, who suffered by earthquakes," approved Feb. 17, 1815 (3 Stat. 211), required the following steps to be taken: Application to the recorder of land-titles, showing the party's claim, and praying a certificate of location — certificate of location issued by the recorder, setting forth the amount of land to which the applicant was entitled — application to the surveyor, presenting the certificate of location, and designating the lands which the party desired to appropriate — survey and plat made by the surveyor — return of the survey and plat to the recorder to be filed and recorded, with a notice designating the tract located and the name of the claimant — certificate of the recorder, stating the facts, and that the party was entitled to a patent — transmission of this certificate to the General Land-Office — the patent. In addition to these requisites, the land thus appropriated must have been a part of the public lands of the Territory, the sale of which was authorized by law. A survey, therefore, of part of said four sections made in 1820, if never returned to the recorder's office, did not within the meaning of said act, or of the act of April 26, 1822 (4 Stat. 668), locate, or segregate from the public domain, the land thereby covered, and so appropriate it to the claimant as to give him a vested right thereto, and prevent the operation of the said act of April 20, 1832. *Id.*
3. The doctrine in *Wilcox* v. *Jackson*, 13 Pet. 498, that a tract lawfully appropriated to any purpose becomes thereafter severed from the mass of public lands, and that no subsequent law or proclamation will be construed to embrace it, or to operate upon it, although no exception be made of it, reaffirmed and held to apply with more force to Indian, than to military, reservations, inasmuch as the latter are the absolute property of the government, whilst in the former other rights are vested. *Leavenworth, Lawrence, and Galveston Railroad Co.* v. *United States*, 733.

PUBLIC LANDS (*continued*).

4. Where Congress enacts "That there be and is hereby granted" to a State, to aid in the construction of a specified railroad, "every alternate section of land, designated by odd numbers," within certain limits of each side of the road, the State takes an immediate interest in land, so situate, whereto the complete title is in the United States at the date of the act, although a survey of the land and a location of the road are necessary to give precision to the title and attach it to any particular tract. Such a grant is applicable only to public land owned absolutely by the United States. No other is subject to survey and division into such sections. *Id.*
5. Where the right of an Indian tribe to the possession and use of certain lands, as long as it may choose to occupy the same, is assured by treaty, a grant of them, absolutely or *cum onere*, by Congress, to aid in building a railroad, violates an express stipulation; and a grant in general terms of "land" cannot be construed to embrace them. *Id.*
6. A proviso, that any and all lands heretofore reserved to the United States, for any purpose whatever, are reserved from the operation of the grant to which it is annexed, applies to lands set apart for the use of an Indian tribe under a treaty. They are reserved to the United States for that specific use; and, if so reserved at the date of the grant, are excluded from its operation. It is immaterial whether they subsequently become a part of the public lands of the country. *Id.*
7. The act of March 3, 1863 (12 Stat. 772), to aid in the construction of certain railroads in Kansas, embraces no part of the lands reserved to the Great and Little Osages by the treaty of June 2, 1825 (7 Stat. 240); and the treaty concluded Sept. 29, 1865, and proclaimed Jan. 21, 1867 (14 Stat. 687), neither makes nor recognizes a grant of such lands. The effect of the treaty is simply to provide that any rights of the companies designated by the State to build the roads should not be barred or impaired by reason of the general terms of the treaty, but not to declare that such rights existed. *Id.*
8. The act of Congress of even date with said act (12 Stat. 793), authorizing treaties for the removal of the several tribes of Indians from the State of Kansas, and for the extinction of their title, and a subsequent act for relocating a portion of the road of the appellant (17 Stat. 5), neither recognize nor confer a right to the lands within the Osage country. *Id.*
9. The act of July 1, 1862 (12 Stat. 492), grants to the Western Pacific Railroad Company every alternate section of public land designated by odd numbers within the limits of ten miles on each side of its road, not sold, reserved, or otherwise disposed of by the United States, and to which a homestead or pre-emption claim may not have attached at the time the line of the road is definitely fixed. The act of 1864 (13 Stat. 358) enlarges those limits, and declares that

PUBLIC LANDS (*continued*).

the grant by it, or the act to which it is an amendment, "shall not defeat or impair any pre-emption, homestead, swamp-land, or other lawful claim, nor include any government reservation or mineral lands, or the improvements of any *bona fide* settler." *Held*, that lands within the boundaries of an alleged Mexican or Spanish grant, which was *sub judice* at the time the Secretary of the Interior ordered a withdrawal of lands along the route of the road, are not embraced by the grant to the company. *Newhall* v. *Sanger*, 761.

10. The words "public lands" are used in our legislation to describe such lands as are subject to sale or other disposition under general laws. *Id.*

PUBLIC PROCLAMATION. See *International Law*, 2, 3; *Rewards*, 2.

PUBLIC SURVEYS. See *Public Lands*, 1, 2.

QUESTIONS OF FACT.

The question, whether an imported article is or is not known in commerce by the word or terms used in the act imposing the duty, is one of fact for the jury. *Tyng* v. *Grinnell, Collector*, 467.

RAILROADS, TAXATION OF. See *State Railroad Tax*, 1–6.

RECORD. See *Practice*, 1, 3, 4, 6.

RECORDER OF LAND-TITLES. See *Legal Representatives*, 1; *Public Lands*, 2.

REMEDY. See *Collateral Securities*.

REMOVAL OF CAUSES. See *Jurisdiction*, 8–10.

The act of Congress of March 2, 1867 (14 Stat. 558), in authorizing and requiring the removal to the Circuit Court of the United States of a suit pending or afterwards brought in *any* State court involving a controversy between a citizen of the State where the suit is brought and a citizen of another State, thereby invests the Circuit Court with jurisdiction to pass upon and determine the controversy when the removal is made, though that court could not have taken original cognizance of the case. *Gaines* v. *Fuentes et al.*, 10.

RESERVATION. See *Public Lands*, 3, 5–7, 9.

REVISED STATUTES OF THE UNITED STATES.

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

Sect. 650. See *Practice* 10.
Sect. 862. See *Practice*, 2–4.
Sect. 914. See *Practice*, 5.
Sect. 1909. See *Jurisdiction*, 6.
Sect. 4979. See *Jurisdiction*, 12.

REWARDS.

1. Where a "liberal reward" was offered for information leading to the apprehension of a fugitive from justice, and a specific sum for his apprehension, — *Held*, that a party giving the information which led to the arrest was entitled to the "liberal reward," but not to the specific sum, unless he, in fact, apprehended the fugitive, or the arrest was made by his agents. *Shuey, Ex'r*, v. *United States*, 73.
2. Where the offer of a reward is made by public proclamation, it may, before rights have accrued under it, be withdrawn through the same channel in which it was made. No contract arises under such offer until its terms are complied with. The fact that the claimant of such reward was ignorant of its withdrawal is immaterial. *Id.*

RIGHT OF SUFFRAGE. See *Constitutional Law*, 3–6, 16.

RIGHT TO BEAR ARMS. See *Constitutional Law*, 13.

RIGHT TO PEACEABLY ASSEMBLE. See *Constitutional Law*, 11, 12.

RIGHTS OF THE PEOPLE. See *Constitutional Law*, 10–16.

SAILING RULES AND REGULATIONS. See *Admiralty*, 1.

SALE UNDER A POWER IN A MORTGAGE. See *Mortgage*, 1–4.

SECRET SERVICES. See *Contracts*, 3.

SET-OFF.

1. A banker, who was a director of an insurance company, can set off against its demand for money it deposited with him, bearing interest and payable on call, the amount due on its policies issued to and held by him. *Scammon* v. *Kimball, Assignee*, 362.
2. The company having been adjudicated a bankrupt, his right to such a set-off is equally available against its assignee. *Id.*

SETTLEMENT.

In order to defeat a settlement by a husband upon his wife, it must be intended to defraud existing creditors, or creditors whose rights are expected shortly to supervene, or those whose rights may and do supervene. *Smith et al.* v. *Vodges, Assignee*, 183.

SLAVERY. See *Contracts*, 2.

SOUTH CAROLINA, STATUTE OF LIMITATIONS OF.

The Exchange Bank of Columbia, S. C., failed in February, 1865. In June, 1872, its creditors filed a bill in equity to enforce their claims against the stockholders under a clause of the charter, which, "upon the failure of the bank," rendered them individually liable for any sum not exceeding double the value of their respective shares. The defence set up the Statute of Limitations of 1712, which requires actions upon the case, and actions of debt, grounded upon any contract without specialty, to be brought within four

SOUTH CAROLINA, STATUTE OF LIMITATIONS OF (*continued*).
years. *Held*, that as the liability of the stockholders arose from their acceptance of the act creating the corporation, and their implied promises to fulfil its requirements, the proper remedy was an action upon the case; and that, as the statute barred such an action at law, it was also a good defence in equity. *Carrol et al.* v. *Green et al.*, 509.

SOVEREIGNTY. See *Insurrection.*

1. Sovereignty for the protection of rights and immunities created by or dependent upon the Constitution, rests with the United States. *United States* v. *Reese et al.*, 214.
2. Sovereignty for the protection of the rights of life and personal liberty within the respective States, rests alone with the States. *United States* v. *Cruikshank et al.*, 542.

SPECIAL FINDING.

A special finding by the court upon issues of fact, where the parties or their attorneys have duly filed a stipulation, waiving a jury, has the same effect as a verdict, and is not subject to review by this court except as to the sufficiency of the facts found to support the judgment. *Tyng* v. *Grinnell, Collector*, 467.

STATE RAILROAD TAX.

1. While the Constitution of Illinois requires taxation, in general, to be uniform and equal, it declares, in express terms, that a large class of persons engaged in special pursuits, among whom are persons or corporations owning franchises and privileges, may be taxed as the legislature shall determine, by a general law, *uniform as to the class upon which it operates;* and under this provision a statute is not unconstitutional which prescribes a different rule of taxation for railroad companies from that for individuals. *State Railroad Tax Cases*, 575.
2. Nor does it violate any provision of the Constitution of the United States. *Id.*
3. The capital stock, franchises, and all the real and personal property of corporations, are justly liable to taxation; and a rule which ascertains the value of all this, by ascertaining the cash value of the funded debt and of the shares of the capital stock as the basis of assessment, is probably as fair as any other. *Id.*
4. Deducting from this the assessed value of all the tangible real and personal property, which is also taxed, leaves the real value of the capital stock and franchise subject to taxation as justly as any other mode, all modes being more or less imperfect. *Id.*
5. It is neither in conflict with the Constitution of Illinois, nor inequitable, that the entire taxable property of the railroad company should be ascertained by the State board of equalization, and that the state, county, and city taxes should be collected within each municipality

STATE RAILROAD TAX (*continued*).

on this assessment, in the proportion which the length of the road within such municipality bears to the whole length of the road within the State. *Id.*

6. The action of the board of equalization, in increasing the assessed value of the property of a railroad company or an individual above the return made to the board, does not require a notice to the party to make it valid; and the courts cannot substitute their judgment as to such valuation for that of the board. *Id.*

STATUTE, CONSTRUCTION OF.

1. In whatever language a statute may be framed, its purpose and its constitutional validity must be determined by its natural and reasonable effect. *Henderson et al.* v. *Mayor of the City of New York et al.*, 259.

2. Looking to the manifest intent of the joint resolution granting to the defendant "fractional section one" on the west side of a military reservation, and to the fact that the grant was not to be consummated until the President had determined that the usefulness of the reservation would not be thereby impaired, the description in the joint resolution meant such a fractional section *within* the reservation on its west side. The title of the defendant became absolute on the issue of the President's order, and had relation back to the date of the passage of the joint resolution. *Republican River Bridge Co.* v. *Kansas Pacific Railroad Co.*, 315.

STATUTE OF LIMITATIONS.

A party against whom an assessment was made in 1865, for an income-tax, appealed therefrom to the Commissioner of Internal Revenue, who, Oct. 7, 1867, set it aside, and ordered a new one, which was made March 15, 1868. The sum thereby assessed, with interest and penalty, was paid in instalments. Suit to recover the money so paid was brought Jan. 15, 1869. *Held*, that the party had no right of action, inasmuch as he failed to sue within six months from the date of the decision of the commissioner on the appeal, and had taken no appeal from the second assessment. *Cheatham et al.* v. *United States*, 85.

STATUTES OF THE UNITED STATES.

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

1789. Sept. 24. See *Practice*, 2.
1815. Feb. 17. See *Public Lands*, 2.
1822. April 26. See *Public Lands*, 2.
1822. May 17. See *Presumption of a Grant from the Government*, 2.
1832. April 20. See *Public Lands*, 1, 2.
1845. Feb. 26. See *Duty on Imports*.
1851. March 3. See *Concessions of Land by Mexican or Spanish Government*, 1.

STATUTES OF THE UNITED STATES (*continued*).

1857. March 3. See *Land Grants*, 1, 2.
1860. June 14. See *Concessions of Land by Mexican or Spanish Government*, 1; *Survey of a Confirmed Claim to Lands in California.*
1861. July 17. See *Treasury Notes*, 1.
1862. July 1. See *Public Lands*, 9.
1862. July 17. See *Abeyance; Confiscation*, 1, 2.
1863. March 3. See *Captured or Abandoned Property*, 5, 6.
1863. March 3. See *Public Lands*, 7, 8.
1864. June 30. See *Duty on Imports.*
1864. July 2. See *Public Lands*, 9.
1867. March 2. See *Bankruptcy*, 4; *Jurisdiction*, 7.
1867. March 2. See *Removal of Causes.*
1868. July 20. See *Duty on Exports*, 1, 2.
1870. May 31. See *Constitutional Law*, 5, 6; *Criminal Law*, 1.
1871. April 19. See *Public Lands*, 8.
1872. June 1. See *Practice*, 5.
1872. June 6. See *Duty on Exports*, 1, 2.

STOCK SUBSCRIPTIONS. See *Municipal Bonds*, 2, 5.

Although a subscription for stock of a railroad company be duly authorized by the requisite number of the qualified voters of a township, if the company, before the subscription be actually made, becomes consolidated with another, thereby forming a third, the County Court in Missouri is not empowered to subscribe, on behalf of the township, for stock of the new company, and issue bonds in payment therefor. *Harshman* v. *Bates County*, 569.

STOCKHOLDERS, LIABILITY OF. See *Individual Liability of Stockholders; Georgia, Statute of Limitations of; South Carolina, Statute of Limitations of.*

SUFFRAGE, RIGHT OF. See *Constitutional Law*, 3–6, 16.

SURVEY OF A CONFIRMED CLAIM TO LANDS IN CALIFORNIA.

The object of the proceeding before the tribunals of the United States for the approval of a survey of a confirmed claim to land in California under a Mexican or Spanish grant, pursuant to the act of Congress of June 14, 1860 (12 Stat. 34), was to insure conformity of the survey with the decree of confirmation, and not to settle any question of title against other claimants. The approval of the court established the fact, that the survey was in conformity with the decree of confirmation; or, if the decree was for quantity only, that the survey was authorized by it, and is conclusive as to the location of the land against all floating grants not previously located. *Miller et al.* v. *Dale et al.*, 473.

TAXATION. See *Corporations*, 2–7.

TAX ON PASSENGERS. See *Commerce*, 2–16.

TAXES, COLLECTION OF, POWERS OF COURTS TO RESTRAIN.

1. While this court does not lay down any absolute rule limiting the powers of a court of equity in restraining the collection of taxes, it declares that it is essential that every case be brought within some of the recognized rules of equity jurisdiction, and that neither illegality or irregularity in the proceedings, nor error or excess in the valuation, nor the hardship or injustice of the law, provided it be constitutional, nor any grievance which can be remedied by a suit at law, either before or after the payment of the tax, will authorize an injunction against its collection. *State Railroad Tax Cases*, 575.
2. This rule is founded on the principle that the levy of taxes is a legislative and not a judicial function, and the court can neither make nor cause to be made a new assessment if the one complained of be erroneous, and also in the necessity that the taxes, without which the State could not exist, should be regularly and promptly paid into its treasury. *Id.*
3. *Quære:* Whether the same rigid rule against equitable relief would apply to taxes levied solely by municipal corporations for corporate purposes as that here applied to State taxes. Probably not. *Id.*
4. No injunction, preliminary or final, can be granted to stay collection of taxes until it is shown that all the taxes conceded to be due, or which the court can see ought to be paid, or which can be shown to be due by affidavits, have been paid or tendered without demanding a receipt in full. *Id.*

TITLE, WARRANTY OF. See *Lease*.

TOWN BONDS. See *Municipal Bonds*.

TREASURY AGENTS. See *Captured or Abandoned Property*, 2, 6–8.

TREASURY-NOTES.

1. The holder of treasury-notes, payable three years after date, which were issued under the authority of an act of July 17, 1861 (12 Stat. 259), demanded payment in gold of the principal and interest due thereon. The Secretary of the Treasury refused payment in that medium, but offered it in legal-tender notes. The holder, under protest, received the offered payment in full discharge of the notes, surrendered them to be cancelled, and brought an action against the United States to recover the difference in the market-value of gold and of legal-tender notes at the date of such payment. *Held*, that by accepting the medium offered, and surrendering the treasury-notes, the holder waived all claim, independently of the question whether or not that medium was a legal tender in payment of them. *Savage, Executrix*, v. *United States*, 382.
2. The protest, being unauthorized by law, had no efficacy to qualify the voluntary surrender of the treasury-notes. *Id.*

TREATY. See *International Law*, 1, 4; *Public Lands*, 5–7.

TRIAL BY JURY. See *Constitutional Law*, 1.

TRIALS IN STATE COURTS. See *Constitutional Law*, 1.

TRUSTEE. See *Mortgage*, 3 ; *Parties*, 1.

UNCONSTITUTIONAL LAW. See *Mandamus*.

An unconstitutional law will be treated by the courts as null and void. *Board of Liquidation* v. *McComb*, 531.

VERDICT. See *Pleading*, 2.

WAIVER. See *Treasury Notes*.

WARRANTY. See *Lease*.

1. Under authority of acts of the legislature of Kansas, the city of Topeka issued certain bonds payable to a party named, or bearer. They became the property of a bank, which put them upon the market, and disposed of them. This court having decided that the legislature had no power to pass the acts, and that the bonds were void, the purchasers brought suit on the ground of failure of consideration to recover the amount paid for them. *Held*, that, as the bank gave no warranty, it cannot be charged with a liability it did not assume. *Otis et al.* v. *Cullom, Receiver*, 447.
2. The vendor of such securities is liable *ex delicto* for bad faith, and *ex contractu* there is an implied warranty on his part that they belong to him, and are not forgeries. Where there is no express stipulation, there is no liability beyond this. *Id.*

WARRANTY, BREACH OF.

Where certain county warrants were sold by a citizen of Iowa, where they were issued, to a citizen of another State, with a guaranty that they were "genuine and regularly issued," — *Held*, that the former thereby undertook that they were not, in a suit brought against the county, subject to any defence founded upon a want of legal form in the signatures or seals ; and that, the absence of the county seals being a breach of the warranty, the vendee, without returning or tendering the warrants, was entitled to recover of the vendor the damages which he had sustained by such breach. *Smeltzer* v. *White*, 390.

WRITS OF ERROR. See *Jurisdiction*, 6.

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