INDEX.

ABANDONMENT. See *Letters-patent*, 14.

ADMIRALTY. See *Practice*, 23.

1. Owners of a ship are not liable, under existing laws, for any loss, damage, or injury by a collision, occasioned without their privity or knowledge, beyond the amount of their interest in such ship and her cargo at the time the collision occurred. *The "Atlas,"* 302.
2. The true measure of compensation to an innocent party, in a case of collision, is damages to the full amount of loss actually suffered by him. *Id.*
3. The shipper or consignee of the cargo of a vessel, being innocent of all wrong, bears no proportion of the loss resulting from a collision. He may pursue his remedy at common law; or in admiralty, by a proceeding *in rem*, or by libel *in personam* against the owner of either or both of the offending vessels. *Id.*
4. A collision between two vessels, which were at fault, resulted in the loss of the cargo of a third vessel which was not at fault. Its owner proceeded *in rem* against one of the offending vessels, — *Held*, that he was entitled to a decree against it for the entire amount of his damages. *Id.*
5. The doctrine announced in *The "Atlas," supra*, p. 302, that where an innocent party suffers damages by a collision resulting from the mutual fault of two vessels, only one of which is libelled, the decree should be against such vessel for the whole amount of the damages, and not for a moiety thereof, reaffirmed, and applied to this case. *The "Juniata,"* 337.
6. The rule requiring a sailing-vessel to keep her course when approaching a steamer in such direction as to involve risk of collision, does not forbid such necessary variations in her course as will enable her to avoid immediate danger arising from natural obstructions to navigation. *The "John L. Hasbrouck,"* 405.
7. Where well-known usage has sanctioned one course for a steamer ascending, and another for a sailing-vessel descending, a river, the vessel, if required by natural obstructions to navigation to change her course, is, after passing them, bound to resume it. Failing to do

ADMIRALTY (*continued*).

so, and continuing her course directly into that which an approaching steamer is properly navigating, she is not entitled to recover for a loss occasioned by a collision, which the steamer endeavored to prevent, by adopting the only means in her power. *Id.*

ADVANCEMENT OF CAUSES. See *Practice*, 1, 30.

AFFREIGHTMENT. See *Contracts*, 1.

AGENT. See *Bills of Exchange and Promissory Notes*, 4; *Common Carriers*, 2–5.

1. The government is not bound by the act or declaration of its agent, unless it manifestly appears that he acted within the scope of his authority, or was employed in his capacity as a public agent to do the act or make the declaration for it. *Whiteside et al.* v. *United States*, 247.
2. Individuals, as well as courts, must take notice of the extent of authority conferred by law upon a person acting in an official capacity. *Id.*

AMENDMENTS.

Where no local statute or rule of local law is involved, the power to amend is the same in attachment suits as in others. *Tilton et al.* v. *Cofield et al.*, 163.

APPEAL. See *Supersedeas*, 1.

APPROPRIATIONS FOR IMPROVEMENT OF HARBORS ON NAVIGABLE RIVERS. See *Commerce*, 5.

ARKANSAS, PRACTICE CODE OF. See *Practice*, 17.

ASSIGNEE IN BANKRUPTCY. See *Contracts*, 5.

1. Under the Bankrupt Act of March 2, 1867 (14 Stat. 517), the assignee might sue in the State courts to recover the assets of the bankrupt, no exclusive jurisdiction having been given to the courts of the United States. *Quære*, Whether such exclusive jurisdiction is given by the Revised Statutes. *Claflin* v. *Houseman, Assignee*, 130.
2. A suit pending against a party at the time he is adjudged a bankrupt, may, after due notice to his assignee, be prosecuted to final judgment against the latter in his representative capacity, where he makes no objection to the jurisdiction and the bankrupt court does not arrest the proceedings. *Norton, Assignee*, v. *Switzer*, 355.
3. Such judgment may be filed with the assignee as an ascertainment of the amount due to the creditor by the bankrupt, and as a basis of dividends, but it is effectual and operative for that purpose *only*. *Id.*

ASSISTANT SPECIAL AGENT OF THE TREASURY. See *Contracts*, 3.

ASSUMPSIT. See *Pleading*, 3.

ATTACHMENT SUITS, POWER TO AMEND IN.

Where no local statute or rule of local law is involved, the power to amend is the same in attachment suits as in others. *Tilton et el.* v. *Cofield et al.*, 163.

BAILMENT. See *Mixture of Goods.*

1. Actual delivery by the bailee on the demand of the true owner, who has the right to the immediate possession of the goods bailed, is a sufficient defence of the bailee against the claim of the bailor, and there is no difference in this regard between a common carrier and other bailees. *The "Idaho,"* 575.
2. While a contract of bailment undoubtedly raises a strong presumption that the bailor is entitled to the thing bailed, it is not true that the bailee thereby conclusively admits the right of the principal. His contract is to do with the property committed to him what his principal has directed, — to restore it, *or to account for it.* He does so account for it when he has yielded it to the claim of one who has a right paramount to that of his bailor. *Id.*
3. If there be any estoppel on the part of the bailee, it ceases when the bailment on which it is founded is determined by what is equivalent to an eviction by title paramount; that is, by the reclamation of possession by the true owner. *Id.*
4. Nor can it be maintained that a carrier can excuse himself for failure to deliver to the order of the shipper, only when the goods have been taken from his possession by legal proceedings, or where the shipper has obtained the goods by fraud from the true owner. *Id.*
5. Whether the shipper has obtained, by fraud practised upon the true owner, the possession he gives to the carrier, or whether he mistakenly supposes he has rights to the property, his relation to his bailee remains the same. He cannot confer rights which he does not possess; and, if he cannot withhold the possession from the true owner, one claiming under him cannot. *Id.*
6. While a bailee cannot avail himself of the title of a third person (though that person be the true owner), for the purpose of keeping the property for himself, nor in any case where he has not yielded to the paramount title, he is not answerable if he has delivered the property to its true owner at his demand. *Id.*
7. Without asserting that a title to personal property may not be created between the issue of a bill of lading therefor and its delivery to the ship, which will prevail over the master's bill, the court holds, that, in the absence of any such intervening right, a bill of lading does cover goods subsequently delivered and received to fill it, and that it will represent the ownership of the goods. Their subsequent removal from the vessel by a person other than the true owner, either with or without the consent of her officers, cannot divest that ownership. *Id.*
8. The taking possession of property by one not its owner, or authorized

BAILMENT (*continued*).

by him, shipping it, obtaining bills of lading from the carriers, indorsing them away, or even selling the property and obtaining a full price for it, can have no effect upon the rights of the owner, even in the case of a *bona fide* purchaser. *Id.*

BANKRUPTCY. *See Assignee in Bankruptcy; Jurisdiction*, 2, 7, 12.

BILL OF EXCEPTIONS. See *Practice*, 31.

BILL OF LADING. See *Bailment*, 7, 8; *Common Carriers*, 1, 5.

The statutes of Louisiana prohibit the issue of bills of lading before the receipt of the goods; but they do not forbid curing an illegal bill by supplying goods, the receipt of which have been previously acknowledged. *The "Idaho,"* 575.

BILL OF REVIEW. See *Practice*, 15.

BILLS OF EXCHANGE AND PROMISSORY NOTES. See *Evidence*, 2; *Protest and Notice.*

1. A *bona fide* holder of negotiable paper, purchased before its maturity upon an unexecuted contract, on which part payment only had been made when he received notice of fraud, and a prohibition to pay, is protected only to the amount paid before the receipt of such notice. *Dresser* v. *Missouri & Iowa Railway Construction Co.*, 92.
2. As the Statute of Limitations was suspended in Louisiana during the war, a note dated Jan. 28, 1859, payable twelve months thereafter, was not prescribed when the plaintiffs, the executors of A., made a legal demand therefor by instituting an action, Jan. 5, 1870. The defendant, by paying the note at that time, could, therefore, have been subrogated to their rights, and could have maintained suit against the maker in their names. *Bird et al., Ex'rs*, v. *Louisiana State Bank*, 97.
3. The holder of a note which is secured by mortgage may proceed at law and in equity at the same time, until he obtains actual satisfaction of the debt. *Ober* v. *Gallagher*, 199.
4. In law, a person with whom a note is deposited for collection is the agent of the holder, and not of the maker. The maker has no interest in it, except to pay the note. Failing to do this, he leaves it to be dealt with as others interested may choose. *Dodge et al.* v. *Freedman's Savings & Trust Co.*, 379.
5. Where a note, deposited in bank for collection by its owner, was paid by a person not a party thereto, with the intention of having it remain as an existing security, and the money so paid was received by the owner of the note, — *Held*, that such person thereby became the purchaser of the note, and its negotiability remains after as before maturity, subject to the equities between the parties. *Id.*
6. The order of the President of the United States of April 29, 1865 (13 Stat. 776), removed, from that date, all restrictions upon commercial

BILLS OF EXCHANGE AND PROMISSORY NOTES (*continued*).
intercourse between Tennessee and New Orleans; and neither the rights nor the duties of the holder of a bill of exchange, drawn at Trenton, Tenn., which matured in New Orleans before June 13, 1865, were dependent upon, or affected by, the President's proclamation of the latter date (id. 763). *Bond et al.* v. *Moore*, 593.

BURDEN OF PROOF. See *Domicile*, 1; *Letters-patent*, 12.
Where the evidence on the part of the plaintiff in an action against a railroad company for injuries received upon its road did not tend to establish contributory negligence on his part, the court charged that the burden of proving it rested on the defendant, and that it must be established by a preponderance of evidence, — *Held*, that the charge was not erroneous. *Indianapolis & St. Louis R. R. Co.* v. *Horst*, 291.

CALIFORNIA.
Grants of land to. See *School Lands*.
Selections of land by. See *Public Lands*, 1–5.

CALLAWAY, COUNTY OF. See *Municipal Bonds*, 3, 4.

CARRIERS OF PASSENGERS. See *Burden of Proof*.
1. In an action against a railroad company for injuries received by a passenger upon its road, it is not error for the court to instruct the jury "that a person taking a cattle-train is entitled to demand the highest possible degree of care and diligence, regardless of the kind of train he takes." *Indianapolis & St. Louis R. R. Co.* v. *Horst*, 291.
2. The rule of law, that the standard of duty on the part of a carrier of passengers should be according to the consequences that may ensue from carelessness, applies as well to freight-trains as to passenger-trains. It is founded deep in public policy; and is approved by experience, and sanctioned by the plainest principles of reason and justice. *Id.*

CAVEAT EMPTOR. See *Purchasers at Judicial Sales*, 1–3.

CHAMPAGNE WINES. See *Import Duties*.

COLLISION. See *Admiralty; Practice*, 23.

COMMERCE.
1. The compact between South Carolina and Georgia, made in 1787, by which it was agreed that the boundary between the two States should be the northern branch or stream of the Savannah River, and that the navigation of the river along a specified channel should for ever be equally free to the citizens of both States, and exempt from hinderance, interruption, or molestation, attempted to be enforced by one State on the citizens of the other, has no effect upon the subsequent constitutional provision that Congress shall have power to regulate commerce with foreign nations and among the several States. *South Carolina* v. *Georgia et al.*, 4.

COMMERCE (*continued*).

2. Congress has the same power over the Savannah River that it has over the other navigable waters of the United States. *Id.*
3. The right to regulate commerce includes the right to regulate navigation, and hence to regulate and improve navigable rivers and ports on such rivers. *Id.*
4. Congress has power to close one of several channels in a navigable stream, if, in its judgment, the navigation of the river will be thereby improved. It may declare that an actual obstruction is not, in the view of the law, an illegal one. *Id.*
5. An appropriation for the improvement of a harbor on a navigable river, "to be expended under the direction of the Secretary of War," confers upon that officer the discretion to determine the mode of improvement, and authorizes the diversion of the water from one channel into another, if, in his judgment, such is the best mode. By such diversion preference is not given to the ports of one State over those of another. *Quære*, Whether a State suing for the prevention of a nuisance in a navigable river, which is one of its boundaries, must not aver and show that she sustains some special and peculiar injury thereby, such as would enable a private person to maintain a similar action. *Id.*
6. Until Congress makes some regulation touching the liabilities of parties for marine torts resulting in death of the persons injured, the statute of Indiana giving a right of action to the personal representatives of the deceased, where his death is caused by the wrongful act or omission of another, applies, the tort being committed within the territorial limits of the State; and, as thus applied, it constitutes no encroachment upon the commercial power of Congress. *Sherlock et al.* v. *Alling, Administrator*, 99.
7. The action of Congress as to a regulation of commerce, or the liability for its infringement, is exclusive of State authority; but, until some action is taken by Congress, the legislation of a State, not directed against commerce or any of its regulations, but relating generally to the rights, duties, and liabilities of citizens, is of obligatory force within its territorial jurisdiction, although it may indirectly and remotely affect the operations of foreign or inter-State commerce, or persons engaged in such commerce. *Id.*
8. The act of March 30, 1852, "to provide for the better security of the lives of passengers on board of vessels propelled in whole or part by steam, and for other purposes," does not exempt the owners and master of a steam vessel, and the vessel, from liability for injuries caused by the negligence of its pilot or engineer, but makes them liable for all damages sustained by a passenger or his baggage, from any neglect to comply with the provisions of the law, no matter where the fault may lie; and, in addition to this remedy, any person injured by the negligence of the pilot or engineer may have his action directly against those officers. *Id.*

COMMERCE (*continued*).

9. The relation between the owner or master and pilot, as that of master and employé, is not changed by the fact that the selection of the pilot is limited to those who have been found by examination to possess the requisite knowledge and skill, and have been licensed by the government inspectors. *Id.*
10. Congress, under its constitutional power to regulate commerce with the Indian tribes, may not only prohibit the unlicensed introduction and sale of spirituous liquors in the "Indian country," but extend such prohibition to territory in proximity to that occupied by Indians. *United States* v. *Forty-three Gallons of Whiskey, &c.*, 188.
11. It is competent for the United States, in the exercise of the treaty-making power, to stipulate, in a treaty with an Indian tribe, that, within the territory thereby ceded, the laws of the United States, then or thereafter enacted, prohibiting the introduction and sale of spirituous liquors in the Indian country, shall be in full force and effect, until otherwise directed by Congress or the President of the United States. *Id.*
12. Such a stipulation operates *proprio vigore*, and is binding upon the courts, although the ceded territory is situate within an organized county of a State. *Id.*

COMMERCIAL INTERCOURSE. See *Bills of Exchange and Promissory Notes*, 6.

COMMON CARRIERS. See *Bailment*, 1–8.

1. A party engaged as a common carrier cannot, by declaring or stipulating that he shall not be so considered, divest himself of the liability attached to the fixed legal character of that occupation. *Bank of Kentucky* v. *Adams Express Co.*, 174.
2. A common carrier, who undertakes for himself to perform an entire service, has no authority to constitute another person or corporation the agent of his consignor or consignee. He may employ an agency, but it must be subordinate to him, and not to the shipper, who neither employs it, pays it, nor has any right to interfere with it. Its acts become his, because done in his service and by his direction. *Id.*
3. Therefore, where an express company engaged to transport packages, &c., from one point to another, sends its messenger in charge of them on the car set apart for its use by the railroad company employed to perform the service, the latter company becomes the agent of the former. *Id.*
4. An exception in its bill of lading, "that the express company is not to be liable in any manner or to any extent for any loss or damage or detention of such package, or its contents, or of any portion thereof, occasioned by fire," does not excuse the company from liability for the loss of such package by fire, if caused by the negligence of a

COMMON CARRIERS (*continued*).
railroad company to which the former had confided a part of the duty it had assumed. *Id.*

5. Public policy demands that the right of the owners to absolute security against the negligence of the carrier, and of all persons engaged in performing his duty, shall not be taken away by any reservation in his receipt, or by any arrangement between him and the performing company. *Id.*

COMPROMISE, OFFERS OF. See *Evidence*, 6.

CONDITION SUBSEQUENT. See *Life Insurance*, 1–3.

CONFIRMATORY STATUTE. See *Land Grants*, 1–3.

CONFISCATION PROCEEDINGS. See *Jurisdiction*, 17.

CONSTITUTIONAL LAW.

1. A provision in the Code of Wisconsin to the effect, that, when the defendant is out of the State, the Statute of Limitations shall not run against the plaintiff, if the latter resides in the State, but shall if he resides out of the State, is not repugnant to the second section of the fourth article of the Constitution of the United States, which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." *Chemung Canal Bank* v. *Lowery*, 72.

2. Unless restrained by provisions of its constitution, the legislature of a State possesses the power to direct a restitution to tax-payers of a county, or other municipal corporation, of property exacted from them by taxation, into whatever form the property may be changed, so long as it remains in possession of the municipality. The exercise of this power infringes upon no provision of the Federal Constitution. *Board of Commissioners, &c.* v. *Lucas, Treasurer*, 108.

3. An insurance company conformed to the requirements of the act of the legislature of Georgia, and received from the comptroller-general a certificate authorizing it to transact business in that State for one year from Jan. 1, 1874. That act does not, expressly or by implication, limit or restrain the exercise of the taxing power of the State, or of any municipality. An ordinance of the city council of Augusta, passed Jan. 5, 1874, imposed from that date an annual license tax "on each and every fire, marine, or accidental insurance company located, having an office or doing business within" that city. *Held*, that the ordinance is not in violation of that clause of the Constitution of the United States which declares that "no State shall pass any law impairing the obligations of contracts." *Home Insurance Co.* v. *City Council of Augusta*, 116.

CONTINGENT COMPENSATION.

An agreement to pay a contingent compensation for professional services of a legitimate character, in prosecuting a claim against the

CONTINGENT COMPENSATION (*continued*).
United States pending in one of the executive departments, is not in violation of law or public policy. *Stanton et al.* v. *Embrey, Administrator*, 548.

CONTRACTS. See *Constitutional Law*, 3; *Exemption from Taxation; Life Insurance*, 1–5; *Practice*, 17; *Revival of Contracts; Winona, City of.*

1. Where a steamer, lying at the time at the wharf at St. Louis, was taken into the service of the United States by a quartermaster of the United States, for a trip to different points on the Mississippi River, the compensation for the service required being stated at the time to the captain, and no objection being made to the service or compensation, and the service was rendered, the possession, command, and management of the steamer being retained by its owner, — *Held*, that the United States were charterers of the steamer upon a contract of affreightment, and that they were not liable, under such a contract, to the owner for the value of the steamer, though she was destroyed by fire whilst returning from the trip, without his fault. *Shaw* v. *United States*, 235.
2. The Post-office Department, by public notice, invited proposals for conveying the mails on route No. "43,132, from Portland, Oregon, by Port Townsend (W. T.) and San Juan, to Sitka, Alaska, fourteen hundred miles and back, once a month, in safe and suitable steamboats." The notice, after fixing the time of departure and arrival from the terminal ports, contained the following: "Proposals invited to begin at Port Townsend (W. T.), five hundred miles less. Present pay, $34,800 per annum." *Held*, 1. That, under sect. 243 of the act of June 8, 1872 (17 Stat. 313), this was a sufficient notice that proposals were desired for carrying the mails between Port Townsend and Sitka. 2. That the acceptance by the Post-office Department of the proposal of a bidder to so carry them created a contract of the same force and effect as if a formal contract had been written out and signed by the parties. *Garfielde* v. *United States*, 242.
3. An assistant special agent of the Treasury Department has no authority to bind the United States by contract, to repay the expenses of transporting, repairing, &c., abandoned or captured cotton. *Whiteside et al.* v. *United States*, 247.
4. Where a party, by fraudulently concealing his insolvency and his intent not to pay for goods, induces the owner to sell them to him on credit, the vendor, if no innocent third party has acquired an interest in them, is entitled to disaffirm the contract and recover the goods. *Donaldson, Assignee*, v. *Farwell et al.*, 631.
5. The defeasible title of the vendee to the goods so acquired vests in his assignee in bankruptcy, and is subject to be determined by the prompt disaffirmance of the contract by the vendor. *Id.*

CONTRIBUTORY NEGLIGENCE. See *Burden of Proof.*

COURSES AND DISTANCES. See *Deeds, Construction of*, 1, 2.

COURT AND JURY. See *Practice*, 10, 19, 24, 25.

DAMAGES. See *Admiralty.*

DECLARATIONS OF A PARTY WHEN IN POSSESSION OF LAND. See *Evidence*, 3.

DEED.

A deed takes effect only from the time of delivery, and, when deposited as an escrow, nothing passes by it unless the condition is performed. *County of Calhoun et al.* v. *American Emigrant Co.*, 124.

DEEDS, CONSTRUCTION OF.

1. The rule that monuments, natural or artificial, rather than courses and distances, control in the construction of a conveyance of real estate, will not be enforced, when the instrument would be thereby defeated, and when the rejection of a call for a monument would reconcile other parts of the description, and leave enough to identify the land. *White et al.* v. *Luning*, 514.
2. So far as it relates to the description of the property conveyed, the rule of construction is the same, whether the deed be made by a party in his own right or by an officer of the court. *Id.*

DEMURRER. See *Pleading*, 1, 2, 4; *Practice*, 3.

DISBURSING OFFICERS. See *United States, Right of, to Priority of Payment.*

DISTILLERIES.

1. Where, pursuant to the tenth section of the act of July 20, 1868 (15 Stat. 129), a survey of a distillery and an estimate of its producing capacity is made, and a copy thereof furnished the distiller, such survey and estimate conclusively determine the producing capacity of the distillery, fix the minimum tax due from him, and can only be abrogated by a new survey and estimate, ordered by the Commissioner of Internal Revenue, a copy of which is furnished to the distiller. *United States* v. *Ferrary et al.*, 625.
2. An abortive attempt to make a new estimate to take the place of the former cannot have the effect to annul it. *Id.*

DISTRICT OF COLUMBIA, LIABILITY OF THE TRUSTEES OF CERTAIN CORPORATIONS THEREIN.

The act of Congress (16 Stat. 98), under which certain corporations are organized in the District of Columbia, contains a provision, that, "if the indebtedness of any company organized under this act shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally and individually

DISTRICT OF COLUMBIA, LIABILITY OF THE TRUSTEES OF CERTAIN CORPORATIONS THEREIN (*continued*).

liable for such excess to the creditors of the company." *Held*, 1. That an action at law cannot be sustained by one creditor among many for the liability thus created, or for any part of it, but that the remedy is in equity. 2. That this excess constitutes a fund for the benefit of all the creditors, so far as the condition of the company renders a resort to it necessary for the payment of its debts. *Hornor* v. *Henning et al.*, 228.

DOMICILE.

1. A domicile once existing continues until another is acquired; and, where a change thereof is alleged, the burden of proof rests upon the party making the allegation. *Desmare* v. *United States*, 605.
2. A., whose domicile was, and continued during the war to be, at New Orleans, went into or remained within the territory embraced by the rebel lines, engaged actively in the service of the rebel government, and, while so engaged, purchased certain cotton, which, upon the subsequent occupation of that territory by the military forces of the United States, was seized, sold, and the proceeds paid into the treasury. *Held*, that his purchase of the cotton was illegal and void, and gave him no title thereto. *Id.*

DOUBLE INSURANCE. See *Insurance*, 1–4.

EQUITABLE ESTOPPEL.

1. For the application of the doctrine of equitable estoppel, there must generally be some intended deception in the conduct or declarations of the party to be estopped, or such gross negligence on his part as amounts to constructive fraud, by which another has been misled to his injury. *Brant* v. *Virginia Coal & Iron Co. et al.*, 326.
2. Where the estoppel relates to the title of real property, it is essential to the application of the doctrine, that the party claiming to have been influenced by the conduct or declarations of another was himself not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. Where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there is no estoppel. *Id.*

EQUITABLE VALUE. See *Life Insurance*, 3, 4.

EQUITY. See *District of Columbia, Liability of the Trustees of Certain Corporations therein.*

1. A mistake as to a matter of fact, to warrant relief in equity, must be material; and the fact must be such that it animated and controlled the conduct of the party. It must go to the essence of the object in view, and not be merely incidental. The court must be satisfied

EQUITY (*continued*).

that but for the mistake the complainant would not have assumed the obligation from which he seeks to be relieved. *Grymes* v. *Sanders et al.*, 55.

2. Mistake, to be available in equity, must not have arisen from negligence where the means of knowledge were easily accessible. The party complaining must have exercised at least the degree of diligence "which may be fairly expected from a reasonable person." *Id.*
3. Where a party desires to rescind, upon the ground of mistake or fraud, he must, upon the discovery of the facts, at once announce his purpose, and adhere to it. If he be silent, and continue to treat the property as his own, he will be held to have waived the objection, and will be as conclusively bound by the contract, as if the mistake or fraud had not occurred. This applies peculiarly to speculative property, which is liable to large and constant fluctuations in value. *Id.*
4. A court of equity is always reluctant to rescind, unless the parties can be put back *in statu quo*. If this cannot be done, it will give such relief only where the clearest and strongest equity imperatively demands it. *Id.*
5. A court of equity cannot act as a court of review, and correct errors of a court of law, nor can it, in the absence of fraud, collaterally question the conclusiveness of a judgment at law. *Tilton et al.* v. *Cofield et al.*, 163.

ESCROW. See *Deed; Estoppel.*

ESTOPPEL. See *Bailment*, 3; *Equitable Estoppel*, 1, 2; *Municipal Corporations*, 2, 3.

A county, by its contract for the sale of lands, whereof it was the owner, stipulated that it would not assess taxes against them until after they should be conveyed. The deed was executed, and deposited with the clerk of the board of county supervisors as an escrow, and was not to be delivered until the performance by the grantee of a certain condition. The condition was not performed; and the deed having been surreptitiously placed on record, the county brought suit to set it and the contract aside. The court, on May 20, 1872, by consent, dismissed the bill, and decreed that such dismissal should for ever bar and estop the county from setting up any right or title to the lands in controversy. In July following, the county listed certain of the lands for taxes for the years 1870 and 1871; and was proceeding to enforce collection, when the court below, upon a bill filed for that purpose by the appellee, decreed that the assessment was void, and enjoined all proceedings by the county in the matter. *Held*, that the decree was proper. *County of Calhoun et al.* v. *American Emigrant Co.*, 124.

EVIDENCE. See *Burden of Proof; Legacy*, 2; *Letters-Patent*, 2, 12, 13; *Partnership, Notice of Dissolution of*, 1, 2; *Practice*, 10, 20, 24; *Treasurer's Deed for Lands Sold for Taxes*, 1.

1. Testimony, whether parol or documentary, which shows a want of power in officers who issue a patent, is admissible in an action at law to defeat a title set up under it. In such case, the patent is not merely voidable, but absolutely void; and the party is not obliged to resort to a court of equity to have it so declared. *Sherman* v. *Buick*, 209.
2. Declarations made by the holder of a promissory note or of a chattel, while he held it, are not admissible in evidence in a suit upon or in relation to it by a subsequent owner. *Dodge et al.* v. *Freedman's Savings & Trust Co.*, 379.
3. The declarations of a party when in possession of land are, as against those claiming under him, competent evidence to show the character of his possession, and the title by which he held it, but not to sustain or destroy the record title. *Id.*
4. In a trial for homicide, where the question, whether the prisoner or the deceased commenced the encounter which resulted in death, is in any manner of doubt, it is competent to prove threats of violence against the prisoner made by the deceased, though not brought to the knowledge of the prisoner. *Wiggins* v. *People, &c.*, 465.
5. In a case of contributing policies of insurance, adjustments of loss made by an expert may be submitted to the jury, not as evidence of the facts stated therein, or as obligatory, but for the purpose of assisting the jury in calculating the amount of liability of the insurer upon the several hypotheses of fact mentioned in the adjustment, if they find either hypothesis correct. *Home Insurance Co.* v. *Baltimore Warehouse Co.*, 527.
6. No part of a letter written as an offer of compromise is admissible in evidence. *Id.*
7. Where the amount of compensation to be paid for professional services of a legitimate character in prosecuting a claim against the United States pending in one of the executive departments was not fixed by the agreement of the parties, evidence of what is ordinarily charged by attorneys-at-law in cases of the same character is admissible. *Stanton et al.* v. *Embrey, Administrator*, 548.

EXCEPTIONS. See *Practice*, 7, 8, 9, 26, 31.

EXECUTORS, ACTIONS AGAINST. See *Practice*, 6.

EXEMPTION FROM TAXATION.

1. Upon a sale of the property and franchises of a railroad corporation under a decree founded upon a mortgage which in terms covers the franchises, or under a process upon a money judgment against the company, immunity from taxation upon the property of the company provided in the act of incorporation does not accompany the

EXEMPTION FROM TAXATION (*continued*).
property in its transfer to the purchaser. The immunity from taxation in such cases is a personal privilege of the company, and not transferable. *Morgan* v. *Louisiana*, 217.

2. The franchises of a railroad corporation are rights or privileges which are essential to the operations of the corporation, and without which its roads and works would be of little value; such as the franchise to run cars, to take tolls, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like. Immunity from taxation is not itself a franchise of a railroad corporation which passes as such without other description to a purchaser of its property. *Id.*

3. The doctrine announced in *Tucker* v. *Ferguson*, 22 Wall. 527, — that an act of the legislature of a State, exempting property of a railroad company from taxation, is not, when a mere gratuity on the part of the State, a contract to continue such exemption, but is always subject to modification and repeal in like manner as other legislation, — reaffirmed, and applied to this case. *West Wisconsin Railway Company* v. *Board of Supervisors of Trempealeau County*, 595.

EXPRESS COMPANY. See *Common Carriers*, 2–5.

FINAL JUDGMENT.
If by any direction of a Supreme Court of a State an entire cause is determined, the decision, when reduced to form and entered in the records of the court, constitutes a final judgment, whatever may be its technical designation, and is subject in a proper case to review by this court. *So held*, where, upon appeal from an interlocutory order made by a circuit court of Indiana, granting a temporary injunction, the Supreme Court of the State reversed the order and remanded the cause to the lower court, with directions to dismiss the complaint. *Board of Commissioners, &c.* v. *Lucas, Treasurer*, 108.

FORECLOSURE SALE. See *Purchasers at Judicial Sales*, 1–3.

FORFEITURE. See *Jurisdiction*, 17; *Life Insurance*, 1–5.

FRANCHISES OF RAILROAD CORPORATIONS. See *Exemption from Taxation*, 1, 2.

FRAUD. See *Bailment*, 4, 5; *Bills of Exchange and Promissory Notes*, 1; *Contracts*, 4, 5; *Equitable Estoppel*, 1, 2; *Equity*, 3, 5; *Liens on Personal Property*, 2.

FREIGHT-TRAINS, PASSENGERS ON. See *Carriers of Passengers*, 1, 2.

GARNISHMENT. See *Sureties in an Appeal Bond*, 3.

GEORGIA AND SOUTH CAROLINA, COMPACT OF 1787 BETWEEN. See *Commerce*, 1.

GEORGIA, INSURANCE COMPANIES DOING BUSINESS IN. See *Constitutional Law*, 3.

GRANT. See *Nevada*, 2.

HABEAS CORPUS. See *Jurisdiction*, 11.

1. Where an inferior court has jurisdiction of the cause and the person in a criminal suit, and no writ of error lies from this court, it will not on *habeas corpus* review the legality of the proceedings. *Ex parte Parks*, 18.
2. It is only where the proceedings below are entirely void, either for want of jurisdiction or other cause, that such relief will be given. *Id.*
3. *Ex parte Yerger*, 8 Wall. 85, and *Ex parte Lange*, 18 id. 163, referred to and approved. *Id.*

HOMICIDE, TRIAL FOR. See *Evidence*, 4.

HOT SPRINGS.

Where, in a suit between some of the claimants to the hot springs in Arkansas, the Supreme Court of that State by its decree refused aid to any of them against the other, except as to the improvements erected by each respectively on the property, and as to them saved the rights of the United States, this court having decided in *Hot Springs Cases*, 92 U. S. 698, that the United States is the owner of the property, affirms that decree. *Gaines et al.* v. *Hale et al.*, 3.

ILLINOIS.

MARRIED WOMAN'S SEPARATE PROPERTY ACT. See *Liens on Personal Property.*

The act of the general assembly of Illinois, entitled "An Act to protect married women in their separate property," approved Feb. 21, 1861, repeals, by implication, so much of the saving clause of the Statute of Limitations of 1839 as relates to married women. *Kibbe* v. *Ditto et al.*, 674.

TOWN AUDITORS IN.

A supervisor, town-clerk, or justice of the peace, although his resignation is tendered to and accepted by the proper authority, continues in office, and is not relieved from his duties and responsibilities as a member of the board of auditors, under the township organization laws of the State of Illinois, until his successor is appointed, or chosen and qualified. *Badger et al.* v. *United States ex rel. Bolles*, 599.

IMPORT DUTIES.

The act of Congress of July 14, 1870 (16 Stat. 262), imposed on champagne wine a duty of six dollars per dozen bottles (quarts), and three dollars per dozen bottles (pints), and upon each bottle containing it an additional duty of three cents. *De Bary* v. *Arthur, Collector*, 420.

INDIAN TRIBES, COMMERCE WITH. See *Commerce*, 10–12.

INFRINGEMENT OF LETTERS-PATENT, MEASURE OF DAMAGES FOR.

1. In an action at law for the infringement of letters-patent, the rule as to the measure of damages is, that the verdict of the jury must be for the *actual* damages sustained by the plaintiff, subject to the right of the court to enter judgment thereon for any sum above the verdict not exceeding three times that amount, together with costs. *Birdsall et al.* v. *Coolidge*, 64.
2. Where the unlawful acts consist in making and selling a patented improvement, or in its extensive and protracted use, without palliation or excuse, evidence of an established royalty will, in an action at law, undoubtedly furnish the true measure of damages; but where the use is a limited one, and for a brief period, the arbitrary and unqualified application of that rule is erroneous. *Id.*

INSURANCE. See *Evidence*, 5, 6.

1. A policy of insurance taken out by warehouse-keepers, against loss or damage by fire on "merchandise, their own or held by them in trust, or in which they have an interest or liability, contained in" a designated warehouse, covers the merchandise itself, and not merely the interest or claim of the warehouse-keepers. *Home Insurance Co.* v. *Baltimore Warehouse Co.*, 527.
2. If the merchandise be destroyed by fire, the assured may recover its entire value, not exceeding the sum insured, holding the remainder of the amount recovered, after satisfying their own loss, as trustees for the owners. *Id.*
3. Goods described in a policy as "merchandise held in trust" by warehousemen, are goods intrusted to them for keeping. The phrase, "held in trust," is to be understood in its mercantile sense. *Id.*
4. A policy was taken out by warehousemen on "merchandise" contained in their warehouses, "their own or held by them in trust, or in which they have an interest or liability." Depositors of the merchandise, who received advances thereon from the warehousemen, took out other policies covering the same goods. *Held*, that the several policies constituted double insurance, and that they bear a loss proportionally. *Id.*

INTEREST. See *Jurisdiction*, 8.

INVENTION. See *Letters-Patent.*

IOWA, DEED FOR LANDS SOLD FOR DELINQUENT TAXES IN. See *Treasurer's Deed for Lands Sold for Taxes.*

JUDGMENTS AT LAW. See *Equity*, 5.

JURISDICTION. See *Habeas Corpus*, 1, 3; *New Mexico, Private Land Claims in; Writs of Error*, 3.

I. Of the Supreme Court.

1. Under sect. 692 of the Revised Statutes, an appeal could not be had

JURISDICTION (*continued*).

to this court from the final decree of a circuit court, unless the matter in dispute, exclusive of costs, exceeded the sum or value of $2,000. *Terry* v. *Hatch*, 44.

2. In a suit by its creditors against an insolvent bank, which had made an assignment for their benefit, claims amounting to $440,000, including a decree in favor of A. for $23,297, and judgments in favor of B. for $88,000, were proved and allowed. There was realized under the assignment $30,000, the *pro rata* distribution of which was decreed by the court. A. filed an exception to the allowance of B.'s claim, which was overruled; whereupon he, by leave of the court, took a separate appeal, "without joining any party to the record with him as appellant," or any party as defendant except B. *Held*, that the amount in dispute here is the interest of A. in that portion of the $30,000 payable by the decree to B., which the former would have received had his exception been sustained, and the amount decreed the latter been distributed *pro rata* among all the creditors. As that interest is less than $2,000, this court has no jurisdiction. *Id.*

3. Where a statute of, or authority exercised under, a State is drawn in question, on the ground of its repugnance to the Constitution of the United States, or a right is claimed under that instrument, the decision of a State court in favor of the validity of such statute or authority, or adverse to the right so claimed, can be reviewed here. *Home Insurance Co.* v. *City Council of Augusta*, 116.

4. As the Code of Practice of Louisiana provides that all definitive or final judgments must be signed by the judge rendering them, this court, under sect. 691 of the Revised Statutes, as amended by the act of Feb. 16, 1875 (18 Stat. 316), cannot, where the matter in dispute does not exceed the sum or value of $5,000, exclusive of costs, review the judgment of a circuit court of the United States sitting in that State, signed subsequently to May 1, 1875. *Yznaga Del Valle* v. *Harrison et al.*, 233.

5. The doctrine in *Lee* v. *Watson*, 1 Wall. 337, that, "in an action upon a money-demand, where the general issue is pleaded, the matter in dispute is the debt claimed, and its amount, as stated in the body of the declaration, and not merely the damages alleged or the prayer for judgment at its conclusion, must be considered in determining whether this court can take jurisdiction," affirmed and applied to the present case. *Schacker* v. *Hartford Fire Ins. Co.*, 241.

6. Where a petition for the removal of a suit filed under the act of March 2, 1867 (14 Stat. 558), was, in accordance with the practice of the State, reserved for the decision of the Supreme Court, and the latter dismissed the petition, and remanded the cause to the inferior court for further proceedings according to law, — *Held*, that this court has no jurisdiction. *Kimball* v. *Evans*, 320.

7. This court has no jurisdiction to review a judgment of the Circuit

JURISDICTION (*continued*).

Court, rendered in a proceeding upon an appeal from an order of the District Court, rejecting the claim of a supposed creditor against the estate of a bankrupt. *Wiswall et el.* v. *Campbell et al., Assignees*, 347.

8. This court has no jurisdiction to review the judgment of a circuit court rendered subsequently to May 1, 1875, unless the matter in dispute exceeds the sum or value of $5,000, exclusive of costs. Interest on the judgment cannot enter into the computation. *Western Union Telegraph Co.* v. *Rogers*, 565.

II. Of the Circuit Courts.

9. Under the act of March 2, 1867 (14 Stat. 558), a suit pending in a State court, between a citizen of the State in which the suit was brought and a citizen of another State, could not, on the application of the former, be removed to a circuit court of the United States. *Hurst* v. *Western and Atlantic R. R. Co.*, 71.

10. In a suit brought by a citizen of Louisiana, in the Circuit Court of the United States for the Eastern District of Arkansas, to enforce a lien on lands situate within that district, one of the defendants, a citizen of Tennessee, was served with process in Arkansas. *Held*, that, under the act of Feb. 28, 1839 (5 Stat. 321), such service brought him within the jurisdiction of the court. *Ober* v. *Gallagher*, 199.

III. Of the District Courts.

11. Whether a matter for which a party is indicted in a district court of the United States is, or is not, a crime against the laws of the United States, is a question within the jurisdiction of that court, which it must decide. Its decision will not be reversed here by *habeas corpus*. *Ex parte Parks*, 18.

IV. Of the State Courts.

12. Under the Bankrupt Act of March 2, 1867 (14 Stat. 517), the assignee might sue in the State courts to recover the assets of the bankrupt, no exclusive jurisdiction having been given to the courts of the United States. *Quœre*, whether such exclusive jurisdiction is given by the Revised Statutes. *Claflin* v. *Houseman, Assignee*, 130.

13. Exclusive jurisdiction for the enforcement of the statutes of the United States may be given to the Federal courts, yet where it is not given, either expressly or by necessary implication, the State courts, having competent jurisdiction in other respects, may be resorted to. *Id.*

14. In such cases, the State courts do not exercise a new jurisdiction conferred upon them, but their ordinary jurisdiction, derived from their constitution under the State law. *Id.*

JURISDICTION (*continued*).

V. In General.

15. A court which has acquired rightful jurisdiction of the parties and subject-matter will retain it for all purposes within the general scope of the equities to be enforced. *Ober* v. *Gallagher*, 199.
16. A sentence of a court, pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal. *Windsor* v. *McVeigh*, 274.
17. The jurisdiction acquired by the seizure of property, in a proceeding *in rem* for its condemnation for alleged forfeiture, is not to pass upon the question of forfeiture absolutely, but to pass upon that question after opportunity has been afforded to its owner and parties interested to appear and be heard upon the charges for which the forfeiture is claimed. To that end, some notification of the proceedings, beyond that arising from the seizure, prescribing the time within which the appearance must be made, is essential. *Id.*
18. In confiscation proceedings a monition and a notice were issued and published; but the appearance of the owner, for which they called, when made, was stricken out, his right to appear being denied by the court. *Held*, that the subsequent sentence of confiscation of his property was as inoperative upon his rights as though no monition or notice had ever been issued. The legal effect of striking out his appearance was to recall the monition and notice as to him. *Id.*
19. The doctrine, that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend, in the extent or character of its judgment, the law which is applicable to it. *Id.*

LAND GRANTS.

1. The first section of the act of June 13, 1812 (2 Stat. 748), making further provision for settling the claims to land in the Territory of Missouri, confirms, *proprio vigore*, the rights, titles, and claims to the lands embraced by it, and, to all intents and purposes, operates as a grant. *Ryan et al.* v. *Carter et al.*, 78.
2. The court adheres to the doctrine, announced in its previous decisions, that a confirmatory statute passes a title as effectually as if it in terms contained a grant *de novo*, and that a grant may be made by a law as well as by a patent pursuant to law. *Id.*
3. Said first section is not, by the proviso thereto annexed, excluded from operating on the right and claim of an inhabitant of a village which is therein named to an out-lot whose title thereto had, on his peti-

LAND GRANTS (*continued*).
tion, been recognized and confirmed by the board of commissioners for adjusting and settling claims to land in said Territory. *Id.*

LAND-GRANT RAILROADS.
1. A provision in an act of Congress, granting lands to aid in the construction of a railroad, that "said railroad shall be, and remain, a public highway for the use of the government of the United States, free from all toll or other charge, for the transportation of any property or troops of the United States," secures to the government the free use of the road, but does not entitle the government to have troops or property transported over the road by the railroad company free of charge for transporting the same. *Lake Superior & Mississippi R. R. Co.* v. *United States*, 442.
2. Where, throughout an act of Congress, a railroad is referred to, in its character as a road, as a permanent structure, and designated, and required to be, a public highway, the term "railroad" cannot, without doing violence to language, and disregarding the long-established usage of legislative expression, be extended to embrace the rolling-stock or other personal property of the company. *Id.*

LEGACY.
1. In Louisiana, a legacy to two persons, "to be divided equally between them," is a conjoint one. If but one of them survives the testator, he is entitled, by accretion, to the whole of the thing bequeathed. *Mackie et al.* v. *Story*, 589.
2. Parol evidence, to show the intention of the testator, is not admissible. *Id.*

LETTERS-PATENT. See *Infringement of Letters-Patent, Measure of Damages for*, 1, 2.
1. Letters-patent No. 124,340, issued to John Dalton, March 5, 1872, for "an alleged new and useful improvement in ladies' hair-nets," are void, because his specification and claim precisely and accurately describe various fabrics which had been made and were in public use for a long time previous to his application. *Dalton* v. *Jennings*, 271.
2. To defeat a party suing for an infringement of letters-patent, it is sufficient to plead and prove that prior to his supposed invention or discovery the thing patented to him had been patented, or adequately described in some printed publication. A sufficiently certain and clear description of the thing patented is required, not of the steps necessarily antecedent to its production. *Cohn* v. *United States Corset Co.*, 366.
3. Letters-patent No. 137,893, issued April 15, 1873, to Moritz Cohn, for an improvement in corsets, are invalid, the invention claimed by him having been clearly anticipated and described in the English provisional specification of John Henry Johnson, deposited in the Patent

LETTERS-PATENT (*continued*).

Office Jan. 20, 1854, and officially published in England in that year. *Id.*

4. Where a reissued patent is granted upon a surrender of the original, for its alleged defective or insufficient specification, such specification cannot be substantially changed in the reissued patent, either by the addition of new matter or the omission of important particulars, so as to enlarge the scope of the invention, as originally claimed. A defective specification can be rendered more definite and certain, so as to embrace the claim made, or the claim can be so modified as to correspond with the specification; but, except under special circumstances, this is the extent to which the operation of the original patent can be changed by the reissue. *Russell* v. *Dodge*, 460.
5. Where the patent was for a process of treating bark-tanned lamb or sheep skin by means of a compound, in which heated fat liquor was an essential ingredient, and a change was made in the original specification, by eliminating the necessity of using the fat liquor in a heated condition, and making, in the new specification, its use in that condition a mere matter of convenience, and by inserting an independent claim for the use of fat liquor in the treatment of leather generally, the character and scope of the invention, as originally claimed, were held to be so enlarged as to constitute a different invention. *Id.*
6. The action of the Commissioner of Patents, in granting a reissue within the limits of his authority, is not open to collateral impeachment; but, his authority being limited to a reissue for the same invention, the two patents may be compared to determine the identity of the invention. If the reissued patent, when thus compared, appears on its face to be for a different invention, it is void, the commissioner having exceeded his authority in issuing it. *Id.*
7. *Klein* v. *Russell*, 19 Wall. 433, stated and qualified. *Id.*
8. Where the claim for a patent for an invention, which consists of a product or a manufacture made in a defined manner, refers in terms to the antecedent description in the specification of the process by which the product is obtained, such process is thereby made as much a part of the invention as are the materials of which the product is composed. *Smith* v. *Goodyear Dental Vulcanite Co. et al.*, 486.
9. Whether the single fact that a device has gone into general use, and displaced other devices previously employed for analogous uses, establishes, in all cases, that the later device involves a patentable invention, it may always be considered as an element in the case, and, when the other facts leave the question in doubt, it is sufficient to turn the scale. *Id.*
10. *Hotchkiss* v. *Greenwood*, 11 How. 248, decides that employing one known material in place of another is not invention, if the result be only greater cheapness and durability of the product. It does not decide that the use of one material in lieu of another in the forma-

LETTERS-PATENT (*continued.*)
tion of a manufacture can, in no case, amount to invention, or be the subject of a patent. *Id.*
11. In the present case the result of the use, in the manner described in the specification, of hard rubber in lieu of the materials previously used for a plate for holding artificial teeth, or such teeth and gums, is a superior product, having capabilities and performing functions which differ from any thing preceding it, and which cannot be ascribed to mere mechanical skill, but are to be justly regarded as the results of inventive effort, as making the manufacture of which they are attributes a novel thing in kind, and, consequently, patentable as such. *Id.*
12. A patent is *prima facie* evidence that the patentee was the first inventor, and casts upon him who denies it the burden of sustaining his denial by proof. *Id.*
13. The presumption arising from the decision of the Commissioner of Patents, granting the reissue of letters-patent, that they are for the same invention which was described in the specification of the original patent, can only be overcome by clearly showing, from a comparison of the original specification with that of the reissue, that the former does not substantially describe what is described and claimed in the latter. *Id.*
14. Upon consideration of the history of this invention, the court holds: 1. That there was no abandonment by the patentee of his original application. 2. That the application upon which the patent was finally allowed was a mere continuation of the original, and not a new and independent one. 3. That the invention was never abandoned to the public. 4. That reissued letters-patent No. 1904, dated March 21, 1865, for an alleged "improvement in artificial gums and palates," are valid. *Id.*

LIEN FOR TAXES.
A lien for taxes does not stand upon the footing of an ordinary incumbrance; and, unless otherwise directed by statute, is not displaced by a sale of the property under a pre-existing judgment or decree. *Osterberg* v. *Union Trust Co.*, 424.

LIENS ON PERSONAL PROPERTY.
1. The owner of personal property, who vests another, to whom it is delivered, with an interest therein, must, if desirous of preserving a lien on it in Illinois, comply with the requirements of the chattel-mortgage act of that State. *Hervey et al.* v. *Rhode Island Locomotive Works*, 664.
2. Where personal property has been sold and delivered, secret liens, which treat the vendor as its owner until payment of the purchase-money, cannot be maintained in Illinois. They are held to be constructively fraudulent as to creditors, and the property, so far as their rights are concerned, is considered as belonging to the vendee holding the possession. *Id.*

LIENS ON PERSONAL PROPERTY (*continued*).

3. Nor is the transaction changed by the agreement assuming the form of a lease. The courts look to the purpose of the parties; and, if that purpose be to give the vendor a lien on the property until payment in full of the purchase-money, it is liable to be defeated by creditors of the vendee who is in possession of it. *Id.*

LIFE-ESTATE. See *Will.*

LIFE INSURANCE.

1. A policy of life insurance which stipulates for the payment of an annual premium by the assured, with a condition to be void on non-payment, is not an insurance from year to year, like a common fire policy ; but the premiums constitute an annuity, the whole of which is the consideration for the entire assurance for life ; and the condition is a condition subsequent, making, by its non-performance, the policy void. *New York Life Ins. Co.* v. *Statham et al.*, 24.
2. The time of payment in such a policy is material, and of the essence of the contract ; and a failure to pay involves an absolute forfeiture, which cannot be relieved against in equity. *Id.*
3. If a failure to pay the annual premium be caused by the intervention of war between the territories in which the insurance company and the assured respectively reside, which makes it unlawful for them to hold intercourse, the policy is nevertheless forfeited if the company insist on the condition ; but in such case the assured is entitled to the equitable value of the policy arising from the premiums actually paid. *Id.*
4. This equitable value is the difference between the cost of a new policy and the present value of the premiums yet to be paid on the forfeited policy when the forfeiture occurred, and may be recovered in an action at law or a suit in equity. *Id.*
5. The average rate of mortality is the fundamental basis of life assurance, and as this is subverted by giving to the assured the option to revive their policies or not, after they have been suspended by a war (since none but the sick and dying would apply), it would be unjust to compel a revival against the company. *Id.*
6. In an action upon a policy of life insurance, which provided that it should be null and void if the insured died by suicide, "sane or insane," the company pleaded that he "died from the effects of a pistol-wound inflicted upon his person by his own hand, and that he intended, by inflicting such wound, to destroy his own life." *Held*, that a replication setting up that, "at the time when he inflicted said wound, he was of unsound mind, and wholly unconscious of his act," is bad. *Bigelow* v. *Berkshire Life Ins. Co.*, 284.

LIMITATIONS, STATUTE OF.

Louisiana. See *Bills of Exchange and Promissory Notes*, 2.

Wisconsin. See *Constitutional Law*, 1.

LOUISIANA, BILLS OF LADING UNDER THE LAWS OF. See *Bills of Lading.*

LOUISIANA, LEGACIES UNDER THE LAWS OF. See *Legacy*, 1.

LIABILITY OF SURETIES IN AN APPEAL BOND UNDER THE LAWS OF. See *Sureties in Appeal Bond*, 1–3.

PRACTICE CODE OF. See *Jurisdiction*, 3.

STATUTE OF LIMITATIONS OF. See *Bills of Exchange and Promissory Notes*, 2.

MANDAMUS. See *Public Corporations*, 3, 4.

MARINE TORTS. See *Commerce*, 6–9.

MERCHANDISE HELD IN TRUST. See *Insurance*, 1–4.

MEXICAN OR SPANISH GRANTS. See *New Mexico, Private Land Claims in; Public Lands*, 1–5.

MINERAL LANDS. See *Nevada*, 4.

MISTAKE AS TO MATTERS OF FACT. See *Equity*, 1–4.

MISSOURI, SUBSCRIPTIONS TO STOCKS OF CORPORATIONS IN. See *Municipal Bonds*, 2, 3, 4.

The powers of a railroad company, in Missouri, in existence prior to the adoption of the constitutional provision of 1865, prohibiting subscriptions to the stock of any corporation by counties, cities, or towns, unless two-thirds of the qualified electors thereof shall assent, are not affected by such provision, but remain the same as if it had never been adopted. *County of Callaway* v. *Foster*, 567.

MISSOURI, TERRITORY OF, CLAIMS TO LAND IN. See *Land Grants*, 1–3.

MIXTURE OF GOODS.

If the owner of goods wilfully and wrongfully mixes them with those of another of a different quality and value, so as to render them undistinguishable, he will not be entitled to any part of the intermixture. *The "Idaho,"* 575.

MONUMENTS. See *Deeds, Construction of*, 1, 2.

MORTGAGE. See *Purchasers at Judicial Sales*, 1–3.

MUNICIPAL BONDS. See *Municipal Corporations; Railroad Company.*

1. The bonds issued by the county court of Randolph County, Ill., bearing date Jan. 1, 1872, and reciting that they are issued in payment of a subscription of $100,000 to the capital stock of the Chester and Tamaroa Coal and Railway Company, in pursuance of an election held by the legal voters of said county, on the sixth day of June, 1870, and by virtue of the provisions of an act of the general assembly of the State of Illinois, entitled "An Act supplemental to an act to provide for a general system of railroad corporations," are, with the coupons thereto attached, valid, and binding upon the county. *County of Randolph* v. *Post*, 502.

MUNICIPAL BONDS (*continued*).

2. The power conferred by the statute of Missouri of March 10, 1859, upon a county in which may be any part of the route of the Louisiana and Missouri River Railroad Company, to subscribe to the capital stock of that company without submitting the question of such subscription to the vote of the people, was not taken away by the amendatory act of March 24, 1868. *County of Callaway* v. *Foster*, 567.
3. Every reasonable construction of the language of the act of March 10, 1859, embraces the county of Callaway, and the road has been actually located through it. *Id.*
4. The subscription to the stock of the railroad company, having been actually made by that county, under the authority of a legislative act, in January, 1868, was legal, and the circumstance that the bonds were issued at a later date does not impair their validity. *Id.*
5. The acts of March 8, 1867, c. 93, of March 3, 1869, c. 166, and of Feb. 17, 1871, of Wisconsin, under which certain bonds were issued to the Green Bay and Lake Pepin Railroad Company, were not repealed, either directly or by implication, by the acts of the legislature of that State of March 8, 1870, c. 210, and of March 11, 1872, c. 34. *Board of Supervisors of Wood County* v. *Lackawana Iron and Coal Co.*, 619.

MUNICIPAL CORPORATIONS.

1. A change in the charter of a municipal corporation, in whole or part, by an amendment of its provisions, or the substitution of a new charter in place of the old one, embracing substantially the same corporators and the same territory, will not be deemed, in the absence of express legislative declaration otherwise, to affect the identity of the corporation, or to relieve it from its previous liabilities, although different powers are possessed under the amended or new charter, and different officers administer its affairs. *Broughton* v. *Pensacola*, 266.
2. It would be an unreasonable restriction of the rights and powers of a municipal corporation to hold that it cannot waive conditions found to be injurious to its interests, or, like other parties to a contract, estop itself. *County of Randolph* v. *Post*, 502.
3. A county in Illinois, a subscriber to the stock of a railway company, agreed to extend the time for completing the road from that originally fixed to a particular date. Before that date, the county, by its proper officers, declared the road completed to its satisfaction, delivered its bonds, and received the stock of the company in return therefor. *Held*, that its action constitutes a waiver and an estoppel which prevent it from raising the objection that the contract was not performed in time. *Id.*

NAVIGATION. See *Admiralty; Commerce*, 3–5.

NEVADA.

1. At the time of the passage of the Nevada Enabling Act, approved March 21, 1864 (13 Stat. 30), sections 16 and 36 in the several townships had not been surveyed, nor had Congress then made, or authorized to be made, any disposition of the public domain within the limits of Nevada. *Heydenfeldt* v. *Daney Gold and Silver Mining Co.*, 634.
2. The words of present grant in the seventh section of that act are restrained by words of qualification which were intended to protect the proposed new State against loss that might happen through the subsequent action of Congress in selling or disposing of the public domain. If by such sale or disposal the whole or any part of the sixteenth or thirty-sixth section in any township was lost to the State, she was to be compensated by other lands equivalent thereto, in legal subdivisions of not less than one-quarter section each. *Id.*
3. A qualified person whose settlement on mineral lands which embrace a part of either of said sections was prior to the survey of them by the United States, who, on complying with all the requirements of the act of Congress approved July 26, 1866 (14 Stat. 251), received a patent for such lands from the United States, has a better title thereto than has the holder of an older patent therefor from the State. *Id.*
4. The legislative act of Nevada of Feb. 13, 1867, recognized the validity of the claim of the United States to the mineral lands within that State. *Id.*

NEW MEXICO, PRIVATE LAND CLAIMS IN.

The action of Congress confirming a private land claim in New Mexico, as recommended for confirmation by the surveyor-general of that Territory, is not subject to judicial review. *Tameling* v. *United States Freehold and Emigration Co.*, 644.

NEW TRIALS, MOTIONS FOR. See *Practice*, 22.

NUNC PRO TUNC ORDERS. See *Supersedeas*, 2; *Practice*, 31.

OWNERS AND MASTERS OF STEAM VESSELS. See *Commerce*, 8, 9.

PARTIES. See *Practice*, 4, 5.

Where a trustee is invested with such powers and subjected to such obligations that his beneficiaries are bound by what is done against him or by him, they are not necessary parties to a suit against him by a stranger to defeat the trust in whole or in part. In such case, he is in court on their behalf; and they, though not parties, are concluded by the decree, unless it is impeached for fraud or collusion between him and the adverse party. *Kerrison, Assignee*, v. *Stewart et al.*, 156.

PARTNERSHIP, NOTICE OF DISSOLUTION OF.

1. A., having had no previous dealings with a firm, but having heard of its existence, and who composed it, sold goods to one of the partners, and received in payment therefor a draft by him drawn upon the firm, and accepted in its name. At the time of the transaction the firm was, in fact, dissolved; but A. had no notice thereof. *Held*, that, in order to protect a retired partner against such acceptance of the draft at the suit of A., evidence, tending to show a public and notorious disavowal of the continuance of the partnership, is admissible. *Lovejoy* v. *Spofford et al.*, 430.
2. It is not an absolute, inflexible rule, that there must be a publication in a newspaper to protect a retiring partner. Any means of fairly publishing the fact of such dissolution as widely as possible, in order to put the public on its guard, — as, by advertisement, public notice in the manner usual in the community, the withdrawal of the exterior indications of the partnership, — are proper to be considered on the question of notice. *Id.*

PATENTS FOR LANDS. See *Evidence*, 1.

1. The act of Sept. 28, 1850 (9 Stat. 519), granting swamp-lands, makes it the duty of the Secretary of the Interior to identify them, make lists thereof, and cause patents to be issued therefor. *Held*, that a patent so issued cannot be impeached in an action at law, by showing that the land which it conveys was not in fact swamp and overflowed land. *French* v. *Fyan et al.*, 169.
2. *Railroad Company* v. *Smith*, 9 Wall. 95, examined, and held not to conflict with this principle. *Id.*

PENDENCY OF PRIOR SUITS.

The pendency of a prior suit in a State court is not a bar to a suit in a circuit court of the United States, or in the Supreme Court of the District of Columbia, by the same plaintiff against the same defendant for the same cause of action. *Stanton et al.* v. *Embrey, Administrator*, 548.

PENITENTIARY. See *United States Convicts*, 1–4.

PILOTS OF STEAM VESSELS. See *Commerce*, 8, 9.

PLEADING. See *Letters-Patent*, 2; *Life Insurance*, 6; *Practice*, 20.

1. The English rule, that the Statute of Limitations cannot be set up by demurrer in actions at law, does not prevail in the courts of the United States sitting in Wisconsin. *Chemung Canal Bank* v. *Lowery*, 72.
2. The distinction between actions at law and suits in equity has been abolished by the code of that State; and the objection that suit was not brought within the time limited therefor, if the lapse of time appears in the complaint without any statement to rebut its effect, may be made by way of demurrer, if the point is thereby specially

PLEADING (*continued*).
taken. If the plaintiff relies on a subsequent promise, or on a payment to revive the cause of action, he must set it up in his original complaint, or ask leave to amend. *Id.*
3. It is now the prevailing rule in this country, that a party may maintain assumpsit on a promise not under seal made to another for his benefit. *Hendrick* v. *Lindsay et al.*, 143.
4. Pleading over to a declaration adjudged good on demurrer is a waiver of the demurrer. *Stanton et al.* v. *Embrey, Administrator*, 548.

PLEDGEE.
Where the pledgee parts with the pledge to a *bona fide* purchaser without notice of any right or claim of the pledgor, the latter cannot recover against such purchaser without first tendering him the amount due on the pledge. *Talty* v. *Freedman's Savings and Trust Co.*, 321.

PRACTICE. See *Attachment Suits*, *Power to Amend in*; *Final Judgment*; *Pleading*, 1, 2, 3; *Usury*, 1.
1. The court will not, in preference to cases pending between private parties, set down for argument a case in which the execution of the revenue laws of a State has been enjoined, unless it sufficiently appears that the operations of the government of the State will be embarrassed by delay. *Hoge et al.* v. *Richmond, &c. R. R. Co.*, 1.
2. An order striking out an answer, as it ends the cause, leaves the action undefended, and confers a right to immediate judgment, is subject to review in the appellate court. *Fuller et al.* v. *Claflin et al.*, 14.
3. The court below having, on demurrer, held an answer to be sufficient, directed it to be made more specific and certain. The party thereupon filed an answer, which, although in substantial compliance with the order, was stricken out, and judgment rendered in favor of the plaintiff for the amount of the claim sued on. *Held*, that the action of the court in striking out the answer and proceeding to judgment was erroneous. *Id.*
4. Where an appellant obtains an order of severance in the court below, and does not make parties to his appeal some of the parties below who are interested in maintaining the decree, he cannot ask its reversal here on any matter which will injuriously affect their interests. *Terry* v. *Abraham et al.*, 38.
5. When an appellant seeks to reverse a decree because too large an allowance was made to the appellees out of a fund in which he and they were both interested, he will not be permitted to do so when he has received allowances of the same kind, and has otherwise waived his right to make the specific objection which he raises for the first time here. *Id.*
6. In an action against an executor upon a contract of his testator, where a *devastavit* is not alleged and proved, a judgment *de bonis propriis* is erroneous. *Smith, Executor*, v. *Chapman, Executor*, 41.

PRACTICE (*continued*).

7. If one of a series of propositions presented to a court as one request for a charge to the jury is unsound, an exception to a refusal to charge the entire series cannot be maintained. *Beaver* v. *Taylor et al.*, 46.
8. An exception to the entire charge of the court, or, in gross, to a series of propositions therein contained, cannot be sustained, if any portion thus excepted to is sound. *Id.*
9. An exception to such portions of a charge as are variant from the requests made by a party not pointing out the variances, cannot be sustained. *Id.*
10. In the absence of any evidence whatever to contradict or vary the case made by the plaintiff, it is not error for the court, when the legal effect of the plaintiff's evidence warrants a verdict for him, to so charge the jury. *Hendrick* v. *Lindsay et al.*, 143.
11. A decree in chancery will be reversed if rendered against a woman who is shown by the bill to be both a minor and *feme covert*, where no appearance by or for her has been entered, and no guardian *ad litem* appointed. *O'Hara et al.* v. *MacConnell et al., Assignees*, 150.
12. It is error to render a final decree for want of appearance at the first term after service of subpœna (Equity Rules, 18, 19), unless another rule-day has intervened. *Id.*
13. Where the object is to divest a *feme covert* or minor of an interest in real estate, the title of which is in a trustee for her use, the trust being an active one, it is error to decree against her without making the trustee a party to the suit. *Id.*
14. The making of the conveyance, as ordered by the decree, does not deprive the defendant of the right of appeal. *Id.*
15. Neither a subsequent petition in the nature of a bill of review, nor any thing set up in the answer to such petition on which no action was had by the court, can prevent a party from appealing from the original decree. *Id.*
16. Where no local statute or rule of local law is involved, the power to amend is the same in attachment suits as in others. *Tilton et al.* v. *Cofield et al.*, 163.
17. Under the Code of Practice of Arkansas, in force when this judgment was rendered, and therefore furnishing a rule of practice for the courts of the United States in that State, an action on a contract, upon which two or more persons were jointly bound, might be brought against all or any of them; and, although they were all summoned, judgment might be rendered against any of them severally, where the plaintiff would have been entitled to a judgment against such defendants if the action had been against them alone. *Sawin, Administrator*, v. *Kenny*, 289.
18. When instructions are asked in the aggregate, and there is any thing exceptionable in either of them, the court may properly reject the whole. *Indianapolis & St. Louis R. R. Co.* v. *Horst*, 291.

PRACTICE (*continued*).

19. It is the settled law in this court, that, if the charge given by the court below covers the entire case, and submits it properly to the jury, such court may refuse to give further instructions. *Id.*
20. A plaintiff is bound to state his case, but not the evidence by which he intends to prove it. *Id.*
21. The construction given in *Nudd et al.* v. *Burrows, Assignee*, 91 U. S. 426, to the act of June 1, 1872 (17 Stat. 197), reaffirmed. *Id.*
22. A motion for a new trial is not a mere matter of proceeding or practice in the district and circuit courts. It is, therefore, not within the act of June 1, 1872, and cannot be affected by any State law upon the subject. *Id.*
23. This court will not, in a case of collision, reverse the concurrent decrees of the courts below, upon a mere difference of opinion as to the weight and effect of conflicting testimony. To warrant a reversal, it must be clear that the lower courts have committed an error, and that a wrong has been done to the appellant. *The "Juniata,"* 337.
24. The court is not authorized to take from the jury the right of weighing the evidence bearing on controverted facts in issue. *Mutual Life Ins. Co.* v. *Snyder*, 393.
25. The court below properly refused to give an instruction declaring that a fact was established by unimpeached and uncontradicted testimony, when the record discloses that the testimony touching such asserted fact was conflicting. *Id.*
26. This court can only review so much of the instructions of the court below as was made the subject of an exception. *Id.*
27. The omission of the judge to instruct the jury on a particular aspect of the case, however material, cannot be assigned for error, unless his attention was called to it with a request to instruct upon it. *Id.*
28. A motion to set aside a decree, made by persons not parties to the suit, but who are permitted to intervene only for the purpose of an appeal from the decree as originally rendered, will not operate to suspend such decree. *Sage et al.* v. *Central R. R. Co. of Iowa et al.*, 412.
29. Their separate appeal having been properly allowed and perfected, the case is here to the extent necessary for the protection of their interests. *Id.*
30. A cause, involving private interests only, will not be advanced for a hearing in preference to other suits on the docket. *Id.*
31. When the record shows that an exception was taken and reserved at the trial, it is not necessary that the bill of exceptions be drawn out in form, and signed or sealed by the judge, before the jury retires; but it may be so signed or sealed at a later period; and, when filed *nunc pro tunc*, brings the case within the settled practice of courts of error. *Stanton et al.* v. *Embrey, Administrator*, 548.

PRE-EMPTION. See *Nevada*, 3 ; *School Lands.*

PRESUMPTION. See *Letters-Patent*, 13.

"PROFITS USED IN CONSTRUCTION," MEANING OF THE EXPRESSION.

The expression "profits used in construction" (within the meaning of the one hundred and twenty-second section of the Internal Revenue Act of June 30, 1864, 13 Stat. 284) does not embrace earnings expended in repairs for keeping the property up to its normal condition, but has reference to new constructions adding to the permanent value of the capital; and when these are made to take the place of prior structures, it includes only the increased value of the new over the old, when in good repair. *Grant, Collector*, v. *Hartford & N. H. R. R. Co.*, 225.

PROPOSALS FOR CARRYING THE MAILS. See *Contracts*, 2.

PROTEST AND NOTICE.

A promissory note, bearing date Jan. 28, 1859, payable twelve months thereafter at the Citizens' Bank, New Orleans, and indorsed by A., the payee, and B., the then owner thereof, who resided in Missouri, was, before maturity, placed in the branch of the Louisiana State Bank at Baton Rouge, whose cashier indorsed and forwarded it to the mother bank at New Orleans for collection. It was duly protested for non-payment by the notary of the mother bank, who mailed notices of protest for the indorsers to the cashier of the branch bank. A., upon whom reliance was principally placed, died, and his executors were qualified before the maturity of the note; but neither they nor B. was served by the branch bank with notice of protest. *Held*, that the bank was liable for any loss thereby sustained by the holder of the note. *Bird et al., Executors*, v. *Louisiana State Bank*, 96.

PUBLIC CORPORATIONS.

1. A public corporation, charged with specific duties, such as building and repairing levees within a certain district, being superseded in its functions by a law dividing the district, and creating a new corporation for one portion, and placing the other under charge of the local authorities, ceases to exist except so far as its existence is expressly continued for special objects, such as settling up its indebtedness, and the like. *Barkley* v. *Levee Commissioners et al.*, 258.
2. If, with such limited existence, no provision is made for the continuance or new election of the officers of such corporation, the functions of the existing officers will cease when their respective terms expire, and the corporation will be *de facto* extinct. *Id.*
3. In such case, if there be a judgment against the corporation, *mandamus* will not lie to enforce the assessment of taxes for its payment, there being no officers to whom the writ can be directed. *Id.*
4. The court cannot, by *mandamus*, compel the new corporations to perform the duties of the extinct corporation in the levy of taxes for

PUBLIC CORPORATIONS (*continued*).

the payment of its debts, especially where their territorial jurisdiction is not the same, and the law has not authorized them to make such levy. *Id.*

5. Nor can the court order the marshal to levy taxes in such a case; nor in any case, except where a specific law authorizes such a proceeding. *Id.*
6. Under these circumstances, the judgment creditor is, in fact, without remedy, and can only apply to the legislature for relief. *Id.*

PUBLIC LANDS.

1. The act of Congress of July 23, 1866 (14 Stat. 218), confirming selections theretofore made by California of any portion of the public domain, divided them into two classes; namely, one in which they had been made from land surveyed by the United States before the passage of the act, and the other in which the selected lands had not been so surveyed. *Huff* v. *Doyle et al.*, 558.
2. Where the surveys had been made before the passage of the act, it was, by the second section thereof, the duty of the State authorities to notify the local land officer of such selection, where they had not already done so. Such notice was regarded as the date of such selection. *Id.*
3. Where the surveys had not yet been made, the State, under the third section, had the right to treat her selection made before the passage of the act as a pre-emption claim; and the holder of her title was allowed the same time to prove his claim under the act, after the surveys were filed in the local land-office, as was allowed to pre-emptors under existing laws. *Id.*
4. By a fair construction of these provisions, and others of this statute, and of the act of March 3, 1853 (10 Stat. 244), the exception in the first section confirming these selections, of lands "held or claimed under a valid Mexican or Spanish grant," must be determined as of the date when the claimant, under a State selection, undertakes to prove up his claim after the surveys have been made and filed, and within the time allowed thereafter to pre-emptors. *Id.*
5. If at that date the land selected by the State was excluded from such a grant, either by judicial decision or by a survey made by the United States, the claimant may have his claim confirmed. *Id.*

PUBLIC POLICY. See *Common Carriers*, 5; *Contingent Compensation.*

PURCHASERS AT JUDICIAL SALES. See *Lien for Taxes.*

1. As the rule of *caveat emptor* applies to a purchasar at a judicial sale, under a decree foreclosing a mortgage, he cannot retain from his bid a sum sufficient to pay a part of the taxes on the property which were a subsisting lien at the date of the decree of foreclosure. *Osterberg* v. *Union Trust Co.*, 424.
2. Where such a purchaser, having failed to punctually comply with the

PURCHASERS AT JUDICIAL SALES (*continued*).

terms of sale, is granted an extension of time by the court, the property in the mean time to remain in the possession of a receiver, he is not entitled to any of the earnings of the property while it so remains in the possession of the latter, nor is he in a position to question the orders of the court as to their application. *Id.*

3. Before the commencement of a suit to foreclose a mortgage, some of the lands covered by it had been transferred to a trustee, by way of indemnity against a bond upon which he was surety for the mortgagor, and sold by the trustee, with the consent of the mortgagee. The proceeds thereof were subsequently paid over to the receiver appointed in the foreclosure suit. The decree did not order the sale of the lands from which such proceeds arose, nor did the master attempt to sell them. *Held*, that the purchaser at the foreclosure sale acquired no right to such proceeds. *Id.*

PURCHASERS PENDENTE LITE.

A purchaser of property *pendente lite* is as conclusively bound by the results of the litigation as if he had from the outset been a party thereto. *Tilton et al.* v. *Cofield et al.*, 163.

RAILROAD COMPANY.

A company is none the less a railroad company, within the meaning of the act of the general assembly of the State of Illinois, approved Nov. 6, 1849, authorizing counties to subscribe to the capital stock of railroad companies, because its charter vests it with power to carry on, in addition to the business of such a company, that of a coal, or a mining, or a furnace, or a manufacturing company. *County of Randolph* v. *Post*, 502.

"RAILROAD," CONSTRUCTION OF THE TERM. See *Land-Grant Railroads*, 2.

REBELLION, THE. See *Bills of Exchange and Promissory Notes*, 6; *Domicile*, 1, 2.

RECEIVERS. See *Purchasers at Judicial Sales*, 2, 3.

1. A receiver is not authorized, without the previous direction of the court, to incur any expenses on account of property in his hands, beyond what is absolutely essential to its preservation and use, as contemplated by his appointment. Accordingly, the expenditures of a receiver to defeat a proposed subsidy from a city, to aid in the construction of a railroad parallel with the one in his hands, were properly disallowed in the settlement of his final account, although such road, if constructed, might have diminished the future earnings of the road in his charge. *Cowdrey et al.* v. *Galveston, Houston, & Henderson R. R. Co. et al.*, 352.

2. The earnings of a railroad in the hands of a receiver are chargeable with the value of goods lost in transportation, and with damages done to property during his management. *Id.*

RECEIVERS (*continued*).

3. Where an attorney and counsellor-at-law, employed by trustees of certain mortgaged property to foreclose the mortgages, upon a stipulated retaining fee, entered upon such retainer, commenced the suit, prosecuted it until prevented by the outbreak of the civil war, and, after the termination of the war, offered to go on with the suit; but, in the mean time, the trustees having died, a new suit was commenced and prosecuted, without his assistance, by the bondholders (for whose security the mortgages were executed), to foreclose the same mortgages, in which suit a receiver was appointed, — *Held*, that his claim for his fee was chargeable against the funds obtained by the receiver from the mortgaged property. *Id.*

REISSUED PATENTS. See *Letters-Patent*, 4–7, 13, 14.

REMOVAL OF CAUSES.

Under the act of March 2, 1867 (14 Stat. 558), a suit pending in a State court, between a citizen of the State in which the suit was brought and a citizen of another State, could not, on the application of the former, be removed to a circuit court of the United States. *Hurst* v. *Western & Atlantic R. R. Co.*, 71.

REQUESTS FOR INSTRUCTIONS. See *Practice*, 7–9, 18, 19, 27.

REVISED STATUTES OF THE UNITED STATES.

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

Sect. 691. See *Jurisdiction*, 4.

Sect. 692. See *Jurisdiction*, 1.

REVIVAL OF CONTRACTS. See *Life Insurance*, 1–5.

The doctrine of revival of contracts, suspended during the war, is based on considerations of equity and justice, and cannot be invoked to revive a contract which it would be unjust or inequitable to revive, — as where time is of the essence of the contract, or the parties cannot be made equal. *New York Life Ins. Co.* v. *Statham et al.*, 24.

"SANE OR INSANE." See *Life Insurance*, 6.

SAVANNAH RIVER. See *Commerce*, 1–4.

SCHOOL LANDS. See *Nevada*, 1–3.

In construing the act of March 3, 1853 (10 Stat. 246), the court held: 1. School sections 16 and 36, granted to the State of California by sect. 6 of the act, are also excepted from the operation of the pre-emption law to which, by the same section, the public lands generally are subjected. 2. The rule governing the right of pre-emption on school sections is provided by the seventh section of the act; and it protects a settlement, if the surveys, when made, ascertain its location to be on a school section. 3. In such case, the only right

SCHOOL LANDS (*continued*).

conferred on the State is to select other land in lieu of that so occupied. 4. The proviso to the sixth section, forbidding pre-emption on unsurveyed lands after one year from the passage of the act, is limited to the lands not excepted out of that section, and has no application to the school sections so excepted. *Sherman* v. *Buick*, 109.

SENTENCE. See *Jurisdiction*, 16.

SOUTH CAROLINA AND GEORGIA, COMPACT OF 1787 BETWEEN. See *Commerce*, 1.

STATUTES OF THE UNITED STATES.

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

1797. March 3. See *United States, Right of, to Priority of Payment.*
1812. June 13. See *Land Grants*, 1.
1839. Feb. 28. See *Jurisdiction*, 10.
1850. Sept. 28. See *Patents for Lands*, 1.
1852. March 30. See *Commerce*, 8.
1853. March 3. See *Public Lands*, 4; *School Lands*, 1.
1864. March 21. See *Nevada*, 1, 2.
1864. June 30. See *Profits used in Construction, &c.*
1866. July 23. See *Public Lands*, 1.
1866. July 26. See *Nevada*, 3.
1867. March 2. See *Assignee in Bankruptcy*, 1; *Jurisdiction*, 6, 9, 12; *Removal of Causes.*
1868. July 20. See *Distilleries.*
1870. July 14. See *Import Duties.*
1872. June 1. See *Practice*, 17, 18.
1872. June 8. See *Contracts*, 2.
1874. June 23. See *Writs of Error*, 1.
1875. Feb. 16. See *Jurisdiction*, 4.

SUBROGATION. See *Bills of Exchange and Promissory Notes*, 2.

SUPERSEDEAS. See *Sureties in an Appeal Bond.*

1. Unless an appeal is perfected, or a writ of error sued out and served within sixty days, Sundays exclusive, after the rendition of the decree or judgment complained of, it is not within the power of a justice of this court to allow a *supersedeas*. *Kitchen* v. *Randolph*, 86.
2. To make a *nunc pro tunc* order effectual for the purposes of a *supersedeas*, it must appear that the delay was the act of the court, and not of the parties, and that injustice will not be done. *Sage et al.* v. *Central R. R. Co. of Iowa et al.*, 412.

SURETIES IN AN APPEAL BOND.

1. Under the laws of Louisiana, sureties in an appeal bond, which operates as a *supersedeas*, are liable, by a summary proceeding, to judgment, after execution on the original judgment has been issued, and

SURETIES IN AN APPEAL BOND (*continued*).
a return of *nulla bona* made by the proper officer. *Smith et al.* v. *Gaines*, 341.
2. The officer who made this return cannot be compelled to amend or modify it, nor can its truth be questioned in the subsequent proceeding against the sureties. *Id.*
3. It is no defence that the defendant in the original judgment has been garnished, or the judgment sold, at the instance of creditors of the plaintiff, where the sureties have not been made parties to the proceedings to appropriate such judgment. *Id.*

SWAMP AND OVERFLOWED LANDS. See *Patents for Lands*, 1, 2.

TAXATION. See *Exemption from Taxation; Estoppel.*

TAXES. See *Lien for Taxes; Public Corporations*, 3, 4, 5; *Purchasers at Judicial Sales*, 1.

TAX-PAYERS, RESTITUTION TO, BY A STATE. See *Constitutional Law*, 2.

TORTS, MARINE. See *Commerce*, 6–9.

TOWN AUDITORS. See *Illinois, Town Auditors in.*

TRANSPORTATION OF GOVERNMENT TROOPS AND PROPERTY. See *Land-Grant Railroads*, 1, 2.

TREASURER'S DEED FOR LANDS SOLD FOR TAXES.
1. A treasurer's deed for lands sold for delinquent taxes in the State of Iowa, if substantially regular in form, is, under the statutes of that State, at least *prima facie* evidence that a sale was made; and, if there was a *bona fide* sale, in substance or in fact, the deed is conclusive evidence that it was made at the proper time and in the proper manner. *Callanan* v. *Hurley*, 387.
2. In a case where a tax-deed, regular in form, recited that the land was sold Jan. 4, and where the treasurer certified that the sales of land for delinquent taxes in the county began on that day, and were continued from day to day until Jan. 18, and that he entered all the sales as made on the 4th, it was *held*, that a sale of land at any time during the period from the 4th to the 18th was valid, and that recording such sale as made on the first day, though actually made later, did not impair the title. *Id.*

TREATY. See *Commerce*, 11, 12.

TRUSTEES. See *District of Columbia, Liability of the Trustees of Certain Corporations therein; Parties; Practice*, 13.

UNITED STATES CONVICTS.
1. Where a person, convicted of an offence against the United States, is sentenced to imprisonment for a term longer than one year, the

UNITED STATES CONVICTS (*continued*).

court may, in its discretion, direct his confinement in a State penitentiary. *Ex parte Karstendick*, 396.

2. Imprisonment at hard labor, when prescribed by statute as part of the punishment, must be included in the sentence of the person so convicted; but, where fine and imprisonment, or imprisonment alone, is required, the court is authorized, in its discretion, to order its sentence to be executed at a place where, as part of the discipline of the institution, such labor is exacted from the convicts. *Id.*

3. Where a court, in passing sentence of imprisonment in the penitentiary, finds that, in the district or territory where the court is holden, there is no penitentiary suitable for the confinement of convicts, or available therefor, such finding is conclusive, and cannot be reviewed here upon a petition for *habeas corpus;* and, where the Attorney-General has designated a penitentiary in another State or Territory, for the confinement of persons convicted by such court, it may order the execution of its sentence at the place so designated. *Id.*

4. It is no objection to the validity of the order, that the State has not given its consent to the use of its penitentiary as a place of confinement of a convicted offender against the laws of the United States. So long as the State suffers him to be detained by its officers in its penitentiary, he is rightfully in their custody, under a sentence lawfully passed. *Id.*

UNITED STATES, RIGHT OF, TO PRIORITY OF PAYMENT.

A party who obtains from a disbursing officer public moneys without right thereto, and with full knowledge that they are such, becomes indebted to the United States, within the meaning of the fifth section of the act of Congress of March 3, 1797 (1 Stat. 515), and, in the event of his insolvency, the United States is entitled to priority of payment out of his assets. *Bayne et al., Trustees*, v. *United States*, 642.

USURY.

1. Where a commission merchant, in Baltimore, advanced to a pork-packer, in Peoria, $100,000, for which he was to receive interest at the rate of ten per cent per annum, and a fixed commission for the sale of the product, to be paid whether it was sold by the commission merchant or not, it was properly left to the jury to decide on all the facts whether or not the commissions were a cover for usury, or were an honest contract for commission business, in connection with use of money. *Cockle et al.* v. *Flack et al.*, 344.

2. The express agreement of ten per cent is not usurious, because lawful in Illinois, though not so in Maryland. *Andrews* v. *Pond*, 13 Pet. 65, reaffirmed. *Id.*

UTAH TERRITORY, SUPREME COURT OF. See *Writs of Error.*

VENDOR AND VENDEE. See *Contracts*, 4, 5.

WAIVER. See *Equity*, 3; *Municipal Corporations*, 2, 3; *Pleading*, 4.

WAREHOUSE KEEPERS. See *Insurance*, 1–4.

WILL.

Where a testator made a bequest to his wife of all his estate, real and personal, "to have and to hold during her life, and to do with as she sees proper before her death," the wife took a life-estate in the property, with only such power as a life-tenant can have, and her conveyance of the real property passed no greater interest. *Brant* v. *Virginia Coal and Iron Co. et al.*, 326.

WINONA, CITY OF.

The contract between the city of Winona and the Minnesota Railway Construction Company, bearing date April 23, 1870, construed, and the rights of the respective parties thereto discussed. *City of Winona* v. *Cowdrey*, 612.

WISCONSIN, CODE OF. See *Constitutional Law*, 1.

STATUTE OF LIMITATIONS OF. See *Constitutional Law*, 1.

WRITS OF ERROR. See *Supersedeas*, 1.

1. A writ of error from this court to the Supreme Court of the Territory of Utah is allowed by sect. 3 of the act of Congress of June 23, 1874 (18 Stat. 254), in criminal cases, where the accused has been sentenced to capital punishment, or convicted of bigamy or polygamy *Wiggins* v. *People*, *&c.*, 465.
2. Writs of error from this court to the Supreme Court of the District of Columbia are governed by the same rules and regulations as are those to the circuit courts. *Stanton et al.* v. *Embrey*, *Administrator*, 548.
3. Judgments in the State courts against the United States cannot be brought here for re-examination upon a writ of error, except in cases where the same relief would be afforded to private parties. *United States* v. *Thompson et al.*, 586.

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