INDEX.

ABATEMENT. See *Pleading*, 3, 4.

ACCOUNTING OFFICERS. See *Limitations, Statute of*, 2.

ACTING ASSISTANT-COMMISSARY. See *Quartermaster*.

ADDITIONAL COMPENSATION. See *Quartermaster*.

ADMIRALTY. See *Appeal*, 1; *Practice*, 6.

AGENT. See *Contracts*, 12; *Fraud*, 1; *Insurance*, 1–3, 5–7, 11.

Where an agent, without authority, borrows moneys in the name of his principal, and the latter, when they have been applied to his use and payment is demanded of him, fails, within a reasonable time thereafter, to disavow the act of his agent, the jury is authorized to consider the principal as assenting to what was done in his name. *Gold-Mining Company* v. *National Bank*, 640.

ALIEN ENEMIES. See *Confederate States*, 9.

APPEAL. See *Practice*, 5; *Supersedeas*.

1. An appeal to the Circuit Court, from the decree of the District Court, in a case in admiralty, carries up the whole fund. *The "Lady Pike,"* 461.
2. An appeal lies here from the final decree of the Circuit Court confirming a sale made under its order. *Sage* v. *Railroad Company*, 712.
3. After the term at which such final decree was rendered, any justice of this court may, within the time prescribed by law, allow an appeal, and approve the bond which is to operate as a *supersedeas*. *Id.*
4. An appeal by an assignee in bankruptcy lies here from the final decree of the Circuit Court, affirming that of the District Court, rendered when sitting in equity, against him for the payment of money, if the amount in controversy be sufficient. *O'Reilly* v. *Edrington*, 724.
5. Even though an appeal is asked for in open court, if the security is not taken until after the term, a citation must be issued to bring in the parties, unless they voluntarily appear. *National Bank* v. *Omaha*, 737.

APPEARANCE. See *Appeal*, 5.

A general appearance by the appellee waives all defects in a citation. *Sage* v. *Railroad Company*, 712.

APPROPRIATE LEGISLATION. See *Constitutional Law*, 3.

ARMY REGULATIONS. See *Quartermaster*, 2.

ARREST OF JUDGMENT. See *Practice*, 3.

ASSESSMENT OF DAMAGES. See *Utah, Code of Practice of.*

ASSESSMENT OF TAXES. See *Due Process of Law*, 1–5; *Illinois.*

ASSIGNEE IN BANKRUPTCY. See *Appeal*, 4; *Bankruptcy*, 1; *Pledge*, 1–5.

ATTORNEY-AT-LAW. See *Champerty; Frauds, Statute of*, 1; *Trustee.*

AUTRE ACTION PENDANT. See *Pleading*, 3, 4.

BANKRUPTCY. See *Injunction.*

1. Assumpsit by an assignee in bankruptcy of an insurance company against the holder of shares of its stock, to enforce the collection of the balance due thereon, the same not having been paid pursuant to the order of the court sitting in bankruptcy. Plea, *non assumpsit*. *Held*, 1. that the plea admits the existence of the corporation, and that the State alone can raise the question whether the corporate stock had been properly increased. 2. That the transferee of stock, who caused the transfer to be made to himself on the books of the corporation, although he holds it as collateral security for a debt of his transferrer, is liable for such balance to such assignee. *Pullman* v. *Upton*, 328.
2. The mere non-resistance of a debtor to judicial proceedings in which a judgment was rendered against him, when the debt was due and there was no valid defence to it, is not the suffering and giving a preference under the Bankrupt Act; and the judgment is not avoided by the facts, that he does not file the petition in bankruptcy, and that his insolvency was known to the creditor. *National Bank* v. *Warren*, 539.

BELLIGERENT RIGHTS. See *Confederate States*, 2–5.

BILL OF PARTICULARS.

Matters of evidence are not required to be stated in a bill of particulars. *Garfield* v. *Paris*, 557.

BOND. See *District of Columbia*, 2.

BOTTOMRY AND RESPONDENTIA.

1. So long as a vessel exists *in specie* in the hands of the owner, although she may require repairs greater than her value, a case of "utter loss," within the meaning of a bottomry and respondentia bond, does not arise, and she continues subject to the hypothecation. *Insurance Company* v. *Gossler*, 645.

BOTTOMRY AND RESPONDENTIA (*continued*).

2. The holder of such a bond, which was conditioned to be void should an utter loss from any of the enumerated perils occur, is, upon a wreck of the vessel during the specified voyage, not amounting to such loss, entitled to the proceeds of the cargo saved by his efforts, as against the insurers thereof, who accepted an abandonment by the owners as for a "total loss," and paid the amount of their policies, said proceeds being insufficient to satisfy the bond. *So held* in this case, which relates solely to such proceeds. *Id.*

BRACES AND SUSPENDERS. See *Imports, Duty on*, 19, 20.

BREWER. See *Court of Claims.*

BURDEN OF PROOF.

In an action against a collector of customs to recover the amount of duties on imports alleged to have been exacted in violation of law, the burden of proof is upon the plaintiff. *Arthur* v. *Unkart*, 118.

CALIFORNIA. See *Patents of the United States for Land*, 1–4; *Preemption*, 1; *School Lands*, 1.

CESTUI QUE TRUST. See *Trustee; Trust Fund.*

CHALLENGE. See *Juror.*

CHAMPERTY.

A contract to pay to an attorney-at-law for his services in suits concerning land, if it be recovered, a specific sum of money out of the proceeds, when it shall be sold by the client, is not champertous, because he neither pays costs nor accepts the land, or any part of it, as his compensation. *McPherson* v. *Cox*, 404.

CHARTER-PARTY. See *Contracts*, 3.

CHOCOLATE. See *Imports, Duty on*, 13, 14.

CITATION. See *Appeal*, 5; *Appearance.*

CLAIMS AGAINST THE UNITED STATES. See *Estoppel*, 2.

A. presented an unliquidated claim against the United States for $151,588.17, which was audited by the accounting officers, and allowed for $97,507.75. He was informed of this adjustment, and of the principles upon which it had been made; and a draft for the amount allowed, payable to his order, was sent to him, which he received and collected without objection. *Held*, that his receipt of the money was equivalent to an acceptance of it in satisfaction of the claim. *Baird* v. *United States*, 430.

COLLATERAL SECURITY. See *Bankruptcy*, 1; *Equity*, 2.

COLLECTOR OF CUSTOMS, ACTION AGAINST. See *Burden of Proof; Imports, Duty on*, 26.

COMMERCE. See *Constitutional Law*, 1–4; *Jurisdiction*, 3.

COMMERCIAL DESIGNATION OF AN ARTICLE. See *Imports, Duty on*, 2–5, 9, 20.

COMMON LAW. See *Lien; Pledge*, 1–5.

CONDEMNATION. See *Confiscation*, 2, 4–6.

CONDITION PRECEDENT. See *Municipal Bonds*, 13; *Patents of the United States for Land*, 1–4; *Removal of Causes*, 1.

CONDITIONS, WAIVER OF. See *Insurance*, 1–8.

CONFECTIONERY. See *Imports, Duty on*, 13, 14.

CONFEDERATE NOTES,

1. A decree, or a judgment, when rendered upon a contract payable in Confederate treasury notes, should be for a sum equal to the value of those notes, not in the gold coin, but in the legal-tender currency, of the United States, at the time when and the place where they were payable. *Bissell* v. *Heyward*, 580.
2. Such notes can in no proper sense be regarded as commodities merely. *Id.*

CONFEDERATE STATES. See *Constitutional Law*, 9.

1. The Confederate States was an illegal organization, within the provision of the Constitution of the United States prohibiting any treaty, alliance, or confederation of one State with another; whatever efficacy, therefore, its enactments possessed in any State entering into that organization must be attributed to the sanction given to them by that State. *Williams* v. *Bruffy*, 176.
2. When a rebellion becomes organized, and attains such proportions as to be able to put a formidable military force in the field, it is usual for the established government to concede to it some belligerent rights; but to what extent they shall be accorded to the insurgents depends upon the considerations of justice, humanity, and policy controlling the government. *Id.*
3. The concession of belligerent rights to the Confederate government sanctioned no hostile legislation against the citizens of the loyal States. *Id.*
4. *De facto* governments of two kinds considered: (1.) Such as exists after it has expelled the regularly constituted authorities from the seats of power and the public offices, and established its own functionaries in their places. so as to represent in fact the sovereignty of the nation. As far as other nations are concerned, such a government is treated as in most respects possessing rightful authority; its contracts and treaties are usually enforced; its acquisitions are retained; its legislation is in general recognized; and the rights acquired under it are, with few exceptions, respected after the restoration of the authorities which were expelled. (2.) Such as exists where a portion of the inhabitants of a country have separated themselves from the parent State and established an independent government. The

CONFEDERATE STATES (*continued*).

validity of its acts, both against the parent State and the citizens or subjects thereof, depends entirely upon its ultimate success; if it fail to establish itself permanently, all such acts perish with it; if it succeed and become recognized, its acts from the commencement of its existence are upheld as those of an independent nation. *Id.*

5. The Confederate government was distinguished from each kind of such *de facto* governments. Whatever *de facto* character may be ascribed to it consists solely in the fact that for nearly four years it maintained a contest with the United States, and exercised dominion over a large extent of territory. Whilst it existed, it was simply the military representative of the insurrection against the authority of the United States; when its military forces were overthrown, it utterly perished, and with it all its enactments. *Id.*

6. Pursuant to a statute of the Confederate States, and to an order of the Confederate District Court for the District of South Carolina, certain shares of the stock of a corporation of that State were, upon the ground that the owners of them were alien enemies, sequestrated and sold in 1862 at public auction; and the company was required to erase from its stock-books the names of such owners, insert those of the purchasers, and issue stock certificates to them. All dividends thereafter from time to time declared were paid to the purchasers, against whom, or their assignees, and the company, this bill was filed by an original stockholder, praying for a decree that the certificates so issued be cancelled as null and void, and the defendants enjoined from selling them, bringing suits to effect the transfer thereof, or collect dividends thereon, and the company from allowing such transfers, issuing new certificates for the same, or paying such dividends. The court decreed accordingly. *Held*, 1. That the order of sequestration, the sale, the transfer on the stock-books of the company, and the new certificates, were void, giving no right to the purchasers or to their assignees, and taking none from the original owners. 2. That the bill was well brought, and the corporation a proper party defendant. 3. That the purchasers, or their assignees, have no claim against the company for indemnity; but if, under the circumstances, entitled to any redress, they must seek it by suit against the parties by whom they claim to have been defrauded. *Dewing* v. *Perdicaries*, 193.

CONFISCATION.

1. The act of July 17, 1862 (12 Stat. 589), so far as it related to the confiscation of property, applied only to the property of persons who thereafter might be guilty of acts of disloyalty and treason; and it reached only the estate of the party for whose offences the property was seized. *Conrad* v. *Waples*, 279.

2. Until some provision was made by law for the condemnation of property in land of persons engaged in the rebellion, the courts of

CONFISCATION (*continued*).
the United States could not decree a confiscation of it, and direct its sale. *Id.*

3. Such persons were not denied the right of contracting with and selling to each other; as between themselves, all the ordinary business could be lawfully carried on, except in cases where it was expressly forbidden by the United States, or would have been inconsistent with or have tended to weaken its authority. *Id.*

4. The purpose of the United States to seize and confiscate the property of certain classes of persons engaged in the rebellion having been declared by the act of July 17, 1862, sales and conveyances of property subsequently made by them could only pass a title subject to be defeated, if the government should afterwards proceed for its condemnation. The fact that the property sold and conveyed was at the time within the territory occupied by the Federal troops, created no other legal impediment to the transfer. *Id.*

5. The provision in that act, that "all sales, transfers, or conveyances" of property of persons therein designated shall be null and void, only invalidates such transactions as against any proceedings taken by the United States for the condemnation of the property. They are not void as between the parties, or against any other party than the United States. The case of *Corbett* v. *Nutt* (10 Wall. 464) cited on this point, and approved. *Id.*

6. A sale by public act, before a notary within the insurrectionary territory, of land in the city of New Orleans by one enemy to another for a valuable consideration, previous to the passage of the Confiscation Act, passed the title to the purchaser, which was not affected by subsequent judicial proceedings for its condemnation for alleged offences of the vendor. The case of *Fairfax's Devisee* v. *Hunter's Lessee* (7 Cranch, 603) cited and approved. *Id.*

7. The Registry Act of Louisiana was not intended to protect the United States in the exercise of its power of confiscation from the consequences of previous unrecorded sales by the alleged offender. By the decree, the United States acquires for his life only the estate which at the time of the seizure he actually possessed, not what he may have appeared from the public records to possess, by reason of the omission of his vendees to record the act of sale to them; and only that estate, whatever it may be, for that period passes by the marshal's sale and deed. *Burbank* v. *Conrad*, 291.

CONSIDERATION. See *Municipal Bonds*, 2.

CONSTITUTIONAL LAW. See *Confederate States*, 1, 3; *Due Process of Law*, 1–5; *Jurisdiction*, 4; *Post-offices and Post-roads; Removal of Causes*, 2; *Texas*, *Constitution of*.

1. The powers conferred upon Congress to regulate commerce with foreign nations and among the several States, and to establish post-offices and post-roads, are not confined to the instrumentalities of commerce,

CONSTITUTIONAL LAW (*continued*).

or of the postal service known or in use when the Constitution was adopted, but keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 1.

2. They were intended for the government of the business to which they relate, at all times and under all circumstances; and it is not only the right, but the duty, of Congress to take care that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation. *Id.*
3. The act of Congress approved July 24, 1866 (14 Stat. 221, Rev. Stat., sect. 5263 *et seq.*), entitled "An Act to aid in the construction of telegraph lines, and to secure to the government the use of the same for postal, military, and other purposes," so far as it declares that the erection of telegraph lines shall, as against State interference, be free to all who accept its terms and conditions, and that a telegraph company of one State shall not, after accepting them, be excluded by another State from prosecuting its business within her jurisdiction, is a legitimate regulation of commercial intercourse among the States, and is appropriate legislation to execute the powers of Congress over the postal service. *Id.*
4. Nor is it limited in its operation to such military and post roads as are upon the public domain. *Id.*
5. The statute of Florida approved Dec. 11, 1866, so far as it grants to the Pensacola Telegraph Company the exclusive right of establishing and maintaining lines of electric telegraph as therein specified, is in conflict with that act, and therefore inoperative against a corporation of another State entitled to the privileges which that act confers. *Id.*
6. Without deciding whether, in the absence of that act, the legislation of Florida of 1874 would have been sufficient to authorize a foreign corporation to construct and operate a telegraph line within the counties of Escambia and Santa Rosa in that State, the court holds that a telegraph company of another State, which has secured a right of way by private arrangement with the owner of the land, and duly accepted the restrictions and obligations required by that act, cannot be excluded by the Pensacola Telegraph Company. *Id.*
7. The legislature of a State does not impair the obligation of a contract by enlarging, limiting, or altering the modes of proceeding for enforcing it, provided that the remedy be not withheld, nor embarrassed with conditions and restrictions which seriously impair the value of the right. *Tennessee* v. *Sneed*, 69.
8. The act of the legislature of Tennessee, providing that there shall be no other remedy in any case of the collection of revenue, or attempt to collect revenue illegally, or attempt to collect revenue in funds only receivable by a collector of taxes under the law, the same being

CONSTITUTIONAL LAW (*continued*).

other or different funds than such as the tax-payer may tender or claim the right to pay, than by paying the tax under protest, and within thirty days thereafter suing the collector to recover it, the judgment, if for the tax-payer, to be paid in preference to other claims on the treasury, does not leave a party without an adequate remedy for asserting his right to pay his State taxes in certain bills, made receivable therefor under the charter granted to the Bank of Tennessee in the year 1838, but which bills the collector refused to accept. *Id.*

9. An enactment of the Confederate States enforced as a law of one of the States composing that confederation, sequestrating a debt owing by one of its citizens to a citizen of a loyal State as an alien enemy, is void, because it impairs the obligation of the contract, and discriminates against citizens of another State. The constitutional provision prohibiting a State from passing a law impairing the obligation of contracts equally prohibits a State from enforcing as a law an enactment of that character, from whatever source originating. *Williams* v. *Bruffy*, 176.
10. The legislative acts of the several States composing that confederation stand on different grounds from those of the confederation itself; and, so far as they did not impair or tend to impair the supremacy of the national authority, or the just rights of citizens under the Constitution, they are, in general, to be treated as valid and binding. *Id.*
11. The provision in the Constitution of the United States, that no State shall pass a law impairing the obligation of contracts, is a limitation upon the taxing power of a State as well as upon all its legislation, whatever form it may assume. Therefore, a law changing the stipulations of a contract, or relieving a debtor from a strict and literal compliance with its requirements, enacted by a State in the exercise of that power, is unconstitutional and void. *Murray* v. *Charleston*, 432.
12. The ordinance of the council of the city of Richmond, passed Sept. 8, 1873, that "no car, engine, carriage, or other vehicle of any kind belonging to or used by the Richmond, Fredericksburg, and Potomac Railroad Company shall be drawn or propelled by steam upon that part of their railroad or railway track on Broad Street, east of Belvidere Street, in said city," does not impair any vested right of the company, under its charter, granted Feb. 25, 1834, nor deprive it of its property without due process of law, nor deny it the equal protection of the laws. *Railroad Company* v. *Richmond*, 521.
13. The appropriate regulation of the use of property is not "taking" it, within the meaning of the constitutional prohibition. *Id.*
14. The remedy subsisting in a State when and where a contract is made, and is to be performed, is a part of its obligation; and any subsequent law of the State, which so affects that remedy as substantially

CONSTITUTIONAL LAW (*continued*).
to impair and lessen the value of the contract, is forbidden by the Constitution of the United States, and, therefore, void. *Edwards* v. *Kearzey*, 595.

CONTRACTS. See *Confiscation*, 3; *Constitutional Law*, 7–9, 11, 12, 14; *Debts*, 1; *Frauds, Statute of*, 1, 2; *Insurance*, 10; *Interest; Lands, Conveyance of*, 1–4; *Lien; Specific Performance; Witness*, 4.

1. In an executory contract for the manufacture of goods, and their delivery on a specified day, no right of property passes to the vendee; and, time being of the essence of the contract, he is not bound to accept and pay for them, unless they are delivered or tendered on that day. *Jones* v. *United States*, 24.
2. The court below having found that the goods had not been delivered or tendered at the stipulated time, nor an extension of time for the performance of the contract granted, and there being nothing in the case to warrant the contractor in assuming that any indulgence would be allowed, the United States was not estopped from setting up that when the goods were tendered the contract was at an end. *Id.*
3. Where the United States chartered a vessel for a "voyage or voyages," at a stipulated price per diem for every day when so employed, — *Held*, that the contract only embraced the employment of the vessel when on such voyage or voyages, and did not extend to demurrage. *Mitchell* v. *United States*, 162.
4. Where a contract is made to sell or furnish certain goods identified by reference to independent circumstances, such as an entire lot deposited in a certain warehouse, or all that may be manufactured by the vendor in a certain establishment, or that may be shipped by his agent or correspondent in certain vessels, and the quantity is named, with the qualification of "about," or "more or less," or words of like import, the contract applies to the specific lot, and the naming of the quantity is regarded not as in the nature of a warranty, but only as an estimate of the probable amount, in reference to which good faith is all that is required of the party making it. *Brawley* v. *United States*, 168.
5. But where no such independent circumstances are referred to, and the engagement is to furnish goods of a certain quality or character to a certain amount, the quantity specified is material, and governs the contract. *Id.*
6. If, however, the qualifying words, "about," "more or less," and the like, are supplemented by other stipulations or conditions which give them a broader scope or a more extensive significancy, then the contract is to be governed by such added stipulations or conditions. *Id.*
7. Previous and contemporary transactions and facts may be very properly taken into consideration to ascertain the subject-matter of a

CONTRACTS (*continued*).

contract, and the sense in which the parties may have used particular terms, but not to alter or modify the plain language which they have used. *Id.*

8. Accordingly, where an agreement was entered into between the United States and a contractor, whereby the latter undertook to deliver at the post of Fort Pembina eight hundred and eighty cords of wood "more or less, as shall be determined to be necessary by the post-commander for the regular supply, in accordance with army regulations, of the troops and employés of the garrison of said post, for the fiscal year beginning July 1, 1871," and the post-commander, as soon as the contract came to his knowledge, and within four days after it was signed, notified the contractor that but forty cords of wood would be required thereon, and forbade his hauling any more to the government yard, — *Held*, that the United States was not liable to the contractor for any number of cords beyond the forty delivered. *Id.*

9. Unless forbidden by its charter, a railroad company may contract for a shipment over connecting lines; and, having done so, is liable in all respects upon them as upon its own lines. In such a case, the shipper is authorized to assume that it has made the requisite arrangements to fulfil its obligations. *Railway Company* v. *McCarthy*, 258.

10. Where such a contract is not, on its face, necessarily beyond the scope of the powers of the corporation, it will, in the absence of proof to the contrary, be presumed to be valid. *Id.*

11. A contract for furnishing goods at a certain price, based on the then value of gold, stipulated that such price should be increased or reduced with the rise or the fall in that value, with a proviso, however, that a rise or a fall of twenty-five per cent, unless it remained sufficiently long to affect the general price of merchandise, should not change the contract price of the goods. When they were delivered, gold had undergone a reduction of more than twenty-five per cent below its value at the date of the contract. *Held*, that in a suit on the contract the purchaser was entitled to a corresponding reduction in the contract price of the goods, without showing that the decline in gold had affected the general price of merchandise. *Ames* v. *Quimby*, 324.

12. Where a city council is vested with power to cause sidewalks in the city to be constructed, it may authorize the mayor, and the chairman of the committee on streets and alleys, to make, in its behalf, and pursuant to its directions, a contract for doing the work. *Hitchcock* v. *Galveston*, 341.

13. A provision in the charter, that the city council shall not borrow for general purposes more than $50,000, does not limit the debt of the city, nor prohibit the council from entering into a contract involving an expenditure exceeding that amount, for special improve-

CONTRACTS (*continued*).
ments, such as the grading and paving of streets and the construction of sidewalks, which are authorized by the charter. *Id.*
14. Such a contract is not rendered wholly inoperative because it provides that the work done under it shall be paid for in bonds of the corporation, the issue whereof was not authorized by law. The contract, so far as it is in other respects lawful, remains in force; and for the breach thereof the corporation is liable. *Id.*
15. The contract in question in this case construed, and the proviso therein, in reference to the consent of the owners of the property fronting or abutting on the pavements to be laid, held to have reference to the materials to be used in constructing them, and not to the execution of the work itself. *Id.*
16. A contract entered into between A. and the Quartermaster's Department of the Army, for the delivery of a number of cords of wood at a post on a military reservation, stipulated that no traders, sutlers, contractors, civilians, or others should be allowed to cut timber about said post, until all required by the United States for certain purposes was secured. The contractor cut a part of the wood on the reservation, when he was directed by the post commander to cut outside the reservation, which he did. Having performed his contract, he was paid in full for all the wood delivered thereunder. *Held*, that the contract prohibited him from cutting wood within the reservation, and that he cannot recover damages for any expense he incurred by reason of being compelled to cut and haul, from a point outside the reservation, the wood necessary to complete his contract. *Francis* v. *United States*, 354.
17. A. contracted to cut, furnish, and deliver in Washington City, at specified rates, granite to the United States, at such times as it might require, and to furnish such number of men as it might deem necessary to the proper prosecution of the work. The full cost of their labor, increased by fifteen per cent, was also to be paid to him by the United States. For every day that he was in default he was to forfeit and pay $100. *Held*, that there was no privity between the United States and the men employed by him in the execution of his contract. *United States* v. *Driscoll*, 421.
18. A. contracted by parol, in New York, for the purchase of a large quantity of spirituous liquor of B., who, by the agreement, was to furnish certain labels. B. delivered them, pursuant to instruction, to A. in New York, and shipped the liquor to A. in Michigan, where he resided. A., when sued for the price of the liquor, no part of which had been paid, insisted that the contract was not completed until the delivery of the liquor in Michigan, and he relied upon the prohibitory liquor law of that State, which declares that all such contracts are null and void. The jury found that the labels added to the value of the liquor, and formed part of the price, and that A. accepted them in New York as a part of the goods sold.

CONTRACTS (*continued*).

Held, that the finding of the jury upon the question of acceptance being final and conclusive, the contract was executed in New York, and was by the laws thereof valid. *Garfield* v. *Paris*, 557.

19. A. agreed to furnish the United States a number of cubic yards of rubble-stone, for the construction of a public building under a contract which, after prescribing the dimensions of the material, and the price to be paid therefor, provided that no departure should be made from its conditions, without the written consent of the Secretary of the Treasury. Such consent was not given. The assistant superintendent, in charge of the erection of the building, declined to receive certain of the stones, although they were within the description of the contract; and required A. to furnish others of a different and more expensive kind, which the latter did. *Held*, that as A. was bound to take notice of the fact that the assistant superintendent had no power to vary the contract, he is only entitled to recover according to its terms. *Hawkins* v. *United States*, 689.

CORPORATE STOCK. See *Bankruptcy*, 1 ; *District of Columbia*.

CORPORATIONS. See *Bankruptcy*, 1; *Confederate States*, 6; *Contracts*, 9, 10; *District of Columbia; Grant*, 1–4; *Illinois; Ultra Vires*.

1. A corporation created by statute can exercise no powers and has no rights, except such as are expressly given or necessarily implied. *Huntington* v. *Savings Bank*, 388.
2. Where two or more corporations, subjected to a special tax upon the net income of their roads, with immunity from other taxation, — the amount of such special tax being dependent upon reports to be made and information communicated by their directors and other officers, — are consolidated into a new corporation, with different directors and other officers, who are neither bound nor able to make the reports and give the information required of the original companies, the new corporation thus created is not entitled to the immunity of the original companies from general taxation. *Railroad Company* v. *Maine*, 499.
3. A new corporation may be created by the union of two or more corporations, and its powers and privileges designated by reference to the charters of other companies as well as by special enumeration. *Id.*
4. The act of the legislature of Maine of 1856, authorizing two or more existing corporations to consolidate and form a new corporation, was an act of incorporation of the new company; and the latter, upon its formation, became at once subject to the provisions of the general law of 1831, which declared that any act of incorporation subsequently passed should at all times thereafter "be liable to be amended, altered, or repealed at the pleasure of the legislature, in the same manner as if an express provision to that effect were therein contained, unless there shall have been inserted in such act of incor-

CORPORATIONS (*continued*).
poration an express limitation or provision to the contrary." So long as this provision remained unrepealed, subsequent legislation not repugnant to it was controlled by it, and is to be construed and enforced in connection with it. *Id.*

5. There being in the act of 1856 no limitation upon the power of amendment, alteration, and repeal, the State, by the reservation in the law of 1831, which is to be considered as if embodied in that act, retained the power to alter it in all particulars constituting the grant of corporate rights, privileges, and immunities to the new company formed under it. The existence of the corporation, and its franchises and immunities, derived directly from the State, were thus kept under its control. Rights and interests acquired by the company, not constituting a part of the contract of incorporation, stand upon a different footing. *Id.*

COSTS. See *Record*, 1, 2; *Tender; Trade-marks*, 5.

COTTON BRAIDS. See *Imports, Duty on*, 11, 12.

COUPONS. See *Municipal Bonds*, 1, 6.

1. The title to interest-coupons passes from hand to hand by mere delivery. A transfer of possession is presumptively a transfer of title, but does not import a guaranty of payment. *Ketchum* v. *Duncan*, 659.
2. The court, in considering the facts in this case, *holds* that the coupons of May and November, 1874, of the bonds of the Mobile and Ohio Railroad Company, represented as owned by Alexander Duncan, are existing liabilities of that company, protected by its first mortgage; and that they have no equity superior to that of the bonds from which they were taken, or of the subsequently maturing coupons. *Id.*

COURT AND JURY. See *Agent*.

1. The court reaffirms its former decisions, that a court is not bound to give instructions in the language in which they are asked. If those given sufficiently cover the case, and are correct, the judgment will not be disturbed. *Railway Company* v. *McCarthy*, 258.
2. The comments of the judge in his charge to the jury, as to the circumstances under which the defendant might be entitled to damages against the plaintiff, cannot be a ground of error, when there was no such issue, and when the defendant could not have been thereby prejudiced. *Walker* v. *Johnson*, 424.
3. The court is not bound, at the request of counsel, to give as instructions philosophical remarks copied from text-books, however wise or true they may be in the abstract, or however high the reputation of the authors. *Id.*
4. Where the record does not show that the finding of the jury is contrary to the instruction of the court, the presumption is that they followed it. *Gregory* v. *Morris*, 619.

COURT OF CLAIMS. See *Limitations, Statute of*, 1, 2; *Practice*, 1; *Witness*, 1–3.

A brewer paid to the collector of internal revenue $100 for special tax on his business from May 1, 1873, to April 30, 1874, for which a special tax stamp was given him. At the close of the year, it was found that he had manufactured less than five hundred barrels, and the Commissioner of Internal Revenue allowed his claim for the excess paid by him. Upon proper application to the treasury, payment of the amount so allowed was refused. *Held*, 1. That the allowance made by the commissioner, unless it be impeached in some appropriate form by the United States, is conclusive. 2. That the Court of Claims has jurisdiction of a suit by the brewer against the United States to recover the amount, and that he is entitled to judgment therefor. *United States* v. *Kaufman*, 567.

CRAPE VEILS. See *Imports, Duty on*, 1–3.

CRIMINAL LAW. See *Distilling*, 3; *Evidence*, 1; *Fine; Post-offices and Post-roads.*

1. An indictment under sect. 3266 of the Revised Statutes, charging the defendant with causing or procuring some other person to use a still, boiler, or other vessel, for the purpose of distilling, within the intent and meaning of the internal revenue laws of the United States, is bad, unless it states the name of such other person, or avers that the same is unknown. *United States* v. *Simmons*, 360.
2. An averment that such use was "in a certain building and on certain premises where vinegar was manufactured and produced" is not sufficient, as it does not state that vinegar was manufactured or produced there at the time the still and other vessels were used for the purpose of distilling. *Id.*
3. It is not necessary to aver that the spirits distilled were alcoholic. The allegation that the vessels were used "for the purpose of distilling, within the intent and meaning of the internal revenue laws of the United States," sufficiently advises the accused of the nature of the offence charged. *Id.*
4. The averment, that the defendant caused and procured the stills and other vessels to be used, implies, with sufficient certainty, that they were in fact used; and the nature of the means whereby their unlawful use was procured is matter of evidence to establish the imputed intent, and not of allegation in the indictment. *Id.*
5. In an indictment under sect. 3281 of the Revised Statutes, charging that the defendant knowingly and unlawfully engaged in and carried on the business of a distiller, within the meaning of the internal revenue laws of the United States, with the intent to defraud the United States of the tax on spirits distilled by him, it is not necessary to state the particular means by which the fraud was effected.

CRIMINAL LAW *(continued)*.

The intent being charged, the means are matters of evidence for the consideration of the jury. *Id.*

6. Under the second section of the act of Congress approved July 17, 1862 (12 Stat. 592), which declares that "no private corporation, banking association, firm, or individual shall make, issue, circulate, or pay out any note, check, memorandum, token, or other obligation, for a less sum than one dollar, intended to circulate as money, or to be received or used in lieu of lawful money of the United States," A. was indicted for circulating obligations in the following form: —

"BANGOR, MICH., Aug. 15, 1874.

"The Bangor Furnace Company will pay the bearer, on demand, fifty cents, in goods, at their store, in Bangor, Mich.

(Signed) "A. B. HOUGH, *Pres.*
"CHAS. D. RHODER, *Treas.*"

The indictment charged that he intended them to circulate as money, and to be received and used in lieu of lawful money of the United States. *Held*, that as the obligations were payable in goods and not in money, and the sum of fifty cents was named merely as the limit of the value of the goods demandable, the indictment was bad on demurrer. *United States* v. *Van Auken*, 366.

CROSS-EXAMINATION. See *Witness*, 4.

CURRENCY. See *Judgment.*

DAMAGES. See *Contracts*, 16; *Court and Jury*, 2; *Trade-marks*, 5; *Utah*, *Code of Practice of.*

DEBTS.

1. A city, when it borrows money and promises to repay it with interest, cannot, by its own ordinances, under the guise of taxation, relieve itself from performing to the letter all that it has expressly promised to its creditors. *Murray* v. *Charleston*, 432.
2. Debts are not property. A non-resident creditor of a city cannot be said to be, in virtue of a debt which it owes him, a holder of property within its limits. *Id.*

DEBTS DUE LOYAL CITIZENS OF THE UNITED STATES BY PARTIES IN REBELLION.

Where property held by parties in the insurgent States, as trustees or bailees of loyal citizens, was forcibly taken from them, they may in some instances be released from liability, their release in such cases depending upon the same principles which control in ordinary cases of violence by an unlawful combination too powerful to be successfully resisted; but debts due such citizens, not being tangible things subject to seizure and removal, are not extinguished, by reason of the debtor's coerced payment of equivalent sums to an unlawful

DEBTS DUE LOYAL CITIZENS OF THE UNITED STATES BY PARTIES IN REBELLION (*continued*).
combination. They can only be satisfied when paid to the creditors to whom they are due, or to others by direction of lawful authority. *Williams* v. *Bruffy*, 176.

DECREE. See *Confederate Notes*, 1; *Jurisdiction*, 5.

DEDICATION.
No particular form of words is required to the validity of a dedication. The assent of the owner, and the use of the premises for the purposes intended by the appropriation, are sufficient, and estop him from revoking the dedication. *Morgan* v. *Railroad Company*, 716.

DEED. See *Louisiana; Mortgage.*

DE FACTO GOVERNMENTS. See *Confederate States*, 4, 5.

DELIVERY. See *Contracts*, 1, 2.

DEMURRAGE. See *Contracts*, 3.

DEMURRER. See *Criminal Law*, 6; *Practice*, 2.

DEPOTS AND SIDE-TRACKS, CONSTRUCTION OF. See *Municipal Bonds*, 10.

DISHONORED PAPER. See *Municipal Bonds*, 1.

DISTILLING. See *Criminal Law*, 1–5; *Forfeiture*, 1.
1. A distiller of spirits is presumed to be acquainted with the utensils and machinery used in his business, and with their character and capacities. But the law does not attach culpability and impose punishment where there is no intention to evade its provisions, and the usual means to comply with them are adopted. *Felton* v. *United States*, 699.
2. All that the law requires of him, to avoid its penalties, is to use in good faith the ordinary means — by the employment of skilled artisans and competent inspectors — to secure utensils and machinery which will accomplish the end desired. If, then, defects exist, and the end sought be not attained, or defects in the utensils or machinery not then open to observation be subsequently discovered, he is not chargeable with "knowingly and wilfully" omitting to do what is required of him. *Id.*
3. Doing or omitting to do a thing "knowingly and wilfully" implies not only a knowledge of the thing, but a determination with an evil intent to do it or to omit doing it. *Id.*

DISTRICT OF COLUMBIA.
1. The act of Congress approved May 24, 1870 (16 Stat. 137), incorporating the National Savings Bank of the District of Columbia, does not authorize the creation of any corporate stock or capital. The profits of the institution, after deducting the necessary expenses of

DISTRICT OF COLUMBIA (*continued*).
conducting it, inure wholly to the benefit of the depositors, in dividends, or in a reserved surplus for their greater security. *Huntington* v. *Savings Bank*, 388.
2. The bond filed pursuant to the eleventh section of that act is in no sense capital owned by the bank or the corporators. It was required solely to secure depositors and creditors.

DUE PROCESS OF LAW. See *Constitutional Law*, 12, 13.
An assessment of certain real estate in New Orleans for draining the swamps of that city was resisted in the State courts, and by writ of error brought here, on the ground that the proceeding deprives the owner of his property without due process of law.
1. The origin and history of this provision of the Constitution, as found in Magna Charta, and in the fifth and fourteenth amendments to the Constitution of the United States, considered. *Davidson* v. *New Orleans*, 97.
2. The court suggests the difficulty and danger of attempting an authoritative definition of what it is for a State to deprive a person of life, liberty, or property without due process of law, within the meaning of the fourteenth amendment; and holds that the annunciation of the principles which govern each case as it arises is the better mode of arriving at a sound definition. *Id.*
3. This court has heretofore decided that due process of law does not in all cases require a resort to a court of justice to assert the rights of the public against the individual, or to impose burdens upon his property for the public use. *Murray's Lessee et al.* v. *Hoboken Land and Improvement Company*, 18 How. 272, and *McMillan* v. *Anderson*, 95 U. S. 37. *Id.*
4. In the present case, the court holds that it is due process of law, within the meaning of the Constitution, when the statute requires that such a burden, or the fixing of a tax or assessment before it becomes effectual, must be submitted to a court of justice, with notice to the owners of the property, all of whom have the right to appear and contest the assessment. *Id.*
5. Neither the corporate agency by which the work is done, the excessive price which the statute allows therefor, nor the relative importance of the work to the value of the land assessed, nor the fact that the assessment is made before the work is done, nor that the assessment is unequal as regards the benefits conferred, nor that personal judgments are rendered for the amount assessed, are matters in which the State authorities are controlled by the Federal Constitution. *Id.*

DUTY ON IMPORTS. See *Imports, Duty on.*

EJECTMENT. See *Limitations, Statute of*, 3–5.

EMBROIDERED LINEN GOODS. See *Imports, Duty on*, 21.

ENEMY, SALE OF LAND BY. See *Confiscation*, 1–7.

EQUITY. See *Mortgage*, 1–4; *Patents of the United States for Land*, 7; *Pleading*, 3, 4.

1. Equity will not regard a thing as done which has not been done, when it would injure third parties who have sustained detriment and acquired rights by what has been done. *Casey* v. *Cavaroc*, 467.
2. A. borrowed of a bank money on call, and deposited with it as collateral security certain mining stocks, with written authority to sell them at its discretion. The loan remaining unpaid, the bank notified him that, unless he paid it, the stocks would be sold. He failed, after repeated demands, to pay it, and they were sold, for more than their market value, to three directors of the bank, and the proceeds applied to the payment of the loan. A., who was advised of the sale, and that enough had been realized to pay his indebtedness, made no objection. The stocks were transferred to the purchasers. Nearly four years after the sale, the stocks having in the mean time greatly increased in value, A. notified the bank of his desire and purpose to redeem them, and subsequently filed his bill against it asserting his right so to redeem, and praying for general relief. *Held*, that he is entitled to no relief. *Hayward* v. *National Bank*, 611.

EQUITY OF REDEMPTION. See *Lands, Conveyance of*, 1–4; *Mortgage*, 1–4.

ESTATE FOR LIFE. See *Confiscation*, 7; *Grant*, 1–4.

ESTOPPEL. See *Contracts*, 2; *Dedication; Imports, Duty on*, 26; *Insurance*, 3; *Mortgage*, 3; *Municipal Bonds*, 15, 17.

1. Where a party gives a reason for his conduct and decision touching any thing involved in a controversy, he is estopped, after litigation has begun, from changing his ground and putting his conduct upon another and different consideration. *Railway Company* v. *McCarthy*, 258.
2. Where a party brings an action for a part only of an entire indivisible demand, and recovers judgment, he is estopped from subsequently bringing an action for another part of the same demand. *Baird* v. *United States*, 430.
3. The only case where a representation as to the future can operate as an estoppel is where it relates to the purposed abandonment of an existing right, and was intended to influence, and has influenced, the conduct of the party to whom it was made. A promise as to future action, touching a right dependent upon a contract to be thereafter entered into, does not create an estoppel. *Insurance Company* v. *Mowry*, 544.
4. The promise of an insurance company, that if a party will take out a policy he shall be notified when to pay the annual premiums before he shall be required to pay them, will not, although such notice is not given, estop the company from setting up the forfeiture which,

ESTOPPEL (*continued*).
according to the terms of the policy subsequently accepted, was incurred on the non-payment of the premium when due. *Id.*
5. Any agreement, declaration, or course of action on the part of an insurance company, which leads a party insured honestly to believe that by conforming thereto a forfeiture of his policy will not be incurred, followed by due conformity on his part, will estop the company from insisting upon the forfeiture, though it might be claimed under the express letter of the contract. *Insurance Company* v. *Eggleston*, 572.
6. An estoppel *in pais* can be set up only by a person who has been misled to his injury. *Ketchum* v. *Duncan*, 659.
7. A party is not permitted to deny a state of things which his conduct or misrepresentations led another to believe existed, and to act in accordance with that belief. *Morgan* v. *Railroad Company*, 716.
8. The doctrine of estoppel *in pais* always presupposes error on one side, and fault or fraud upon the other, and some defect of which it would be inequitable for the party against whom the doctrine is asserted to take advantage. *Id.*

EVIDENCE. See *Bill of Particulars; Burden of Proof; Contracts*, 11; *Criminal Law*, 4; *Imports, Duty on*, 18; *Insurance*, 6, 7; *Mortgage*, 1; *Pleading*, 1.
Where an information against a distillery and other property connected therewith, leased by the owner for the purpose of distilling, charges acts or omissions on the part of the lessee in carrying on the business of distilling while he was in possession, and with intent to defraud the revenue, the declarations of the lessee, voluntarily made subsequent to his arrest, are competent evidence against the owner to show the fraudulent intent of the lessee, as are also books, letters, memoranda, and bills of lading found on the premises in a room occupied by the latter. *Dobbins's Distillery* v. *United States*, 395.

EXECUTORY CONTRACT. See *Contracts*, 1, 2.

EXEMPLIFICATION. See *Patents of the United States for Land*, 3.

FEDERAL QUESTION. See *Jurisdiction*, 5.

FINE.
When a party is convicted of an offence, and sentenced to pay a fine, it is within the discretion of the court to order his imprisonment until the fine shall be paid. *Ex parte Jackson*, 727.

FLORIDA. See *Constitutional Law*, 5, 6.

FORECLOSURE. See *Lands, Conveyance of*, 3, 4; *Pleading*, 2.

FORFEITURE. See *Insurance*, 5–9, 13.
Where the owner of a distillery and other property connected therewith leased them for the purpose of distilling, the acts or omissions of the lessee in carrying on the business of distilling while he was

FORFEITURE (*continued*).
in possession, and with intent to defraud the revenue, although they are unknown to the owner, subject the distillery and such other property to forfeiture to the United States. *Dobbins's Distillery* v. *United States*, 395.

FORM, WHEN OF THE ESSENCE OF AN INVENTION. See *Letters-patent*, 1.

FRANCHISE. See *Corporations*, 2–5; *Grant*, 1–4.

FRAUD. See *Confederate States*, 6; *Municipal Bonds*, 4; *Patents of the United States for Land*, 7; *Trade-marks*, 1–3.

1. The United States cannot, against the claim of an innocent party, hold his money which has gone into its treasury by means of the fraud of its agent. *United States* v. *State Bank*, 30.
2. The rules of law applicable to an individual in a like case apply also to the United States. Its sovereignty is in no wise involved. *Id.*

FRAUDS, STATUTE OF.

1. A contract to pay to an attorney-at-law for his services in suits concerning land, if it be recovered, a specific sum of money out of the proceeds when it shall be sold by the client, is not void under the Statute of Frauds, because not in writing, for it may be performed within the year. *McPherson* v. *Cox*, 404.
2. A parol contract for the delivery of materials is not void under the Statute of Frauds, unless it appears affirmatively that it was not to be performed within a year. If performance by the promisor can be required by the promisee within a year, the contract is valid. *Walker* v. *Johnson*, 424.
3. A subsequent verbal agreement varying the manner of delivering them is binding. *Id.*
4. A purchaser's receipt and acceptance of goods sufficient to satisfy the Statute of Frauds may be constructive. *Garfield* v. *Paris*, 557.

FRAUDULENT PREFERENCE. See *Bankruptcy*, 2.

GENERAL AGENT. See *Insurance*, 2.

GOLD COIN. See *Confederate Notes*, 1; *Judgment*.

GOOD FAITH. See *Contracts*, 4; *Distilling*, 2.

GRANT. See *Patents of the United States for Land*, 1–4.

1. By analogy to the rule of the common law, that a grant to a natural person, without words of inheritance, creates only an estate for his life, a grant of a franchise, without words of perpetuity, to a corporation aggregate, whose duration is limited, creates only an estate for its life. *Turnpike Company* v. *Illinois*, 63.
2. By an act of the legislature of Illinois, approved Feb. 13, 1847, a turnpike company was created a body corporate, to continue as such for twenty-five years from that date, with power to construct and

GRANT (*continued*).

maintain a certain turnpike, erect toll-gates, and collect tolls. The State reserved the right to purchase the road at the expiration of the charter, by paying to the corporation the original cost of construction; but the road, with all its appendages, was to remain in the possession of the corporation, to be used and controlled, subject to the rights and restrictions contained in the charter, until such time as the State should refund said cost. By a supplement passed in 1861, the company was authorized to extend its road; and, in consideration of keeping in repair a certain bridge and dyke, to use them as a part of the road, erect a toll-gate thereon, and collect tolls. The responsibility of the company did not, however, extend to the destruction of the dyke by high floods. *Held*, 1. That the provision whereby, on the failure of the State, at the expiration of twenty-five years, to refund the original cost of the road, the company was authorized to continue in the exercise of its franchises until they should be redeemed by paying such cost, extended only to the charter, and not to the supplement of 1861. 2. That the supplement merely granted to the company the use of the bridge and dyke, and that the franchise to charge tolls thereon was separate and distinct from that authorizing the collection of them on the original road, and did not extend beyond the term of years for which the corporation had been created. 3. That, at the expiration of that term, the State, by resuming the control of the bridge and dyke without compensation to the company, did not impair the obligation of her contract with the company. *Id.*

3. *Quære*, Whether, if the company had been authorized to construct the bridge and dyke, and had done so, or to acquire a proprietary interest in the property in fee, and had acquired it, the State could have taken back the property without just compensation. *Id.*
4. A grant of franchises and special privileges is to be construed most strongly against the donee and in favor of the public. *Id.*
5. The failure to record a patent of the United States for lands does not defeat the grant. *McGarrahan* v. *Mining Company*, 316.

GUARANTY. See *Coupons*, 1.

HARBOR IMPROVEMENTS. See *Jurisdiction*, 3.

HAT BRAIDS. See *Imports, Duty on*, 11, 12.

ILLINOIS. See *Grant*, 2, 3; *Limitations, Statute of*, 3–5.

A railroad corporation of Indiana, by a written contract of lease with a railroad corporation of Illinois, acquired the right and assumed the duty of managing and carrying on the business of the main line and a branch road of the latter company. The lease was confirmed by an act of the legislature of Illinois, which declared that said lessee should be a railroad corporation in the latter State, and possess as large powers as were possessed by the lessor, and such other powers

ILLINOIS (*continued*).

as are usual to railroad corporations. The State board for the equalization of taxes in Illinois made an assessment on the capital stock and franchises of the lessor corporation, over and above its tangible property, for the roads which passed from its control by virtue of the lease, and then assigned to the several counties so much of the assessment as was in the same proportion to the whole as the length of track within their respective limits bore to the entire length of the leased roads; the taxes due upon such assessment being charged to and to be collected from the company which, with the consent of the State, was entitled to have, and did have, exclusive control and management of such roads. *Held*, that the mode adopted by the State board was in substantial conformity to the laws of Illinois. *Railroad Company* v. *Vance*, 450.

IMMOVABLES, DELIVERY OF. See *Possession, Delivery of.*

IMPORTER, PROTEST OF. See *Imports, Duty on*, 26.

IMPORTS, DUTY ON. See *Burden of Proof.*

1. Veils manufactured of silk, and commercially known as "crape veils," and not otherwise, do not fall within the enumerating clause of the eighth section of the act of June 30, 1864 (13 Stat. 210), whereby "silk veils" are dutiable at sixty per cent *ad valorem*, but are within its concluding clause touching manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, and are, therefore, subject to a duty of fifty per cent *ad valorem*. *Arthur* v. *Morrison*, 108.
2. The designation of an article of commerce by merchants and importers, when it is clearly established, determines the construction of the tariff law when that article is mentioned. *Id.*
3. The intent of Congress to impose, under the act of 1864, duties upon imported articles according to their commercial designation, and to recognize this rule of construing statutes, is manifest from the first section of the act of Feb. 8, 1875 (18 Stat. 307), which subjects to a duty of sixty per cent "all goods, wares, and merchandise not herein otherwise provided for, made of silk, or of which silk is the component material of chief value, irrespective of the classification thereof for duty by or under previous laws, or of their commercial designation." *Id.*
4. The rules, that for the purpose of the tariff laws the commercial designation of an article among traders and importers, when clearly established, fixes its character, and that when Congress has designated an article by a specific name, and imposed a duty upon it, general terms in a subsequent act or a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it, are not deprived of their ordinary application by the expression "not otherwise provided for," in the eighth

IMPORTS, DUTY ON (*continued*).
section of the act of June 30, 1864 (13 Stat. 210). *Arthur* v. *Lahey*, 112.
5. The distinctions made by importers and traders between "silk laces" and "thread laces" have been plainly recognized by Congress, and have run through its acts for more than thirty years. *Id.*
6. Under the nineteenth section of the act of March 2, 1861 (12 Stat. 190), as amended by the sixth section of the act of July 14, 1862 (id. 550), thread laces are *eo nomine* subject to a duty of thirty per cent *ad valorem*. *Id.*
7. *Smythe* v. *Fiske* (23 Wall. 374) was not intended to overrule *Homer* v. *The Collector* (1 id. 486), *Reiche* v. *Smythe* (13 id. 162), or the cases referred to in them, nor was *Movius* v. *Arthur* (95 U. S. 144) understood to be in conflict with it. *Id.*
8. Those cases commented upon and explained. *Id.*
9. In 1873, certain gloves, commercially known as "silk plaited gloves," or "patent gloves," made on frames and manufactured in part of silk and in part of cotton, cotton being the component part of chief value, were imported at New York, upon which the collector imposed a duty of sixty per cent *ad valorem*, under the eighth section of the act of June 30, 1864 (13 Stat. 210). *Held*, that the articles did not come within the general terms of that section, because, 1st, they were not, by reason of their component materials, silk gloves; 2d, they were commercially known only as "plaited gloves," or "patent gloves;" and, 3d, they did not fall within the concluding clause, silk not being the component part of chief value. *Arthur* v. *Unkart*, 118.
10. Not being included in the act of 1864, the articles were dutiable under the twenty-second section of the act of March 2, 1861 (12 Stat. 191), and the thirteenth section of the act of July 14, 1862 (id. 556), where they are enumerated as gloves made on frames. *Id.*
11. The distinction between "cotton braids" and "other manufactures of cotton not otherwise provided for," and "hat braids," has been established and recognized by Congress by the acts of March 2, 1861 (12 Stat. 178), and July 14, 1862 (id. 543), and sect. 2504 of the Revised Statutes. *Arthur* v. *Zimmerman*, 124.
12. "Braids . . . used for making or ornamenting hats," being specifically enumerated in said acts of 1861 and 1862, are subject to the duty thereby prescribed, and not to that imposed by the sixth section of the act of June 30, 1864 (13 Stat. 209), upon "cotton braids, insertings, lace trimmings, or bobbinets, and all other manufactures of cotton not otherwise provided for." *Id.*
13. For tariff purposes, Congress has at all times, since the passage of the act of May 2, 1792 (1 Stat. 259), intended to preserve the distinction between "chocolate" and "confectionery." *Arthur* v. *Stephani*, 125.
14. Chocolate, *eo nomine*, is, by the first section of the act of June 6, 1872 (17 Stat. 231), dutiable at the rate of five cents per pound; and,

IMPORTS, DUTY ON (*continued*).
although put up in a particular form and sold as "confectionery," is not subjected to the duty imposed on the latter article by the first section of the act of June 30, 1864 (13 id. 202). *Id.*
15. The similitude clause of the act of Aug. 30, 1842 (5 Stat. 565), applies only to non-enumerated articles. *Arthur* v. *Sussfield*, 128.
16. In 1872 and 1873, a quantity of spectacles made of glass and steel were imported at New York, upon which the collector of the port, under the third section of the act of June 30, 1864 (13 Stat. 205), exacted a duty of forty-five per cent *ad valorem*. *Held*, that they were dutiable under the ninth section of that act, which imposes "on pebbles for spectacles and all manufactures of glass, or of which glass shall be a component material, not otherwise provided for," a duty of forty per cent *ad valorem*. *Id.*
17. "Nitro-benzole," being a manufacture from benzole and nitric acid, and a non-enumerated article, is subject to duty under the twentieth section, known as the similitude clause, of the act of Aug. 30, 1842 (5 Stat. 565), which provides that "on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of its component parts may be chargeable," and not under the fifth section of the act of July 14, 1862 (12 id. 548), which imposes a duty of fifty per cent *ad valorem* on "essential oils not otherwise provided for." *Murphy* v. *Arnson*, 131.
18. Evidence tending to show that a non-enumerated article "resembles essential oil in the uses to which it is put, as a marketable commodity, more than any thing else," falls short of the requisition of the act of Aug. 30, 1842, *supra*, which provides that "on each and every non-enumerated article which bears a similitude in . . . the use to which it may be applied, to any enumerated article chargeable with duty," there shall be levied, collected, and paid "the same rate of duty which is levied and charged on the enumerated article which it most resembles." *Id.*
19. The duty on braces and suspenders is, *eo nomine*, fixed by the twenty-second section of the act of March 2, 1861 (12 Stat. 191), and the thirteenth section of the act of July 14, 1862 (id. 556). *Arthur* v. *Davies*, 135.
20. Merchandise technically and commercially known as braces and suspenders is subject to the duty imposed upon them, although it would otherwise fall under the general designation applicable to other articles. *Id.*
21. The duty imposed on embroidered linen goods by the twenty-second section of the act of March 2, 1861 (12 Stat. 192), is not reconsidered in the seventh section of the act of June 30, 1864 (13 id. 209), but remains as fixed by the former act. *Arthur* v. *Homer*, 137.
22. In 1872, A. imported certain goods manufactured of cattle-hair and cotton, the latter not being the component part of chief value. *Held*, that, under the last paragraph of the sixth section of the act of June

IMPORTS, DUTY ON (*continued*).

30, 1864 (13 Stat. 209), they were subject to a duty of thirty-five per cent *ad valorem*. *Arthur* v. *Herman*, 141.

23. The rule that an article, dutiable by its specific designation, will not be affected by the general words of the same or another statute, which would otherwise embrace it, applies as well to statutes reducing duties as to those increasing them. *Arthur* v. *Rheims*, 143.

24. As the twelfth section of the act of June 30, 1864 (13 Stat. 213), imposes a duty of fifty per cent *ad valorem* upon artificial flowers *eo nomine*, they are not subject to the deduction of ten per cent allowed by the second section of the act of June 6, 1872 (17 id. 231), "on all manufactures of cotton of which cotton is the component part of chief value." *Id.*

25. The plaintiffs below entered an importation of goods upon the following invoice:—

Bought	Fr's 8,670.25
Discount for cash on gross amount, two per cent, 8,766.60 .	175.30
	Fr's 8,494.95

Terms cash. If not paid, interest to be added at the rate of six per cent.

As cash had not been paid, the two per cent discount was disallowed by the appraisers. The collector thereupon fixed the value of the goods as of the invoice price at 8,670.25 francs, and exacted duty thereon, although the actual market value of the goods in the country of exportation was 8,494.95 francs. *Held*, that the latter sum was also the invoice value, and that the duty on the two per cent was improperly exacted. *Arthur* v. *Goddard*, 145.

26. An importer, having set forth in his written protest the ground of his objection to the payment of customs duties exacted by the collector, cannot, in his suit against the latter, recover them upon any ground other than that so set forth. *Davies* v. *Arthur*, 148.

27. The joint resolution of March 2, 1867 (14 Stat. 571), repealing that portion of the fifth section of the act approved June 30, 1864 (13 id. 208), which subjected to a duty of ten per cent *ad valorem* "lastings, mohair cloth, silk, twist, or other manufacture of cloth, woven or made in patterns of such size, shape, and form, or cut in such manner, as to be fit for shoes, slippers, boots, bootees, gaiters, and buttons exclusively, not combined with india-rubber," did not revive the provision in the twenty-third section of the act of March 2, 1861 (12 id. 195), which placed such articles on the free list. *Kohlsaat* v. *Murphy*, 153.

28. Patterns imported in 1870, made of cotton canvass cut into strips of the size and shape for slippers, more or less embroidered with worsted and silk, were dutiable under the last paragraph of the sixth section of the act of June 30, 1864 (13 Stat. 209), which imposes a duty of thirty-five per cent *ad valorem* on "manufactures of cotton not otherwise provided for." *Id.*

IMPRISONMENT. See *Fine.*

INDEMNITY. See *Confederate States*, 6.

INDICTMENT. See *Criminal Law*, 1–6.

INFRINGEMENT. See *Letters-Patent*, 2; *Trade-marks*, 3–5.

INJUNCTION. See *Pleading*, 4; *Trade-marks.*

Except in cases arising under the bankrupt law, a court of the United States cannot enjoin a party from proceeding in a State court. *Dial* v. *Reynolds*, 340.

INSOLVENCY. See *Bankruptcy*, 2.

INSTRUCTIONS. See *Court and Jury*, 1–3.

INSURANCE. See *Bottomry and Respondentia.*

1. An insurance company cannot hold out a person as its agent, and then disavow responsibility for his acts. Persons dealing with him in the particular business for which he was appointed have a right to rely upon the continuance of his authority, until in some way informed of its revocation. *Insurance Company* v. *McCain*, 84.
2. Unless instructions limiting the authority of a general agent of an insurance company, whose powers would otherwise be coextensive with the business intrusted to him, are communicated to the party with whom he deals, the company is bound to the same extent as though such special instructions had not been given. *Id.*
3. The receipt, without objection, by an insurance company of a statement from a person who had been acting as its agent, that the premium for the renewal of a policy had been paid to him, and its failure then to notify the assured that the powers of the agent had terminated, is equivalent to an adoption of the act of the agent, and estops the company, when sued on the policy, from denying his authority. *Id.*
4. An insurance company may waive any condition of a policy inserted therein for its benefit. *Insurance Company* v. *Norton*, 234.
5. As the company may at any time, at its option, give authority to its agents to make agreements, or to waive forfeitures, it is not bound to act upon the declaration in its policy that they have no such authority. *Id.*
6. Whether it has or has not exercised that option is a fact provable by either written evidence or by parol. *Id.*
7. As denoting the power given by an insurance company to a local agent, evidence is admissible as to its practice in allowing him to extend the time for the payment of premiums and premium notes; and the jury, upon such evidence, may find whether he was authorized to make such an extension, and, if so, whether it was in fact made in the case on trial. *Id.*
8. In this case, the court holds that the fact that the premium note was already past due when the agreement to extend it was made, is not

INSURANCE (*continued*).
sufficient to prevent that agreement from operating as a waiver of the forfeiture. *Id.*

9. The promise of an insurance company, that if a party will take out a policy he shall be notified when to pay the annual premiums before he shall be required to pay them, will not, although such notice is not given, estop the company from setting up the forfeiture which, according to the terms of the policy subsequently accepted, was incurred on the non-payment of the premium when due. *Insurance Company* v. *Mowry*, 544.
10. The policy issued by the company and accepted by the assured must, in a court of law, be taken as expressing the final agreement of the parties, and as merging all previous verbal stipulations. *Id.*
11. The court in this case holds that the authority of the local agent of the company was limited to countersigning the policy and receiving the premiums. *Id.*
12. Any agreement, declaration, or course of action on the part of an insurance company, which leads a party insured honestly to believe that by conforming thereto a forfeiture of his policy will not be incurred, followed by due conformity on his part, will estop the company from insisting upon the forfeiture, though it might be claimed under the express letter of the contract. *Insurance Company* v. *Eggleston*, 572.
13. A policy of insurance, issued by a New York company upon the life of A., who resided at Columbus, Miss., stipulated, that if the premiums were not paid at the appointed dates the company should not be liable, that all receipts for them were to be signed by the president and actuary, and that agents were not authorized to make, alter, or discharge contracts, or waive forfeitures. After the policy was issued, the company discontinued its agency at Columbus, and from time to time, as the premiums became due, notified A. by mail where and to whom to pay them. No notice as to the premium due Nov. 11, 1871, having been received by him, it was ascertained, by inquiry of the agents at Savannah, Ga., and Vicksburg, Miss., to whom payment had formerly been made, that the sub-agent at Macon, Miss., held the receipt. Payment was tendered him Dec. 30; but he refused to accept it, unless a certificate of A.'s health was furnished. A. died Jan. 5, 1872. The company, when sued, set up the forfeiture of the policy by reason of the non-payment of the premium on the day it was due. *Held*, that A., in view of the company's dealings with him, had reasonable cause to expect, and rely on, receiving notice where and to whom to pay the premium, and that the company was estopped from setting up that the policy was forfeited by the non-payment, on Nov. 11, of the premium then due. *Id.*
14. *Insurance Company* v. *Davis* (95 U. S. 452), and *New York Life Insurance Company* v. *Statham et al.* (93 id. 24), commented on and distinguished from this case. *Id.*

INTENT. See *Criminal Law; Distilling; Evidence*, 1; *Forfeiture.*

INTEREST. See *Municipal Bonds*, 6, 11, 12; *Tender.*

When at the place of contract the rate of interest differs from that at the place of payment, the parties may stipulate for either rate, and the contract will govern. *Cromwell* v. *County of Sac*, 51.

INTERNAL IMPROVEMENTS. See *Municipal Bonds*, 7.

INTERNAL REVENUE. See *Criminal Law*, 1–6.

INVENTION. See *Letters-patent*, 1.

IOWA.

Under the law of Iowa, municipal bonds of that State, drawing ten per cent interest before maturity, draw the same interest thereafter, and matured coupons attached to them draw six per cent. Judgments there rendered upon such bonds and coupons draw interest on the amount due on the bonds at the rate of ten per cent a year, and on that due on the coupons at the rate of six per cent a year. *Cromwell* v. *County of Sac*, 51.

JUDGMENT. *See Bankruptcy*, 2; *Confederate Notes*, 1.

Where a party entitled to recover a certain amount in gold coin, takes, with the approbation of the court, a judgment which may be discharged in currency, the judgment should be for a sum equivalent in value to the specified amount of that coin as bullion. *Gregory* v. *Morris*, 619.

JUDGMENT BY DEFAULT. See *Jurisdiction*, 1; *Practice*, 2, 3.

JUDGMENT CREDITOR. See *Limitations, Statute of*, 1–3.

JUDGMENTS, INTEREST ON. See *Municipal Bonds*, 6.

JURISDICTION. See *Appeal*, 4; *Confiscation*, 1–7; *Removal of Causes*, 2.

I. Of the Supreme Court.

1. This court has no power to re-examine the action of a territorial court in refusing to set aside a judgment by default. *McAllister* v. *Kuhn*, 87.
2. Any enactment, from whatever source originating, to which a State gives the force of law, is a statute of the State, within the meaning of the act regulating the appellate jurisdiction of this court over the judgments and decrees of the State courts. *Williams* v. *Bruffy*, 176.
3. Where Congress has, in the exercise of its lawful authority, inaugurated or adopted a system for the improvement of a harbor, and is, by appropriating the public moneys, carrying it out, this court has no authority to prescribe the manner in which the work shall be conducted, or to forbid its completion, or to require the undoing of that which has been done. *Wisconsin* v. *Duluth*, 379.
4. Wherever rights, acknowledged and protected by the Constitution of the United States, are denied or invaded by State legislation, which is sustained by the judgment of a State court, this court is author-

JURISDICTION (*continued*).

ized to interfere. Its jurisdiction, therefore, to re-examine such judgment cannot be defeated by showing that the record does not in direct terms refer to some constitutional provision, nor expressly state that a Federal question was presented. The true jurisdictional test is, whether it appears that such a question was decided adversely to the Federal right. *Murray* v. *Charleston*, 432.

5. A decree dismissing a bill in chancery brought to recover a debt and set aside an alleged fraudulent sale of property, was, on appeal, reversed, and a decree rendered by the Supreme Court of the State against the appellee for the amount of the debt, and an execution awarded. Thereupon the appellee, who, pending the appeal, and more than three years before the date of the decree, had obtained a discharge in bankruptcy, petitioned the Supreme Court to set aside its decree, and either permit him to plead his discharge there, or remand the cause, so that he might plead it in the inferior court. The court, upon the ground that no new defence could be made there, refused the petition, and permitted the decree to stand as entered. *Held*, 1. That upon the face of the record proper no Federal question was raised. 2. That the action upon the subsequent petition did not place the petitioner in a better position to invoke the jurisdiction of this court. *Wolf* v. *Stix*, 541.

6. This court has jurisdiction of an appeal from the final decree of the Circuit Court confirming a sale made under the order of that court. *Sage* v. *Railroad Company*, 712.

7. After the term at which such final decree was rendered, any justice of this court may, within the time prescribed by law, allow an appeal, and approve the bond which is to operate as a *supersedeas*. *Id.*

II. Of the Circuit Courts.

8. A foreign insurance company was doing business in Pennsylvania under a license granted pursuant to a statute, which, among other things, provided that the company should file a written stipulation, agreeing that process issued in any suit brought in any court of that Commonwealth having jurisdiction of the subject-matter, and served upon the agent specified by the company to receive service of process for it, should have the same effect as if personally served upon the company within the State. Suit was brought in the Circuit Court of the United States for the Eastern District of Pennsylvania by a citizen of that State against the company, and process served, in accordance with the State law, upon its agent so specified, who resided within the district. The service of the process was quashed, because the company was not an inhabitant of or found within the district. *Held*, 1. That the Circuit Court has jurisdiction of the suit, and should proceed to hear and determine it. 2. That said court is a court of the Commonwealth, within the intent of the statute. *Ex parte Schollenberger*, 369.

JURISDICTION (*continued*).

III. In General.

9. Except in cases arising under the bankrupt law, a court of the United States cannot enjoin a party from proceeding in a State court. *Dial* v. *Reynolds*, 340.

JUROR.

A juror in a civil action who, on his *voir dire*, expresses an entire willingness, as well as ability, to accept the facts as they shall be developed by the evidence, and return a verdict in accordance with them, is not rendered incompetent by having previously conversed with a person about the case, and received an impression in relation to the facts. *Gold-Mining Company* v. *National Bank*, 640.

KANSAS. See *Municipal Bonds*, 10–14.

LACHES. See *Trade-marks*, 5.

LAND DEPARTMENT. See *Patents of the United States for Land*, 5–7.

LANDS, CONVEYANCE OF.

1. The laws of the State in which land is situated control exclusively its descent, alienation, and transfer, and the effect and construction of instruments intended to convey it. *Brine* v. *Insurance Company*, 627.
2. All such laws in existence when a contract in regard to real estate is made, including the contract of mortgage, enter into and become a part of such contract. *Id.*
3. A State statute, therefore, which allows to the mortgagor twelve months to redeem, after a sale under a decree of foreclosure, and to his judgment creditor three months after that, governs to that extent the mode of transferring the title, and confers a substantial right, and thereby becomes a rule of property. *Id.*
4. This right of redemption after sale is, therefore, as obligatory on the Federal courts sitting in equity, as on the State courts; and their rules of practice must be made to conform to the law of the State, so far as may be necessary to give full effect to the right. *Id.*

LEGAL-TENDER CURRENCY. See *Confederate Notes*, 1, 2.

LETTERS-PATENT.

1. Form, when of the essence of an invention, is necessarily material; and, if it be inseparable from the successful operation of the machine, the attainment of the same object by a machine different in form is not an infringement. *Werner* v. *King*, 218.
2. The use by Robert Werner, under letters-patent No. 134,621, for crimping and fluting machines, issued to him Jan. 7, 1873, of the detent, or finger, in combination with fluting-rollers to produce crinkles or puffings, is not an infringement of the double-plated semi-cylinder guides covered by reissued letters-patent No. 3000, granted to George E. King, June 23, 1868. *Id.*

LETTERS-PATENT (*continued*).
3. Letters-patent No. 133,536, granted Dec. 3, 1872, to William Johnson, for an improvement in wrenches, do not infringe reissued letters-patent No. 5026, granted Aug. 6, 1872, to John Lacey and George B. Cornell, for an improvement in wrenches for extracting bung-bushes. *Schumacher* v. *Cornell*, 549.
4. The doctrine of mechanical equivalents has no application to this case. *Id.*

LEX FORI. See *Contracts*, 5.

LEX LOCI CONTRACTUS. See *Contracts*, 5.

LEX LOCI REI SITÆ. See *Lands, Conveyance of*, 1–4.

LIEN. See *Limitations, Statute of*, 3–5; *Trustee.*
The rule of the common law, that the lien of the vendor of personal property, to secure the payment of purchase-money, is lost by the voluntary and unconditional delivery of the property to the purchaser, does not prevent the parties from contracting for a lien which, as between themselves, will be good after delivery. *Gregory* v. *Morris*, 619.

LIFE-ESTATE. See *Confiscation*, 7; *Grant*, 1–4.

LIFE INSURANCE. See *Insurance*, 1–8, 13.

LIMITATIONS, STATUTE OF. See *Resulting Trust*, 1, 2.
1. The statute of limitation of suits in the Court of Claims (Rev. Stat., sect. 1069) is not applicable to a suit under sects. 1059–1062, because such a suit is brought to establish, not a claim in the just sense of that word, but a peculiar defence to a cause of action of the United States against the petitioner; and so long as the United States neglects to bring suit to establish that cause of action, so long must he be allowed to set up any defence thereto not in itself a separate demand. *United States* v. *Clark*, 37.
2. The petitioner's right to sue in the Court of Claims did not accrue until the accounting officers held him liable for the sum lost, by refusing to credit his account therewith; and their final action was within six years before this suit was brought. *Id.*
3. The Statute of Limitations applicable to the action of ejectment has no relation to the lien of a judgment creditor on the lands, though the judgment debtor may sell and convey them with possession to the party setting up the statute. *Pratt* v. *Pratt*, 704.
4. That statute does not begin to run in such case until the lands have been sold under an execution sued out on the judgment, and the purchaser of them becomes entitled to a deed; because, until then, there is no right of entry or of action against the party so in possession. *Id.*

LIMITATIONS, STATUTE OF (*continued*).

5. That statute begins to run against the judgment creditor only when he is such purchaser, and can bring ejectment. These propositions are applicable to the statute of Illinois of 1835 limiting actions for the recovery of land to seven years. *Id.*

LOUISIANA. See *Confiscation*, 6, 7; *Pledge*.

1. An actual delivery of immovables in Louisiana is not essential to the validity of a sale of them made by public act before a notary. The law of the State considers the tradition or delivery of the property as accompanying the act. *Conrad* v. *Waples*, 279.
2. In Louisiana, a conveyance of lands is valid between the parties without registration, and passes the title. The only consequence of a failure of the purchaser to place his conveyance on the records of the parish where the lands are situated is that he is thereby subjected to the risk of losing them if they be again sold or hypothecated by his vendor to an innocent third party, or if they be seized and sold by a creditor of his vendor for the latter's debts. *Burbank* v. *Conrad*, 291.

MAGNA CHARTA. See *Due Process of Law*, 1–5.

MAILS. See *Post-offices and Post-roads*.

MAINE. See *Corporations*, 2–5.

MANDATE. See *Practice*, 5.

MANUFACTURES OF CATTLE-HAIR AND COTTON. See *Imports, Duty on*, 22.

MARRIAGE.

1. A marriage valid at common law is valid, notwithstanding the statutes of the State where it is contracted prescribe directions respecting its formation and solemnization, unless they contain express words of nullity. *Meister* v. *Moore*, 76.
2. This court adopts, as an authoritative declaration of the law of Michigan, the ruling of the Supreme Court of that State in *Hutchins* v. *Kimmell* (31 Mich. 126), that, notwithstanding the statutory regulations have not been complied with, a marriage contracted there *per verba de præsenti* is valid. *Id.*

MECHANICAL EQUIVALENTS. See *Letters-patent*, 4.

MICHIGAN. See *Contracts*, 18; *Marriage*.

MILITARY AND POST ROADS. See *Constitutional Law*, 3, 4.

MISJOINDER. See *Pleading*, 2.

MISSOURI. See *Municipal Bonds*, 17.

MOBILE AND OHIO RAILROAD COMPANY. See *Coupons*, 2.

MORTGAGE. See *Lands, Conveyance of; Pleading*, 2.

1. A deed of lands, absolute in form, when executed as security for a loan of money, will in equity be treated as a mortgage; and evidence, written or oral, tending to show the real character of the transaction is admissible. *Peugh* v. *Davis*, 332.
2. An equity of redemption is so inseparably connected with a mortgage, that it cannot be waived or abandoned by any stipulation of the parties made at the time, even if embodied in the mortgage. *Id.*
3. A subsequent release of the equity of redemption to the mortgagee must appear by a writing importing in terms a transfer of the mortgagor's interest, or such facts be shown as will estop him from asserting any interest in the premises; and it must be for an adequate consideration. *Id.*
4. In determining whether a transaction was intended to operate as such release, the fact that the then value of the property was greatly in excess of the amount paid, and of that originally secured, and the fact that the mortgagor retained possession and subsequently enclosed and cultivated the land, are strong circumstances tending to show that a release was not intended. *Id.*
5. Where a deed, absolute in form, was made as security for a loan, papers thereafter executed, which refer to the transaction as one of purchase, will be considered in connection with the deed, and will not be regarded in a court of equity as any more conclusive of a subsequent release than the form of the original instrument was of a sale of the property. *Id.*

MULTIFARIOUSNESS. See *Pleading*, 2.

MUNICIPAL BONDS. See *Contracts*, 14; *Texas, Constitution of.*

1. An overdue and unpaid coupon for interest, attached to a municipal bond which has several years to run, does not render the bond and the subsequently maturing coupons dishonored paper, so as to subject them, in the hands of a purchaser for value, to defences good against the original holder. *Cromwell* v. *County of Sac*, 51.
2. A *bona fide* purchaser of negotiable paper for value, before maturity, takes it freed from all infirmities in its origin, unless it is absolutely void for want of power in the maker to issue it, or its circulation is by law prohibited by reason of the illegality of the consideration. Municipal bonds, payable to bearer, are subject to the same rules as other negotiable paper. *Id.*
3. Though he may have notice of infirmities in its origin, a purchaser of a municipal bond from a *bona fide* holder, who obtained it for value before maturity, takes it as freed from such infirmities as it was in the hands of such holder. *Id.*
4. A purchaser of negotiable securities before their maturity, whatever may have been their original infirmity, can, unless he is personally chargeable with fraud in procuring them, recover against the maker

MUNICIPAL BONDS (*continued*).
the full amount of them, though he may have paid therefor less than their par value. *Id.*
5. When, at the place of contract, the rate of interest differs from that at the place of payment, the parties may stipulate for either rate, and the contract will govern. *Id.*
6. Under the law of Iowa, municipal bonds in that State drawing ten per cent interest before maturity draw the same interest thereafter, and matured coupons attached to them draw six per cent. Judgments there rendered upon such bonds and coupons draw interest on the amount due on the bonds at the rate of ten per cent a year, and on that due on the coupons at the rate of six per cent a year. *Id.*
7. A bridge intended for and used as a thoroughfare is a public highway, and hence a work of internal improvement, within the meaning of the act of Nebraska, passed Feb. 15, 1869, authorizing cities, counties, and precincts in that State to issue bonds in aid of works of internal improvement. *County Commissioners* v. *Chandler*, 205.
8. The fact that the bridge, in aid of the construction of which the bonds were issued, was built as a toll-bridge, and is used as such, does not affect their validity in the hands of a *bona fide* holder for value before maturity. *Id.*
9. A county subscribed for stock of a railroad corporation, and issued bonds in payment therefor, pursuant to a law which authorized a levy of a special tax to pay them, "not to exceed one-twentieth of one per cent upon the assessed value of taxable property for each year," but contained no provision that only the fund so derived should be applied to their payment. *Held*, that the bonds are debts of the county as fully as any other of its liabilities, and that for any balance remaining due on account of principal or interest after the application thereto of the proceeds of such tax the holders of them are entitled to payment out of the general funds of the county. *United States* v. *County of Clark*, 211.
10. The act of the legislature of Kansas, entitled "An Act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, water-power, or other works of internal improvement, and providing for the registration of such bonds, and the repealing of all laws in conflict therewith," approved March 2, 1872 (c. 68, Laws of Kansas, 1872, p. 110), authorizes a township to issue its bonds to aid in constructing within its limits the depots and side-tracks of an existing railroad. *Township of Rock Creek* v. *Strong*, 271.
11. The provisions of that act, that the bonds shall be payable in not less than five, nor more than thirty years from the date thereof, with interest not to exceed ten per cent per annum, all in the discretion of the officers issuing the same, are directory, and not of the essence of the power to issue. *Id.*
12. Certain municipal bonds, dated Sept. 10, 1872, and payable thirty

MUNICIPAL BONDS (*continued*).

years from Oct. 15, 1872, with interest thereon at the rate of seven per cent per annum, payable semi-annually on the fifteenth days of April and October of each year, were registered by the auditor of the State, Oct. 17, 1872. *Held*, that their legal effect is precisely what it would have been had the date inserted been Oct. 15, instead of Sept. 10, 1872. *Id.*

13. The action of the persons or the tribunal authorized by law to determine the result of an election held for the purpose of ascertaining whether a municipal township shall issue its bonds in aid of an object authorized by law is conclusive, and a *bona fide* purchaser of the bonds is under no obligation to look beyond it. *Id.*

14. A municipal bond, on the back of which is indorsed the certificate of the auditor of the State that it has been duly registered in his office according to law, is not invalid because he failed to make in his office an entry of his action. *Id.*

15. Certain bonds or securities issued by the city of San Antonio, March 1, 1852, recite that "this debt is authorized by a vote of the electors of the city of San Antonio, taken in accordance with the provisions of an act to incorporate the San Antonio and Mexican Gulf Railroad Company, approved Sept. 5, 1850," &c. *Held*, that the city is estopped from denying the verity of the recital, and that the bonds or securities are valid in the hands of a *bona fide* purchaser for value before maturity. *San Antonio* v. *Mehaffy*, 312.

16. The fact that the principal securities delivered to that company were not sealed is immaterial, because the act under which they were issued expressly authorized those charged with the duty of making the subscription to "issue bonds bearing interest, or otherwise pledge the faith of the city." *Id.*

17. Pursuant to a power conferred in the charter of A., a railroad company, a county court of Missouri subscribed, in the year 1860, for stock, and agreed to issue county bonds in payment therefor. Under the authority of an act of the General Assembly of that State, passed in the year 1864, A., by a vote of a majority in interest of its stockholders, said county court voting with said majority, transferred all the assets, rights, and privileges of its charter, and all the work done thereunder, to a company, B. C. was, under the general railroad law, organized as a corporation for constructing a railroad which passed through the county; and an agreement was made, in 1868, between B., C., and the county court, by which the subscription was released, and, in consideration of such release, that court subscribed for the same amount of stock in C., and issued county bonds in payment therefor. The county, by this arrangement, secured, with increased railroad facilities, a road in all material respects the same as that desired and originally contemplated; and it received and still retains the requisite certificates of stock. The county court levied and collected the tax to pay the interest due on the bonds for the years

MUNICIPAL BONDS (*continued*).

1869, 1870, 1871, 1872, and 1873; but, in August of the last-mentioned year, directed that the payment of the interest thereunder should be withheld. Suit was brought against the county by a *bona fide* holder of the coupons, who purchased the same for value before their maturity. *Held*, 1. That B. acquired a vested right to demand and receive the bonds of the county in payment of the original subscription to A.; and that such right was not defeated or impaired by the Constitution of Missouri of 1865. 2. That the agreement made in 1868 is not, as against such holder, subject to the objection that a majority of the qualified voters of the county had not, at a general or special election, expressed their assent to the subscription of stock in C. 3. That the tax-payers are concluded by the act of the county court, and by their own failure to assert, by appropriate proceedings, their legal rights, if any they ever had, to prevent the transfer of the original subscription from one company to the other. *County of Ray* v. *Vansycle*, 675.

NATIONAL BANK. See *Usury*.

A defendant sued by a national bank for moneys it loaned him cannot set up as a bar that they exceeded in amount one-tenth part of its capital stock actually paid in. *Gold-Mining Company* v. *National Bank*, 640.

NEBRASKA. See *Municipal Bonds*, 7, 8.

NEGOTIABLE PAPER OR SECURITIES. See *Municipal Bonds*, 2–4; *Pledge*, 5–7.

NEW YORK. See *Contracts*, 18.

NITRO-BENZOLE. See *Imports, Duty on*, 17.

NON-ENUMERATED ARTICLES. See *Imports, Duty on*, 15.

"NOT OTHERWISE PROVIDED FOR." See *Imports, Duty on*, 4.

OBLIGATION OF CONTRACTS. See *Constitutional Law*, 7–9, 14; *Grant*, 2, 3.

PAROL CONTRACT. See *Contracts*, 18; *Frauds, Statute of*, 1–3.

PARTIES. See *Confederate States*, 6; *Pleading*, 2; *Witness*, 3.

PATENT GLOVES. See *Imports, Duty on*, 9, 10.

PATENTS OF THE UNITED STATES FOR LAND.

1. The statutory provisions prescribing the manner in which a patent of the United States for land shall be executed are mandatory. No equivalent for any of the required formalities is allowed; but each of the integral acts to be performed is essential to the perfection and validity of such an instrument. If, therefore, it is not actually countersigned by the recorder of the General Land-Office in person, or, in his absence, by the principal clerk of private land claims as acting recorder, it is not executed according to law, and does not

PATENTS OF THE UNITED STATES FOR LAND (*continued*).
pass the title of the United States. *McGarrahan* v. *Mining Company*, 316.

2. The record in the volume kept for that purpose at the General Land-Office at Washington, of a patent which has been executed in the manner which the law directs, is evidence of the same dignity and is subject to the same defences as the patent itself. If the instrument, as the same appears of record, was not so executed, and was therefore insufficient on its face to transfer the title of the United States, the record raises no presumption that a patent duly executed was delivered to and accepted by the grantee. *Id.*
3. The act of March 3, 1843 (5 Stat. 627), in relation to exemplifications of records, does not dispense with the provisions of law touching the signing and countersigning. The record, to prove a valid patent, must still show that they were complied with. The names need not be fully inserted in the record; but it must appear in some form that they were actually signed to the patent when it was issued. *Id.*
4. The failure to record a patent does not defeat the grant. *Id.*
5. A patent for public land, when issued by the Land Department, acting within the scope of its authority, and delivered to and accepted by the grantee, passes the legal title to the land. All control of the Executive Department of the government over the title thereafter ceases. *Moore* v. *Robbins*, 530.
6. If there be any lawful reason why the patent should be cancelled or rescinded, the appropriate remedy is by a bill in chancery, brought by the United States; but no executive officer is authorized to reconsider the facts on which it was issued, and to recall or rescind it, or to issue one to another party for the same tract. *Id.*
7. But when fraud or mistake or misconstruction of the law of the case exists, the United States, or any contesting claimant for the land, may have relief in a court of equity. *Id.*

PATTERNS FOR SLIPPERS, SHOES, &c. See *Imports, Duty on*, 27, 28.

PENNSYLVANIA. See *Jurisdiction*, 8; *Resulting Trust.*

PERSONAL JUDGMENT. See *Due Process of Law*, 5.

PLEADING. See *Bankruptcy*, 1; *Confederate States*, 6; *Criminal Law; Removal of Causes; Specific Performance; Usury.*

1. A declaration in an action for the wrongful conversion of the shares of the capital stock of a corporation is sufficient for the purposes of pleading, if it states the ultimate fact to be proven. The circumstances which tend to prove that fact can be used for the purposes of evidence; but they have no place in the pleadings. *McAllister* v. *Kuhn*, 87.
2. A bill of foreclosure is bad for misjoinder of parties and for multifariousness, where persons are made defendants thereto who claim

PLEADING (*continued*).

title adversely to the mortgagor and the complainant, and the latter seeks in that suit to litigate and settle his rights. *Dial* v. *Reynolds*, 340.

3. The rule at law that the pendency of a former action between the same parties for the same cause is pleadable in abatement to a second action, provided the actions be in courts of the same State, holds in equity. *Insurance Company* v. *Brune's Assignee*, 588.
4. The plea of a former suit pending in equity for the same cause in a foreign jurisdiction will not abate an action at law in a domestic tribunal, or authorize an injunction against prosecuting such action. *Id.*
5. A defendant sued by a national bank for moneys it loaned him, cannot set up as a bar that they exceeded in amount one-tenth part of its capital stock actually paid in. *Gold-Mining Company* v. *National Bank*, 640.

PLEDGE.

1. Possession is of the essence of a pledge; and, without it, no privilege can exist as against third persons. *Casey* v. *Cavaroc*, 467.
2. This doctrine is in accordance with both the common and the civil law, the Code Napoleon (art. 2076) and the Civil Code of Louisiana (art. 3162). *Id.*
3. The thing pledged may be in the temporary possession of the pledgor as special bailee, without defeating the legal possession of the pledgee; but where it has never been out of the pledgor's actual possession, and has always been subject to his disposal by way of collection, sale, substitution, or exchange, no pledge or privilege exists as against third persons. *Id.*
4. Though in such a case the pledgee, by a real action against the pledgor or his heirs, may, under the law of Louisiana, recover possession of the thing, he cannot sustain a privilege thereon as against creditors, or against a bank receiver, or an assignee in bankruptcy, who represents them. *Id.*
5. Where it was agreed that a bank should deposit bills and notes with its president and his partner, by way of pledge to secure a loan made by a third party, and the president delivers them back to the bank officers for collection, with power to substitute other securities therefor, it is not such a delivery and possession as is necessary to create a privilege by the law of Louisiana. *Id.*
6. The ruling in *Casey* v. *Cavaroc* (*supra*, p. 467), as to what constitutes a valid pledge of securities, so far as third persons are concerned, applied to this case. *Casey* v. *National Bank*, 492.
7. Under the statute of Louisiana, relating to pledges of negotiable and other securities, which was in force in the year 1873, when the transaction in this case took place, the actual delivery of such securities was sufficient to constitute a pledge. *Casey* v. *Schneider*, 496.

POSSESSION. See *Pledge*, 1–5; *Resulting Trust*, 2.

POSSESSION, DELIVERY OF. See *Coupons*, 1; *Louisiana*, 1.

POST-OFFICES AND POST-ROADS. See *Constitutional Law*, 1–8.

1. The power vested in Congress to establish "post-offices and post-roads" embraces the regulation of the entire postal system of the country. Under it, Congress may designate what shall be carried in the mail, and what excluded. *Ex parte Jackson*, 727.
2. In the enforcement of regulations excluding matter from the mail, a distinction is to be made between what is intended to be kept free from inspection, such as letters, and sealed packages subject to letter postage, and what is open to inspection, such as newspapers, magazines, pamphlets, and other printed matter, purposely left in a condition to be examined. *Id.*
3. Letters, and sealed packages subject to letter postage, in the mail can be opened and examined only under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. *Id.*
4. Regulations against transporting in the mail printed matter, which is open to examination, cannot be enforced so as to interfere in any manner with the freedom of the press. Liberty of circulating is essential to that freedom. When, therefore, printed matter is excluded from the mail, its transportation in any other way as merchandise cannot be forbidden by Congress. *Id.*
5. Regulations excluding matter from the mail may be enforced through the courts, upon competent evidence of their violation obtained in other ways than by the unlawful inspection of letters and sealed packages; and with respect to objectionable printed matter, open to examination, they may in some cases also be enforced by the direct action of the officers of the postal service upon their own inspection, as where the object is exposed, and shows unmistakably that it is prohibited, as in the case of an obscene picture or print. *Id.*

PRACTICE. See *Appearance; Court and Jury*, 1–3; *Lands, Conveyance of*, 1–4; *Trustee.*

1. When the Court of Claims sends here as part of its finding all the evidence on which a fact essential to the judgment there rendered was found, from which it appears that there was no legal evidence to establish such fact, this court must, on appeal, reverse the judgment. *United States* v. *Clark*, 37.
2. Upon a writ of error to reverse a judgment by default, such defects in the declaration or complaint as could have been taken advantage of before judgment by general demurrer may be brought under review. *McAllister* v. *Kuhn*, 87.

PRACTICE (*continued*).

3. If the judgment would have been arrested on motion, because the declaration did not state facts sufficient to constitute a cause of action, it may, for the same reason, be reversed upon error. *Id.*
4. As important questions of practice are likely to arise under the act of March 3, 1875 (18 Stat. 475), the decision in this case touching the removal of causes to the courts of the United States is to be considered as conclusive only upon the question directly involved and decided. *Gold-Washing and Water Company* v. *Keyes*, 199.
5. This court will consider, on a second appeal, only the proceedings subsequent to its mandate. The re-examination cannot extend to any thing decided on the first appeal. *The "Lady Pike,"* 461.
6. Where a stipulation to abide and answer the decree of the District Court in a case in admiralty is, with the consent of the parties, substituted for the stipulation previously filed by a claimant, it thereby becomes the only stipulation for value, and does not become inoperative upon an appeal to the Circuit Court. The appeal carries up the whole fund. *Id.*
7. The security required upon writs of error and appeals must be taken by the judge or justice. He cannot delegate that power to the clerk. *O'Reilly* v. *Edrington*, 724.
8. The ruling in *O'Reilly* v. *Edrington* (*supra*, p. 724), that a judge or justice cannot delegate to the clerk the power to approve the security upon writs of error and appeals, approved, and applied to this case. *National Bank* v. *Omaha*, 737.

PRE-EMPTION. See *School Lands.*

1. Under sect. 6 of the act of March 3, 1853 (10 Stat. 244), a settler upon unsurveyed public lands in California has no valid claim to pre-empt a quarter-section, or any part thereof included in his settlement, unless it appears by the government surveys, when the same are made and filed in the local land-office, that his dwelling-house was on that quarter-section. *Ferguson* v. *McLaughlin*, 174.
2. No right of pre-emption can be established by a settlement and improvement on a tract of public land where the claimant forcibly intruded upon the possession of one who had already settled upon, improved, and enclosed that tract. *Atherton* v. *Fowler*, 513.
3. Such an intrusion, though made under pretence of pre-empting the land, is but a naked, unlawful trespass, and cannot initiate a right of pre-emption. *Id.*
4. Under sect. 14 of the act of 1841 (5 Stat. 457), and the act of March 3, 1853 (10 id. 244), no pre-emption claim was of any avail against a purchaser of the land at the public sales ordered by the proclamation of the President; unless, before they commenced, the claimant had proved up his settlement and paid for the land. *Moore* v. *Robbins*, 530.
5. The decision of the Secretary of the Interior, against a purchaser at the public sales, in favor of a pre-emption claimant who had failed

PRE-EMPTION (*continued*).
to make the required proof and payment, was erroneous, as a misconception of the law, and the equitable title should be decreed to belong to the purchaser. *Id.*

PREMIUMS. See *Insurance*, 3, 7, 8, 13.

PRESUMPTION. See *Contracts*, 10; *Coupons*, 1; *Court and Jury*, 4; *Patents of the United States for Land*, 2.

PRINCIPAL AND AGENT. See *Agent.*

PRIVILEGE. See *Pledge*, 1–5.

PRIVITY. See *Contracts*, 17.

PROCESS, SERVICE OF. See *Jurisdiction*, 8.

PROPERTY. See *Constitutional Law*, 12, 13.
Debts are not property. A non-resident creditor of a city cannot be said to be, in virtue of a debt which it owes him, a holder of property within its limits. *Murray* v. *Charleston*, 432.

PROTEST OF AN IMPORTER. See *Imports, Duty on*, 26.

PUBLIC ACT, SALE BY. See *Confiscation*, 6.

PUBLIC LANDS. See *Constitutional Law*, 3, 4; *Patents of the United States for Land; Pre-emption; School Lands.*

PURCHASE-MONEY. See *Lien.*

QUARTERMASTER.
1. A quartermaster of a regiment of cavalry, who also serves as acting assistant-commissary, is entitled to the additional compensation of $100 per annum provided for by sect. 1261 of the Revised Statutes. *United States* v. *Morrison*, 232.
2. As such quartermaster receives no compensation for staff service separate from that of rank, he does not, within the meaning of the army regulations, receive pay for his staff appointment. *Id.*

RAILROAD COMPANY. See *Contracts*, 9, 10; *Corporations*, 2–5; *Illinois.*

REBELLION, THE. See *Confederate States*, 1–5; *Confiscation.*
All acts done in aid of the rebellion were illegal and void. *Dewing* v. *Perdicaries*, 193.

RECEIPT AND ACCEPTANCE OF GOODS. See *Frauds, Statute of*, 4.

RECORD. See *Court and Jury*, 4; *Jurisdiction*, 4; *Patents of the United States for Land*, 1–4.
1. Under the provisions of the act of March 3, 1877 (19 Stat. 344), the

RECORD (*continued*).

cost of printing all records in this court, after Oct. 1 in that year, which is paid by the government, must be taxed against the losing party. *Railroad Company* v. *Collector*, 594.

2. The appellee, the successful party in this court, caused the printing of the record, after said last-mentioned date, to be done at his own expense, but at a cost no greater than if the work had been done at the government printing-office. *Held*, that such cost be taxed against the appellant. *Id.*

RECORDS, EXEMPLIFICATION OF. See *Patents of the United States for Land*, 3.

RELEASE. See *Mortgage*, 3–5.

REMOVAL OF CAUSES.

1. A petition for the removal of a suit from a State court to a Federal court is insufficient, unless it sets forth in due form, such as is required in good pleading, the essential facts not otherwise appearing in the case, which, under the act of Congress, are conditions precedent to the change of jurisdiction. *Gold-Washing and Water Company* v. *Keyes*, 199.
2. A suit cannot be so removed, under the second section of the act of March 3, 1875 (18 Stat. 475), simply because, in its progress, a construction of the Constitution or a law of the United States may be necessary; unless it, in part at least, arises out of a controversy in regard to the operation and effect of some provision in that Constitution or law upon the facts involved. *Id.*
3. As important questions of practice are likely to arise under that act, this decision is to be considered as conclusive only upon the question directly involved and decided. *Id.*

REPEAL BY IMPLICATION.

A statute does not, by implication, repeal a prior one, unless there is such a positive repugnancy between them that they cannot stand together. *Arthur* v. *Homer*, 137.

RESPONDENTIA. See *Bottomry and Respondentia.*

RESULTING TRUST.

1. In Pennsylvania, a resulting trust in land, if not sought to be enforced for a period of twenty-one years, and not reaffirmed and continued, will, under ordinary circumstances, be extinguished. *King* v. *Pardee*, 90.
2. That rule is especially applicable where the party having the legal title has, during the required period of twenty-one years, been in notorious and adverse possession, paying the taxes, exercising all the usual rights of ownership, and his title has for the whole period been on record in the proper office. *Id.*

REVISED STATUTES OF THE UNITED STATES.
The following sections referred to and explained: —
Sects. 1059–1062. See *Limitations, Statute of*, 1.
Sect. 1069. See *Limitations, Statute of*, 1.
Sect. 1079. See *Witness*, 2.
Sect. 1261. See *Quartermaster*.
Sect. 2504. See *Imports, Duty on*, 11.
Sect. 3266. See *Criminal Law*, 1.
Sect. 3281. See *Criminal Law*, 5.
Sect. 5263. See *Constitutional Law*, 3.

RICHMOND, FREDERICKSBURG, AND POTOMAC RAILROAD COMPANY. See *Constitutional Law*, 12, 13.

SALE.
While it is true that it is essential to a sale that both parties should consent to it, yet the consent of the former owner need not be expressly given, but may be inferred from the circumstances of the transaction. *Ketchum* v. *Duncan*, 659.

SAVINGS BANKS. See *District of Columbia*, 1, 2.

SCHOOL LANDS.
1. The act of March 3, 1853 (10 Stat. 244), granted for school purposes to California the public lands within sections 16 and 36 in each congressional township in that State, except so much of them whereon an actual settlement had been made before they were surveyed, and the settler claimed the right of pre-emption within three months after the return of the plats of the surveys to the local land-office. If he failed to make good his claim, the title to the land embraced by his settlement vested in the State as of the date of the completion of the surveys. *Water and Mining Company* v. *Bugbey*, 165.
2. In this case, the title of the State to the demanded premises, being part of a school section, having become absolute May 19, 1866, a mining company could, under the act of July 26, 1866 (14 Stat. 253), acquire no right to them. *Id.*

SECRETARY OF THE INTERIOR. See *Pre-emption*, 5.

SECURITY UPON WRITS OF ERROR AND APPEALS. See *Practice*, 7, 8.

SEIZURE. See *Confiscation*, 1, 4.

SEQUESTRATION. See *Confederate States*, 6; *Confiscation; Constitutional Law*, 9.

SETTLER. See *Pre-emption*, 4.

SIDEWALKS. See *Contracts*, 12–16.

SILK LACES. See *Imports, Duty on*, 5.

SILK PLAITED GLOVES. See *Imports, Duty on*, 9, 10.

SILK VEILS. See *Imports, Duty on*, 1, 3.

SIMILITUDE CLAUSE ACT OF AUGUST 30, 1842. See *Imports, Duty on*, 15.

SOVEREIGNTY. See *Fraud*, 2.

SPECIAL IMPROVEMENTS. See *Contracts*, 12–16.

SPECIAL TAX. See *Municipal Bonds*, 9.

SPECIFIC DESIGNATION. See *Imports, Duty on*, 23.

SPECIFIC PERFORMANCE.

A. made his will appointing C. his executor, and devising his real property in South Carolina to B. for life; and, after the determination of that estate, to C., in trust, to support certain contingent remainders in fee. A. afterwards entered into a contract to sell the property to D., who entered into possession, and paid a part of the purchase-money. A. died without receiving the balance or making a conveyance, and C. duly qualified as his executor. *Held*, that a bill by B. against C. and D., to compel the specific performance of the contract, would lie. *Bissell* v. *Heyward*, 580.

SPECIFIED QUANTITY. See *Contracts*, 4–8.

SPECTACLES. See *Imports, Duty on*, 16.

STATE COURTS. See *Injunction; Jurisdiction*, 8; *Removal of Causes*.

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

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

STATUTES, CONSTRUCTION OF. See *Corporations*, 2–5.

A well-known rule of statutory construction remains in force until it shall be abolished by Congress. *Arthur* v. *Morrison*, 108.

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

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

1792. May 2. See *Imports, Duty on*, 13.
1841. Sept. 4. See *Pre-emption*, 4.
1842. Aug. 30. See *Imports, Duty on*, 15, 17, 18.
1843. March 3. See *Patents of the United States for Land*, 3.
1853. March 3. See *Pre-emption*, 1, 4; *School Lands*, 1.
1861. March 2. See *Imports, Duty on*, 6, 10, 11, 19, 21, 27.
1862. July 14. See *Imports, Duty on*, 6, 10, 11, 17, 19, 21.
1862. July 17. See *Confiscation*, 1, 4.
1862. July 17. See *Criminal Law*, 6.
1864. June 30. See *Imports, Duty on*, 1, 4, 9, 12, 14, 16, 21, 22, 24, 27, 28.
1864. July 2. See *Witness*, 2.
1866. July 24. See *Constitutional Law*, 3.

STATUTES OF THE UNITED STATES (*continued*).
1866. July 26. See *School Lands*, 2.
1867. March 2. See *Imports, Duty on*, 27.
1870. May 24. See *District of Columbia*, 1.
1872. June 6. See *Imports, Duty on*, 14, 24.
1875. Feb. 8. See *Imports, Duty on*, 3.
1875. March 3. See *Practice*, 4; *Removal of Causes*, 2.
1877. March 3. See *Record*, 1.

STOCK, TRANSFER OF. See *Bankruptcy*, 1; *Confederate States*, 6.

SUBSCRIPTION TO STOCK, TRANSFER OF. See *Municipal Bonds*, 17.

SUPERSEDEAS. See *Appeal*, 3.
The refusal of the Circuit Court to accept a *supersedeas* bond, when offered during the term at which the decree was rendered, does not take from a judge of that court, or a justice of this court, the power to approve one thereafter. *Sage* v. *Railroad Company*, 712.

SURVEYS. See *Pre-emption*.

TAXATION. See *Constitutional Law*, 8, 11; *Corporations*, 2–5; *Debts*, 1; *Illinois; Municipal Bonds*, 9.

TELEGRAPHING AND TELEGRAPH LINES. See *Constitutional Law*, 3–6.

TENDER. See *Contracts*, 1, 2.
A tender of payment must, to stop interest or costs, be kept good. It ceases to have that effect when the money is used by the debtor for any other purpose. *Bissell* v. *Heyward*, 580.

TENNESSEE. See *Constitutional Law*, 8.

TEXAS, CONSTITUTION OF.
The twelfth section of the act of the legislature of Texas, entitled "An Act to incorporate the San Antonio Railroad Company," which authorizes the city of San Antonio to subscribe for the stock of said company, and issue bonds to pay for the same, is not repugnant to the provision of the State Constitution of 1845, requiring that "every law enacted by the legislature shall contain but one object, and that shall be expressed in the title." *San Antonio* v. *Mehaffy*, 312.

TEXT-BOOKS. See *Court and Jury*, 3.

THREAD LACES. See *Imports, Duty on*, 5, 6.

TITLE. See *Confiscation*, 4–7; *Coupons*, 1; *Louisiana*, 2; *Patents of the United States for Land*, 1–4; *School Lands*.

TOLLS. See *Grant*, 1–4.

TRADE-MARKS.

1. Where a manufacturer has habitually stamped his goods with a particular mark or brand, a court of equity will restrain another party from adopting it for the same kind of goods. *McLean* v. *Fleming*, 245.
2. Positive proof of fraudulent intent on the part of the infringer is not required where the infringement is clearly shown. *Id.*
3. Although no precise rule, applicable to all cases, can be laid down as to the degree of resemblance necessary to constitute an infringement of a trade-mark, an injunction will be granted where the imitation is so close, that, by the form, marks, contents, words, or their special arrangement, or by the general appearance of the infringing device, purchasers exercising ordinary caution are likely to be misled into buying the article bearing it for the genuine one. *Id.*
4. It is not necessary, to entitle a party to an injunction, that a specific trade-mark has been infringed. It is sufficient to satisfy the court that the respondent intended to represent to the public that his goods were those of the complainant. *Id.*
5. In this case, the court holds that the appellant has infringed the trade-mark of the appellee; but that the latter, by his long-continued acquiescence therein, and his unreasonable delay in seeking relief, has been guilty of inexcusable laches, and is not entitled to an account for profits. The decree below is therefore affirmed, so far as it awards an injunction, but reversed as to damages; and costs in this court are allowed to the appellant. *Id.*

TREASURY OF THE UNITED STATES. See *Fraud.*

TRESPASS. See *Pre-emption*, 3.

TRUSTEE.

Bill in chancery, praying for the removal of the defendant as the trustee in a deed made to secure to the complainant the payment of a bond in the defendant's possession, and for the delivery of the bond. The defendant asserts a lien on the bond for legal services rendered to the complainant. *Held*, 1. That while a state of mutual ill-will or hostile feeling may justify a court in removing a trustee, in a case where he has a discretionary power over the rights of the *cestui que trust*, and has duties to discharge which necessarily bring the parties into personal intercourse with each other, it is not sufficient cause where no such intercourse is required and the duties are merely formal and ministerial, and no neglect of duty or misconduct is established against him. 2. A contract to pay to an attorney-at-law for his services in suits concerning land, if it be recovered, a specific sum of money out of the proceeds, when it shall be sold by the client, is not champertous, because he neither pays costs nor accepts the land, or any part of it, as his compensation. 3. Nor is it void under the Statute of Frauds, because not in writing; for it may be per-

TRUSTEE (*continued*).

formed within the year. 4. The land having been recovered, and by the owner sold for $38,000, for which a bond was taken, and left with the attorney, the latter has a lien on the bond for money due him for his services as such. 5. Where, under the circumstances mentioned, the client brings a bill in chancery for the removal of the attorney from his position as trustee in the deed to secure the purchase-money, and for the delivery of the bond, it is the duty of the court to decide on the existence and amount of the lien set up in the answer, and to decree such delivery on payment of the amount of the lien, if one be found to exist. 6. Though the defendant, by neglecting to file a cross-bill, can have no decree for affirmative relief, it is proper for the court to establish the condition on which the delivery of the bond to the complainant, according to the prayer of the bill, should be made, and to require such delivery on the performance of that condition. *McPherson* v. *Cox*, 404.

TRUST-FUND.

Where a trust-fund has been perverted, the *cestui que trust* can follow it at law as far as it can be traced. *United States* v. *State Bank*, 30.

ULTRA VIRES. See *Contracts*, 9, 10, 14.

The doctrine of *ultra vires*, when invoked for or against a corporation, should not be allowed to prevail, where it would defeat the ends of justice or work a legal wrong. *Railway Company* v. *McCarthy*, 258.

UNSURVEYED LANDS IN CALIFORNIA. See *Pre-emption; School Lands*, 1.

USURY.

Suit by a national bank upon a bill of exchange. Defence, usury. The bank, in discounting the bill, reserved a greater amount than was allowed for interest by the law of the State where it was situated. There was no proof of the current rate of exchange. *Held*, that the bank was entitled to recover. *Wheeler* v. *National Bank*, 268.

UTAH, CODE OF PRACTICE OF.

By the Code of Practice of Utah, the failure of a defendant to appear at the time of the assessment of damages against him by the court is a waiver by him of an assessment by a jury. *McAllister* v. *Kuhn*, 87.

VALUE, STIPULATION FOR. See *Practice*, 6.

WAIVER. See *Insurance*, 4–8.

WARRANTY. See *Contracts*, 4.

WITNESS.

1. At common law, a party to a suit is a competent witness to prove the contents of a trunk or package, which, by other testimony, is shown to have been lost or destroyed under circumstances that render some one liable for the loss. *United States* v. *Clark*, 37.

WITNESS (*continued*).

2. Sect. 1079 of the Revised Statutes was intended to do no more than to restore in the Court of Claims the common-law rule excluding parties as witnesses, which had been abolished by the act of July 2, 1864 (13 Stat. 351); and hence the petitioner in this case is a competent witness to prove the contents of a package of government money taken from his official safe by robbers. *Id.*
3. The petitioner being competent, neither his testimony before the court-martial which convicted the robbers, nor his report of the loss to his superior officer, is admissible as independent or orginal evidence, though it might be proper as corroborative of his own testimony. *Id.*
4. Where a witness testifies, in his direct examination, to a purchase made by him, it is competent on cross-examination to ask him whether his contract was in writing; and, if it was, to identify the paper. *Gregory* v. *Morris*, 619.

WORDS.

"About." See *Contracts*, 4–6.
"Knowingly and Wilfully." See *Distilling*, 2, 3.
"More or Less." See *Contracts*, 4–6, 8.
"Taking." See *Constitutional Law*, 13.
"Utter Loss." See *Bottomry and Respondentia*, 1.
"Voyage or Voyages." See *Contracts*, 3.

WRONGFUL CONVERSION, ACTION FOR. See *Pleading*, 1.

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