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ACCOMMODATION INDORSER. See *Bills of Exchange and Promissory Notes*, 2, 5.

ACKNOWLEDGMENT.

1. The formula prescribed by the laws of Tennessee for the acknowledgment of deeds is: "Personally appeared before me . . . the within-named bargainor, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained." *Held*, that a certificate of an officer taking the acknowledgment of the grantor in a deed of trust, in which the officer certifies that said grantor is "personally known" to him, is a compliance with the statute. *Kelly* v. *Calhoun*, 710.
2. To be "personally acquainted with" and to "know personally" are, in such a certificate, equivalent phrases. *Id.*
3. There is no statutory provision in Tennessee as to the execution or acknowledgment of deeds by a corporation. In such cases, its officer affixing its seal is the party executing the deed, within the meaning of the statutes requiring deeds to be acknowledged by the grantor. *Id.*

ACTION. See *District of Columbia*, 2.

ADDITIONAL COMPENSATION. See *Supreme Court of the District of Columbia*, &c.

ADMIRALTY. See *Experts; Practice*, 4; *Wharfage*, 1–3.

1. *Quære*, Can a demand arising out of contract be enforced by a libel *in personam* in admiralty when a suit to recover it, if brought in a State court of concurrent jurisdiction, would be barred by the Statute of Limitations? *Reed* v. *Insurance Company*, 23.
2. A collision occurred at night, about a half mile off the coast of New Jersey, north of Barnegat and between that point and Long Branch, between a schooner and a pilot-boat, the latter, lying there at anchor in four fathoms of water, displaying the light required by art. 7 of the sailing regulations, and having a proper lookout, who was, however, at the time of the collision, momentarily absent from her deck. The schooner displayed no lights, owing, her claimants allege, to unavoidable accident due to the force of the wind. *Held*, 1. That

ADMIRALTY (*continued*).

the pilot-boat was not anchored in an improper place. 2. That the light displayed by her was a proper one. 3. That the momentary absence of the lookout from her deck did not contribute to the accident. 4. That the collision was not the result of inevitable accident, but was owing entirely to the fault of the schooner. *The "Wanata,"* 600.

3. Like other ships, and subject to all the conditions specified in art. 7, prescribed by Congress (13 Stat. 59), concerning lights, pilot-boats, when at anchor in roadsteads or fairways, are required to exhibit a white light in a globular lantern of eight inches in diameter. *Id.*
4. Art. 8 applies to sailing pilot-vessels only when they are under way. *Id.*
5. The act of Congress limiting the liability of ship-owners in a case of collision does not release them from the payment of costs in the District Court, beyond the amount of the stipulation filed therefor, if they appear and make defence, nor, in case they appeal to the Circuit Court, from the payment of the costs taxable there, or of interest in the nature of damages occasioned by the appeal. *Id.*
6. Stipulators for a definite amount are only bound to make good the liability of their principal to that amount, unless they have been guilty of default or contumacy, in which event, they may be held for costs and interest in the nature of damages to the extent that the same have arisen from their breach of duty. *Id.*
7. Appeals, in admiralty, to the Circuit Court carry up the whole fund; and mere technical errors in the decree of that court, not injuriously affecting the rights of the parties, do not present sufficient grounds for reversing it here. *Id.*
8. As the appeal-bond in this case may be treated as an admiralty stipulation, all sums due the libellants for costs and interest over and above the stipulation for costs may be collected from the sureties on that bond. *Id.*

AGENT. See *Common Carrier*, 1; *Life Insurance*, 7, 12–14.

1. A general power conferred upon the agent of a railroad company to borrow money on its behalf, in such sums, for such length of time, and at such a rate of interest as he may think proper, and to purchase iron rails, locomotives, machinery, &c., on such terms as he may deem advisable, and, in order so to do, to make, execute, and deliver obligations, bills of exchange, contracts, and agreements of the company, includes authority to give to the lender of the money borrowed, or to the seller of the things purchased, the ordinary securities. *Hatch* v. *Coddington*, 48.
2. Persons who deal with an agent before notice of the recall of his powers are not affected by the recall. *Id.*
3. Upon consideration of the written evidence in this case, the court *holds*, 1. That the contract entered into April 21, 1859, between the defendant and the Minnesota and Pacific Railroad Company,

AGENT (*continued*).
by Edmund Rice, its president, was authorized by the resolution of the board of directors of that company, passed July 13, 1858. 2. That the resolution of said board, passed May 13, 1859, was an acknowledgment that the contract was a binding obligation upon the company. *Id.*

AGREEMENT. See *Contracts.*

ALABAMA. See *Trustee*, 4, 5.

ALEXANDRIA. See *Process, Service of*, 7–10.

ALIEN ENEMY. See *Life Insurance*, 13.

AMENDMENT. See *Practice*, 1, 6, 12; *Writ of Error*, 1, 2.

ANCHORAGE. See *Admiralty*, 2.

APPEAL. See *Admiralty*, 5–8; *Jurisdiction*, 3–6, 8; *Practice*, 1, 5, 8.

APPEARANCE BY COUNSEL. See *Practice*, 2.

ASSESSMENT. See *Bankruptcy*, 8, 11, 12.

ASSIGNEE. See *Claims against the United States*, 7; *Practice*, 7.
An assignment by a defendant of his interest in the subject-matter of a pending suit does not necessarily defeat the suit. The assignee is bound by what is done against the assignor; and may either come in and assume the burden of the litigation in his own name, or act in the name of his assignor. *Ex parte Railroad Company*, 221.

ASSIGNEE IN BANKRUPTCY. See *Bankruptcy*, 3, 5, 7, 11, 12; *Jurisdiction*, 4; *Pleading*, 1.
1. The court, upon consideration of the facts in this case, holds that certain real estate settled upon a woman by her husband was purchased with the assets of the firm whereof he was a member, and that the assignee in bankruptcy of the firm is, after the payment of the mortgage thereon, entitled to the proceeds thereof. *Phipps* v. *Sedgwick*, 3.
2. An assignee in bankruptcy is not required to take measures for the sale of the mortgaged property of the bankrupt, unless its value exceeds the incumbrance. *McHenry* v. *La Société Française D'Épargnes*, 58.
3. An assignee in bankruptcy of a corporation represents it and its creditors, and the defence of its irregular organization cannot be set up against him by a subscriber for its capital stock who is sued on account of a claim growing out of such contract or subscription. The same rule applies where the stock of a corporation has been increased, and the question arises upon the liability of a subscriber for the increased stock. *Chubb* v. *Upton*, 665.
4. A party receiving a certificate for a certain number of shares of stock,

ASSIGNEE IN BANKRUPTCY (*continued*).
at a given sum per share, thereby becomes liable to pay the amount thereof when called upon by the corporation or its assignee in bankruptcy. *Id.*

ASSIGNMENT. See *Claims against the United States*, 3–7.

ASSIGNMENT PENDENTE LITE. See *Practice*, 7.

ASSISTANT-SURGEON. See *Navy, Officer in*, 1.

ATTACHMENT. See *Bankruptcy*, 3, 11.

ATTORNEY-AT-LAW. See *Practice*, 2.

AUTHENTICATION OF RECORDS AND JUDICIAL PROCEEDINGS.
The record of a district court of the United States is not within the act of Congress approved May 29, 1790 (1 Stat. 122), prescribing the mode in which the records and judicial proceedings of the State courts shall be authenticated, but is, when duly certified by the clerk under its seal, admissible as evidence in every other court of the United States. *Turnbull* v. *Payson*, 418.

BAD FAITH. See *Contracts*, 8.

BAILMENT FOR HIRE. See *Contracts*, 7.

BANK CHECKS. See *Pleading*, 6.

BANKRUPTCY. See *Assignee in Bankruptcy*, 1, 2; *Criminal Law*, 1; *Jurisdiction*, 4, 5, 9; *Pleading*, 1.

1. Mortgagees who prove their debt in the bankruptcy proceedings against the mortgagor become creditors of his general estate only for the balance of the debt after deducting the value of the mortgaged property, to be ascertained by agreement, sale, or in such other manner as the bankrupt court may direct. *McHenry* v. *La Société Française D'Épargnes*, 58.
2. Mortgagees may, pursuant to leave of that court, institute a suit against the bankrupt in another court for the foreclosure of his equity of redemption and the sale of the mortgaged premises. *Id.*
3. Money paid to his creditors, by a person who they have reasonable cause to believe is insolvent, or obtained by them on an attachment issued against his property, within four months next preceding the commencement of the bankruptcy proceedings, may be recovered by his assignee in bankruptcy. *West Philadelphia Bank* v. *Dickson*, 180.
4. The court, upon consideration of the facts in this case, holds that it appears that an insolvent debtor transferred certain securities to his creditor with a view to give him a fraudulent preference, and that the latter received and appropriated them, having reasonable cause to believe that the debtor was insolvent. *Merchants' National Bank* v. *Cook*, 342.

BANKRUPTCY (*continued*).

5. The creditor is, therefore, liable to the assignee in bankruptcy of the debtor for the securities or for their value. *Id.*

6. *Toof* v. *Martin*, 13 Wall. 40, *Buchanan* v. *Smith*, 16 id. 277, and *Wager* v. *Hall*, id. 584, cited and approved. *Id.*

7. On April 5, 1870, A., in order to secure B. as his indorser, made a mortgage of certain property. This mortgage the latter, on the thirteenth of that month, assigned to C., to secure a debt due him. Oct. 4, A. made a second mortgage of the same and additional property to D. for $4,000, which sum D. paid to B. as the agent of A.; whereupon B. paid certain notes of A. upon which he as well as D. was liable as indorser. On the 12th of October, A. sold the entire property covered by both mortgages to E. for $6,000, and received the latter's notes in payment. Of them, $2,444.40 was delivered to C., and $3,555.60 to D., who thereupon released their respective mortgages. Proceedings in bankruptcy were commenced against A. Nov. 2, 1870, and he was duly adjudicated a bankrupt. His assignees then sued D. for the value of the property covered by his mortgage, and obtained, by a compromise, a judgment for $4,000, which he satisfied. They subsequently sued him for the amount paid on the said notes whereon he was liable as indorser. This suit was compromised by his paying $2,000. The assignees thereupon released all claims and demands against him, and brought the present action to recover from C., who was not a creditor of A., the $2,444.40, on the ground that it was, in fraud of the Bankrupt Act, and within six months before the filing of the petition in bankruptcy, paid to him to secure him as indorser for B., he having reasonable cause for believing A. to be insolvent, and that he thereby prevented the property from coming to the assignees for distribution, and sought to impede the operation and evade the provisions of that act. *Held*, 1. That it was incumbent upon C. to show that B. took up the notes to secure the payment of which the mortgage to the latter had been executed. 2. That, in the absence of such proof, the amount received by C. was clearly a preference by way of indemnity. 3. That the action was not barred by the satisfaction of the judgment against D. 4. That the court having charged that, if the assignees had received from D. full satisfaction for the proceeds of the sale, there could be no recovery in this action, the verdict in favor of the assignees is upon that point conclusive against C. 5. That the inquiry whether C. had paid any thing for A. was properly submitted to the jury. *Sessions* v. *Johnson*, 347.

8. The court again decides that, where a corporation is adjudged a bankrupt, the proper District Court of the United States, in order to provide means for the payment of the debts of the corporation, may direct an assessment upon the unpaid balance due on stock held by the several stockholders. *Turnbull* v. *Payson*, 418.

BANKRUPTCY (*continued*).

9. The word "fraud," as used in the thirty-third section of the bankrupt law of 1867, which provides that "no debt created by the fraud or embezzlement of the bankrupt, or by defalcation as a public officer, or while acting in a fiduciary capacity, shall be discharged under this act," means positive fraud or fraud in fact, involving moral turpitude or intentional wrong, and not implied fraud or fraud in law, which may exist without the imputation of bad faith or immorality. *Neal* v. *Clark*, 704.
10. Accordingly, where a party paid an executor for a portion of the assets of an estate which he purchased at a discount, but without any actual fraud, and where he was, with the executor, who failed to account therefor, held liable for a *devastavit*, — *Held*, that his subsequent discharge in bankruptcy was a complete defence to an action against him for such *devastavit*. *Id.*
11. Except where, within a prescribed period before the commencement of proceedings in bankruptcy, an attachment has been sued out against the property of the bankrupt, or where his disposition of his property was, under the statute, fraudulent and void, his assignees take his real and personal estate, subject to all equities, liens, and incumbrances thereon, whether created by his act or by operation of law. *Yeatman* v. *Savings Institution*, 764.
12. Until he shall be paid, the pledgee is entitled to the possession of the property which he holds under a valid pledge as security for his debt against the pledgors, notwithstanding a subsequent adjudication of bankruptcy against them; and his refusal to surrender it to their assignees is not a conversion of it. *Id.*
13. The failure of the pledgee to appear and prove his claim in the bankruptcy court forfeits only his right to participate in the distribution of the bankrupt's estate ordered by that court. *Id.*

BEQUEST. See *Will.*

BILL OF EXCEPTIONS. See *Georgia, Code of; Jurisdiction*, 1, 2; *Record*, 1; *Writ of Error*, 4.

A bill of exceptions, allowed and signed or sealed by the judge, is the only mode by which his rulings during the progress of a trial, or his charge to the jury, can be rendered a part of the record. *Insurance Company* v. *Lanier*, 171.

BILL OF REVIEW. See *Practice*, 12; *Rebellion, The*, 3.

1. The court approves the ruling in *Whiting et al.* v. *The Bank of the United States*, 13 Pet. 6, and *Putnam* v. *Day*, 22 Wall. 60, that the only questions open in a bill of review, except when it is filed on the ground of newly discovered evidence, or contains new matter, are such as arise upon the pleadings, proceedings, and decree. *Buffington* v. *Harvey*, 99.
2. Should such a bill set forth the evidence in the original cause, a demurrer, specially assigning that error alone, should be sustained,

BILL OF REVIEW (*continued*).
or the evidence might, on motion, be stricken out; but a general demurrer must be overruled, if the bill shows any substantial error in the record. *Id.*
3. None but parties and privies can have a bill of review; and it will not lie where the decree in question was passed by consent. *Thompson* v. *Maxwell*, 391.

BILLS OF EXCHANGE AND PROMISSORY NOTES. See *Agent*, 1; *Deed; District of Columbia*, 2.
1. In the absence of proof to show when promissory notes were transferred by the payee, the law presumes that they were, when underdue, taken in good faith by the transferee, without notice of any infirmity attaching to them, and he is entitled to the benefit of the deed of trust given to secure them. *New Orleans Canal and Banking Co.* v. *Montgomery*, 16.
2. In a suit upon a promissory note, the court below charged the jury that if the defendant, without making any statement of his intention in so doing, wrote his name on the back of the note before its delivery to the payee, he is presumed to have done so as the surety of the maker, for his accommodation, and to give him credit with the payee; and that, if such presumption is not rebutted by the evidence, he is liable on the note as maker. *Held*, that the charge was not erroneous. *Good* v. *Martin*, 90.
3. Where, at the time of making and indorsing a promissory note, a written contract in relation thereto is entered into by the parties, parol testimony varying or contradicting its terms is not admissible. *Brown* v. *Spofford*, 474.
4. The court reaffirms the doctrine that a *bona fide* purchaser for value before maturity of a negotiable instrument, is not, unless they are brought to his notice, affected by any equities between the original parties. *Id.*
5. The cashier of a bank is not, by reason of his official position, presumed to have the power to bind it as an accommodation indorser on his individual note; and the payee who fails to prove that the cashier, as such, had authority to make the indorsement cannot recover against the bank. *West St. Louis Savings Bank* v. *Shawnee County Bank*, 557.

BONDED WAREHOUSE. See *Imports, Duties on*, 4; *Internal Revenue*, 7.

BONDS. See *Demand of Payment; Municipal Bonds.*

BOUNDARIES. See *Mexican Land Grants*, 1, 2.

BURDEN OF PROOF. See *Internal Revenue*, 2, 3; *Stockholders*, 1.

CALIFORNIA. See *Mexican Land Grants*, 1–5; *Pleading*, 4.

CARRIER. See *Common Carrier.*

CASHIER. See *Bills of Exchange and Promissory Notes*, 5; *Pleading*, 6.

CHARGE TO JURY. See *Bill of Exceptions; Court and Jury.*

CHARITABLE USES AND TRUSTS. See *Uses and Trusts*, 1–3.

CHARTER. See *Constitutional Law*, 2–6, 8, 9, 24.

CLAIMS AGAINST THE UNITED STATES. See *Contracts*, 1; *Court of Claims*, 1.

1. The presentation of a claim for compensation for carrying the mails, to the Second Assistant Postmaster-General, with whom all the business in relation to the claim had been previously transacted, is, in contemplation of law, the presentation of it to the Postmaster-General. *Alvord* v. *United States*, 356.
2. The facts in this case considered, and held to entitle the claimant to $35,100 for his services, under contracts with the Post-Office Department, for carrying the mails. *Id.*
3. The act entitled "An Act to prevent frauds upon the treasury of the United States," approved Feb. 26, 1853 (10 Stat. 170), embraces every claim against the government, however arising, of whatever nature, and wherever and whenever presented. *United States* v. *Gillis*, 407.
4. So far from giving new potency to assignments of rights of action, and from changing the rule of the common law touching such rights, that act denies any effect to powers of attorney, orders, transfers, and assignments which before were good in equity, and which a debtor, when they were brought to his notice, was bound to regard. *Id.*
5. The act of Feb. 24, 1855 (10 Stat. 612), establishing the Court of Claims, is not an enabling act, nor does it expressly or by necessary implication repeal any of the provisions of the act of Feb. 26, 1853, or make claims assignable which, before its enactment, were incapable of assignment. *Id.*
6. Congress has given a legislative construction of the act of 1853, by including and re-enacting it in sect. 3477 of the Revised Statutes. *Id.*
7. The court, therefore, upon consideration of the above statutes, *holds*, 1. That claims against the United States cannot be assigned, so as to enable the assignee to bring suit in his own name in the Court of Claims. 2. That, in cases arising under the act of March 3, 1863 (12 Stat. 820), the ownership claimed and required to be proved is that which existed at the time when the property in question was captured, and that the assignee of the claim for the proceeds of such property is not entitled to sue for them in said court. *Id.*

COASTWISE VOYAGES. See *Shipping Articles*, 2.

COERCION. See *Duress.*

COLLATERAL PAPERS. See *Statute of Frauds*, 1.

COLLATERAL SECURITY. See *Bankruptcy*, 12.

COLLECTORS OF INTERNAL REVENUE, COMMISSIONS OF. See *Internal Revenue*, 7.

COLLISION. See *Admiralty*, 2, 5; *Railway Crossings*, 1–3.

COLORADO.

The act of the Territory of Colorado of Feb. 11, 1870, rendering parties to a suit competent witnesses, did not apply to cases which were at issue at the time of its passage. *Good* v. *Martin*, 90.

COMITY. See *Judicial Comity.*

COMMERCE. See *Constitutional Law*, 12–18.

COMMISSIONER OF INTERNAL REVENUE.

The rules and regulations which the Commissioner of Internal Revenue is authorized by sect. 2 of the act of July 20, 1868 (15 Stat. 125), to prescribe, may aid in carrying the law into execution; but they cannot change its positive provisions. *United States* v. *Two Hundred Barrels of Whiskey*, 571.

COMMON CARRIER.

1. The liability of an intermediate common carrier for the safety of goods delivered to him for carriage is discharged by their delivery to and acceptance by a succeeding carrier or his authorized agent. *Pratt* v. *Railway Company*, 43.
2. If there is an agreement between two persons, occupying the relative positions of intermediate and succeeding carrier, that property intended for transportation by the latter may be deposited at a particular place without express notice to him, such deposit amounts to notice, and is a delivery. *Id.*
3. The acceptance by the succeeding carrier is complete, and his liability fixed, whenever the property thus, with his assent, comes into his possession. *Id.*
4. Although a transportation company, engaged in towing a barge from one point to another, does not occupy the position of a common carrier, nor have that exclusive control of her which that relation would imply, it does have control of her to such extent as is necessary to enable it to fulfil its contract, and is, therefore, bound to exercise such degree of diligence and care as a skilful performance of the stipulated service requires. *Transportation Line* v. *Hope*, 297.

COMPROMISE.

A party who seeks to avail himself of the conditions of a compromise binding him to the performance of certain acts, in order to discharge the original demand, must first show performance on his part. *Brown* v. *Spofford*, 474.

CONFIRMATORY ACT OF CONGRESS.

1. When an act of Congress, confirming a claim to land, contains a proviso that the confirmation shall not include any lands occupied by the United States for military purposes, the fact of such occupancy can be established by parol evidence, and is not necessarily a matter of record. *Morrow* v. *Whitney*, 551.
2. Where such occupancy does not exist, the act perfects the title of the confirmee, if the tract has clearly defined boundaries, or can be identified. The interest of the United States having been thereby vested in him, a patent subsequently issued to him is only documentary evidence of title. *Id.*
3. *Langdeau* v. *Hanes*, 21 Wall. 521, cited and approved. *Id.*
4. In a description of land, distances and quantities, when inconsistent with metes and bounds, must yield to them. *Id.*

CONFISCATION. See *Court of Claims*, 1; *Process*, *Service of*, 7–10.

1. The general pardon and amnesty granted by President Johnson, by proclamation, on the 25th of December, 1868, do not entitle one receiving their benefits to the proceeds of his property, previously condemned and sold under the confiscation act of July 17, 1862 (12 Stat. 589), after such proceeds have been paid into the treasury of the United States. *Knote* v. *United States*, 149.
2. Whilst a full pardon releases the offender from all disabilities imposed by the offence pardoned, and restores to him all his civil rights, it does not affect any rights which have vested in others directly by the execution of the judgment for the offence, or which have been acquired by others whilst that judgment was in force. And if the proceeds of the property of the offender sold under the judgment have been paid into the treasury, the right to them has so far become vested in the United States that they can only be recovered by him through an act of Congress. Moneys once in the treasury can only be withdrawn by an appropriation by law. *Id.*

CONSENT DECREE. See *Bill of Review*, 3; *Contracts*, 3.

CONSTITUTIONAL LAW. See *Criminal Law; Due Process of Law*, 1–3; *Judicial Comity; Set-Off*, 1–3; *Wharfage*, 4.

1. Statutes which are constitutional in part only will be upheld and enforced so far as they are not in conflict with the Constitution, provided the allowed and prohibited parts are severable. *Packet Company* v. *Keokuk*, 80.
2. A statute of a State, which declares that all charters of corporations granted after its passage may be altered, amended, or repealed by the legislature, does not necessarily apply to supplements to an existing charter which were enacted subsequently to the statute. *New Jersey* v. *Yard*, 104.
3. Nor does a provision which declares that "this supplement, and the charter to which it is a supplement, may be altered or amended by

CONSTITUTIONAL LAW (*continued*).
the legislature," apply to a contract with the corporation made in a supplement thereafter passed. *Id.*

4. Such statutory reservations of the right to repeal, unlike similar constitutional provisions, are only binding on a succeeding legislature so far as it chooses to conform to them; and, if it so intends, an irrepealable legislative contract may be made. It is, therefore, in every case a question whether the legislature making the contract intended that the former provision for repeal or amendment should, by implication, become a part of the new contract. *Id.*

5. In this case, the contract of 1865 for a specific rate of taxation is inconsistent with any such implication, because: 1. There was a subject of dispute and a fair adjustment of it for a valuable consideration on both sides. 2. The contract assumed, by legislative requirement, the shape of a formal written contract. 3. The terms of the contract, that "this tax shall be in lieu and satisfaction of all other taxation or imposition whatsoever by or under the authority of this State, or any law thereof," exclude, in view of the whole transaction, the right of the State to revoke it at pleasure. *Id.*

6. A statute which prescribes a mode of serving process upon railroad companies different from that provided for in a charter previously granted to a particular company, does not impair the obligation of the contract between such company and the State. *Railroad Company* v. *Hecht*, 168.

7. The seventh amendment to the Constitution, touching the right of trial by jury, applies only to the courts of the United States. *Pearson* v. *Yewdall*, 294.

8. The consolidation, pursuant to the statute of Ohio of April 10, 1856 (4 Curwen, 2791), of two or more railway companies works their dissolution. All the powers and franchises of the new company which is thereby formed are derived from that statute, and are subject to "be altered, revoked, or repealed by the General Assembly," under sect. 2, art. 1, of the Constitution of that State, which took effect Sept. 1, 1851. *Shields* v. *Ohio*, 319.

9. The General Assembly does not, therefore, impair the obligation of a contract by prescribing the rates for the transportation of passengers by the new company, although one of the original companies was, prior to the adoption of that Constitution, organized under a charter which imposed no limitation as to such rates. *Id.*

10. In the absence of legislation by Congress bearing on the case, a statute of a State which authorizes the erection of a dam across a navigable river which is wholly within her limits is not unconstitutional. *Pound* v. *Turck*, 459.

11. A party is not liable for obstructing the navigation of the river by means of a dam which he has erected under the authority and pursuant to the requirements of such a statute. *Id.*

12. The statute of Missouri which prohibits driving or conveying any

CONSTITUTIONAL LAW (*continued*).

Texas, Mexican, or Indian cattle into the State, between the first day of March and the first day of November in each year, is in conflict with the clause of the Constitution that ordains "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." *Railroad Company* v. *Husen*, 465.

13. Such a statute is more than a quarantine regulation, and not a legitimate exercise of the police power of the State. *Id.*
14. That power cannot be exercised over the inter-state transportation of subjects of commerce. *Id.*
15. While a State may enact sanitary laws, and, for the purpose of self-protection, establish quarantine and reasonable inspection regulations, and prevent persons and animals having contagious or infectious diseases from entering the State, it cannot, beyond what is absolutely necessary for self-protection, interfere with transportation into or through its territory. *Id.*
16. Neither the unlimited powers of a State to tax, nor any of its large police powers, can be exercised to such an extent as to work a practical assumption of the powers conferred by the Constitution upon Congress. *Id.*
17. Since the range of a State's police power comes very near to the field committed by the Constitution to Congress, it is the duty of courts to guard vigilantly against any needless intrusion. *Id.*
18. The Supreme Court of Louisiana having decided that an act of the General Assembly, approved Feb. 23, 1869, entitled "An Act to enforce the thirteenth article of the Constitution of this State, and to regulate the licenses mentioned in said thirteenth article," requires those engaged in the transportation of passengers among the States to give all persons travelling within that State, upon vessels employed in such business, equal rights and privileges in all parts of the vessel, without distinction on account of race or color; and subjects to an action for damages the owner of such a vessel who excludes colored passengers, on account of their color, from the cabin set apart by him for the use of whites during the passage: this court, accepting as conclusive this construction of the act by the highest court of the State, holds that the act, so far as it has such operation, is a regulation of inter-state commerce, and, therefore, to that extent, unconstitutional and void. *Hall* v. *DeCuir*, 485.
19. An enactment reducing the time prescribed by the Statute of Limitations in force when the right of action accrued is not unconstitutional, provided a reasonable time be given for the commencement of a suit before the bar takes effect. *Terry* v. *Anderson*, 628.
20. This court concurs in opinion with the Supreme Court of Georgia that the time prescribed by the statute of that State, approved March 16, 1869, in which suits for the enforcement of rights which accrued prior to June 1, 1865, should be brought, is not so short or unreason-

CONSTITUTIONAL LAW (*continued*).
able, under the circumstances which led to its enactment, as to render it unconstitutional. *Id.*
21. A statutory liability is as much the subject of remedial legislation as a liability by contract, unless the remedy enters into and forms a part of the obligation which the statute creates. *Id.*
22. It is competent for the legislature to impose upon a city the payment of claims just in themselves, for which an equivalent has been received, but which, from some irregularity or omission in the proceedings creating them, cannot be enforced at law. *New Orleans* v. *Clark*, 644.
23. A law requiring a municipal corporation to pay such a claim is not within the provision of the Constitution of Louisiana inhibiting the passage of a retroactive law. *Id.*
24. The charter of a bank, granted by the legislature of Tennessee, provides that the bank "shall pay to the State an annual tax of one-half of one per cent on each share of the capital stock subscribed, which shall be in lieu of all other taxes." *Held*, 1. That this provision is a contract between the State and the bank, limiting the amount of tax on each share of the stock. 2. That a subsequent revenue law of the State, imposing an additional tax on the shares in the hands of stockholders, impairs the obligation of that contract, and is void. *Farrington* v. *Tennessee*, 679.

CONTRACTS. See *Admiralty*, 1; *Agent*, 1–3; *Constitutional Law*, 2–6, 8, 9; *Court of Claims*, 1; *Lands, Contract for Conveyance of*, 1–3; *Lands, Contract for Sale of*, 1; *Life Insurance*, 9; *Parol Evidence*, 1; *Wharfage*, 1–3.
1. A., having a claim against the government under his contract with the Navy Department for building the iron-clad steam-battery "Etlah," executed to B. a power of attorney authorizing him to sue for, recover, and receive all such sum or sums of money, debts, goods, wares, and other demands whatsoever, and especially payments that were or would be due on his contract for building the "Etlah," with full power in and about the premises; to have, use, and take all lawful means and ways in his name for the purposes aforesaid; and to make acquittances or other sufficient discharges for him and in his name, and generally to do all other acts necessary and lawful to be done in and about the premises. The contract fixed the amount to be paid for the battery, and provided for its completion and delivery within eight months from June 24, 1863. For every month that the delivery might be made earlier than the time fixed, the contractor should receive $4,500, and for every month later he should pay a like sum. It also provided that the department might, at any time during the progress of the work, make such alterations and additions to the plans and specifications as it might deem necessary and proper, the extra expense caused thereby to be paid at fair and reasonable rates, to be determined when the changes were

CONTRACTS (*continued*).

directed to be made. The battery was finished for delivery in November, 1865, and the proper authorities of the department certified that the extra work and materials, rendered necessary in making the alterations and additions that were ordered, amounted to $116,111. A portion of that sum having previously been paid, a voucher, in favor of A., for $26,653.17, "being the full and final payment on all extras, and in full for all claims and demands for that work," was approved by the department April 24, 1866, and paid May 11 following to B., who, under his power of attorney, receipted it in full. A.'s assignee, asserting that the extra work amounted to $172,273.55, brought suit in the Court of Claims to recover the excess over the amount paid, and $118,283.30 alleged to be due, irrespective of extras, on account of an increase in the price of labor and materials during the time that the completion of the vessel was delayed by reason of such alterations and additions. *Held*, 1. That the power of attorney authorized B. to accept payment of the voucher, which upon its face declared it was the last and full payment for the extra work, and that his acceptance bound A., and barred a recovery for such work. 2. That the United States is not liable to A. for the increased cost of the labor and materials. *Chouteau* v. *United States*, 61.

2. The court, in construing the contract between the parties to this suit, holds that the company is not bound to deliver the stipulated new bonds until all the construction bonds which are still outstanding shall be surrendered to it, or due proof made of the loss of such as cannot be produced, and adequate security offered to indemnify the company against liability to any adverse claimant. *Railway Company* v. *Stewart*, 279.

3. The parties in interest will then be entitled to a performance of the contract by the company, notwithstanding a decree by consent and in part performance of the contract has been rendered by the District Court of the first judicial district of the State of Kansas, sitting within and for the county of Leavenworth, directing a cancellation of the construction bonds and a discharge of the mortgage securing them. *Id.*

4. Where, at the time of making and indorsing a promissory note, a written contract in relation thereto is entered into by the parties, parol testimony varying or contradicting its terms is not admissible. *Brown* v. *Spofford*, 474.

5. The act of Congress approved June 2, 1862 (12 Stat. 411), which makes it the duty of the Secretary of War, the Secretary of the Navy, and the Secretary of the Interior to require every contract made by them severally on behalf of the government, or by officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties, is mandatory, and in effect prohibits and renders unlawful any other mode of making the contract. *Clark* v. *United States*, 539.

CONTRACTS (*continued*).

6. Where, however, a parol contract has been wholly or partly executed on one side, the party performing will be entitled to recover the fair value of his property or services as upon an implied contract for a *quantum meruit*. *Id.*

7. In the present case, the contract for the use of the claimant's vessel, and for the payment of her value if she should be lost in the service of the government, was not reduced to writing. When in that service she was manned by a captain and crew furnished by the Quartermaster's Department and lost; but no negligence was attributed to them. *Held*, that the implied contract being such as arises upon a simple bailment for hire, the claimant cannot recover for her loss. *Id.*

8. No question having been raised as to the claimant's title to the vessel, and there being no suggestion of any concealment or suppression of the truth on his part at the time the agreement to compensate him for the use of her was made, she being then in Mexican waters, it would be bad faith on the part of the government, after getting her within its jurisdiction and into its possession, under the pretence of hiring her, to set up that the claimant, having obtained her from the Confederate government in 1863 in payment for supplies furnished to the Quartermaster's Department of that government, had no valid title to her as against the United States. *Id.*

CONTRIBUTORY NEGLIGENCE. See *Negligence*, 2; *Railway Crossings*, 4.

CONVERSION. See *Bankruptcy*, 12.

CONVEYANCE. See *Lands, Contract for Conveyance of*, 1–3.

CORPORATIONS. See *Bankruptcy*, 8; *Constitutional Law*, 2–6, 8, 9; *Creditors; Demand of Payment; Process, Service of*, 7–10; *Stockholders*, 2–5.

CORPORATIONS, EXECUTION OR ACKNOWLEDGMENT OF A DEED BY. See *Acknowledgment*, 3.

COSTS. See *Admiralty*, 5–8.

COUNSEL, APPEARANCE BY. See *Practice*, 2.

COURT AND JURY. See *Bankruptcy*, 7; *Bills of Exchange and Promissory Notes*, 2; *Life Insurance*, 3–5; *Practice*, 9, 10.

1. It belongs to the judge to exercise discretion as to the style and form in which he expounds the law and comments upon the facts. His duty is discharged if his instructions to the jury correctly state, although not in the *ipsissima verba* of counsel, the whole law applicable to the case. *Continental Improvement Company* v. *Stead*, 161.

2. To instruct upon assumed facts, to which no evidence applies, is error. *Railroad Company* v. *Houston*, 697.

COURT OF CLAIMS. See *Claims against the United States*, 5–7; *Jurisdiction*, 6.

1. To constitute an implied contract with the United States for the payment of money upon which an action will lie in the Court of Claims, there must have been some consideration moving to the United States, or they must have received the money charged with a duty to pay it over; or the claimant must have had a lawful right to it when it was received, as in the case of money paid by mistake. No such implied contract with the United States arises with respect to moneys received into the treasury as the proceeds of property forfeited and sold under the confiscation act of July 17, 1862 (12 Stat. 589). *Knote* v. *United States*, 149.
2. The act of Feb. 24, 1855 (10 Stat. 612), establishing the Court of Claims, is not an enabling act, nor does it expressly or by necessary implication repeal any of the provisions of the act of Feb. 26, 1853 (id. 170), or make claims assignable which before its enactment were incapable of assignment. *United States* v. *Gillis*, 407.
3. The forms of pleading in the Court of Claims do not preclude a claimant from recovering what is justly due him upon the facts stated in his petition, although there be no count in the petition as upon an implied contract. *Clark* v. *United States*, 539.

COURTS OF THE UNITED STATES. See *Constitutional Law*, 7; *Judicial Comity*, 2.

CREDITORS. See *Bankruptcy*, 1–7; *Set-Off*, 3.

Quære, Can a creditor of a dissolved corporation, who has not recovered a judgment and exhausted his remedies at law, proceed in equity to subject choses in action to the payment of his demand? *Terry* v. *Anderson*, 628.

CRIMINAL LAW.

1. An act which is not an offence at the time it is committed cannot become such by any subsequent independent act of the party with which it has no connection. Accordingly, that part of sect. 5132, Rev. Stat., which declares that every person respecting whom proceedings in bankruptcy are commenced, either upon his own petition or that of a creditor, who, within three months before their commencement, obtains goods upon false pretences with intent to defraud, shall be punished by imprisonment, is inoperative to render the act an offence, because its criminal character is to be determined by subsequent proceedings, which, at the time the goods were so obtained, may not have been in his contemplation, and may be instituted, against his will, by another. *United States* v. *Fox*, 670.
2. It is competent for Congress to enforce, by suitable penalties, all legislation necessary or proper to the execution of powers with which it is intrusted; and any act committed with a view of evading such legislation, or fraudulently securing its benefits, may be made an

CRIMINAL LAW (*continued*).

offence against the United States. But it is otherwise, when an act committed in a State has no relation to the execution of a power of Congress, or to any matter within the jurisdiction of the United States. *Id.*

DAMAGES. See *Admiralty*, 5–8; *Letters-Patent*, 8; *Life Insurance*, 15, 16.

Where a military officer seizes goods upon the ground that they are in the Indian country contrary to law, and it appears that the place where the seizure was made was not, in fact, in that country, he is liable to an action as a trespasser; and the difference between their value at the place where they were taken and the place where they were returned to the owners is the proper measure of damages. *Bates* v. *Clark*, 204.

DEATH, PROOFS OF. See *Life Insurance*, 210.

DECREE. See *Bill of Review*, 1–3; *Consent Decree; Jurisdiction*, 3–5; *Mexican Land Grants*, 2; *Process*, *Service of*, 10; *Trustee*, 5.

DECREE FOR CARRYING OUT A SETTLEMENT AND COMPROMISE OF A SUIT.

A decree for carrying out a settlement and compromise of a suit, if obtained without fraud, cannot be impeached. *Thompson* v. *Maxwell*, 391.

DEED. See *Acknowledgment*, 1–3; *Bills of Exchange and Promissory Notes*, 1; *Lands*, *Contract for Conveyance of*, 2; *Trustee*, 1, 2.

Where the records of the proper office showed that in 1866, when a deed of trust was executed to secure the payment of certain promissory notes, there was no prior incumbrance upon the land, — *Held*, that a party claiming under a deed executed and recorded in 1848, which he alleges was intended to embrace the same land, but which misdescribes it, which misdescription was not asserted in any judicial proceeding, nor notice thereof given before action commenced by the holders of said notes to enforce their trust, is not entitled to have his deed reformed against their intervening rights. *New Orleans Canal and Banking Company* v. *Montgomery*, 16.

DELIVERY. See *Common Carrier*, 1–3.

DEMAND OF PAYMENT.

Where a corporation is insolvent, and has no funds at the place where its bonds are payable, demand of payment at such place need not be made before suit brought to foreclose its mortgages executed to secure the bonds. *Shaw* v. *Bill*, 10.

DEMURRER. See *Bill of Review*, 2; *Pleading*, 4.

DEVASTAVIT. See *Bankruptcy*, 10.

DEVISE. See *Uses and Trusts*, 1–3; *Will*.

DILIGENCE. See *Common Carrier*, 4 ; *Railway Crossings*, 1–3.

DISTANCES AND QUANTITIES. See *Metes and Bounds.*

DISTILLED SPIRITS. See *Internal Revenue*, 5, 7.

DISTRICT OF COLUMBIA. See *Estate at Will.*

1. The statute of 43 Eliz., c. 4, was purely remedial and ancillary. It was never in force in the District of Columbia; and the validity of charitable endowments, and the jurisdiction of courts of equity over them, does not depend upon it. *Ould* v. *Washington Hospital for Foundlings*, 303.
2. Under sect. 827 of the Revised Statutes of the United States relating to the District of Columbia, persons severally liable upon the same obligation or instrument, including the parties to promissory notes, may all or any of them, at the option of the plaintiff, be included in the same action. *Burdette* v. *Bartlett*, 637.

DOCUMENTARY EVIDENCE. See *Confirmatory Act of Congress*, 2.

DUE PROCESS OF LAW.

1. The revenue laws of a State may be in harmony with the Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deprive any person of life, liberty, or property without due process of law, although they do not provide that a person shall have an opportunity to be present when a tax is assessed against him, or that the tax shall be collected by suit. *McMillen* v. *Anderson*, 37.
2. A statute which gives a person against whom taxes are assessed a right to enjoin their collection, and have their validity judicially determined, is due process of law, notwithstanding he is required, as in other injunction cases, to give security in advance. *Id.*
3. The act of the General Assembly of the State of Pennsylvania, entitled "An Act relating to roads, highways, and bridges," approved July 13, 1836, makes ample provision for judicial inquiry in the matters therein mentioned, and is due process of law, within the meaning of the Federal Constitution. *Pearson* v. *Yewdall*, 294.
4. The term, "due process of law," when applied to judicial proceedings, means a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a competent tribunal to pass upon their subject-matter; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or by his voluntary appearance. *Pennoyer* v. *Neff*, 714.

DURESS.

The coercion or duress which will render a payment involuntary must consist of some actual or threatened exercise of power possessed, or

DURESS (*continued*).
believed to be possessed, by the party exacting or receiving the payment, over the person or property of another, from which the latter has no other means of immediate relief than by making payment. *Radish* v. *Hutchins*, 210.

EJECTMENT. See *Mexican Land Grants*, 4.

ELECTORS. See *Municipal Bonds*, 1–3.

ENROLLED AND LICENSED STEAMBOATS. See *Wharfage*, 4.

EQUITY. See *Creditors; Lands, Contract for Conveyance of*, 1–3; *Uses and Trusts*, 2.

1. A court of equity will not relieve against a judgment at law, where the party seeking its aid has been guilty of laches or fault. *Brown* v. *County of Buena Vista*, 157.
2. Whether the time which has elapsed since the discovery of the fraud, set up as the ground of relief, be sufficient to bar the remedy, is a question to be determined by the sound discretion of the court. *Id.*

EQUITY OF REDEMPTION. See *Bankruptcy*, 2.

ESTATE AT WILL.
Under the laws of Maryland prevailing in the District of Columbia, an interest in lands made by livery and seisin only, or by parol, except leases not exceeding the term of three years, has only the force and effect of an estate at will. *Williams* v. *Morris*, 444.

ESTOPPEL. See *Bankruptcy*, 7; *Contracts*, 1; *Letters-Patent*, 4; *Passenger for Hire*.

EVIDENCE. See *Authentication of Records and Judicial Proceedings; Confirmatory Act of Congress*, 2; *Experts; Internal Revenue*, 3, 4; *Life Insurance*, 3, 4; *Statute of Frauds*, 1.

EXECUTORS, PETITION BY, FOR REMOVAL OF CAUSES. See *Removal of Causes*, 3, 4.

EXECUTORY TRUST. See *Uses and Trusts*, 1.

EXEMPTION FROM LIABILITY TO SUIT. See *Indian Country*, 1, 2.

EXPERTS.
The testimony of experts is admissible in determining an issue involving a question of nautical skill. *Transportation Line* v. *Hope*, 297.

FEES. See *Registers of Land-Offices, Fees of*, 1, 2.

FERMENTED OR MALT LIQUORS. See *Internal Revenue*, 2, 3.

FINAL DECREE. See *Jurisdiction*, 3, 4.

FINAL JUDGMENT. See *Jurisdiction*, 1, 2.

FINDINGS OF FACT. See *Record*, 1, 2.

FIRE INSURANCE. See *Insurance.*

FORECLOSURE. See *Bankruptcy*, 2; *Demand of Payment; Mortgage*, 1; *Practice*, 2.

FOREIGNER. See *Rebellion, The*, 1.

FORFEITURE. See *Life Insurance*, 7, 8.

FRANCHISES, TRANSFER OF. See *Municipal Bonds*, 10.

FRAUD. See *Bankruptcy*, 9, 10; *Decree for Carrying out a Settlement and Compromise of a Suit; Equity*, 2.

FRAUDS, STATUTE OF. See *Statute of Frauds.*

FRAUDULENT CONVEYANCE.

Where property is conveyed to a wife in fraud of her husband's creditors, a judgment *in personam* for its value cannot be taken against her, nor, in case of her death, against her executors. *Phipps* v. *Sedgwick*, 3.

FRAUDULENT PREFERENCE. See *Bankruptcy.*

FREE PASS. See *Passenger for Hire.*

GEORGIA. See *Constitutional Law*, 19, 20; *Statute of Limitations*, 1.

The provisions of the Code of Georgia are in harmony with the rule that a bill of exceptions, allowed and signed or sealed by the judge, is the only mode by which his rulings during the progress of a trial, or his charge to the jury, can be rendered a part of the record. *Insurance Company* v. *Lanier*, 171.

GRANT. See *Public Lands*, 1–4.

GRANTOR IN A DEED, ACKNOWLEDGMENT BY. See *Acknowledgment*, 1–3.

GUARANTY. See *Municipal Bonds*, 12, 13.

HOMICIDE. See *Life Insurance*, 15, 16.

HUSBAND AND WIFE. See *Assignee in Bankruptcy*, 1; *Judgment.*

IMPLIED CONTRACT. See *Contracts*, 6, 7; *Court of Claims*, 1; *Pleading*, 5.

IMPORTS, DUTIES ON.

1. The act of Congress approved June 6, 1872 (17 Stat. 230), does not repeal the provisions in the acts of March 2, 1861 (12 id. 189), Aug. 5, 1861 (id. 293), and July 14, 1862 (id. 555), imposing duties on japanned, patent, or enamelled leather or skins. *Movius* v. *Arthur*, 144.
2. It is a general rule in the construction of revenue statutes that specific provisions for duties on a particular article are not repealed or affected by the general words of a subsequent statute, although the language is sufficiently broad to cover that article. *Id.*

IMPORTS, DUTIES ON (*continued*).

3. The expression "not herein otherwise provided for," in the act of June 6, 1872, *supra*, has reference to the provisions of that act, and not to those of some previous act. *Id.*
4. Certain goods were imported in November, 1869, and stored in a bonded warehouse until March 20, 1871, when they were withdrawn for consumption. *Held*, that, having so remained in such warehouse, they were, under the act of March 14, 1866 (14 Stat. 8), subject to the additional duty of ten per cent thereby imposed. *Fabbri* v. *Murphy*, 191.

INDEMNITY. See *Insurance*, 5.

INDIAN COUNTRY.

1. In the absence of any different provision by treaty or by act of Congress, all the country described by the first section of the act of June 30, 1834 (4 Stat. 729), as Indian country, remains such only as long as the Indians retain their title to the soil. *Bates* v. *Clark*, 204.
2. Whatever may be the rule in time of war and in the presence of actual hostilities, military officers can no more protect themselves than civilians, for wrongs committed in time of peace under orders emanating from a source which is itself without authority in the premises. Hence a military officer, seizing liquors supposed to be in Indian country when they are not, is liable to an action as a trespasser. *Id.*

INDIVIDUAL LIABILITY. See *Statute of Limitations*, 1, 2; *Stockholders.*

INFRINGEMENT. See *Letters-Patent*, 2, 3, 8; *Practice*, 6.

INJUNCTION. See *Due Process of Law*, 2; *Practice*, 5.

INSANITY. See *Life Insurance*, 3–5.

INSOLVENCY. See *Bankruptcy; Demand of Payment.*

INSURABLE INTEREST. See *Insurance*, 4, 5.

INSURANCE. See *Life Insurance.*

1. A policy of insurance on a vessel at and from Honolulu, *via* Baker's Island, to a port of discharge in the United States, contained a clause, "the risk to be suspended while vessel is at Baker's Island loading." *Held*, in view of the circumstances which must be supposed to have appeared to the parties at the time of making the contract, that the meaning of the clause is that the risk was to be suspended while the vessel was at Baker's Island for the purpose of loading, whether actually engaged in the process of loading or not. *Reed* v. *Insurance Company*, 23.
2. A policy of insurance for one year, issued Sept. 2, 1864, upon certain goods then in a store at the city of Glasgow, Mo., contained the following stipulation: "*Provided always*, and it is hereby declared,

INSURANCE (*continued*).

that the company shall not be liable to make good any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power." At an early hour on the morning of the fifteenth day of October, 1864, an armed force of the rebels, under military organization, surrounded and attacked the city. It was defended by Colonel Harding and the forces of the United States under his command, and a battle between them and the rebel forces continued for many hours. When it became apparent to Colonel Harding that the city could not be successfully defended, he, in order to prevent the military stores deposited in the city hall from falling into the possession of the rebel forces, set fire to the city hall. It, with its contents, was consumed. Without other interference, agency, or instrumentality, the fire spread to the building next adjacent to the city hall, and from building to building through two other intermediate buildings to the store containing the goods insured, and destroyed them. During this time, and until after the fire had consumed such goods, the battle continued, and no surrender had taken place, nor had the rebel forces, nor any part thereof, entered the city. *Held*, that the fire which destroyed the goods was excepted from the risk undertaken by the insurers. *Insurance Company* v. *Boon*, 117.

3. A policy, issued to an express company, insuring goods and merchandise in its care for transportation while on board cars or other conveyances, contained the following provision: "It is a further condition of this insurance, that no loss is to be paid in case of collision, except fire ensue, and then only for the loss and damage by fire. And that no loss is to be paid arising from petroleum or other explosive oils." Certain goods in the possession of the company, and in the course of transportation by it, were in an express freight-car, forming part of a railway train, which collided with another train composed mainly of oil-cars loaded with petroleum. Immediately upon the collision, the petroleum burst into flames, which enveloped and destroyed the freight-car and the goods. *Held*, that the loss thereby sustained by the express company was not covered by the policy. *Insurance Company* v. *Express Company*, 227.

4. The owner in fee of land and of the buildings thereon, to whom has been issued a policy of fire insurance, which provides that "if the interest of the assured in the property be any other than the entire, unconditional, and sole ownership of the property for the use and benefit of the assured, or if the buildings insured stand on leased ground, it must be so represented to the company, and so expressed in the written part of the policy, otherwise the policy shall be void," is entitled, upon their destruction by fire, to recover on his policy, although, at the time it was issued, there was an outstanding lease for years of the land to a third party, which fact was neither so

INSURANCE (*continued*).
represented to the company nor expressed in the written part of the policy. *Insurance Company* v. *Haven*, 242.

5. Certain insurance companies insured T. & Co. against loss or damage by fire "upon whiskey, their own or held by them on a commission, including government tax thereon for which they may be liable." They were so liable as sureties on the bond of the distiller in whose warehouse the whiskey was. The whiskey belonged to them, and was destroyed by fire; and the amount of the loss apart from the tax was paid by the companies. The tax was not paid; and, suit having been brought against T. & Co. on their bond, the companies, although thereunto requested, declined to defend it. Judgment was rendered against T. & Co., who thereupon gave in due form a bond which, under the laws of Kentucky, operated to satisfy the judgment; and they brought this action against the companies for the amount thereof. *Held*, 1. That the interest of T. & Co. in the whiskey, by reason of their liability to pay the government tax, was an insurable one. 2. That the policy was intended to furnish indemnity against that liability, as well as to insure the interest which, at the time of the loss, they had as owners of the whiskey. 3. That the companies are liable to them for the amount of the judgment so rendered. *Insurance Companies* v. *Thompson*, 547.

6. When a party states, in his application for an insurance, that he has made a just, full, and true exposition of all material facts and circumstances in regard to the condition, situation, value, and risk of the property, so far as known to him, and the application is expressly made a part of the policy, should it afterwards appear that he overestimated the value of the property, the policy would not be vitiated, unless it be shown that the estimate was intentionally excessive. *National Bank* v. *Insurance Company*, 673.

7. When a policy contains contradictory provisions, or is so framed as to render it doubtful whether the parties intended that the exact truth of the applicant's statements should be a condition precedent to any binding contract, that construction which imposes upon the assured the obligations of a warranty should not be favored. *Id.*

8. The policy having been prepared by the insurers, it should be construed most strongly against them. *Id.*

INSURED, REPRESENTATIONS BY THE. See *Insurance*, 6, 7; *Life Insurance*, 9, 10.

INTEREST. See *Admiralty*, 5–8.

INTERLOCUTORY DECREE. See *Jurisdiction*, 3.

INTERMEDIATE CARRIER. See *Common Carrier*, 1–3.

INTERNAL REVENUE. See *Pleading*, 6.

1. A railroad company paid to the holders of its bonds the entire amount of semiannual interest accruing thereon from Jan. 1 to July 1, 1870.

INTERNAL REVENUE (*continued*).

Held, that the proper internal revenue officer of the United States rightfully assessed against the company a tax of five per cent upon the amount so paid. *Railroad Company* v. *Rose*, 78.

2. A manufacturer of fermented liquors, from whom taxes had been collected under a second assessment, was, in order to recover them, required by the act of July 13, 1866 (14 Stat. 111, Rev. Stat., sect. 3225), to show that his return did not contain any understatements; and he should, therefore, prove that it agreed with the quantity of liquor actually drawn from the fermenting vessels. *Bergdoll* v. *Pollock*, 337.
3. For that purpose, although not, under all circumstances, necessarily conclusive for or against the government, his books, if kept as the law requires, ought to be the best evidence; and, until it is shown that they cannot be produced, or do not contain the desired information, resort cannot be had to the recollection or knowledge of witnesses as to circumstances bearing upon the ultimate fact in issue. *Id.*
4. *Quære*, Does the act entitled "An Act to define the tax on fermented or malt liquors," approved May 13, 1876 (19 Stat. 53), change any rule of evidence theretofore established. *Id.*
5. Distilled spirits, owned by and found upon the premises of a rectifier or wholesale liquor-dealer, cannot be seized as forfeited to the United States, under sect. 96 of the "Act imposing taxes on distilled spirits," &c., approved July 20, 1868 (15 Stat. 164), because such rectifier or wholesale liquor-dealer has knowingly and wilfully neglected, omitted, or refused to cause packages of distilled spirits containing more than twenty gallons each, filled for shipment or sale on his premises, to be gauged, inspected, and stamped, in accordance with the provisions of sect. 25 of the same act. *United States* v. *Two Hundred Barrels of Whiskey*, 571.
6. The rules and regulations which the Commissioner of Internal Revenue is authorized by sect. 2 of that act (id. 125) to prescribe, may aid in carrying the law into execution; but they cannot change its positive provisions. *Id.*
7. Sects. 73 and 74 of the act entitled "An Act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July 28, 1868 (15 Stat. 157), were not intended to repeal the rule prescribed by sect. 24 of the act of July 13, 1866 (14 id. 153), as amended by sect. 9 of the act of March 2, 1867 (id. 473), for the allowance of commissions to collectors of internal revenue upon taxes collected by them for articles removed from one district to a bonded warehouse in another district. *United States* v. *Wilcox*, 661.

INTER-STATE COMMERCE. See *Constitutional Law*, 12–18.

INVOLUNTARY PAYMENT. See *Duress*.

JOINT OR SEVERAL OBLIGORS. See *District of Columbia*, 2.

JUDGMENT. See *Equity*, 1; *Jurisdiction*, 1, 2, 4.

JUDGMENT IN PERSONAM. See *Fraudulent Conveyance; Process, Service of*, 2, 4, 5.

Where property is conveyed to a wife in fraud of her husband's creditors, a judgment *in personam* for its value cannot be taken against her, nor, in case of her death, against her executors. *Phipps* v. *Sedgwick*, 3.

JUDICIAL COMITY. See *Process, Service of*, 5.

1. The Supreme Court of Tennessee having decided that the act of the legislature of that State, requiring that all personal property of every kind and nature shall be listed and assessed for taxation, overrides and repeals the previous ordinance of the city of Nashville exempting from municipal taxation certain city bonds, and brings them within the scope of general taxation, that decision is binding upon this court. *Adams* v. *Nashville*, 19.
2. Whilst the courts of the United States are not foreign tribunals in their relations to the State courts, they are tribunals of a different sovereignty, and are bound to give to a judgment of a State court only the same faith and credit to which it is entitled in the courts of another State. *Pennoyer* v. *Neff*, 714.

JUDICIAL PROCEEDINGS. See *Due Process of Law*, 4; *Process, Service of*, 8–10; *Sovereignty*, 1.

JURIDICAL POSSESSION. See *Mexican Land Grants*, 1.

JURISDICTION. See *Bankruptcy*, 2, 8; *Pleading*, 3; *Practice*, 4; *Process, Service of*, 7–10; *Rebellion, The*, 1; *Removal of Causes*, 1–4.

I. Of the Supreme Court.

1. This court has no jurisdiction to revise the action of an inferior court upon the question of either granting or refusing a new trial; and the final judgment of such court cannot be examined through its rulings upon that question. If, when the final judgment is brought here for review by writ of error, no other documents are presented for consideration than such as were before the inferior court upon the application for a new trial, this court cannot look into them; and, if error is not otherwise disclosed by the record, the judgment will be affirmed. *Kerr* v. *Clampitt*, 188.
2. This court must have before it a bill of exceptions, or what is equivalent thereto, upon which the final judgment of the court below was reviewed, or it will not examine into any alleged errors, except such as are otherwise apparent on the face of the record. *Id.*
3. Where the final decree of the Circuit Court is inconsistent with an interlocutory decree granting affirmative relief upon a cross-bill in the same suit, a party adversely affected by such final decree, where the matter in dispute is sufficient, has a right to appeal to this court,

JURISDICTION (*continued*).

which, if withheld, may be enforced by *mandamus*. *Ex parte Railroad Company*, 221.

4. An appeal, where the amount in controversy is sufficient, lies to this court from a decree rendered by the Circuit Court, in the exercise of its appellate jurisdiction, in a suit wherein a bill in equity against the creditors of a bankrupt was filed and prosecuted to a final decree in the District Court by his assignees, who prayed for a sale of his land, and an adjustment of the liens thereon arising from judgment, mortgage, or otherwise. *Milner* v. *Meek*, 252.
5. An appeal does not lie to this court from the decree of a circuit court dismissing, in the exercise of its supervisory jurisdiction under the bankrupt law, an appeal from a district court, and affirming the order appealed from. *Nimick* v. *Coleman*, 266.
6. The decision of the Court of Claims awarding, on the motion of the United States, a new trial, while a claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, cannot be reviewed here. *Young* v. *United States*, 641.
7. In a suit in the Circuit Court, where the defendant pleaded neither a set-off nor a counter-claim, the plaintiff remitted so much of a verdict in his favor as was in excess of $5,000, and took judgment for the remainder "in coin." The defendant sued out a writ of error. *Held*, that the amount in controversy, whether payable in coin or any other kind of money, is not sufficient to give this court jurisdiction. *Thompson* v. *Butler*, 694.
8. The District Court, in the exercise of its jurisdiction, under an act entitled "An Act to ascertain and settle the private land claims in the State of California," approved March 3, 1857 (9 Stat. 631), rendered a decree Nov. 12, 1859, rejecting the claim of A. He died Jan. 22, 1869, and his executrix was, by an order of the court entered April 3, 1875, permitted to become the party claimant of the land. She thereupon moved for a new trial and the reversal of the decree. The motion was overruled; and, on the same day, an appeal was allowed her from the decree and from the order refusing a new trial. *Held*, 1. That the appeal from the decree was not taken in time. 2. That no appeal lies from the order refusing a new trial. *Cambuston* v. *United States*, 285.

II. Of the Circuit Courts.

9. The supervisory and the appellate jurisdiction of the Circuit Court, in cases arising under the bankrupt acts, distinguished. *Milner* v. *Meek*, 252.

JURY. See *Court and Jury*.

LACHES. See *Equity*, 1, 2; *Lands*, *Contract for Conveyance of*, 3.

1. The ruling in *Osborne* v. *United States*, 19 Wall. 577, reaffirmed and applied to this case. *Hart* v. *United States*, 316.
2. The United States is not responsible for the laches or wrongful acts of

LACHES (*continued*).

its officers; and where it takes an official bond, the obligors are conclusively presumed to execute it with a full knowledge of that principle of law, and to consent to be dealt with accordingly. *Id.*

LANDS, CONTRACT FOR CONVEYANCE OF.

1. A contract for the conveyance of lands, which a court of equity will specifically enforce, must be certain in its terms; and the certainty required has reference both to the description of the property and the estate to be conveyed. Accordingly, where the property could not be identified, specific performance was denied *Preston* v. *Preston*, 200.
2. Where one having such a contract permitted the other party to execute a deed of trust of the lands to a trustee to secure certain indebtedness, with a power to sell them, if necessary, for the payment of such indebtedness, — *Held*, that he had waived his right to the conveyance, or, at least, had subordinated it to the interest of the trustee and the purchasers under him. *Id.*
3. The delay of a party in taking proceedings to enforce such a contract for a period which would bar an action at law for the property is, except under special circumstances, such laches as disentitle him to the aid of a court of equity. *Id.*

LANDS, CONTRACT FOR SALE OF.

1. The court applies to this case the doctrines announced in *Barry* v. *Coombe*, 1 Pet. 640, and *Purcell* v. *Miner*, 4 Wall. 513, as to what must be set forth in a written contract for the sale of lands, and what is sufficient part performance of a parol contract for such sale to take it out of the Statute of Frauds. *Williams* v. *Morris*, 444.
2. There is nothing in this case to bring it by analogy within the Statute of Limitations which govern courts of law. *Id.*

LANDS OCCUPIED BY THE UNITED STATES FOR MILITARY PURPOSES. See *Confirmatory Act of Congress*, 1–4.

LEASE. See *Insurance*, 4.

LEGACY. See *Will*, 4.

LEGISLATIVE CONSTRUCTION.

Congress has given a legislative construction to the act of Feb. 26, 1853 (10 Stat. 170), by including and re-enacting it in sect. 3477 of the Revised Statutes. *United States* v. *Gillis*, 407.

LEGISLATIVE INTENT. See *Constitutional Law*, 2–5.

LETTERS-PATENT. See *Practice*, 6.

1. Letters-patent No. 56,801, issued July 31, 1866, to William Roemer, for an improvement in travelling-bags, cannot be sustained, as the thing patented was, before his alleged invention, known and extensively used by others in this country. *Roemer* v. *Simon*, 214.

LETTERS-PATENT (*continued*).

2. The manufacture of round or cylindrical bars flattened and drilled at the eye, for use in the lower chords of iron truss bridges, is not an infringement of letters-patent for an improvement in such bridges where the claim in the specification describes the patented invention as consisting in the use of wide and thin drilled eye-bars applied on edge. *Keystone Bridge Company* v. *Phœnix Iron Company*, 274.
3. Although one of the patents under consideration in this suit embraced the use of wide and thin bars, upset and widened at the ends by compression to give additional strength, it does not claim that process. Therefore, the use of round or cylindrical bars strengthened in a similar manner is not an infringement of the patent. *Quære*, Would such a process have been patentable? *Id.*
4. A patentee, in a suit upon his patent, is bound by the claim therein set forth, and cannot go beyond it. *Id.*
5. In reissued letters-patent No. 1515, granted to Paul Dennis Aug. 4, 1863, for a new and useful improvement in cultivators, the second claim in the specification is for a combination of the beam and the mould-board with the adjustable wheel, of which combination the adjustable wheel is an essential element. *Eddy* v. *Dennis*, 560.
6. The first claim does not cover an inclined shovel mould-board simply, nor the principle of passing the earth over the recess of the plow into the furrow behind, or passing it over a recess formed exclusively with a curved edge. Its effect is to provide for that which is not novel; viz., a recess cut or carved out for the purpose intended. *Id.*
7. There is no evidence in this case to show that, by passing the earth through a recess in the mould-board formed by curved lines, any advantage is obtained over passing it through one formed by right lines. *Id.*
8. There having been no infringement by the defendants of the rights of the complainant, the question of his measure of damages does not arise here. *Id.*

LIBEL IN PERSONAM. See *Admiralty*, 1.

LIEN. See *Jurisdiction*, 4; *Life Insurance*, 6; *Practice*, 8; *Wharfage*, 1–3.

LIFE INSURANCE.

1. By a policy upon the life of A., for the benefit of his wife, an insurance company promised to pay her a certain sum, "for her sole and separate use and benefit, ninety days after due notice and satisfactory evidence of the death of the said A., and of the just claim of the assured (or proof of interest, if assigned or held as security), under this policy, has been received and approved by the company." *Held*, that the words "just claim of the assured" have reference to

LIFE INSURANCE (*continued*).
her claim or title to the policy, and not to the justness of her cause of action thereon. *Insurance Company* v. *Rodel*, 232.
2. A fact, disclosed by the proofs of the death of the insured furnished to the company, which might be set up as a defence to a suit on the policy, does not derogate from their sufficiency, nor bar the bringing of such suit. *Id.*
3. Where a policy provides that it shall be void if the insured shall "die by his own hand," the court should not take from the jury, as insufficient to sustain a recovery, evidence tending to show that he was insane when he committed the act which caused his death. The weight of the evidence is for the jury to pass upon, although the court may, in its discretion, express its opinion thereon. *Id.*
4. The testimony of ordinary persons as to the conduct, manner, and appearance of the insured, and to the impressions thereby made upon them, is competent to go to the jury upon the question of his insanity. *Id.*
5. The charge of the court below upon that question, being in the language sanctioned and approved in *Life Insurance Company* v. *Terry*, 15 Wall. 580, was not erroneous. *Id.*
6. Upon consideration of the facts of this case, and the order of business of the insurance company touching paid-up policies, where the premiums have been partially paid, the court holds that the assured, having elected to discontinue the payment of premiums, is entitled to a paid-up policy *pro tanto*, without paying her note to the company for part premiums, but that the note will be a lien on such policy, and, with interest, less the accruing dividends of profits, must, when the policy becomes payable, be deducted from the amount thereof. *Insurance Company* v. *Dutcher*, 269.
7. A. took out a policy of insurance upon the life of her husband. The premium was payable annually on the first day of November. The policy stipulated for the payment of the amount of the insurance within sixty days after due notice and proof of the death of the insured, subject, however, to certain express conditions. One of these conditions provided, that, if the premiums were not paid on or before the days mentioned for their payment, the company should not be liable for the sum insured, or any part of it, and that the policy should cease and determine. Another condition provided, that, if the insured resided in any part of the United States south of the 33d degree of north latitude, except in California, between the 1st of July and the 1st of November, without the consent of the company previously given in writing, the policy should be null and void. The policy declared that agents of the company were not authorized to make, alter, or discharge contracts, or waive forfeitures; but the company, notwithstanding this provision, sent renewal receipts signed by its secretary; and their use, when countersigned by its local manager and cashier, was subject entirely to

LIFE INSURANCE (*continued*).

the judgment of its local agent. It was his habit to give such receipts whenever the premiums were paid after the time stipulated. His mode of dealing with persons taking out policies at the local office, his use of renewal receipts, his acceptance of premiums after the day on which they were payable, were all known to the home company, and it retained the premiums thus received. The insured died at the city of New Orleans on the 11th of November, 1872. Between the 1st of July and the 1st of November of that year he had resided at that city, which is south of the 33d degree of north latitude, without the knowledge or the previous consent in writing of the company; and the annual premium due at the latter date was not paid until ten days thereafter. A friend then paid it to the agent, and took from him a renewal receipt, but made no mention of the residence of the insured, who died the same day from yellow fever contracted in that district. The agent, on learning the fact, at once informed the company, and was immediately instructed by telegraph to tender the premium to the party paying, and demand the receipt. He did so; but the tender was not accepted, nor the receipt surrendered. *Held*, 1. That the company, by the agent's receipt of the premium, waived the forfeiture for non-payment at the stipulated time, but not the forfeiture incurred by the residence of the insured within the prohibited district. 2. That the company, having promptly tendered the return of the premium and demanded the surrender of its receipt, was not liable on its policy. *Insurance Company* v. *Wolff*, 326.

8. A waiver can only be justly claimed by the assured where the course of dealing by the company has been such as to induce his action; and the company should be apprised of the facts which create the forfeiture, and of those which will necessarily influence its judgment in consenting to waive it. *Id.*

9. A policy of life insurance, dated July 16, 1869, stipulated for the payment of the annual premium on or before twelve o'clock on the sixteenth day of July in every year; and provided that, in case it should not be paid on or before the day mentioned, at the home office of the company, or to agents when they produced receipts signed by the president or the treasurer, then, and in every such case, the company should not be liable to the payment of the sum insured, or any part thereof, and that the policy should cease and determine. The premium due July 16, 1870, was not paid when due. On the 1st of October following, the insured made application for the reinstatement of the policy to the company, paid the premium, received the agent's receipt therefor, and gave the latter his certificate of health and his certificate of examination, signed by the physician of the company, which were forwarded to it at its home office. The renewal receipt, bearing date July 16, 1870, was, Oct. 12, sent by the company to the agent, who delivered it on the 14th to the insured,

LIFE INSURANCE (*continued*).

without inquiry or information as to his health. *Held*, that the representations of the insured as to the condition of his health on the 1st of October, when he applied for the reinstatement of his policy, and paid the premium, were not continuous until the 14th of that month; and that the contract was consummated on the day when the premium was paid. *Insurance Company* v. *Higginbotham*, 380.

10. The ruling in *Insurance Company* v. *Newton*, 22 Wall. 32, touching the effect, as admissions for or against an insurance company, of facts set forth in the preliminary proofs of death, reaffirmed. *Id.*
11. *New York Life Insurance Company* v. *Statham et al.*, 93 U. S. 24, reaffirmed. *Insurance Company* v. *Davis*, 425.
12. Where, as in this case, the legal effect of a policy of insurance is that the premiums shall be paid to the company at its domicile, the indorsement on the margin of the instrument, that "all receipts for premiums paid at agencies are to be signed by the president or actuary" of the company, is not an agreement on its part to vary the condition of the contract, and to make any particular agency the legal place of payment, but is merely a notice to the assured that he must not pay to an agent, or at an agency, without getting a receipt signed by the president or actuary. *Id.*
13. A resident of Virginia, who had been before the war a local agent of a Northern insurance company, refused to receive the renewal premium, due Dec. 28, 1861, tendered him upon a policy of insurance upon the life of a resident of that State. His refusal was based upon the ground that he had received no renewal receipts from the company, without which he could not receive the premium, and that the money, if received, would be liable to confiscation by the Confederate government. The evidence further failed to show that the company had consented to his continuing to act as such agent during the war, or that he did so continue. *Held*, that, waiving the consideration of any question in regard to the validity of an insurance upon the life of an alien enemy, such tender of payment did not bind the company. *Id.*
14. The effect of a state of war upon the question of agency discussed. *Id.*
15. A. killed B., upon whose life there was a policy of insurance in favor of a third party. The company paid the insurance, and sued A. for the damages it had sustained by his act. *Held*, that the action does not lie at common law, or under the Civil Code of Louisiana, where the homicide was committed. *Insurance Company* v. *Brame*, 754.
16. That Code gives a right of action against the wrong-doer to certain relatives of the deceased, for injuries to the person resulting in death. At common law, an action for such injuries abates. *Id.*

LIGHTS. See *Admiralty*, 2–4.

LIMITATIONS, STATUTE OF. See *Statute of Limitations*.

LOOKOUT. See *Admiralty*, 2.

LOUISIANA. See *Constitutional Law*, 18, 22, 23; *Life Insurance*, 15, 16.

MAILS. See *Claims against the United States*, 1, 2.

MANDAMUS. See *Jurisdiction*, 3; *Municipal Bonds*, 5.

1. Courts cannot enforce rights depending for their existence upon a prior performance by an executive officer of certain duties which he has failed to perform. *United States* v. *McLean*, 750.
2. A *mandamus* enforces the exercise of an existing power, but does not confer power upon those to whom it is directed. *United States* v. *County of Clark*, 769.
3. Where bonds were not issued prior to Jan. 1, 1874, by a county court in Missouri, in payment of its subscription to the stock of a railroad company, and the special tax of one-twentieth of one per cent, which, after the issue of the bonds, was allowed by law for the specific purpose of providing means to pay the interest on them, was levied for that year, — *Held*, that a *mandamus* to levy and collect such special tax for the years 1872 and 1873 would not lie. *Id.*
4. Where the county court has no authority by law to levy, in addition to said special tax, a county tax exceeding the rate of one-half of one per cent on the valuation of the taxable property in the county, and it appears by the record that the county tax was levied and collected for the year 1874, — *Held*, that there was no error in the refusal of the court below to order a *mandamus* to enforce the collection of such tax. *Id.*

MARINE INSURANCE. See *Insurance.*

MARITIME LIEN. See *Wharfage*, 1–3.

MENOMONEE INDIANS. See *Public Lands*, 3, 4.

METES AND BOUNDS. See *Confirmatory Act of Congress*, 1, 2.

In a description of land, distances and quantities, when inconsistent with metes and bounds, must yield to them. *Morrow* v. *Whitney*, 551.

MEXICAN LAND GRANTS.

1. Under the Mexican law, when a grant of land is made by the government, a formal delivery of possession to the grantee by a magistrate of the vicinage is essential to the complete investiture of title. This proceeding, called, in the language of the country, the delivery of juridical possession, involves the establishment of the boundaries of the land granted, when there is any uncertainty with respect to them. A record of the proceeding is preserved by the magistrate, and a copy delivered to the grantee. *Van Reynegan* v. *Bolton*, 33.
2. Unless the decree of the tribunals of the United States, confirming a claim under such a grant, otherwise limits the extent or the form of the tract, the boundaries thus established should control the officers of the United States in surveying the land. *Id.*
3. A survey, by a surveyor-general of the United States, of a claim thus

MEXICAN LAND GRANTS (*continued*).
confirmed, is inoperative, until finally approved by the Land Department at Washington. *Id.*

4. Where a quantity of land in California was granted by the Mexican government within a tract embracing a larger amount, in the possession of which tract the grantee was placed, he is entitled to retain such possession until that quantity is segregated from the tract by the officers of the government and set apart to him; and he may maintain ejectment for the whole tract, or any portion of it, against parties in possession claiming under the pre-emption laws of the United States. *Id.*

5. Lands claimed under Mexican grants in California are excluded from settlement under the pre-emption laws, so long as the claims of the grantees remain undetermined by the tribunals and officers of the United States. *Id.*

6. Where an act of Congress confirms a Mexican grant of five hundred thousand acres to the extent of eleven square leagues, to be selected within the limits of the claim, according to the lines of the public surveys which the Commissioner of the General Land-Office is directed to cause to be run for the proper location of the quantity confirmed, and provides that the confirmation shall not be legally effective until payment by the confirmee of the expense of so much of the surveys as inure to his benefit, — *Held*, 1. That, until such payment, the confirmee has no title to the eleven square leagues selected pursuant to the act, nor a perfect equitable right to such title, and they are not subject to taxation. 2. That Congress, after the surveys and plats shall have been perfected, may enforce such payment by a sale of the lands, a resumption of the grant, or other appropriate mode. *Colorado Company* v. *Commissioners*, 259.

MILITARY BOUNTY-LAND WARRANTS. See *Registers of Land-Offices, Fees of*, 1, 2.

MILITARY OFFICERS, SEIZURES BY. See *Damages; Indian Country*, 1, 2.

MISSOURI. See *Constitutional Law*, 12–17; *Mandamus*, 3, 4; *Municipal Bonds*, 1–11.

MORTGAGE. See *Assignee in Bankruptcy*, 1, 2; *Bankruptcy*, 1, 2, 7; *Demand of Payment; Jurisdiction*, 4.

A mortgage by a railroad corporation which in terms covers "all the following, present, and in future to be acquired property" of the corporation, naming in the description of such property its engines, cars, and machinery, carries not only the cars, engines, and machinery in existence at the date of the mortgage, but such as take their place or are subsequently added to them by the company and are in existence at the time of the foreclosure. *Shaw* v. *Bill*, 10.

MORTGAGEE. See *Trustee*, 1.

MULTIFARIOUSNESS. See *Pleading*, 4.

MUNICIPAL BONDS. See *Constitutional Law*, 22, 23; *Judicial Comity*, 1; *Mandamus*, 2–4.

1. The provisions of the act of the General Assembly of Missouri, entitled "An Act to facilitate the construction of railroads in the State of Missouri," approved March 23, 1868, commonly known as the "Township Aid Act," which authorize a subscription to the capital stock of railway companies by a township, whenever it appears, by the returns of an election duly called for that purpose, "that not less than two-thirds of the qualified voters of the township voting at such election are in favor of such subscription," are not repugnant to sect. 14, art. 11, of the Constitution of that State, adopted in 1865, which ordains that the General Assembly shall not authorize any county, city, or town to become a stockholder in, or to loan its credit to, any company, association, or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent thereto. *County of Cass* v. *Johnston*, 360.
2. *Harshman* v. *Bates County*, 92 U. S. 569, so far as it conflicts herewith, is overruled. *Id.*
3. All qualified voters who absent themselves from an election held on public notice duly given are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares. *Id.*
4. It is not an objection to the validity of the bonds issued under that act that the railroad company, to the capital stock of which the subscription was made by the county court on behalf of the township, was not incorporated until the day when the election took place. *Id.*
5. On the bonds in question in this suit the judgment was properly rendered by the court below against the county, to be enforced, if necessary, by *mandamus* against the county court or the judges thereof, to compel the levy and collection of a tax in accordance with the provisions of that act. *Id.*
6. The order of the county court of Cass County, Mo., entered upon its records Oct. 20, 1871 (*supra*, p. 377), authorized the execution of the bonds sued on; and they are, in the hands of an innocent holder for value, binding upon the county. *County of Cass* v. *Shores*, 375.
7. Where the charter of a railroad company, granted by Missouri prior to the adoption of the Constitution in 1865, made it lawful for the county court of any county in which any part of the route of said railroad or of its authorized branches might be, or for any county adjacent thereto, to subscribe to the stock of the company, and to issue bonds of the county in payment therefor, the power of the county court so to subscribe did not become subject to the fourteenth

MUNICIPAL BONDS (*continued*).
section of art. 11 of that Constitution, which requires the assent of two-thirds of the qualified voters of the county to such subscription. *County of Henry* v. *Nicolay*, 619.
8. The Supreme Court of that State has decided that the said fourteenth section does not apply to the construction of branch roads authorized by the original charter of a railroad company, but undertaken as an independent enterprise under the act of the legislature of March 21, 1868. *Id.*
9. Where the bonds of a county, issued by the county court in payment of its subscription to the stock of a railroad company, show on their face that they were issued pursuant to a law which authorized their issue without the assent of the qualified voters of the county, given at an election, and there is nothing on them to show that they were not regularly issued, it is not incumbent upon a purchaser of them to inquire whether the company has pursued the regular steps necessary to entitle it to receive them. Where the agents of the company have them for sale, he has a right to presume that they were lawfully entitled to them. *Id.*
10. The fact that subsequently to making the subscription, but before the issue of the bonds, the company transferred its franchises to another company, does not alter the case. *Id.*
11. *County of Scotland* v. *Thomas*, 94 U. S. 682, reaffirmed. *Id.*
12. Where an ordinance of a city, authorizing a contract with a gas company, and the issue to it of bonds of the city, provided that the company should "guarantee the said bonds and assume the payment of the principal thereof at maturity," — *Held*, 1. That the guaranty embraced both the principal and interest of the bonds. 2. That the ordinance contemplated two undertakings by the company, — one, to the bondholder, to answer for the city's liability; and the other to the city, to provide for the payment of the principal of the bonds on their maturity. *New Orleans* v. *Clark*, 644.
13. The indorsement on the bonds by the president of the company, guaranteeing "the payment of the principal and interest" of them, was a compliance with the ordinance and contract as to the guaranty. *Id.*

MUTUAL OBLIGATIONS. See *Set-Off*, 1–3.

NATIONAL BANKS. See *Pleading*, 6.
1. The act of Congress approved June 3, 1864 (13 Stat. 99), was not intended to curtail the power of the States on the subject of taxation, or to prohibit the exemption of particular kinds of property, but to protect the corporations formed under its authority from unfriendly discrimination by the States in the exercise of their taxing power. *Adams* v. *Nashville*, 19.
2. *People* v. *The Commissioners*, 4 Wall. 244, and *Hepburn* v. *The School Directors*, 23 id. 480, cited and approved. *Id.*

NAUTICAL SKILL. See *Experts.*

NAVIGABLE RIVERS. See *Constitutional Law*, 10, 11.

NAVY, OFFICER IN.

1. The words, "after date of appointment" and "from such date," which occur in sect. 1556 of the Revised Statutes, fixing the annual pay of passed assistant-surgeons of the navy, refer not to the original entry of the officer into the service as an assistant-surgeon, but to the notification by the Secretary of the Navy that he has passed his examination for promotion to the grade of surgeon, and will thereafter, until such promotion, be considered as a passed assistant-surgeon. *United States* v. *Moore*, 760.
2. A passed assistant-surgeoncy is an office, and the notification of the Secretary of the Navy is a valid appointment to it. *Id.*

NEGLIGENCE.

1. Negligence may consist in either failing to do what, under the circumstances, a reasonable and prudent man would ordinarily have done, or in doing what he would not have done. *Railroad Company* v. *Jones*, 439.
2. A. was one of a party of men employed by a railroad company in constructing and repairing its roadway. They were usually conveyed by the company to and from the place where their services were required, and a box-car was assigned to their use. Although on several occasions forbidden to do so, and warned of the danger, A., on returning from work one evening, rode on the pilot or bumper of the locomotive, when the train, in passing through a tunnel, collided with cars standing on the track, and he was injured. There was ample room for him in the box-car. All in it were unhurt. *Held*, 1. That, as A. would not have been injured had he used ordinary care and caution, he is not entitled to recover against the company. 2. That the knowledge, assent, or direction of the agents of the company as to what he did at the time in question is immaterial. The company, although bound to a high degree of care, did not insure his safety. *Id.*

NEW TRIAL. See *Jurisdiction*, 1, 6, 8.

NORTH CAROLINA. See *Set-Off*, 1–3.

NOTICE. See *Common Carrier*, 2, 3; *Trustee*, 1.

OFFICIAL BONDS TO THE UNITED STATES. See *Registers of Land-Offices, Fees of*, 1, 2.

1. The ruling in *Osborne* v. *United States*, 19 Wall. 577, reaffirmed, and applied to this case. *Hart* v. *United States*, 316.
2. The United States is not responsible for the laches or the wrongful acts of its officers; and, where it takes an official bond, the obligors

OFFICIAL BONDS TO THE UNITED STATES (*continued*).
are conclusively presumed to execute it with a full knowledge of that principle of law, and to consent to be dealt with accordingly. *Id.*

OHIO. See *Constitutional Law*, 8, 9.

OREGON. See *Process, Service of*, 1–6.

PAID-UP POLICY. See *Life Insurance*, 6.

PARDON AND AMNESTY. See *Confiscation*, 1, 2.

PAROL CONTRACT. See *Contracts*, 6, 7; *Lands, Contract for Sale of*, 1.

PAROL EVIDENCE. See *Bills of Exchange and Promissory Notes*, 3; *Confirmatory Act of Congress*, 1; *Contracts*, 4; *Statute of Frauds*, 1; *Trustee*, 2.

Although a written agreement cannot be varied by proof of the circumstances out of which it grew, and which surrounded its adoption, they may be resorted to for the purpose of ascertaining its subject-matter, and the stand-point of the parties in relation thereto. *Reed* v. *Insurance Company*, 23.

PARTIES. See *Bill of Review*, 3; *Colorado; Pleading*, 1; *Practice*, 3, 8; *Witnesses*, 1; *Writ of Error*, 1, 2.

If the interest and cause of action of the promisees under an agreement be several, each may maintain an action against the promisor. *Beckwith* v. *Talbot*, 289.

PARTITION. See *Pleading*, 4.

PARTNERSHIP, DISSOLUTION OF. See *Pleading*, 4.

PASS. See *Passenger for Hire.*

PASSED ASSISTANT-SURGEON. See *Navy, Officer in*, 1, 2.

PASSENGER FOR HIRE.

A., who was the owner of a patented car-coupling, for the adoption and use of which by a railway company he was negotiating, went, at the request and expense of the company, to a point on its road to see one of its officers in relation to the matter. A free pass was furnished by the company to carry him in its cars. During the passage, the car in which he was riding was thrown from the track, by reason of the defective condition of the rails, and he was injured. *Held*, 1. That the pass was given for a consideration, and that he was a passenger for hire. 2. That, being such, his acceptance of the pass did not estop him from showing that he was not subject to the terms and conditions printed on the back of the pass, exempting the company from liability for any injury he might receive by the negligence of the agents of the company, or otherwise. *Railway Company* v. *Stevens*, 655.

PASSENGERS, TRANSPORTATION OF. See *Constitutional Law*, 9, 18.

PATENT FOR LANDS. See *Confirmatory Act of Congress*, 2.

PATENTS FOR INVENTIONS. See *Letters-Patent.*

PAYMENT. See *Duress.*

PENNSYLVANIA. See *Due Process of Law*, 3.

PERPETUITY. See *Uses and Trusts*, 1–3.

PILOT-BOATS. See *Admiralty*, 2.

1. Like other ships, and subject to all the conditions specified in art. 7, prescribed by Congress (13 Stat. 59), concerning lights, pilot-boats, when at anchor in roadsteads or fairways, are required to exhibit a white light in a globular lantern of eight inches in diameter. *The "Wanata,"* 600.
2. Art. 8 applies to sailing pilot-vessels only when they are under way. *Id.*

PLEADING. See *Bill of Review*, 1, 2.

1. To a bill filed by the assignee in bankruptcy to set aside, as a fraud upon creditors, a conveyance of real and personal property by the bankrupt, the latter is not a necessary party. *Buffington* v. *Harvey*, 99.
2. Where a defence is by way of traverse, it is not error to strike out so much thereof as is not responsive to the allegations of the petition. *Hart* v. *United States*, 316.
3. Where the record shows that a suit brought in a State court was, on the petition of the defendant, and by reason of the character of the parties, duly removed to the proper Circuit Court of the United States, the jurisdiction of the latter court is not lost for want of an averment of citizenship in the bill of complaint originally filed, or in the amendments thereto, which were made in the Circuit Court. *Briges* v. *Sperry*, 401.
4. The bill in this case prayed for a dissolution of the partnership between the parties, and a sale of certain lands by them held as tenants in common, which, it was alleged, were not susceptible of division without prejudice to them. There was no demurrer to the bill, nor did the answer raise any objection to the jurisdiction. *Held*, 1. That, as the allegations of the bill touching the lands conform to the provision of the Code of California, and are sustained by the proofs, the decree below awarding partition was proper. 2. That, if there is any thing in the allegations which concern the partnership, which introduces another matter, the objection should have been taken by demurrer for multifariousness. *Id.*
5. The forms of pleading in the Court of Claims do not preclude a claimant from recovering what is justly due him upon the facts stated in his petition, although there be no count in the petition as upon an implied contract. *Clark* v. *United States*, 539.

PLEADING (*continued*).

6. Under sect. 3177 of the Revised Statutes, authorizing any collector, deputy-collector, or inspector, to enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary for the purpose of examining said articles or objects, the United States brought suit against the cashier of a national bank, having charge of its place of business, where were kept checks drawn upon and paid by it, who refused to permit the collector of the proper district to examine said bank-checks. *Held*, that the declaration was bad in not alleging that the paid checks on the bank remaining in its possession were not duly stamped at the time they were made, signed, and issued. *United States* v. *Mann*, 580.

PLEDGE. See *Bankruptcy*, 11–13.

POLICE POWER OF THE STATES. See *Constitutional Law*, 12–17.

POSTMASTER, DEPUTY, SALARY OF.

1. After the salary of a deputy-postmaster has been fixed, it cannot be increased until a readjustment of it, based upon his quarterly returns, shall have been made by the Postmaster-General. *United States* v. *McLean*, 750.
2. Such readjustment is an executive act, taking effect in all cases prospectively; and, if it be not performed, the law imposes no obligation upon the government to pay an increased salary. *Id.*

POWER OF ATTORNEY. See *Claims against the United States*, 4; *Contracts*, 6.

PRACTICE. See *Admiralty*, 7, 8; *Judgment; Receiver*, 1; *Record*, 2, 3; *Trustee*, 5; *Writ of Error*, 1, 4.

1. Appeals in equity are heard in this court upon the pleadings and proofs below. No new evidence can be submitted, nor can the pleadings be amended here. *Pacific Railroad of Missouri* v. *Ketchum*, 1.
2. The appearance of counsel specially for a corporation, and his moving to dismiss the petition of an individual creditor for the appointment of a receiver of its property, do not preclude him from subsequently appearing for the trustee of the bondholders in proceedings to foreclose mortgages given by the corporation. *Shaw* v. *Bill*, 10.
3. Upon a supplemental bill in chancery, a subpœna is not required unless new parties are made. A rule upon parties already served to answer the supplemental bill is sufficient. *Id.*
4. Whether a writ of prohibition should be issued to the District Court, when proceeding as a court of admiralty and maritime jurisdiction, depends upon the facts stated in the record upon which that court is called to act. Matters *dehors* that record, which are set forth in the petition for the writ, cannot be considered here. *Ex parte Easton*, 68.

PRACTICE (*continued*).

5. Granting a rehearing, or granting or dissolving a temporary injunction, rests in the sound discretion of the court, and furnishes no ground for an appeal. *Buffington* v. *Harvey*, 99.
6. Where, after setting up the defence of prior knowledge and use of the thing patented, and giving the names and residences of witnesses intended to be called to prove the defence, the answer to a bill for the infringement of letters-patent alleges that the names and residences of certain other witnesses are unknown to the defendant, and prays leave to insert and set forth in the answer such names and residences when they shall be discovered, it is competent for the court to allow, upon such discovery, the amendment to be made *nunc pro tunc*. *Roemer* v. *Simon*, 214.
7. An assignment by a defendant of his interest in the subject-matter of a pending suit does not necessarily defeat the suit. The assignee is bound by what is done against the assignor; and may either come in and assume the burden of the litigation in his own name, or act in the name of his assignor. *Ex parte Railroad Company*, 221.
8. Where the decree determined the amount and priority of the respective liens, an appeal therefrom will not be dismissed on the ground that it was taken by one lien creditor, if it brings up so much of the case and such of the parties as are necessary for the determination of his rights. *Milner* v. *Meek*, 252.
9. A mere expression of opinion by a judge upon a question of fact is not a ground of error. *Transportation Line* v. *Hope*, 297.
10. The action of the court below, in refusing to charge the jury as requested by the defendant, and the charge as given, considered, and held not to be erroneous. *Id.*
11. The court declines to vacate its decree rendered at the last term in *Cochrane* v. *Deener*, 94 U. S. 780, but holds that third parties, whose interests are opposed to the Cochrane patents which were in controversy in that suit, should not be concluded from having a further hearing upon them whenever a future case may be presented here for consideration. *Cochrane* v. *Deener*, 355.
12. As the bill in this case, before it was by amendment converted into a bill of review, approximated to the character of a bill to carry the original decree more effectually into execution, which was the appropriate remedy of the complainants, the court, while reversing the decree, does not direct that the bill be absolutely dismissed, but that the complainants be allowed to amend it, with leave to defendants to answer any new matter therein introduced, and that the proofs taken in the cause shall stand as proofs at any future hearing thereof, with liberty to either party to take additional proof upon any new matter that may be put in issue by the amended pleadings. *Thompson* v. *Maxwell*, 391.
13. To instruct upon assumed facts to which no evidence applies, is error. *Railroad Company* v. *Houston*, 697.

PRE-EMPTION. See *Mexican Land Grants*, 4, 5; *Will*, 4.

PRESUMPTION. See *Bills of Exchange and Promissory Notes*, 1, 2; *Stockholders*, 1.

PREVIOUS KNOWLEDGE AND USE. See *Letters-Patent*, 1, 3.

PRIVIES. See *Bill of Review*, 3.

PROCESS, SERVICE OF. See *Constitutional Law*, 6; *Due Process of Law*, 4; *Judicial Comity*, 4.

1. A statute of Oregon, after providing for service of summons upon parties or their representatives, personally or at their residence, declares that when service cannot be thus made, and the defendant, after due diligence, cannot be found within the State, and "that fact appears, by affidavit, to the satisfaction of the court or judge thereof, and it, in like manner, appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real property in the State, such court or judge may grant an order that the service be made by publication of summons, . . . when the defendant is not a resident of the State, but has property therein, and the court has jurisdiction of the subject of the action," — the order to designate a newspaper of the county where the action is commenced in which the publication shall be made, — and that proof of such publication shall be "the affidavit of the printer, or his foreman, or his principal clerk." *Held*, that defects in the affidavit for the order can only be taken advantage of on appeal, or by some other direct proceeding, and cannot be urged to impeach the judgment collaterally; and that the provision as to proof of the publication is satisfied when the affidavit is made by the editor of the paper. *Pennoyer* v. *Neff*, 714.
2. A personal judgment is without any validity, if it be rendered by a State court in an action upon a money-demand against a non-resident of the State, who was served by a publication of summons, but upon whom no personal service of process within the State was made, and who did not appear; and no title to property passes by a sale under an execution issued upon such a judgment. *Id.*
3. The State, having within her territory property of a non-resident, may hold and appropriate it to satisfy the claims of her citizens against him; and her tribunals may inquire into his obligations to the extent necessary to control the disposition of that property. If he has no property in the State, there is nothing upon which her tribunals can adjudicate. *Id.*
4. Substituted service by publication, or in any other authorized form, is sufficient to inform a non-resident of the object of proceedings taken, where property is once brought under the control of the court by seizure or some equivalent act; but where the suit is brought to determine his personal rights and obligations, that is, where it is

PROCESS, SERVICE OF (*continued*).
merely *in personam*, such service upon him is ineffectual for any purpose. *Id.*

5. Process from the tribunals of one State cannot run into another State, and summon a party there domiciled to respond to proceedings against him; and publication of process or of notice within the State in which the tribunal sits cannot create any greater obligation upon him to appear. Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his personal liability. *Id.*
6. Except in cases affecting the personal *status* of the plaintiff, and in those wherein that mode of service may be considered to have been assented to in advance, the substituted service of process by publication, allowed by the law of Oregon and by similar laws in other States where actions are brought against non-residents, is effectual only where, in connection with process against the person for commencing the action, property in the State is brought under the control of the court, and subjected to its disposition by process adapted to that purpose, or where the judgment is sought as a means of reaching such property, or affecting some interest therein; in other words, where the action is in the nature of a proceeding *in rem*. *Id.*
7. Every corporation has officers, who speak and act for it by authority of law; and some one of them, either by an express statutory provision, or by the nature of their functions, is the proper person on whom the process or notice, which is necessary to bind it in a judicial proceeding, must be served. *Alexandria* v. *Fairfax*, 774.
8. Where the proceeding to confiscate a debt of the corporation to an individual is, by reason of his absence beyond the jurisdiction, necessarily *in rem*, the service of the process or notice on the corporation, which is requisite to a valid seizure of the debt, should be made upon some one of the officers of the corporation on whom a similar service would bind it in an ordinary suit against it. *Id.*
9. By the Code of Virginia, such service, in case of a town or a city, may be made on the mayor, or, in his absence, on the president of the council or board of trustees, or, if both be absent, on an alderman or trustee. *Id.*
10. Service on the auditor of Alexandria, without an appearance by the city or the creditor, did not give the court jurisdiction of the debt which the city owed the creditor; and its decree condemning the debt to confiscation and sale is void. *Id.*

PROHIBITION, WRIT OF. See *Practice*, 4.

PROMISOR AND PROMISEE. See *Parties*.

PROMISSORY NOTES. See *Bills of Exchange and Promissory Notes*.

PROOFS OF DEATH. See *Life Insurance*, 2, 10.

PUBLIC LANDS.

1. It was an unalterable condition of the admission of Wisconsin into the Union, that, of the public lands in the State, section 16 in every township, which had not been sold or otherwise disposed of, should be granted to her for the use of schools. *Beecher* v. *Wetherby*, 517.
2. Whether the compact with the State constituted only a pledge of a grant *in futuro*, or operated to transfer to her the sections as soon as they could be identified by the public surveys, the lands embraced within them were set apart from the public domain, and could not be subsequently diverted from their appropriation to the State. If any further assurance of title was required, the United States was bound to provide for the execution of proper instruments transferring to the State the naked fee, or to adopt such other legislation as would secure that result. *Id.*
3. The right of the Menomonee Indians to their lands in Wisconsin was only that of occupancy; and, subject to that right, the State was entitled to every section 16 within the limits of those lands. *Id.*
4. The act of Congress approved Feb. 6, 1871 (16 Stat. 404), authorizing a sale of the townships set apart for the use of the Stockbridge and Munsee Indians, and originally forming a part of the lands of the Menomonees, does not apply to sections 16. *Id.*

QUARANTINE REGULATIONS. See *Constitutional Law*, 12–17.

RAILWAY COMPANIES. See *Agent*, 1, 3; *Constitutional Law*, 2–5, 8, 9; *Municipal Bonds*, 1–11.

RAILWAY CROSSINGS.

1. Travellers upon a common highway which crosses a railroad upon the same level, and the railroad company running a train, have mutual and reciprocal duties and obligations; and, although the train has the right of way, the same degree of care and diligence in avoiding a collision is required from each of them. *Continental Improvement Company* v. *Stead*, 161.
2. That right does not, therefore, impose upon such a traveller the whole duty of avoiding a collision, but is accompanied with and conditioned upon the duty of the train to give due and timely warning of its approach. *Id.*
3. The degree of diligence to be used on either side is such as a prudent man would exercise under the circumstances of the case in endeavoring fairly to perform his duty. *Id.*
4. The neglect of the engineer of a locomotive of a railroad train to sound its whistle or ring its bell on nearing a street-crossing does not relieve a traveller on the street from the necessity of taking ordinary precautions for his safety. Before attempting to cross the railroad track, he is bound to use his senses, — to listen and to look, — in order to avoid any possible accident from an approaching train. If he omits to use them, and walks thoughtlessly upon the track, or if,

RAILWAY CROSSINGS (*continued*).

using them, he sees the train coming, and, instead of waiting for it to pass, undertakes to cross the track, and in either case receives any injury, he so far contributes to it as to deprive him of any right to complain. If one chooses in such a position to take risks, he must suffer the consequences. They cannot be visited upon the railroad company. *Railroad Company* v. *Houston*, 697.

REASONABLE COMPENSATION. See *Wharfage*, 2.

REBELLION, THE. See *Confiscation*, 1, 2; *Insurance*, 2; *Life Insurance*, 13, 14; *Trustee*, 4, 5.

1. A foreigner, domiciled during the year 1864 in Texas, who, in order to obtain permission of the rebel government to export his cotton, sold at a nominal price, and delivered to its agents or officers for its use, an equal amount of other cotton, which he subsequently redeemed by paying a stipulated sum therefor, directly contributed to the support of the enemy, and gave him aid and comfort. Out of such a transaction, no demand against such agents or officers can arise which will be enforced in the courts of the United States. *Radich* v. *Hutchins*, 210.

2. The acts of Congress, respectively approved March 3, 1863 (12 Stat. 756), and May 11, 1866 (14 id. 46), extend protection to all persons for acts they committed in subordination to the military authorities engaged in conducting the war, and confer upon them the same exemption from liability to suit which belonged to the President, the Secretary of War, and the department commanders. *Beard* v. *Burts*, 434.

3. Where a bill was filed in 1865 for an injunction against cutting wood on the complainant's land in Tennessee, and for an account of what had been already cut, and the defendant, answering, set up that he had cut the wood "as an authorized agent of the government of the United States, and for military purposes, under the direction and authority of the military authorities," and, in further answering, pleaded that he had a right to do so, as appeared by an order or authority from one D. V. Brown, wood agent of the United States military railroads, authorizing him to cut wood on said land, as follows: —

"KNOXVILLE, TENN., May 9, 1865.

"James S. Beard is hereby authorized to cut wood for the U. S. M. R. on the lands of Joseph Burts, John Lyle, Dillard Love, by order of the superintendent. D. V. BROWN, *Wood Agent.*"

— and the court, after finding that the defendant's answer was sustained by the proofs, entered a decree dismissing the bill, — *Held*, 1. That the facts so found were conclusive upon a bill of review alleging errors apparent on the face of the decree. 2. That it cannot be properly assumed that the paper signed D. V. Brown was all

REBELLION, THE (*continued*).
the evidence from which the court concluded that the defendant acted under the warrant of the military authorities of the government. 3. That, as the wood was received by them, and used for the military railroads, before operations for the suppression of the rebellion had ceased, the paper, although in form permissive only, was a sufficient justification and defence. *Id.*

RECEIVER.
Without deciding whether a case may not arise in which it would appoint a receiver pending an appeal here, the court declines to do so upon the showing made in this case. *Pacific Railroad of Missouri* v. *Ketchum*, 1.

RECORD. See *Authentication of Records and Judicial Proceedings; Bill of Exceptions*, 1; *Georgia; Jurisdiction*, 1, 2; *Practice*, 4.
1. Where the issues are tried by the court, its finding belongs to the record as fully as does the verdict of a jury. *Insurance Company* v. *Boon*, 117.
2. Where the court tried the issues of fact, and its opinion, embodying its findings and the conclusions of law thereon, was filed concurrently with the entry of the judgment, but there was no formal finding of facts, and the court, at the next following term, upon a rule awarded, and, after hearing the parties, made an order that a special finding, with the conclusions of law conformable to that opinion so filed, be entered *nunc pro tunc*, and made part of the record as of the term when the judgment was rendered, — *Held*, that the order was within the discretion of the court, and that by it such special finding became a part of the record of the cause, and that the judgment upon it is, without a bill of exceptions, subject to review here. *Id.*
3. The court calls attention to the irrelevant matter and useless repetitions with which the record in this case is incumbered; and, while reversing the decree below, adjudges that the parties pay their respective costs in this court, and refers to rule 52 in admiralty as containing suggestions which may serve as an appropriate guide in making up the record in a case at law or in equity. *Railway Company* v. *Stewart*, 279.

REGISTERS OF LAND-OFFICES, FEES OF.
1. Where, under the acts of Feb. 11, 1847 (9 Stat. 125), Sept. 28, 1850 (id. 520), March 22, 1852 (10 id. 3), and March 3, 1855 (10 id. 635), military bounty-land warrants were located on public land, subject to private entry by them, it was the duty of the register of the land-office where the locations were made to receive the register's fees therefor. *United States* v. *Babbitt*, 334.
2. Where the register received them, his refusal to pay over to the United States the surplus beyond the maximum compensation of $3,000 per annum, to which he was entitled by law for all his services of every

REGISTERS OF LAND-OFFICES, FEES OF (*continued*).
description, is a breach of his official bond, both as respects himself and his sureties; and the United States is under no necessity to proceed against him by an action on the case for money had and received. *Id.*

REHEARING. See *Practice*, 5.

REMOVAL OF CAUSES. See *Pleading*, 3.

1. A person not a citizen of the State, in a court whereof he is sued, cannot, under the twelfth section of the Judiciary Act of 1789, remove the suit to the Circuit Court of the United States, by reason of the citizenship of the parties, unless his petition for removal affirmatively shows that the plaintiff was, at the time of the commencement of the suit, a citizen of such State. *Insurance Company* v. *Pechner*, 183.
2. The right of removal is statutory; and, before a party can avail himself of it to oust the jurisdiction of a State court, he must show upon the record that his case is one which comes within the provisions of the statute. *Id.*
3. A petition for the removal from a State court of a suit brought by the plaintiffs in their respresentative capacity as executors is insufficient under the act of March 2, 1867 (14 Stat. 558), where the defendant, who is not a citizen of the State where the suit is brought, alleges, so far as the citizenship of the plaintiffs is concerned, that they, "as such executors," are citizens of that State. *Amory* v. *Amory*, 186.
4. Where the jurisdiction of the courts of the United States depends upon the citizenship of the parties, it has reference to their personal citizenship. *Id.*
5. *Insurance Company* v. *Pechner*, *supra*, p. 183, cited and approved. *Id.*

RESIDUARY LEGATEE. See *Will*, 4.

RETROACTIVE LAW. See *Constitutional Law*, 22, 23.

REVENUE LAWS OF A STATE. See *Due Process of Law*, 1, 2.

REVENUE STATUTES, CONSTRUCTION OF. See *Imports, Duties on*, 2.

REVISED STATUTES.
The following sections referred to and explained: —

Sect. 1005. See *Writ of Error*, 1.
Sect. 1556. See *Navy, Officer in*, 1.
Sect. 3177. See *Pleading*, 6.
Sect. 3225. See *Internal Revenue*, 2.
Sect. 3477. See *Claims against the United States*, 6.
Sect. 5132. See *Criminal Law*, 1.

REVISED STATUTES RELATING TO THE DISTRICT OF COLUMBIA.

The following section construed.

Sect. 827. See *District of Columbia*, 2.

SCHOOL LANDS. See *Public Lands*, 1–4.

SEAMEN. See *Shipping Articles*, 1, 2.

SECOND ASSESSMENT. See *Internal Revenue*, 2–4.

SECRETARY OF THE INTERIOR. See *Contracts*, 5.

SECRETARY OF THE NAVY. See *Contracts*, 5; *Navy, Officer in*, 1, 2.

SECRETARY OF WAR. See *Contracts*, 5.

SET-OFF.

1. When no rights of third parties interfere, the extent to which mutual obligations may be set off against each other, and the mode of doing it, are wholly subject to legislative control. *Blount* v. *Windley*, 173.
2. A statute, therefore, as that of North Carolina, passed after the bank or its commissioner had obtained a judgment, which authorizes the defendant to set off against it the circulating notes of the bank which he procured after the judgment, is, as between him and the bank or its commissioner, valid, and does not impair the obligation of the contract sued on, or of the judgment. *Id.*
3. But if the rights of either creditors of the bank, or other parties interested in the judgment, were such that they could exact payment of the judgment in lawful money, the case would be different. *Id.*

SHIPPING ARTICLES.

1. The agreement, in writing or in print, which, with certain exceptions, the master of a vessel, bound from a port in the United States to any foreign port, is required, before proceeding on his voyage, to make with every seaman whom he carries to sea as one of his crew, need not be signed in the presence of a shipping commissioner, when such voyage is to a port in the West India Islands. *United States* v. *The "Grace Lothrop,"* 527.
2. The act of Congress approved June 7, 1872 (17 Stat. 262), does not apply to the shipping of seamen upon vessels engaged only in and for voyages coastwise between Atlantic ports of the United States. *United States* v. *Smith*, 536.

SOVEREIGNTY.

1. The power of a State to regulate the forms of administering justice is an incident of sovereignty, and its surrender is never to be presumed. *Railroad Company* v. *Hecht*, 168.
2. As against the government, the word "shall," when used in statutes, is to be construed as "may," unless a contrary intention is manifest. *Id.*

SPECIFIC PERFORMANCE. See *Contracts*, 3; *Lands, Contract for Conveyance of*, 1–3.

STATE, REVENUE LAWS OF. See *Constitutional Law*, 24; *Due Process of Law*, 1, 2.

STATE COURTS. See *Judicial Comity*, 2.

STATE COURTS, SUITS IN. See *Admiralty*, 1.

STATUTE OF FRAUDS. See *Lands, Contract for Sale of*, 1.

It is not an absolute rule that collateral papers, made by a party, which are adduced in evidence against him to supply the want of his signature to a written agreement, required by the Statute of Frauds to be "subscribed by the party chargeable therewith," should, on their face, and without the aid of parol proof, sufficiently demonstrate their reference to such agreement. *Beckwith* v. *Talbot*, 289.

STATUTE OF LIMITATIONS. See *Admiralty*, 1; *Constitutional Law*, 19, 20; *Equity*, 2; *Lands, Contract for Conveyance of*, 3; *Lands, Contract for Sale of*, 2.

The statute of Georgia approved March 16, 1869, may be set up as a valid bar to suits brought after Jan. 1, 1870, to enforce the individual liability of the stockholders of a bank in that State for the ultimate redemption of its bills which it ceased and failed to pay before June 1, 1865, or to recover the unpaid balance due on stock subscriptions at the time of such failure. *Terry* v. *Anderson*, 628.

STATUTES.

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

1790. May 29. See *Authentication of Records and Judicial Proceedings.*
1834. June 30. See *Indian Country*, 1.
1847. Feb. 11. See *Registers of Land-Offices, Fees of*, 1.
1850. Sept. 28. See *Registers of Land-Offices, Fees of*, 1.
1852. March 22. See *Registers of Land-Offices, Fees of*, 1.
1853. Feb. 26. See *Claims against the United States*, 3, 5, 6.
1855. Feb. 24. See *Claims against the United States*, 5.
1855. March 3. See *Registers of Land-Offices, Fees of*, 1.
1861. March 6. See *Imports, Duties on*, 1.
1861. Aug. 5. See *Imports, Duties on*, 1.
1862. June 2. See *Contracts*, 5.
1862. July 14. See *Imports, Duties on*, 1.
1862. July 17. See *Confiscation*, 1.
1863. March 3. See *Rebellion, The*, 2.
1863. March 3. See *Claims against the United States*, 7.
1864. June 3. See *National Banks*, 1.
1864. July 2. See *Witnesses*, 1.
1866. March 14. See *Imports, Duties on*, 4.

STATUTES (*continued*).

1866. May 11. See *Rebellion, The*, 2.
1866. July 13. See *Internal Revenue*, 2, 7.
1867. Feb. 28. See *Supreme Court of the District of Columbia, Right of the Employés thereof to Additional Compensation.*
1867. March 2. See *Internal Revenue*, 7.
1868. July 20. See *Internal Revenue*, 5, 6.
1868. July 28. See *Internal Revenue*, 7.
1871. Feb. 6. See *Public Lands*, 4.
1872. June 6. See *Imports, Duties on*, 1, 3.
1872. June 7. See *Shipping Articles*, 2.
1876. May 13. See *Internal Revenue*, 4.

STATUTORY LIABILITY. See *Constitutional Law*, 21.

STIPULATION FOR COSTS. See *Admiralty*, 5–8.

STIPULATION FOR VALUE. See *Admiralty*, 5–8.

STOCKBRIDGE AND MUNSEE INDIANS. See *Public Lands*, 3, 4.

STOCKHOLDERS. See *Bankruptcy*, 8; *Statute of Limitations*.

1. A person is presumed to be the owner of stock when his name appears on the books of a company as a stockholder; and, when he is sued as such, the burden of disproving that presumption is cast upon him. *Turnbull* v. *Payson*, 418.
2. A party who made a contract with an organization which had attempted irregularly to create itself into a corporation, and which acted as such, or who subscribed to its capital stock, cannot, in a suit by the corporation, defend himself against a claim growing out of such contract or subscription by alleging the irregularity of such organization. *Chubb* v. *Upton*, 665.
3. The same rule applies where the stock of a corporation has been increased, and the question arises upon the liability of a subscriber for the increased stock. *Id.*
4. An assignee in bankruptcy of a corporation represents it and its creditors, and the defence of its irregular organization cannot be set up against him by such subscriber. *Id.*
5. A party receiving a certificate for a certain number of shares of stock, at a given sum per share, thereby becomes liable to pay the amount thereof when called upon by the corporation or its assignee. *Id.*
6. The balance due on stock subscriptions at the time of the failure of a bank is a debt to the bank, and inures to the benefit of all its creditors, while the individual liability for the redemption of its bills operates only in favor of the holders of them. *Terry* v. *Anderson*, 628.

SUBPŒNA. See *Practice*, 3.

SUCCEEDING CARRIER. See *Common Carrier*, 1–3.

SUMMONS. See *Process, Service of*, 1, 5.

SUMMONS BY PUBLICATION. See *Process, Service of*, 1, 2, 4–6.

SUPPLEMENTAL BILL. See *Practice*, 3.

SUPREME COURT OF THE DISTRICT OF COLUMBIA, RIGHT OF THE EMPLOYÉS THEREOF TO ADDITIONAL COMPENSATION.

The deputy-clerk, crier, and messengers of the Supreme Court of the District of Columbia are not entitled to the twenty per cent additional compensation granted by the joint resolution of Congress approved Feb. 28, 1867 (14 Stat. 569). *United States* v. *Meigs*, 748.

SURETY. See *Admiralty*, 5–8; *Bills of Exchange and Promissory Notes*, 2.

SURVEY. See *Mexican Land Grants*, 3, 6.

TAXATION. See *Constitutional Law*, 5, 16, 24; *Due Process of Law*, 1, 2; *Internal Revenue*, 1–6; *Judicial Comity*, 1; *Mandamus*, 2–4; *Mexican Land Grants*, 6; *National Banks*, 1.

TENANTS IN COMMON. See *Pleading*, 4.

TENNESSEE. See *Acknowledgment*, 1–3; *Constitutional Law*, 24; *Judicial Comity*, 1.

TESTATOR. See *Will*, 1–4.

TEXAS. See *Rebellion, The*, 1.

TITLE. See *Confirmatory Act of Congress*, 2.

TRANSPORTATION COMPANY. See *Common Carrier*, 4.

TRANSPORTATION OF PASSENGERS, RATES FOR. See *Constitutional Law*, 9.

TRAVELLERS. See *Railway Crossings*, 1–3.

TREASURY OF THE UNITED STATES. See *Confiscation*, 1, 2.

TRIAL BY JURY.

The seventh amendment to the Constitution, touching the right of trial by jury, applies only to the courts of the United States. *Pearson* v. *Yewdall*, 294.

TRUSTEE. See *Lands, Contract for Conveyance of*, 1–3; *Practice*, 2; *Uses and Trusts*, 1.

1. The trustee named in a deed of trust, which has been given to secure a debt, is, like a mortgagee, a purchaser for value. Both occupy the same ground with respect to notice, either actual or constructive, of any outstanding equities. *New Orleans Canal and Banking Company* v. *Montgomery*, 16.
2. Where a conveyance of real estate is made to the grantee, as "trustee," without setting forth for whom or for what purpose he is trustee,

TRUSTEE (*continued*).
parol evidence is admissible to establish the fact. *Railroad Company* v. *Durant*, 576.
3. A trustee cannot claim adversely to those for whom he acquired and holds the property. *Id.*
4. A trustee residing in Alabama during the rebellion, who kept no separate accounts of the trust fund, but invested it in his own name, cannot charge it with the losses he sustained from payments made to him in Confederate money. *Mitchell* v. *Moore*, 587.
5. Where the allegations of a bill charging a breach of trust, and praying for an account by the trustee, the payment of the amount found due, his removal, and general relief, are sustained by the proofs, — *Held*, that the appointment of a new trustee, and the decree for the payment to him of the principal of the fund, is necessary to carry into full effect an order for the removal of the old trustee. *Id.*

UNAVOIDABLE ACCIDENT. See *Admiralty*, 2.

USES AND TRUSTS.
1. A., by his last will and testament, admitted to probate June 22, 1864, devised certain lots of ground in the District of Columbia to two trustees, "and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, in trust, nevertheless, and to and for and upon the uses, intents, and purposes following, that is to say: In trust to hold the said lots of ground, with the appurtenances, as and for a site for the erection of a hospital for foundlings, to be built and erected by any association, society, or institution that may hereafter be incorporated by an act of Congress as and for such hospital, and upon such incorporation, upon further trust to grant and convey the said lots of ground and trust estate to the corporation or institution so incorporated for said purpose of the erection of a hospital, which conveyance shall be absolute and in fee. *Provided*, *nevertheless*, that such corporation shall be approved by my said trustees, or the survivor of them, or their successors in the trust; and, if not so approved, then upon further trust to hold the said lots and trust estate for the same purpose, until a corporation shall be so created by act of Congress which shall meet the approval of the said trustees or the survivor or successors of them, to whom full discretion is given in this behalf, and, upon such approval, in trust to convey as aforesaid; and I recommend to my said trustees to select an institution which shall not be under the control of any one religious sect or persuasion; and, until such conveyance, I direct the taxes, charges, and assessments, and all necessary expenses of, for, and upon said lots, and every one of them, to be paid by my executors, as they shall from time to time accrue and become due and payable, out of the residue of my estate." The Washington Hospital for Foundlings was incorporated by an act of Congress, approved April 22, 1870 (16 Stat. 92); and, on the 4th of April, 1872, the trustees under

USES AND TRUSTS (*continued*).

the will conveyed said lots to that corporation in fee. *Held*, 1. That the devise is not invalid for uncertainty, or because it creates a perpetuity. 2. That the provision touching a conveyance by the trustees whenever Congress should create a corporation for foundlings which they approved was only a conditional limitation of the estate vested in them. 3. That the duty with which they were charged was an executory trust, and their conveyance was necessary to and did pass the title. *Ould* v. *Washington Hospital for Foundlings*, 303.

2. The statute of 43 Eliz., c. 4, was purely remedial and ancillary. It was never in force in the District of Columbia; and the validity of charitable endowments, and the jurisdiction of courts of equity over them, does not depend upon it. *Id.*
3. The doctrine of charitable uses and trusts discussed, and the authorities bearing upon it cited and approved. *Id.*

VERDICT. See *Record*, 1.

VIRGINIA. See *Process, Service of*, 9.

WAIVER. See *Life Insurance*, 7, 8, 13.

WANT OF SIGNATURE, EVIDENCE TO SUPPLY. See *Statute of Frauds*, 1.

WEST INDIA ISLANDS. See *Shipping Articles*, 1.

WHARFAGE.

1. Claims for wharfage, arising out of either an express or an implied contract, are cognizable in admiralty. *Ex parte Easton*, 68.
2. Where the wharfage has not been agreed upon by the parties, the wharfinger is entitled, as upon an implied contract, to a just and reasonable compensation for the use of his wharf. *Id.*
3. If the vessel or water-craft is a foreign one, or belongs to a port of a State other than that where the wharf is used, the claim of the wharfinger for such use is a maritime lien against the vessel, which he may enforce by a proceeding *in rem*, or he may resort to a libel *in personam* against the owner of such vessel or water-craft. *Id.*
4. A municipal corporation having, by its charter, an exclusive right to make wharves on the banks of a navigable river upon which it is situated, collect wharfage, and regulate wharfage rates, can, consistently with the Constitution of the United States, charge and collect from the owner of enrolled and licensed steamboats, which moor and land at a wharf constructed by it, wharfage proportioned to their tonnage. *Packet Company* v. *Keokuk*, 80.

WILL. See *Uses and Trusts*, 1.

1. Where the intent of a testator to make a complete disposition of all his property is manifest throughout his will, its provisions should be so construed, if they reasonably may, as to carry that intent into effect. *Given* v. *Hilton*, 591.

WILL (*continued*).

2. While an apparent general intent cannot control his particular directions plainly to the contrary, or enlarge dispositions beyond their legitimate meaning, it is of weight in determining what he intended by particular devises or bequests that may admit of an enlarged or a limited construction. *Id.*
3. The rule in the construction of wills, where certain things are enumerated, that a more general description, which is coupled with the enumeration, is commonly understood to cover only things *ejusdem generis* with the particular things mentioned, rests on a mere presumption, easily rebutted by any thing which shows that the larger subject was in fact in the testator's view. *Id.*
4. The will in this case construed, and *held*, 1. That the testator intended to dispose of his entire estate, and not to die intestate as to any portion of it. 2. That his direction to his executors to sell all his estate not otherwise devised and bequeathed was intended to secure a complete conversion, to all intents, of his entire property into personal estate. 3. That, with the exception of the lot devised, his entire estate, both real and personal, after the payment of his debts and of the legacies prior to that given to the residuary legatee, passed to the latter. *Id.*

WISCONSIN. See *Public Lands*, 1–4.

WITNESSES. See *Colorado; Practice*, 6.

The proviso to the third section of the act of Congress, approved July 2, 1864 (13 Stat. 351), that in the courts of the United States no witness shall be excluded in any civil action because he is a party to, or interested in, the issue tried, has no application to the courts of a Territory. *Good* v. *Martin*, 90.

WORDS.

"After date of appointment."	See *Navy, Officer in*, 1.
"Die by his own hand."	See *Life Insurance*, 3.
"Due process of law."	See *Due Process of Law*, 4.
"Fraud."	See *Bankruptcy*, 9.
"From such date."	See *Navy, Officer in*, 1.
"In coin."	See *Jurisdiction*, 7.
"Just claim of the assured."	See *Life Insurance*, 1.
"Know personally."	See *Acknowledgment*, 2.
"May."	See *Sovereignty*, 2.
"Not herein otherwise provided for."	See *Imports, Duties on*, 3.
"Personally acquainted with."	See *Acknowledgment*, 2.
"Shall."	See *Sovereignty*, 2.

WRIT OF ERROR.

1. Where a writ of error is defective in the statement of the parties thereto, the right to amend is not absolute, under sect. 1005, Rev.

WRIT OF ERROR (*continued*).

Stat.; but the court, in its discretion, may allow the requisite amendment to be made upon such terms as it may deem just. *Pearson* v. *Yewdall*, 294.

2. As both parties severally claim compensation for land taken by the city of Philadelphia for public use, the city, the only adverse party to them in the proceedings below, is an indispensable party to the writ. *Id.*
3. The court declines to allow an amendment making the city such party, inasmuch as the questions made by the assignment of error have been settled by repeated decisions, and are no longer open to discussion here. *Id.*
4. The court condemns as irregular, proceedings whereby the defendant in two separate suits, in the former of which judgment had been rendered before the latter had gone to trial, was permitted to file bills of exception purporting to be applicable to each case, and, without consolidating them, remove them to this court by one writ of error. *Brown* v. *Spofford*, 474.

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