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ADMIRALTY.

1. A ship in tow of a steam-tug, each having its own master and crew, collided with and sunk a steam-dredge lying at anchor at a proper place, displaying good signal-lights, and having competent lookouts stationed on her decks. The tug and the ship having been libelled and seized, the former gave a stipulation for value for $16,000. Both were found to be at fault; and the court below entered a decree awarding the libellants $24,184.57 damages, with interest and costs, and directing that one half of the amount be paid by the ship, and the remaining half by the stipulators for the tug. *Held*, that the decree should be modified so as to further provide that any balance of the moiety decreed against either vessel, which the libellants shall be unable to collect, shall be paid by the other, or by her stipulators, to the extent of her stipulated value beyond the moiety due from her. *The "Virginia Ehrman" and the "Agnese,"* 309.
2. A steamboat collided with and sunk a schooner towed by a tug. The owner of the schooner and the owner of her cargo severally libelled the steamboat and tug, both of which were found to be in fault. *Held*, that each libellant was entitled to a decree against each of the offending vessels for a moiety of his damages, and for interest and costs, with a proviso that if either of said vessels was unable to pay such moiety, then he should have a remedy over against the other vessel for any balance thereof which might remain unpaid. *The "City of Hartford" and the "Unit,"* 323.
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AID AND COMFORT TO THE REBELLION. See *Rebellion, The*, 1–4.

ALABAMA.

The provision in the Constitution of Alabama, which declares that "corporations may be formed under general laws, but shall not be created by special acts, except for municipal purposes," does not prohibit the legislature from passing a special act changing the name of an existing railroad corporation, and giving it power to purchase additional property. *Wallace* v. *Loomis*, 146.

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ASSIGNEE IN BANKRUPTCY. See *Judgment in Personam; Mortgage*, 3.

1. Where cotton was captured by the military forces of the United States and sold, and the proceeds were paid into the treasury, the claim of the owner against the government constitutes property, and passes to his assignee in bankruptcy, though, by reason of the bar arising from the lapse of time, it cannot be judicially enforced. *Erwin* v. *United States*, 392.
2. The act of Congress of Feb. 26, 1853 (10 Stat. 170), to prevent frauds upon the treasury of the United States, applies only to cases of voluntary assignment of demands against the government. The passing of claims to heirs, devisees, or assignees in bankruptcy is not within the evil at which it aimed. *Id.*

ASSIGNMENT. See *Assignee in Bankruptcy*, 2; *Claims against the United States.*

AUTREFOIS CONVICT. See *Criminal Law*, 5.

AWARD. See *Referees*, 4.

BAD FAITH. See *Bailment*, 1; *Contracts*, 4.

BAILMENT.

1. Forty-four record-books, some deeds, mortgages, and other papers of a county having been stolen, the county officers deposited $3,500 in the hands of A., upon condition that it should, upon the return of the stolen property, be paid to the person causing the return. It was also stipulated that the failure to "deliver some small paper or papers" should not invalidate the agreement. Within the time limited, A. received a paper, signed by the deputy-sheriff of the county, acknowledging the receipt of the record-books, "also papers

BAILMENT (*continued*).

and small index-books." He thereupon paid the money to the person presenting the receipt. The county then brought suit against A. to recover the money, alleging that some of the books were, upon their return, in such a damaged condition as to be rendered comparatively worthless, and that he had, therefore, not performed his contract. *Held*, that A., being a simple bailee of the money deposited in his hands, without compensation, was not, in the absence of bad faith on his part, responsible for the condition of the property at the time of its return. *Eldridge* v. *Hill*, 92.

2. An incorporated company entered into a contract with A., the owner of letters-patent for an explosive compound called "dualin," whereby he undertook to manufacture it, as required by the company from time to time, in quantities sufficient to supply the demand for the same, and all sales produced or effected by the company. The contract provided that all goods he manufactured should be consigned to the company for sale, and all orders he received should be transferred to it to be filled; that the parties should equally share the net profits arising from such sales, and equally bear all losses by explosion, or otherwise, so far as the loss of the dualin was concerned, but the company assumed no risk on A.'s building or machinery; that the company should, semi-monthly, advance to him, on his requisition, a stipulated sum, for paying salaries, for labor, and for his personal account, and such further reasonable sums as might be required for incidental expenses of manufacture; and should furnish him all the raw materials needed to manufacture said explosive in quantities sufficient to supply the demand created by the company, or should advance the money necessary to purchase them, — the said advances and the cost of such materials to be charged to him against the manufactured goods to be by him consigned to the company. Certain of the materials which had been furnished him under the contract, and others which he had purchased with money advanced by the company, were seized upon an execution sued out on a judgment against him in favor of a third party. The company then brought this action, to recover for the wrongful conversion of the materials so seized. *Held*, that the delivery of them by the company to A. did not create a bailment, but that, upon such delivery, they, as well as those purchased by him with the money so advanced, became his sole property, and, as such, were subject to the execution. *Powder Company* v. *Burkhardt*, 110.

BANKRUPTCY. See *Assignee in Bankruptcy*.

1. In order to invalidate, as a fraudulent preference within the meaning of the Bankrupt Act, a security taken for a debt, the creditor must have had such a knowledge of facts as to induce a reasonable belief of his debtor's insolvency. It is not sufficient that he had some cause to suspect such insolvency. *Grant* v. *National Bank*, 80.

BANKRUPTCY (*continued*).

2. The sale of a bankrupt's property under proceedings in involuntary bankruptcy cannot be invalidated by the fact that he, before their commencement, had promised to pay in full his debt to a creditor who, at his instance, instituted them. *Wallace* v. *Loomis*, 146.

BILL OF EXCEPTIONS. See *Jurisdiction*, 10.

A paper incorporated in the record, and certified to be a part thereof by the court below, if it has all the requisites of a bill of exceptions, will be considered here as such, although it be otherwise entitled. *Herbert* v. *Butler*, 319.

BOND. See *Clearance*, 1–3; *Estoppel*, 1; *Jurisdiction; Municipal Bonds; Pleading*, 2.

1. Where bonds of a corporation, as prepared for issue and sale, promise payment in lawful money, and, as such, were guaranteed by a State, a stipulation that they shall be paid in coin, subsequently indorsed on them by the corporation, in accordance with the requirement of purchasers from it, is supplementary and subsidiary, and binds only the corporation itself. *Wallace* v. *Loomis*, 146.
2. Duties imposed upon an officer, different in their nature from those which he was required to perform at the time his official bond was executed, do not render it void as an undertaking for the faithful performance of those which he at first assumed. It will still remain a binding obligation for what it was originally given to secure. *Gaussen* v. *United States*, 584.

BREACH. See *Condition Subsequent.*

BRITISH SUBJECT. See *Rebellion, The*, 1–4.

BURDEN OF PROOF. See *Infringement*, 2; *Internal Revenue*, 5; *Mortgage*, 4; *Practice*, 6.

CALIFORNIA, CLAIM TO LANDS IN. See *Mexican Land-Grants.*

CAPTURE. See *Rebellion, The*, 1–4.

CAPTURED AND ABANDONED PROPERTY. See *Assignee in Bankruptcy*, 1; *Rebellion, The*, 1–4.

CHARTER. See *Constitutional Law*, 1–7, 14; *Jurisdiction; Taxation, Exemption from.*

CHARTER-PARTY. See *Contracts*, 2, 3.

CHROMO-LITHOGRAPHS. See *Imports, Duties on*, 1.

CIRCUIT JUDGE. See *Jurisdiction*, 7.

CITIZENSHIP. See *Jurisdiction*, 8, 9, 10, 12.

CLAIMS AGAINST THE UNITED STATES. See *Assignee in Bankruptcy.*

A. employed B. to collect a claim against the United States. Before its allowance, or the issue of a warrant for its payment, he drew, in

CLAIMS AGAINST THE UNITED STATES (*continued*).

favor of C., an order on B., payable out of any moneys coming into his hands on account of said claim. B. accepted it, and D. became the holder of it in good faith and for value. A. refused to recognize its validity after the warrant in his favor had been issued, or to indorse the latter. D. thereupon filed his bill against A. and B. to enforce payment of the order. *Held*, 1. That the order became, upon its acceptance, and in the absence of any statutory prohibition, an equitable assignment *pro tanto* of the claim. 2. That, under the act of Feb. 26, 1863 (10 Stat. 170, re-enacted in sect. 3477, Rev. Stat.), the accepted order was void, and that D. took no interest in the claim, and acquired no lien upon the fund arising therefrom. *Spofford* v. *Kirk*, 484.

CLEARANCE.

1. The third section of the act of May 20, 1862 (12 Stat. 404), authorized the Secretary of the Treasury to require reasonable security that goods should not be transported in vessels to any place under insurrectionary control, nor in any way be used in giving aid or comfort to the enemy, and to establish such general regulations as he should deem necessary and proper to carry into effect the purposes of the act. *Held*, that a bond taken by the collector of the port of New York, under regulations established by the Secretary of the Treasury, from a shipper and two sureties, in double the value of the goods shipped, to prevent such transportation and use, comes within the reasonable security specified in said third section. *United States* v. *Mora*, 413.
2. The right of the collector to refuse a clearance altogether included that to exact a bond. Such bond, when duly executed, is *prima facie* evidence that it was voluntarily entered into. *Id.*
3. Where the conditions of a bond which are not sustainable are severable from those which are, the latter hold good *pro tanto*, and evidence to show a breach of them is admissible. *Id.*

COIN. See *Bond*, 1.

COLLECTOR OF CUSTOMS. See *Clearance*, 1–3.

The twenty-first section of the act of Congress of March 2, 1799 (1 Stat. 644), makes it the duty of collectors of customs "to pay to the order of the officer, who shall be authorized to direct the payment thereof, the whole of the moneys which they may respectively receive" by virtue of that act. *Held*, that payments and disbursements of moneys received in his official capacity, if made by direction of the Secretary of the Treasury, are within the range of the duty of a collector of customs. *Gaussen* v. *United States*, 584.

COLLECTOR OF INTERNAL REVENUE. See *Probable Cause, Certificate of.*

COLLISION. See *Admiralty.*

COMMERCE. See *Constitutional Law*, 5, 13.

COMMINUTED GLUE. See *Letters-patent*, 1–3.

COMPENSATORY DAMAGES. See *Letters-patent*, 16.

CONDEMNATION. See *Imports, Duties on*, 3.

CONDITION PRECEDENT. See *French and Spanish Land-Grants*, 1–3; *Municipal Bonds*, 2, 3; *Pleading*, 2.

CONDITION SUBSEQUENT.

The breach of conditions subsequent, which are not followed by a limitation over to a third person, does not, *ipso facto*, work a forfeiture of the freehold estate to which they are annexed. It only vests in the grantor, or his heirs, a right of action which cannot be transferred to a stranger, but which they, without an actual entry or a previous demand, can enforce by a suit for the land. *Ruch* v. *Rock Island*, 693.

CONFEDERATE SOLDIER. See *Rebellion, The*, 5.

CONFEDERATE STATES. See *Jurisdiction*, 5.

CONSIGNOR AND CONSIGNEE. See *Bailment*, 2.

CONSTITUTIONAL LAW. See *Rebellion, The*, 5; *Taxation, Exemption from*, 2; *Taxes, Enforcement of the Payment thereof*, 1.

1. An act of the legislature of Massachusetts, passed Feb. 1, 1828, to incorporate the Boston Beer Company, "for the purpose of manufacturing malt liquors in all their varieties," declared that the company should have all the powers and privileges, and be subject to all the duties and requirements, contained in an act passed March 3, 1809, entitled "An Act defining the general powers and duties of manufacturing corporations," and the several acts in addition thereto. Said act of 1809 had this clause: "*Provided always*, that the legislature may from time to time, upon due notice to any corporation, make further provisions and regulations for the management of the business of the corporation and for the government thereof, or wholly to repeal any act or part thereof, establishing any corporation, as shall be deemed expedient." In 1829, an act repealing that of 1809, and all acts in addition thereto, and reserving similar power, was passed. Under the prohibitory liquor law of 1869, certain malt liquors belonging to the company were seized as it was transporting them to its place of business in said State, with intent there to sell them, and they were declared forfeited. *Held*, 1. That the provisions of the act of 1809, touching the power reserved by the legislature, having been adopted in the charter, were a part of the contract between the State and the company, rendering the latter subject to the exercise of that power. 2. That the contract so contained in the charter was not affected by the repeal of that act, nor was its obligation impaired by the prohibitory liquor law of 1869. *Beer Company* v. *Massachusetts*, 25.

2. The company, under its charter, has no greater right to manufacture

CONSTITUTIONAL LAW (*continued*).
or sell malt liquors than individuals possess, nor is it exempt from any legislative control therein to which they are subject. *Id.*

3. All rights are held subject to the police power of a State ; and, if the public safety or the public morals require the discontinuance of any manufacture or traffic, the legislature may provide for its discontinuance, notwithstanding individuals or corporations may thereby suffer inconvenience. *Id.*
4. As the police power of a State extends to the protection of the lives, health, and property of her citizens, the maintenance of good order, and the preservation of the public morals, the legislature cannot, by any contract, divest itself of the power to provide for these objects. *Id.*
5. While the court does not assert that property actually in existence, and in which the right of the owner has become vested when a law was passed, may, under its provisions, be taken for the public good without due compensation, nor lay down any rule at variance with its decisions in regard to the paramount authority of the Constitution and laws of the United States, relating to the regulation of commerce with foreign nations and among the several States, or otherwise, it reaffirms its decision in *Bartemeyer* v. *Iowa* (18 Wall. 129), that, as a measure of police regulation, a State law prohibiting the manufacture and sale of intoxicating liquors is not repugnant to any clause of that Constitution. *Id.*
6. It appearing from the record that the point, that the prohibitory liquor law of 1869 impaired the obligation of the contract contained in the charter of the company, was made on the trial of the case, and decided adversely to the company, and was afterwards carried, by bill of exceptions, to the Supreme Court of Massachusetts, where the rulings of the lower court were affirmed, this court has jurisdiction. *Id.*
7. The State of Tennessee having, in 1838, organized the Bank of Tennessee, agreed, by a clause in the charter, to receive all its issues of circulating notes in payment of taxes; but, by a constitutional amendment adopted in 1865, it declared the issues of the bank during the insurrectionary period void, and forbade their receipt for taxes. *Held*, that the amendment was in conflict with the provision of the Constitution of the United States against impairing the obligation of contracts. *Keith* v. *Clark*, 454.
8. There is no evidence in this record that the notes offered in payment of taxes by the plaintiff were issued in aid of the rebellion, or on any consideration forbidden by the Constitution or the laws of the United States; and no such presumption arises from any thing of which this court can take judicial notice. *Id.*
9. The political society which, in 1796, was organized and admitted into the Union by the name of Tennessee, has to this time remained the same body politic. Its attempt to separate itself from that Union

CONSTITUTIONAL LAW (*continued*).

did not destroy its identity as a State, nor free it from the binding force of the Constitution of the United States. *Id.*

10. Being the same political organization during the rebellion, and since, that it was before, — an organization essential to the existence of society, — all its acts, legislative and otherwise, during the period of the rebellion, are valid and obligatory on the State now, except where they were done in aid of that rebellion, or are in conflict with the Constitution and laws of the United States, or were intended to impeach its authority. *Id.*
11. If the notes which were the foundation of this suit had been issued on a consideration which would make them void for any of the reasons mentioned, it is for the party asserting their invalidity to set up and prove the facts on which such a plea is founded. *Id.*
12. A tax laid by a State on the amount of sales of goods made by an auctioneer is a tax on the goods so sold. *Cook* v. *Pennsylvania*, 566.
13. The statute of Pennsylvania of May 20, 1853, modified by that of April 9, 1859, requiring every auctioneer to collect and pay into the State treasury a tax on his sales, is, when applied to imported goods in the original packages, by him sold for the importer, in conflict with sects. 8 and 10 of art. 1 of the Constitution of the United States, and therefore void, as laying a duty on imports and being a regulation of commerce. *Id.*
14. An act of the General Assembly of Illinois, approved March 8, 1867, incorporating the Northwestern Fertilizing Company, with continued succession and existence for the term of fifty years, authorized and empowered it to establish and maintain in Cook County, Illinois, at any point south of the dividing line between townships 37 and 38, "chemical and other works, for the purpose of manufacturing and converting dead animals and other animal matter into an agricultural fertilizer, and into other chemical products by means of chemical, mechanical, and other processes," and "to establish and maintain depots in the city of Chicago, in said county, for the purpose of receiving and carrying off from and out of said city any and all offal, dead animals, and other animal matter which it might buy or own, or which might be delivered to it by the city authorities and other persons." The works, before the proprietors of them were incorporated, were located within the designated territory, at a place then swampy and nearly uninhabited, but now forming a part of the village of Hyde Park, and the company established and maintained depots at the city. In March, 1869, the legislature passed an act revising the charter of that village, and conferring upon it the largest powers of police and local government; among them, to "define or abate nuisances which are, or may be, injurious to the public health," provided that the sanitary and police powers thereby conferred should not be exercised against the Northwestern Fertilizing Company in said village until the full expiration of two years from

CONSTITUTIONAL LAW (*continued*).

and after the passage of said act. Nov. 29, 1872, the village authorities adopted the following ordinance: "No person shall transfer, carry, haul, or convey any offal, dead animals, or other offensive or unwholesome matter or material, into or through the village of Hyde Park. Any person who shall be in charge of or employed upon any train or team carrying or conveying such matter or material into or through the village of Hyde Park shall be subject to a fine of not less than five nor more than fifty dollars for each offence;" and Jan. 8, 1873, caused the engineer and other employés of a railway company which was engaged in carrying the offal to the works from the city through the village to be arrested and tried for violating the ordinance. They were convicted, and fined fifty dollars each; whereupon the company filed this bill to restrain further prosecutions, and for general relief. *Held*, 1. That nothing passed by the charter but what was granted in express terms or by necessary intendment. 2. That the charter, although, until revoked, a sufficient license, was not a contract, guaranteeing that the company, notwithstanding its business might become a nuisance by reason of the growth of population around the place originally selected for its works, should for fifty years be exempt from the exercise of the police powers of the State. 3. That the charter affords the company no protection from the enforcement of the ordinances. *Fertilizing Company* v. *Hyde Park*, 659.

CONTRACTS. See *Bailment*, 2; *Constitutional Law*, 1–7, 14; *Estoppel*, 1; *Tax, Enforcement of the Payment thereof*, 1, 4; *Usury*.

1. In 1864, A. entered into two contracts with the United States to deliver a specified number of tons "of timothy or prairie hay" at Fort Gibson, and other points within the Indian Territory, which was then the theatre of hostilities. Each contract contained this clause: "It is expressly understood by the contracting parties hereto, that sufficient guards and escorts shall be furnished by the government to protect the contractor while engaged in the fulfilment of this contract." He cut hay within that Territory; and payments were made to him for that which he delivered and for that which, with other personal property, had been destroyed by the enemy. Having been prevented by the enemy from there cutting all the hay necessary to fulfil his contract, he sued to recover an amount equal to the profits he would have made had the contract been fully performed; and he alleged that the United States did not "furnish sufficient guards and escorts for his protection in the cutting and delivery of said hay." The United States set up as a counter-claim the amount paid him for the loss of the hay and his other personal property. The Court of Claims gave judgment for the claimant, allowing in part the counter-claim. Both parties appealed here. *Held*, 1. That the contract was for the sale and delivery of hay,

CONTRACTS (*continued*).

and not for cutting and hauling grass. 2. That the obligation of the United States to A. was not that of an insurer against any loss he might sustain from hostile forces, but to protect his person and property while engaged in the effort to perform his contract. 3. That A. was entitled to the full value of the property actually lost by him, and having been paid therefor, his petition and the counter-claim should be dismissed. *United States* v. *McKee*, 233.

2. Where the owner of a vessel charters her, there arises, unless the contrary be shown, an implied contract on his part that she is seaworthy and suitable for the service in which she is to be employed. He is therefore bound, unless prevented by the perils of the sea or unavoidable accident, to keep her in proper repair, and is not excused for any defects known or unknown. *Work* v. *Leathers*, 379.

3. A defect in the vessel, which is developed without any apparent cause, is presumed to have existed when the service began. *Id.*

4. A contract between the United States and A., for the transportation by him of stores between certain points, provided that the distance should be "ascertained and fixed by the chief quartermaster," and that A. should be paid for the full quantity of stores delivered by him. Annexed to the contract, and signed by the parties, was a tabular statement fixing the sum to be paid for each one hundred pounds of stores transported. The distance, as ascertained and fixed by the chief quartermaster, was less than by air line, or by the usual and customary route. *Held*, 1. That his action is, in the absence of fraud, or such gross mistake as would necessarily imply bad faith, or a failure to exercise an honest judgment, conclusive upon the parties. 2. That A. was not entitled to compensation, according to the number of pounds received for transportation, in all cases where the loss in weight, occurring during transportation, was without neglect upon his part, but only for the number of pounds actually delivered by him. *Kihlberg* v. *United States*, 398.

CONTRIBUTORY NEGLIGENCE. See *Admiralty*, 1, 2.

CORPORATION. See *Alabama; Bond*, 1; *Constitutional Law*, 1-6; *Estoppel*, 1, 2; *Jurisdiction*, 6, 8; *Municipal Bonds*, 1-6; *Practice*, 10.

1. The officers of a corporation are the custodians of its books; and it is their duty to see that a transfer of shares of its capital stock is properly made, either by the owner himself or by a person having authority from him. In either case, they must act upon their own responsibility. Accordingly, when the name of the owner of a certificate of stock had been forged to a blank form of transfer, and to a power of attorney indorsed on it, and the purchaser of the certificate in this form, using the forged power of attorney, obtained a transfer of the stock on the books of the corporation, — *Held*, in a suit by such owner against the corporation, that he was entitled to

CORPORATION (*continued*).
a decree compelling it to replace the stock on its books in his name, issue a proper certificate to him, and pay him the dividends received on the stock after its unauthorized transfer, or to an alternative decree for the value of the stock, with the amount of the dividends. *Telegraph Company* v. *Davenport*, 369.

2. The negligence of their guardian cannot preclude minors from asserting, by suit, their right to stock belonging to them, which was so sold and transferred. If competent to transfer it, or to approve of the transfer made, they must, to create an estoppel against them, have, by some act or declaration by which the corporation was misled, authorized the use of their names, or subsequently approved such use by accepting the purchase-money with knowledge of the transfer; but under the statute of Ohio, where the minors who are the complainants herein resided, they were not, nor, without the authority of the Probate Court, was their guardian, competent to authorize a sale of their property. *Id.*

COTTON. See *Intercourse and Trade*, 2; *Rebellion, The*, 1–4.

COUNTY. See *Parties*.

COUPONS. See *Municipal Bonds*, 6; *Practice*, 2, 3.

COURT AND JURY. See *Imports, Duties on*, 3; *Internal Revenue*, 5, 8; *Practice*, 3, 6.

COURT OF CLAIMS. See *Rebellion, The*, 2.

COURT OF EQUITY.
A court of equity having jurisdiction of the subject-matter and the parties, when it takes charge of a railroad and its appurtenances, as a trust fund for the payment of incumbrances, has power to appoint managing receivers of the property, and, for its preservation and management, authorize moneys to be raised, and declare the same chargeable as a paramount lien on the fund. *Wallace* v. *Loomis*, 146.

COURTS-MARTIAL. See *Criminal Law*, 1, 5.

COURTS, POWERS OF, TO APPOINT REFEREES. See *Referees*.

CREDITOR. See *Bankruptcy; Illinois; Judgment in Personam; Mortgage*, 1.

CRIMINAL LAW. See *Smuggling*, 1; *States, Police Power of*, 2.

1. The thirtieth section of the act of March 3, 1863 (12 Stat. 731), entitled "An Act for enrolling and calling out the national forces, and for other purposes," did not make the jurisdiction of the military tribunals over the offences therein designated, when committed by persons in the military service of the United States, and subject to the articles of war, exclusive of that of such courts of the loyal

CRIMINAL LAW (*continued*).

States as were open and in the undisturbed exercise of their jurisdiction. *Coleman* v. *Tennessee*, 509.

2. When the territory of the States, which were banded together in hostility to the national government, and making war against it, was in the military occupation of the United States, the tribunals mentioned in said section had, under the authority conferred thereby, and under the laws of war, exclusive jurisdiction to try and punish offences of every grade committed there by persons in the military service. *Id.*

3. Officers and soldiers of the army of the United States were not subject to the laws of the enemy, nor amenable to his tribunals for offences committed by them during the war. They were answerable only to their own government, and only by its laws, as enforced by its armies, could they be punished. *Id.*

4. Unless suspended or superseded by the commander of the forces of the United States which occupied Tennessee, the laws of that State, so far as they affected its inhabitants among themselves, remained in force during the war, and over them its tribunals, unless superseded by him, continued to exercise their ordinary jurisdiction. *Id.*

5. A., charged with having committed murder in Tennessee, whilst he was there in the military service of the United States during the rebellion, was, by a court-martial, then and there convicted, and sentenced to suffer death. The sentence, for some cause unknown, was not carried into effect. After the constitutional relations of that State to the Union were restored, he was, in one of her courts, indicted for the same murder. To the indictment he pleaded his conviction before the court-martial. The plea being overruled, he was tried, convicted, and sentenced to death. *Held*, 1. That the State court had no jurisdiction to try him for the offence, as he, at the time of committing it, was not amenable to the laws of Tennessee. 2. That his plea, although not proper, inasmuch as it admitted the jurisdiction of that court to try and punish him for the offence, if it were not for such former conviction, would not prevent this court from giving effect to the objection taken in this irregular way to such jurisdiction. Accordingly, this court reverses the judgment, and directs the discharge of A. from custody under the indictment. *Id.*

DAMAGES. See *Admiralty*, 1, 2; *Infringement*, 1; *Letters-patent*, 16.

DEATH, PRESUMPTION OF.

1. A person who for seven years has not been heard of by those who, had he been alive, would naturally have heard of him, is presumed to be dead; but the law raises no presumption as to the precise time of his death. *Davie* v. *Briggs*, 628.

2. The triers of the facts may infer that he died before the expiration of the seven years, if it appears that within that period he encoun-

DEATH, PRESUMPTION OF (*continued*).
tered some specific peril, or came within the range of some impending or imminent danger which might reasonably be expected to destroy life. *Id.*

DEBT, ACTION OF. See *Smuggling.*

DECALCOMANIE PICTURES. See *Imports, Duties on*, 1.

DECREE. See *Equity of Redemption; Estoppel*, 3; *French and Spanish Land-Grants*, 6; *Jurisdiction*, 5, 8; *Practice*, 9.

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DE FACTO CORPORATION. See *Municipal Bonds*, 6.

DEMURRER. See *Practice*, 9; *Rebellion, The*, 5.

DEPOSITION. See *Evidence*, 4.

DEVISEE. See *Assignee in Bankruptcy*, 2.

DISMISSAL OF A BILL. See *Practice*, 10.

DISTANCE. See *Contracts*, 4.

DISTILLERY. See *Internal Revenue*, 9.

DISTRICT JUDGE, DISABILITY OF. See *Jurisdiction*, 7.

DISTRICT OF COLUMBIA.

1. The act of the legislative assembly of the District of Columbia of June 26, 1873, exempting from general taxes for ten years thereafter such real and personal property as might be actually employed within said District for manufacturing purposes, provided its value should not be less than $5,000, did not create an irrepealable contract with the owners of such property, but merely conferred a bounty liable at any time to be withdrawn. *Welch* v. *Cook*, 541.
2. Congress, by the act of June 20, 1874 (18 Stat. 117), which superseded the then existing government of the District, declared that for the fiscal year ending June 30, 1875, there should be "levied on all real estate in said District, except that belonging to the United States and to the District of Columbia, and that used for educational and charitable purposes," certain specified taxes. *Held*, that under said act real property used for manufacturing purposes, although within the exemption granted by the act of the legislative assembly, became subject to taxation. *Id.*
3. Congress, in exercising legislation over property and persons within the District of Columbia, may, provided no intervening rights are thereby impaired, confirm the proceedings of an officer in the District, or of a subordinate municipality, or other authority therein, which, without such confirmation, would be void. *Mattingly* v. *District of Columbia*, 687.
4. An act of Congress, approved June 19, 1878 (20 Stat. 166), entitled "An Act to provide for the revision and correction of assessments for special improvements in the District of Columbia, and for other

DISTRICT OF COLUMBIA (*continued*).

purposes," considered, with reference to the preceding legislation of Congress and of the legislative assembly of said District. *Held*, 1. That said act was practically a confirmation of the doings of the board of public works of the District, touching the improvement of streets and roads, and a ratification of the assessments prepared under an act of said assembly of Aug. 10, 1871, as charges upon the adjoining property, and that it conferred authority upon the commissioners to revise and correct such assessments within thirty days after the passage of the act. 2. That such confirmation was as binding and effectual as if authority had been originally conferred by law to direct the improvements and make the assessments. *Id.*

DONATION ACT.

After the passage of the act of July 17, 1854 (10 Stat. 306), amendatory of the act of Sept. 27, 1850 (9 id. 496), commonly known as the Donation Act, a husband and wife, who, by reason of their residence and cultivation, were, under the latter act, entitled to a patent from the United States for land in Oregon, could, before receiving such patent, sell and convey the land, so as to cut off the rights of his or of her children or heirs, in case of his or her death before the patent was actually issued. *Barney* v. *Dolph*, 652.

DURESS. See *Payment.*

EJECTMENT. See *Foreclosure*, 2.

EQUITABLE ASSIGNMENT. See *Claims against the United States.*

EQUITY. See *Court of Equity; Infringement*, 1; *Mortgage*, 1.

EQUITY OF REDEMPTION. See *Foreclosure*, 2; *Mortgage*, 2–4.

The statute of Minnesota declares that, in the foreclosure of a mortgage by a proceeding in court, the debtor, after the confirmation of the sale, shall be allowed twelve months in which to redeem, by paying the amount bid at the sale, with interest. Where, in a foreclosure suit, a decree, passed by a court of the United States sitting in that State, ordered the master, on making the sale, to deliver to the purchaser a certificate that, unless the mortgaged premises were, within twelve months after the sale, redeemed, by payment of the sum bid, with interest, he would be entitled to a deed, and should be let into possession upon producing the master's deed and a certified copy of the order of the court confirming the report of the sale, — *Held*, that the decree gave substantial effect to the equity of redemption secured by the statute. *Allis* v. *Insurance Company*, 144.

EQUIVALENT. See *Letters-patent*, 5.

ESTOPPEL. See *Contracts*, 4; *Corporation*, 2; *Practice*, 7; *Tax, Enforcement of the Payment thereof.*

1. Where stockholders sanctioned a contract, under which moneys were loaned to a corporation by its directors, and its bonds therefor,

ESTOPPEL (*continued*).

secured by mortgage, given, and the moneys have been properly applied, the corporation is estopped from setting up that the bonds and mortgage are void by reason of the trust relations which the directors sustained to it. *Hotel Company* v. *Wade*, 13.

2. A party is estopped from denying the corporate existence of a company when, by holding its bonds, he acquires a *locus standi* in the suit brought to foreclose the mortgage made to secure their payment. *Wallace* v. *Loomis*, 146.

3. A., the owner of a parcel of land, consisting of four adjoining lots, three of them having buildings thereon, conveyed it in fee to B. in trust, to secure the payment of certain notes to C. He subsequently used the land and buildings as a paper manufactory, annexing thereto the requisite machinery, and secured by lease a supply of water as a motive-power. Default having been made in paying the notes, B., under the power conferred by the deed, sold the land, excluding therefrom the machinery and water-power therewith connected; and on the ground that they constituted an entirety, and should have been sold together, A., by his bill against C., obtained a decree setting aside said sale. The notes remaining unpaid, C. filed his bill against A. and the lessor of the water-power, to enforce the execution of the trust, and prayed that the land mentioned in said deed, including the fixtures, machinery, and water-power, be sold as an entirety. The court below passed a decree accordingly. A. appealed here. *Held*, 1. That the decree is correct. 2. That the former decree estopped the parties thereto from again litigating the questions thereby decided. *Hill* v. *National Bank*, 450.

EVIDENCE. See *Clearance*, 2, 3; *French and Spanish Land-Grants*, 5; *Internal Revenue*, 2–5; *Jurisdiction*, 13; *Mortgage*, 4; *Practice*, 3, 6, 7; *Probable Cause*, *Certificate of*.

1. The doings of a county court of Missouri can be shown only by its record. *County of Macon* v. *Shores*, 272.

2. A claim under a Mexican grant was, in 1862, confirmed by this court to A. to the extent of five hundred acres of land. The title thereto was afterwards transferred to B., who brought ejectment therefor against A. The latter offered in evidence a duly certified copy of a decree of the District Court, rendered in pursuance of a mandate of this court of the 13th of June, 1866, confirming the title of the city of San José, as a successor of the Mexican pueblo of that name, to certain lands or commons belonging to the pueblo, the out-boundaries of which included the demanded premises; but the decree excepted from the confirmation all parcels vested in private proprietorship, under grants from lawful authority, which the tribunals of the United States had finally confirmed to parties claiming under such grants. *Held*, that the offered evidence was properly excluded. *Chaboya* v. *Umbarger*, 280.

EVIDENCE (*continued*).

3. Where the conditions of a bond which are not sustainable are severable from those which are, the latter hold good *pro tanto*, and evidence to show a breach of them are admissible. *United States* v. *Mora*, 413.
4. It is not necessary to the admissibility of a deposition, offered to prove the evidence given at a previous trial by a witness who is now dead, that the deponent shall be able to give the exact language of such witness. The substance is all that the law requires, and the deponent may, in order to refresh his memory, recur to his notes taken at the trial. *Ruch* v. *Rock Island*, 693.

EXCEPTIONS. See *Bill of Exceptions.*

EXECUTION. See *Bailment*, 2.

EXECUTORS. See *Judgment in Personam.*

FAILURE. See *Jurisdiction*, 8.

FEDERAL QUESTION. See *Evidence*, 2.

FORECLOSURE. See *Equity of Redemption*, 1; *Estoppel*, 2; *Jurisdiction*, 6.

1. In Illinois, open, visible, and exclusive possession of lands by a person, under a contract for a conveyance of them to him, is constructive notice of his title to creditors and subsequent purchasers. *Noyes* v. *Hall*, 34.
2. A., the owner in fee of certain lands, having mortgaged them to B., to secure a debt, contracted in writing to sell and convey them to C., who thereupon, pursuant to the contract, entered on them, and thereafter remained in the open and visible possession of them. The assignee of B. subsequently brought suit to foreclose the mortgage, but failed to make C. a party. A decree by default was rendered, under which the lands were sold to D., who conveyed them to B., after C. had paid to A. all that was due upon the contract and received from him a deed, which was in due time recorded. B. brought ejectment, and C. filed his bill to redeem. *Held*, that C., not having been served with process, was not bound by the foreclosure proceedings, and that the title which passed by the sale under them was subject to his right of redemption. *Id.*

FOREIGN PATENT OR PUBLICATION. See *Letters-patent*, 7.

FORFEITURE. See *Condition Subsequent; French and Spanish Land-Grants*, 1.

FORMER CONVICTION, PLEA OF. See *Criminal Law*, 5.

FRAUD. See *Contracts*, 4; *Internal Revenue*, 1–5; *Judgment in Personam; Payment.*

FRAUDS, STATUTE OF. See *Assignee in Bankruptcy*, 2; *Mortgage*, 4.

FRAUDULENT CONVEYANCE. See *Judgment in Personam.*

FRAUDULENT PREFERENCE. See *Bankruptcy*, 1.

FRENCH AND SPANISH LAND-GRANTS.

1. On Dec. 17, 1798, A. applied to the Spanish governor-general for a grant of six hundred and ten arpents of land, for a plantation and settlement, in the district of Baton Rouge, three miles from the Mississippi. To the application was annexed a certificate of the local surveyor that in the district of St. Helena, on the west bank of the Tangipahoa River, beginning at the thirty-first parallel of latitude, the boundary line of the United States, and about fifty miles east of the Mississippi, there were vacant lands in which could be found the arpents front which the petitioner asked for, excluding whatever might be in the possession of actual settlers. To this application the surveyor of the district added a further certificate, dated Dec. 22, 1798, and addressed to the governor, by which he stated that four hundred and ten arpents might be conceded in the place indicated by the local surveyor. Thereupon De Lemos, then governor, issued a warrant or order of survey, as follows: —

"New Orleans, Jan. 2, 1799.

"The surveyor of this province, Don Carlos Trudeau, shall locate this interested party on four hundred and ten arpents of land, front, in the place indicated in the foregoing certificate, they being vacant, and thereby not causing injury to any one, with the express condition to make the high-road and do the usual clearing of timber in the absolutely fixed limit in one year; and that this concession is to remain null and void if at the expiration of the precise space of three years the land shall not be found settled upon, and to not be able to alienate it within the same three years, under which supposition there shall be carried out uninterruptedly the proceedings of the survey, which he (the surveyor) shall transmit to me, so as to provide the interested party with the corresponding title-papers in due form."

Neither survey, settlement, nor improvement of any kind was ever made by A., or by any one claiming under him. On Feb. 26, 1806, after the cession of Louisiana to the United States, but before this part of it was surrendered by Spain, he procured from the local Spanish surveyor at Baton Rouge an authority to a deputy surveyor, to survey the tract according to certain general instructions which do not appear, specifying, however, that it was understood that the warrant was for a certain number of arpents in front, and that the depth ought to be forty arpents, or four hundred perches of Paris. Nothing was ever done by the deputy surveyor, and the prosecution of the grant was abandoned by A. and his assigns until long afterwards. Grandpré having, in 1806, become governor, issued a warrant for a thousand arpents, on a portion of the tract, to one Yarr, whose title was subsequently confirmed by the United States. Before the country was occupied by the United States, actual settlers had become possessed of the whole tract, and they were, upon the

FRENCH AND SPANISH LAND-GRANTS (*continued*).

report of the commission appointed to investigate the titles to land in that region, subsequently confirmed in their holdings by the act of March 3, 1819. A., Sept. 16, 1814, assigned his right to the land to B., who, Dec. 26, 1824, presented his claim to the lands to the commissioners, under the act passed May 26, 1824 (4 Stat. 59), by whom it was rejected. B. having died, C., claiming as his devisee, brought this suit under the act of June 22, 1860, entitled "An Act for the final adjustment of land-claims in the States of Florida, Louisiana, and Missouri, and for other purposes" (12 id. 85), but showed no derivation of title to himself. *Held*, 1. That the lands, by reason of the non-performance within the specified time of the conditions mentioned in the warrant of survey, were forfeited and became subject to the disposing power of the United States. 2. That, if the legal representatives of B. had a valid claim, C., being a stranger thereto, and showing no interest therein, would not be entitled to a decree confirming it in their favor. *McMicken* v. *United States*, 204.

2. The said act of June 22, 1860 (*supra*), although it contains sundry remedial provisions, and removes the objection arising from the want of title in the government which was in possession of the territory at the time of making the grants, if they were otherwise sustainable on the principles of justice and equity, does not aid claims which from intrinsic defects were invalid in 1815 or 1825. *Id.*

3. The laws and the proceedings thereunder, touching French and Spanish grants, mentioned, and the decisions as to the effect thereon of a breach of the conditions annexed thereto cited and examined. *Id.*

4. Where a grant of lands, made pursuant to a sale of them, and describing them by metes and bounds, according to a previous regular survey, was made by the Spanish Intendant, March 5, 1804, when, according to the views of the government of the United States, the title to Spain had terminated, but while she was in actual possession, and claimed the sovereignty of that part of Louisiana where the lands are situate, — *Held*, that the grant is subject to confirmation, under the act of June 22, 1860, entitled "An Act for the final adjustment of private land-claims in the States of Florida, Louisiana, and Missouri, and for other purposes." 12 Stat. 85. *United States* v. *Watkins*, 219.

5. Where the original documents to support a claim under said act are not produced, and there is no just ground to suspect their genuineness, the record of them, made by the proper commissioner, to whom the claim was originally presented, is sufficient *prima facie* evidence of their contents. *Id.*

6. A. and B., assignees of the party to whom the grant was made in 1804, filed, under said act, a petition in the District Court praying

FRENCH AND SPANISH LAND-GRANTS (*continued*).
for the confirmation of their claim covering lands, portions of which had been donated by the United States to settlers. Due proof was made of the grant and assignment; but it appeared that B. had conveyed his interest thereunder to C. A decree was passed dismissing the petition as to B., confirming the right of A. to one undivided half of so much of said lands whereto the title remained in the United States, and awarding him certificates of location equal in extent to one undivided half of the residue of said lands. *Held*, 1. That the decree was proper. 2. That "sold," where it occurs in the sixth section of said act, is of equivalent import with "sold or otherwise disposed of." *Id.*

GRANTS. See *French and Spanish Land-Grants; Land-Grant Railroads; Mexican Land-Grants; Swamp and Overflowed Lands.*

GUARDIAN AND WARD. See *Corporation*, 2.

HEARING, CAUSES TO BE READY FOR, WHEN REACHED. See *Practice*, 5.

HEIR. See *Assignee in Bankruptcy*, 2; *Donation Act.*

HUSBAND AND WIFE. See *Donation Act; Judgment in Personam.*

ILLINOIS. See *Pleading*, 1.
In Illinois, open, visible, and exclusive possession of lands by a person, under a contract for a conveyance of them to him, is constructive notice of his title to creditors and subsequent purchasers. *Noyes* v. *Hall*, 34.

IMPLICATION, REPEAL BY. See *Repeal.*

IMPLIED CONTRACT. See *Contracts*, 2.

IMPORTS, DUTIES ON. See *Constitutional Law*, 13; *Smuggling.*
1. Certain chromo-lithographs, printed from oil-stones upon paper, and known as decalcomanie pictures, were imported. *Held*, that they were, as printed papers, subject, under sect. 2504 of the Revised Statutes, to a duty of twenty-five per cent *ad valorem*. *Arthur* v. *Moller*, 365.
2. On the arrival of the steamship "Hansa" at her pier or dock at Hoboken, N. J., certain packages were, without a permit or the knowledge of the customs inspectors, unladen by her officers as the baggage of steerage passengers. The customs officers having there examined the packages, and found them to contain articles subject to duty, so marked them for identification, and sent them to Castle Garden, New York City, for further examination. Upon such further examination at that place, and the failure to pay the duties, the packages were sent to the seizure-room at the custom-house. *Held*, that the seizure was made at Castle Garden, and not on the pier or dock at Hoboken. *Four Packages* v. *United States*, 404.
3. It being fully proved that the packages were so unladen, the court

IMPORTS, DUTIES ON (*continued*).
below did not err in directing a verdict condemning them for a violation of the fiftieth section of the act of March 2, 1799 (1 Stat. 665). *Id.*

INDICTMENT. See *Criminal Law*, 5; *States, Police Powers of*, 2.

INFERENCE. See *Death, Presumption of*, 2; *Internal Revenue*, 1–5; *Jurisdiction*, 13.

INFRINGEMENT. See *Letters-patent*, 5, 6, 11–14, 16.

1. Where contractors laid a pavement for a city, which infringed the patent of Nicholson, and the city paid them as much therefor as it would have had to pay him had he done the work, thus realizing no profits from the infringement, — *Held*, that in a suit in equity, to recover profits, against the city and the contractors, the latter alone are responsible, although the former might have been enjoined before the completion of the work, and perhaps would have been liable in an action for damages. *Elizabeth* v. *Pavement Company*, 126.
2. Where profits are made by an infringer by the use of an article patented as an entirety or product, he is responsible to the patentee for them, unless he can show — and the burden is on him to show it — that a portion of them is the result of some other thing used by him. *Id.*
3. No stipulations between a patentee and his assignee, as to royalty to be charged, can prevent the latter from recovering from an infringer the whole profits realized by reason of the infringement. *Id.*

INJUNCTION. See *Infringement*, 1.

INNOCENT PURCHASER. See *Mortgage*, 3.

INSOLVENCY. See *Bankruptcy*, 1.

INSURER. See *Contracts*, 1.

INTENT. See *Internal Revenue*, 1–5.

INTERCOURSE AND TRADE.

1. The proclamation of the President of June 13, 1865 (13 Stat. 763), annulling in the territory of the United States east of the Mississippi, all restrictions previously imposed upon internal, domestic, and coastwise intercourse and trade, and upon the removal of products of States theretofore declared in insurrection, took effect as of the beginning of that day. *United States* v. *Norton*, 164.
2. There was, therefore, on that day, no authority, under the act of July 2, 1864 (13 Stat. 375), and the treasury regulations of May 9, 1865, for retaining from the owner of cotton shipped to New Orleans from Vicksburg, Miss., one-fourth thereof, nor for exacting from him a payment equal in value to such one-fourth. *Id.*
3. *United States* v. *Lapeyre* (17 Wall. 191) reaffirmed. *Id.*

INTEREST. See *Usury*, 1.

INTERNAL REVENUE. See *Probable Cause, Certificate of.*

1. The ninth section of the act of July 13, 1866 (14 Stat. 133), imposed upon "smoking-tobacco, sweetened, stemmed, or butted, a tax of forty cents per pound," and "on smoking-tobacco of all kinds not sweetened, nor stemmed, nor butted, including that made of stems, or in part of stems," fifteen cents per pound. *Held*, that a mixture of smoking-tobacco, consisting of leaves from which the stems had been removed, and of stems so manipulated as to be undistinguishable from the leaf, — the proportion of stems and leaves being the same which they originally bore to each other, — was liable to a tax of forty cents per pound, as smoking-tobacco stemmed or butted. *Lilienthal's Tobacco* v. *United States*, 237.
2. Under the act of March 3, 1865 (13 id. 477), a manufacturer returned such smoking-tobacco for taxation at thirty-five cents per pound, and after the passage of the act of July 13, 1866 (*supra*), at forty cents per pound, until Aug. 20, 1866, when he somewhat increased the proportion of stems used, and for seventeen months thereafter returned it for taxation at fifteen cents per pound. *Held*, that his conduct was evidence proper to be considered by the jury, in connection with other circumstances, in determining whether or not he intended to defraud the United States of the tax to accrue upon the manufactured and the unmanufactured tobacco found in his factory at the time of seizure. *Id.*
3. A. used portions of a building as a tobacco manufactory, and the remainder of it as a salesroom, having a counter at which goods were sold at retail. Cigars and tobacco removed from the factory to the salesroom, for sale at retail, were returned by him for taxation as "sold or removed for sale," though he still owned them. *Held*, 1. That this was not such a sale or removal as to entitle the tobacco to be so returned. 2. That A.'s manner of doing business was proper to be considered by the jury in determining whether or not he thereby intended to defraud the United States in respect to other tobacco in his manufactory at the time of seizure. *Id.*
4. Certain tobacco, liable to a tax of twenty-five cents per pound, was, by the act of March 3, 1865 (*supra*), subjected, after the last day of that month, to a tax of thirty-five cents per pound. On March 8, 1865, A made a fictitious sale of a large quantity of such tobacco, in order that he might return it as sold prior to April 1, 1865, and did so return it, paying but twenty-five cents per pound as the tax thereon. *Held*, 1. That he was not authorized thus to return it. 2. That the United States had the right to show the fictitious character of the transaction as tending to prove an intent to defraud, even though some of the tobacco was, when actually sold and removed, liable to pay a tax of but ten cents per pound. *Id.*
5. Evidence having been given of the foregoing acts and of other viola-

INTERNAL REVENUE (*continued*).

tions of the internal-revenue laws by A., consisting of acts and omissions in connection with the sale and removal of tobacco subject to tax, but unconnected with the property under seizure, the court instructed the jury, in substance, that if they found that A. had in fact so violated the internal-revenue laws, the burden of proof was upon him to satisfy them that such violations were not committed by him with intent to defraud the revenue; and that unless he did so, they might draw the inference that such intent existed; and from such inference further conclude that the property seized was also held by him with like intent, as charged in the information. *Held*, that the instruction was not erroneous. *Id.*

6. In the forenoon of March 3, 1875, A. stamped, sold, and removed for consumption or use from the place of manufacture certain tobacco, which, under sect. 3368 of the Revised Statutes, was subject to a tax of twenty cents per pound. On the afternoon of that day, the President approved the act of March 3, 1875 (18 Stat. 339), increasing the tax to twenty-four cents per pound, but providing that such increase should "not apply to tobacco on which the tax under existing laws shall have been paid when this act takes effect." *Held*, that the increase of tax under that act did not apply to the tobacco so stamped, sold, and removed. *Burgess* v. *Salmon*, 381.

7. An action by the United States, to recover the proceeds arising from sales of tobacco, which, found in the hands of the defendant, a bailee, was seized as forfeited for the non-payment of the tax due thereon, and then left with him, under an agreement with the collector of internal revenue that he, the bailee, should sell it and hold the proceeds, subject to the decision of the proper court, is, within the meaning of sect. 699 of the Revised Statutes, an action to enforce a revenue law, and this court has jurisdiction to re-examine the judgment, without regard to the amount involved. *Pettigrew* v. *United States*, 385.

8. The defendant having set up in his plea that, while he held such proceeds, pursuant to the agreement, a suit to recover them, defended by A., the owner of the tobacco, was dismissed by the United States after plea filed, and that the defendant, after retaining them for nearly four years, and no other suit having been brought, paid them to A., the court, although testimony was offered sustaining his plea, instructed the jury that he was liable. *Held*, that the instruction was erroneous. *Id.*

9. If a distiller uses material for distillation in excess of the estimated capacity of his distillery, according to the survey made and returned under the provisions of the law regulating that subject, but, in the regular course of his business, pays the taxes upon his entire production, he cannot be again assessed at the rate of seventy cents on every gallon of spirits which the excess of material used should have produced, according to the rules of estimation prescribed by the internal-revenue law. *Stoll* v. *Pepper*, 438.

INTOXICATING LIQUORS. See *Constitutional Law*, 5.

INVENTION. See *Letters-patent.*

INVOLUNTARY BANKRUPTCY. See *Bankruptcy*, 2.

IOWA. See *Swamp and Overflowed Lands*, 1.

JOINT AND SEVERAL LIABILITY. See *Jurisdiction*, 8.

JUDGMENT. See *Jurisdiction*, 1, 3, 13.

JUDGMENT, COLLATERAL EFFECT OF. See *Jurisdiction*, 2.

JUDGMENT IN PERSONAM.

The court adheres to its ruling in *Phipps* v. *Sedgwick* (95 U. S. 3), that, where a husband causes real estate to be conveyed to his wife in fraud of his creditors, a judgment *in personam* for its value cannot be taken at the suit of his assignee in bankruptcy, against her, nor, in case of her death, against her executors. *Trust Company* v. *Sedgwick*, 304.

JURISDICTION. See *Criminal Law; New Trial; Practice*, 11.

I. Of the Supreme Court.

1. The amount of the judgment below against a defendant in an action for money is *prima facie* the measure of the jurisdiction of this court in his behalf. *Troy* v. *Evans*, 1.

2. This *prima facie* case continues until the contrary is shown; and, if jurisdiction is invoked because of the collateral effect a judgment may have in another action, it must appear that the judgment conclusively settles the rights of the parties in a matter actually in dispute, the sum or value of which exceeds $5,000, exclusive of interest and costs. *Id.*

3. It appearing from the record that the point that the prohibitory liquor law of Massachusetts of 1869 impaired the obligation of the contract contained in the charter of the Boston Beer Company was made on the trial of this case and decided adversely to the company, and was afterwards carried by bill of exceptions to the Supreme Court of Massachusetts, where the rulings of the lower court were affirmed, this court has jurisdiction. *Beer Company* v. *Massachusetts*, 25.

4. This court has jurisdiction to re-examine the judgment of the Circuit Court in an action to enforce a revenue law, without regard to the amount involved. *Pettigrew* v. *United States*, 385.

5. Where a case has been decided in an inferior court of a State on a single point which would give this court jurisdiction, it will not be presumed here that the Supreme Court of the State decided it on some other ground not found in the record or suggested in the latter court. *Keith* v. *Clark*, 454.

6. The court reaffirms the doctrine in *Williams* v. *Bruffy* (96 U. S. 176), that an enactment of the Confederate States, enforced as a law of one

JURISDICTION (*continued*).

of the States composing that confederation, is a statute of such State, within the meaning of the act regulating the appellate jurisdiction of this court over the judgments and decrees of the State courts. *Ford* v. *Surget*, 594.

II. Of the Circuit Courts.

7. Bonds issued by a corporation in Nebraska, secured by a mortgage on its lands there situate, were held by citizens of another State, who, on default of the corporation to pay the interest represented by the coupons, applied to the trustee named to take possession of the lands, pursuant to the mortgage, and bring a foreclosure suit. On his refusal, they filed their bill Sept. 24, 1873, in the Circuit Court, against him, the corporation, and the other bond and coupon holders, all citizens of Nebraska, who refused to join in bringing suit. *Held*, that the complainants had the right to file their bill, and that the court below had jurisdiction, although some of the respondents were joined as such solely on the ground that they had refused to unite with the complainants in the prosecution of a suit to compel the trustee to foreclose the mortgage. *Hotel Company* v. *Wade*, 13.

8. The act of Congress approved March 2, 1809 (2 Stat. 534), provides that, in case of the disability of a judge of the District Court of the United States to perform the duties of his office, such duties shall be performed by the justice of the Supreme Court allotted to the circuit which embraces the district. By the second section of the act approved April 10, 1869 (16 id. 44), the same power is conferred upon the circuit judge. *Wallace* v. *Loomis*, 146.

9. The Merchants' Bank of South Carolina, at Cheraw, suspended specie payments Nov. 13, 1860, and never thereafter resumed. Its charter contains a provision that, "in case of the failure of the said bank, each stockholder, copartnership, or body politic, having a share or shares in the said bank at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound individually for any sum not exceeding twice the amount of his, her, or their share or shares." To enforce this provision, A., Dec. 2, 1870, filed, for himself and other note-holders, a bill in the Circuit Court, against the receiver of the bank, its cashier, five of its directors, and some sixty others, as stockholders, alleging, among other matters, that he was a citizen of Virginia, but making no averment touching the citizenship of the other note-holders or of the defendants. Such citizenship does not appear by the record, and the bank was not made a party. Twenty of the defendants were served with process, and the others did not enter an appearance. Dec. 15, 1874, a final decree was rendered, which, after declaring that the persons who held shares of stock in said bank "on the first day of the month of

JURISDICTION (*continued*).

March, A.D. 1865, or who were interested therein within twelve months previous to said first day of March, 1865, are liable and are held bound individually to the complainants, for a sum not exceeding twice the amount of the share or shares held by said stockholders respectively," and reciting the names of over sixty of such stockholders, the number of shares held by each, and the amount for which each was liable, together with the names of five bill-holders, in addition to A., and the amount due to each of them, awards judgment and execution against the defendants, stockholders, as aforesaid, for the amount due said bill-holders respectively, besides costs. *Held*, 1. That the citizenship of the parties is not sufficiently shown to give the court below jurisdiction; and, were it otherwise, the decree is erroneous, in that it was taken against parties not served, and against the defendants jointly, while a several liability was imposed by the charter upon each stockholder, not to exceed twice the amount of his shares. 2. That, within the meaning of its charter, the bank failed Nov. 13, 1860. 3. That a suit against a person who was a stockholder at that date, or within twelve months prior thereto, was, when this suit was commenced, barred by the Statute of Limitations. *Godfrey* v. *Terry*, 171.

10. Where the jurisdiction of a court of the United States depends upon the citizenship of the parties, such citizenship, and not simply their residence, must be shown by the record. *Robertson* v. *Cease*, 646.

11. The ruling in *Railway Company* v. *Ramsey* (22 Wall. 322), approved in *Briges* v. *Sperry* (95 U. S. 401), that the fact of such citizenship need not necessarily be averred in the pleadings, if it otherwise affirmatively appears by the record, does not apply to papers copied into the transcript, but not made a part of the record by bill of exceptions, or by an order of the court referring to them, or by some other mode recognized by the law. *Id.*

12. The presumption that a case is without the jurisdiction of the Circuit Court remains now as it was before the adoption of the Fourteenth Amendment to the Constitution of the United States. *Id.*

13. The defendant having made no objection in the court below to its jurisdiction, by reason of the non-averment of the citizenship of the plaintiff, this court, in reversing the judgment, grants leave to the latter to amend his declaration in respect to his citizenship at the commencement of the suit, if it be such as to authorize that court to proceed with the trial. *Id.*

III. In General.

14. In ejectment for lands in Oregon, the defendant claimed title under a sheriff's deed, pursuant to a sale of them under execution sued out upon a judgment by default rendered in 1861 against A. in the

JURISDICTION (*continued*).

State court. A certified transcript of the judgment record, consisting, as required by the statute, of a copy of the complaint and notice, with proof of service, and a copy of the judgment, was put in evidence. The statute also required that in actions *in personam* service should be made by the sheriff's delivering to the defendant personally, or, if he could not be found, to some white person of his family above the age of fourteen years, at his dwelling-house or usual place of abode, a copy of the complaint and notice to answer. The suit against A. was for the recovery of money, and the sheriff's return showed that service was made "by delivering to the wife of A., a white woman over fourteen years of age, at the usual place of abode," a copy of the complaint and notice; but it contained no statement that A. could not be found. At the ensuing term, judgment was rendered against him, with a recital that the "defendant, although duly served with process, came not, but made default." *Held*, 1. That the court, by such service, acquired no jurisdiction over the person of A., and its judgment was void. 2. That such substituted service, if ever sufficient for the purposes of jurisdiction, can only be made where the condition upon which it is permissible is shown to exist. 3. That the inability of the sheriff to find A. was not to be inferred, but to be affirmatively stated in his return. 4. That the said recital is not evidence of due service, but must be read in connection with that part of the record which sets forth, as prescribed by statute, the proof of service. 5. That such proof must prevail over the recital, as the latter, in the absence of an averment to the contrary, the record being complete, can only be considered as referring to the former. *Settlemier* v. *Sullivan*, 444.

KANSAS, LANDS IN. See *Payment*.

LACHES.

The United States, in asserting its rights, is not barred by the laches of its officers or agents. *Gaussen* v. *United States*, 584.

LAND-GRANT RAILROADS.

1. Subject to certain reservations and exceptions, the act of Congress of July 1, 1862 (12 Stat. 489), "to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes," passed to the companies therein named a present interest in every odd-numbered section of public land, within specified limits, on each side of the lines of their respective roads. When those lines were definitely established, the title of the companies acquired precision, and became attached to such sections. *Missouri, Kansas, and Texas Railway Co.* v. *Kansas Pacific Railway Co.*, 491.
2. Said act having been amended by that of July 2, 1864 (13 Stat. 356),

LAND-GRANT RAILROADS (*continued*).
by substituting words of larger import, the grant must be treated as if it had been thus made originally; and therefore, as against the United States, the title of the companies to the increased quantity of land must be considered as taking effect July 1, 1862. *Id.*

3. The company now known as the Kansas Pacific Railway Company was one of the companies mentioned in said acts. By the act of July 3, 1866 (14 Stat. 79), it was authorized to designate the general route of its road, and to file a map thereof at any time before Dec. 1, 1866: *Provided*, that, after the filing of the map, the lands along its entire line, so far as designated, should be reserved from sale by the Secretary of the Interior. Within the specified time, the company filed a map designating as such general route a line from Fort Riley to the western boundary of Kansas, by way of the Smoky Hill River. The lands upon this route, embracing, among others, those now in controversy, were accordingly withdrawn from sale; and, in January, 1867, the road was completed for twenty-five miles, approved by the commissioners appointed to examine it, and accepted by the President. *Held*, 1. That the title of the company attaching to those lands by the location of the road, followed by the construction thereof, took effect, by relation, as of the date of the said act of 1862, so as to cut off all intervening claimants, except in the cases where reservations were specially made in it and the amendatory act of 1864. 2. That such reservations operated as limitations upon the grant. *Id.*
4. It was not within the language or intention of those acts to except from their operation any portion of the odd-numbered sections within the limits specified in either act, for the purpose of thereafter granting them to aid in the construction of other roads. *Id.*
5. The claim of the Missouri, Kansas, and Texas Railway Company to the lands in controversy arises under the act of July 26, 1866 (14 Stat. 289), under which the route of its road was designated, a map thereof filed, and the road constructed. At that date, the title to the lands along that route, which were covered by the previous grant to the Kansas Pacific Railway Company, had already passed from the United States. *Id.*
6. Although the rights of said companies are determined by the date of their respective grants, it appears that the location of the Kansas Pacific was earlier than that of the Missouri, Kansas, and Texas road. *Id.*

LANDS, POSSESSION OF. See *Illinois.*

LEGAL TITLE. See *Mortgage*, 3.

LETTERS-PATENT. See *Infringement*, 1–3; *States, Police Powers of.*

1. The mere change in form of a soluble article of commerce, by reducing it to small particles so that its solution is accelerated and it is rendered more ready for immediate use, convenient for handling, and, by its improved appearance, more merchantable, does not make it a

LETTERS-PATENT (*continued*).

new article, within the sense of the patent law. *Glue Company* v. *Upton*, 3.

2. To render an article new within that law, it must be more or less efficacious, or possess new properties by a combination with other ingredients. *Id.*
3. Reissued letters-patent No. 4072, granted July 12, 1870, to Thomas P. Milligan and Thomes Higgins, assignees of Emerson Goddard, for an improvement in the manufacture of glue, — the alleged improvement consisting "of glue comminuted to small particles of practically uniform size, as distinguished from the glue in angular flakes hitherto known," — are void for want of novelty. *Id.*
4. Letters-patent No. 37,941, granted March 17, 1863, to William M. Welling, for an improvement in rings for martingales, are void for want of novelty, being merely for a product consisting of a metallic ring enveloped in a composition of ivory or similar material. *Rubber-Coated Harness-Trimming Co.* v. *Welling*, 7.
5. The substantial equivalent of a thing is, in the sense of the patent law, the same as the thing itself. Two devices which perform the same function in substantially the same way, and accomplish substantially the same result, are therefore the same, though they may differ in name or form. *Machine Company* v. *Murphy*, 120.
6. The combination, consisting of a fixed knife with a striker and the other means employed to raise the striker and let it fall to perform the cutting function, embraced by letters-patent No. 146,774, issued Jan. 27, 1874, to Merrick Murphy, for an improvement in paper-bag machines, is substantially the same thing as the ascending and descending cutting device embraced by letters-patent No. 24,734, issued July 12, 1859, to William Goodale. *Id.*
7. A foreign patent or publication describing an invention, unless published anterior to the making of the invention or discovery secured by letters-patent issued by the United States, is no defence to a suit upon them. *Elizabeth* v. *Pavement Company*, 126.
8. The presumption arising from the oath of the applicant that he believes himself to be the first inventor or discoverer of the thing for which he seeks letters-patent remains until the contrary is proved. *Id.*
9. The use of an invention by the inventor, or by persons under his direction, if made in good faith, solely in order to test its qualities, remedy its defects, and bring it to perfection, is not, although others thereby derive a knowledge of it, a public use of it, within the meaning of the patent law, and does not preclude him from obtaining letters-patent therefor. *Id.*
10. Samuel Nicholson having, in 1847, invented a new and useful improvement in wooden pavements, and filed in the Patent Office a *caveat* of his invention, put down in 1854, as an experiment, his wooden pavement on a street in Boston, where it was exposed to

LETTERS-PATENT (*continued*).

public view and travelled over for several years, and it proving successful, he, Aug. 7, 1854, obtained letters-patent therefor. *Held*, 1. That there having been no public use or sale of the invention, he was entitled to such letters-patent. 2. That they were not avoided by English letters-patent for the same invention, enrolled in 1850. *Id.*

11. Reissued letters-patent No. 3727, granted by the United States, Nov. 9, 1869, to Edward H. Ashcroft, assignee of William Naylor, for an improvement in steam safety-valves, being a reissue of original letters No. 58,962, granted to Naylor Oct. 16, 1866, cannot, in view of the disclaimer of said Naylor in his specification, upon which English letters-patent No. 1830 were sealed to him Jan. 19, 1864, and of the prior state of the art, be construed to embrace a combination, in every form of spring safety-valve, of a projecting, overhanging, downward-curved lip or periphery, with an annular recess or chamber surrounding the valve-seat, into which a portion of the steam is deflected as it issues between the valve and its seat, but must be limited to a combination of the other elements of his device, with such an annular recess of the precise form, and operating in the manner described, so far as such recess, separately or in combination, differs in construction or mode of operation from those which preceded it. *Ashcroft* v. *Railroad Company*, 189.

12. Said reissued letters, thus limited, are not infringed by the use of a steam safety-valve made in substantial compliance with the specification of letters-patent No. 58,294, granted Sept. 25, 1866, to George W. Richardson. *Id.*

13. This case involves merely questions of fact; and the court finds that letters-patent No. 106,165, granted Aug. 9, 1870, to William G. Hyndman, for an "improvement in rotary blowers," infringe the first, second, third, and fourth claims of reissued letters-patent No. 3570, granted July 27, 1869, to P. H. Roots and F. M. Roots, for an "improvement in cases for rotary blowers," upon the surrender of original letters No. 80,010, dated Aug. 11, 1868. *Hyndman* v. *Roots*, 224.

14. The court concurs with the court below that reissued letters-patent No. 72, dated May 7, 1861, and No. 1683, dated May 31, 1864, for new and useful improvements in reaping-machines, and reissued letters No. 1682, dated May 31, 1864, for a new and useful improvement in harvesters, all of which were granted to William H. Seymour and others, are valid, and that they have been infringed by the respondents. *Marsh* v. *Seymour*, 348.

15. *Seymour* v. *Osborne* (11 Wall. 516) cited and commented on. *Id.*

16. Compensatory damages for the infringement of letters-patent may be allowed in equity, although the business of the infringer was so improvidently conducted as to yield no substantial profits. *Id.*

17. A party who invents a new machine never used before, and procures letters-patent therefor, acquires a monopoly as against all merely

LETTERS-PATENT (*continued*).

formal variations thereof; but if the advance towards the thing desired is gradual, and proceeds step by step, so that no one can claim the complete thing, each inventor is entitled only to his own specific form of device. *Railway Company* v. *Sayles*, 554.

18. Double brakes, operating upon the two trucks of a railroad car at the same time, by a single force, through the medium of connecting rods, had been publicly used before Thompson and Bachelder invented the Tanner brake. Only the specific improvement which they made could, therefore, be covered by the letters-patent for that brake. The latter were not infringed by the Stevens brake, for which letters-patent No. 8552 were issued Nov. 25, 1851, though it was invented after the Tanner brake, inasmuch as it is another and different specific form of brake. The parties are entitled to the specific improvement they respectively invented, provided the later does not include the earlier. *Id.*

19. Though the double brakes used before the Tanner brake was invented may have been much less perfect than it, and may have been superseded by it and by other improved forms of brake, nevertheless, they were actually used, and to some good purpose. Their construction and use, though with limited success, were sufficient to contravene the pretension of Thompson and Bachelder that they were the pioneers in this department of invention. *Id.*

20. The original application for a patent made by Thompson and Bachelder was filed in the Patent Office in June, 1847. Having been rejected, it remained there unaltered until 1852, when it was considerably amended, and letters-patent No. 9109 were, July 6, 1852, granted thereon to Tanner, as assignee. *Held*, that no material alterations introduced by such amendments could avail as against parties who had introduced other brakes prior thereto. *Id.*

21. The original application for letters-patent (with its accompanying drawings and model), filed by an inventor, should possess great weight in showing what his invention really was, especially where it remains unchanged for a considerable period, and is afterwards amended so as to have a broader scope. Amendments embracing any material variation from the original application — any thing new, not comprised in that — cannot be sustained on the original application, and should not be allowed; otherwise, great injustice might be done to others who may have invented or used the same things in the mean time. *Id.*

22. The law does not permit enlargements of an original specification any more than it does where letters-patent already granted are reissued. It regards with jealousy and disfavor any attempt to enlarge the scope of an application once filed, or of letters-patent once granted, the effect of which would be to enable the patentee to appropriate other inventions made prior to such alteration, or improvements which have gone into public use. *Id.*

LICENSE. See *Constitutional Law*, 14.

LIEN. See *Claims against the United States; Court of Equity; Mortgage*, 3.

LIMITATIONS, STATUTE OF. See *Assignee in Bankruptcy*, 1; *Rebellion, The*, 2.

1. The charter of the Merchants' Bank of South Carolina contains a provision that, "in case of the failure of the said bank, each stockholder, copartnership, or body politic, having a share or shares in the said bank at the time of such failure, or who shall have been interested therein at any time within twelve months previous to such failure, shall be liable and held bound individually for any sum not exceeding twice the amount of his, her, or their share or shares." Within the meaning of its charter the bank failed Nov. 13, 1860, when it suspended specie payments. *Held*, that a suit commenced Dec. 2, 1870, against a stockholder, to enforce said liability, was barred by the Statute of Limitations. *Godfrey* v. *Terry*, 171.
2. This court adopts the construction of the Supreme Court of North Carolina, that the term "beyond the seas," where it occurs in the Statute of Limitations of that State, means "without the United States." *Davie* v. *Briggs*, 628.

LIS PENDENS. See *Municipal Bonds*, 4, 5.

MALT LIQUORS. See *Constitutional Law*, 1–6.

MANDAMUS. See *Tax, Enforcement of the Payment thereof.*

MANDATE. See *Practice*, 8.

MASSACHUSETTS, PROHIBITORY LIQUOR LAW OF. See *Constitutional Law*, 1–6.

MEXICAN LAND-GRANTS. See *Evidence*, 1.

1. Pending a proceeding in a tribunal of the United States, for the confirmation of a claim to lands in California, under a Mexican grant, no portion of them embraced within the boundaries designated in the grant is open to settlement, under the pre-emption laws, although, upon the final survey of the claim when confirmed, there may be a surplus within those boundaries. *Hosmer* v. *Wallace*, 575.
2. Until a segregation of the quantity granted is made by an approved official survey, third parties cannot interfere with the grantee's possession of the lands, and limit it to any particular place within those boundaries. *Id.*
3. Between March 1, 1856, and May 30, 1862, unsurveyed public lands in California were not subject to settlement under the pre-emption laws. Since the latter date, they, as well as surveyed lands, have been so subject. *Id.*
4. The right of pre-emption only inures in favor of a claimant when

MEXICAN LAND-GRANTS (*continued*).
he has performed the conditions of actual settlement, inhabitation, and improvement. As he cannot perform them while the land is occupied by another, his right of pre-emption does not extend to it. *Id.*

5. The object of the seventh section of the act of July 23, 1866 (14 Stat. 218), "to quiet land-titles in California," was to withdraw from the general operation of the pre-emption laws lands continuously possessed and improved by a purchaser under a Mexican grant, which was subsequently rejected, or limited to a less quantity than that embraced in the boundaries designated, and to give to him, to the exclusion of all other claimants, the right to obtain the title. *Id.*

MILITARY COMMANDERS. See *Criminal Law*, 4; *Rebellion, The*, 5.

MILITARY TRIBUNALS, JURISDICTION OF. See *Criminal Law*, 1, 2.

MINNESOTA. See *Equity of Redemption.*

MISSOURI. See *Public Administrator; Record.*
Sect. 14, art. 11, of the Constitution of Missouri of 1865 did not take away from a county the authority, which had been previously conferred by statute, to subscribe for stock in a railroad company. *County of Macon* v. *Shores*, 272.

MISTAKE. See *Contracts*, 4; *Mortgage*, 4; *Payment.*

MONEY, ACTION FOR. See *Jurisdiction*, 1.

MORTGAGE. See *Equity of Redemption; Estoppel*, 1, 2; *Foreclosure*, 2; *Jurisdiction*, 6.

1. A deed of land, with a power of sale, to secure the payment of a debt, whether made to the creditor or a third person, is, in equity, a mortgage, if there is left a right to redeem on payment of such debt. *Shillaber* v. *Robinson*, 68.
2. Sales under such a power have no validity unless made in strict conformity to the prescribed directions. Therefore, a sale made on a notice of six weeks, instead of twelve, as required by the mortgage and the statute of the State where the lands are situate, is absolutely void, and does not divest the right of redemption. *Id.*
3. A person holding the strict legal title, with no other right than a lien for a given sum, who sells the land to innocent purchasers, must account to the owners of the equity of redemption for all he receives beyond that sum. *Id.*
4. A., to secure the payment of money borrowed from B., mortgaged land to the latter, who commenced proceedings in foreclosure, and obtained a decree under which he purchased the land, and received a deed therefor from the proper officer. He subsequently conveyed it to C. Eight years after the death of B., A. filed his bill against

MORTGAGE (*continued*).

C., alleging a parol agreement whereby he was to make no defence to the foreclosure; that the equity of redemption, notwithstanding the sale and the deed made pursuant thereto, should not be thereby barred, but that B., on receiving his debt from the rents and profits of the land, should convey it to A.; that B. desiring to be repaid at an earlier date, C., at A.'s instance, paid the same, and took a deed from B. with a full knowledge of the agreement between the latter and A.; that C. agreed that, when reimbursed out of the rents and profits of the land, he would convey it to A. *Held*, 1. That, in order to make out his alleged agreement with B., the burden was upon A. to produce evidence of such weight and character as would justify a court in reforming a written instrument, which, upon the ground of mistake, did not set forth the intention of the parties thereto. 2. That such evidence not having been produced to show the alleged agreement, and A.'s continuing interest in the land, his parol agreement with C. was void, under the Statute of Frauds. *Howland* v. *Blake*, 624.

MUNICIPAL BONDS. See *Parties; Pleading*, 2; *Practice*, 2, 3.

1. On April 5, 1870, the county court of Bates County, Missouri, having received the requisite petition, ordered that an election be held May 3 in Mount Pleasant township, for the purpose of determining whether a subscription of $90,000 should be made on behalf of the township to the capital stock of the Lexington, Chillicothe, and Gulf Railroad Company, to be paid for in the bonds of the county, upon certain conditions and qualifications set forth in the order. The election resulted in favor of the subscription; whereupon the court, June 14, 1870, made an order that said sum "be, and is hereby, subscribed . . . subject to and in pursuance of all the terms, restrictions, and limitations" of the order of April 5, and that the agent of the court be authorized and directed to make said subscription, on behalf of the township, on the stock-books of said company, and, in making it, to have copied in full the order of the court as the conditions on which it was made, and that he report his acts to the court. The agent, Dec. 19, 1870, reported that the company had no stock-books, for which, and other reasons, he did not make the subscription, concluding his report with the words, "the bonds of said township are therefore not subscribed," which report was formally adopted by the court. Jan. 18, 1871, the county court made another order, reciting that the subscription had been made to said Lexington, Chillicothe, and Gulf Railroad Company; that a consolidation had been made between that and another company, resulting in the Lexington, Lake, and Gulf Railroad Company, and directing that $90,000 of bonds be issued to the latter company in payment and satisfaction of said original subscription. The order concluded by authorizing the agent of the court "to subscribe said

MUNICIPAL BONDS (*continued*).

stock" to said Lexington, Lake, and Gulf Railroad Company. The agent made the subscription on the books of that company, which was accepted by it, and a certificate of stock issued to the county. The bonds recite on their face that they are issued to the Lexington, Lake, and Gulf Railroad Company, in payment of the subscription to the Lexington, Chillicothe, and Gulf Railroad Company, authorized by the vote of the people held May 3, 1870, and that the two companies were consolidated, as required by law. *Held*, 1. That the action of the county court on June 14, 1870, was not final and self-executing, and did not constitute a subscription to the Lexington, Chillicothe, and Gulf Railroad Company. 2. That the issue of the bonds to the Lexington, Lake, and Gulf Railroad Company was not authorized by the election held May 3, 1870. 3. That there can be no recovery on said bonds, as their invalidity is shown by their recitals. *County of Bates* v. *Winters*, 83.

2. The court reaffirms its former decisions that where, after a preliminary proceeding, such as a popular election, a county had lawful authority to issue its bonds, and they were issued, bearing upon their face a certificate by the officer whose primary duty it was to ascertain the fact that such proceeding had taken place, a *bona fide* holder of them for value before maturity has a right to assume that such a certificate is true. *County of Warren* v. *Marcy*, 96.

3. The bonds are not, in the hands of such a holder, rendered invalid by the fact that such proceeding was so defective that a suit to prevent their issue should be, and, on appeal to the Supreme Court of the State, ultimately was, sustained against the county officers, nor by the fact that they were issued after such a suit had been brought, and were by him purchased during its pendency. *Id.*

4. The rule that all persons are bound to take notice of a suit pending with regard to the title to property, and that they, at their peril, buy the same from any of the litigating parties, does not apply to negotiable securities purchased before maturity. *Id.*

5. The considerations which exclude the operation of that rule to such securities apply to them, whether they were created during the suit or before its commencement, and to controversies relating to their origin or to their transfer. *Id.*

6. In an action against a county to recover the amount due on coupons detached from bonds issued by it in payment of its subscription to the capital stock of a railroad company, it is no defence that the company, which was a *de facto* corporation when the subscription was made, had not been organized within the time prescribed by its charter, and that when the bonds were issued a suit to restrain the issue of them was pending, however it may have ultimately resulted, if the holder had no actual notice thereof, and was a purchaser of them for value before they matured. *County of Macon* v. *Shores*, 272.

NEGOTIABLE SECURITIES. See *Municipal Bonds*, 4, 5.

NEW ARTICLE. See *Letters-patent*, 1, 2.

NEW TRIAL.

The fifth section of the act of Congress of June 1, 1872 (17 Stat. 197), was not intended to abrogate the established law of the courts of the United States, that to grant or refuse a new trial rests in the sound discretion of the court to which the motion is addressed, and that the result cannot be made the subject of review by writ of error. *Newcomb* v. *Wood*, 581.

NON-APPEARANCE OF APPELLANT. See *Practice*, 4.

NORTH CAROLINA, STATUTE OF LIMITATIONS OF. See *Limitations, Statute of*, 2.

NOTICE, CONSTRUCTIVE. See *Foreclosure*, 1.

NOVELTY. See *Letters-patent*, 3, 4.

NUISANCE. See *Constitutional Law*, 14.

OATH. See *Letters-patent*, 8; *Referees*, 3.

OFFICER OF THE ARMY.

Charges of drunkenness on duty having been preferred against A., a captain in the army, he proposed that if they should not be acted upon he would place his resignation in the hands of his commanding officer, to be held, and not forwarded to the War Department, if he should entirely abstain from the use of intoxicating liquors. Accordingly, May 10, 1868, he enclosed in a letter to that officer his resignation, stating that it was without date, and authorizing him, subject to the condition above stated, to place it in the hands of the department commander, to be forwarded to the War Department if he, A., should become intoxicated again. On A.'s again becoming intoxicated on duty prior to Oct. 3, 1868, the department commander, on being notified of the fact, inserted the date of the 5th of that month in the resignation, and duly forwarded it. On the 29th, it was accepted by the President, and the notification of his action thereon was received by A. Nov. 11. The President revoked his acceptance, Dec. 11; but no order promulgating the revocation, or restoring A. to duty, was issued by the War Department. Dec. 22, 1869, the Senate advised and consented to the appointment of B. to be a captain, *vice* A. resigned. *Held*, 1. That A., by voluntarily placing his resignation, without date, in the hands of his commanding officer, authorized him, upon his (A.) becoming again intoxicated, to insert a proper date in such resignation, and forward it for acceptance. 2. That A.'s office became vacant upon his receipt of the notification of the acceptance by the President of the resignation. 3. That the action of the President, revoking such acceptance, did not restore A. to the service. *Mimmack* v. *United States*, 426.

OFFICIAL BOND. See *Bond*, 2.

OHIO. See *Corporation*, 2.

Any issues in an action, whether they be of fact or of law, may, by sect. 281 of the Code of Ohio, be referred to referees. *Newcomb* v. *Wood*, 581.

OREGON. See *Donation Act; Jurisdiction*, 14.

PARDON AND AMNESTY. See *Rebellion, The*, 3, 4.

PAROL AGREEMENT. See *Mortgage*, 4.

PAROL EVIDENCE. See *Mortgage*, 4.

PARTIES. See *Jurisdiction*, 7, 9, 10; *Practice*, 10.

In an action on certain coupons originally attached to bonds issued by the county of Pickens, South Carolina, the holder of them made as sole defendants to his complaint certain persons whom he named "as county commissioners" of said county. No objection was taken to the pleadings, nor any misnomer suggested. Verdict and judgment for the plaintiff. *Held*, 1. That neither the Constitution nor the statutes of that State declare the name by which a county shall be sued. 2. That, if the action should have been brought against the county by its corporate name, the misdescription, if objected to, was, by the statutes of that State, amendable at the trial; but it furnishes no ground for reversing the judgment. *Commissioners* v. *Bank of Commerce*, 374.

PAYMENT. *See Claims against the United States.*

A contract for the purchase by A. from B. of certain lands in Kansas provided that A. should pay all taxes lawfully assessed on them, and that B. would convey them upon the payment of the purchase-money. The taxes assessed for the year 1870, held by the Supreme Court of the State to be valid, not having been paid, the county treasurer advertised, and, in May, 1871, sold the lands therefor, the county bidding them in. In 1872, C., trustee and representative of A., relying upon the validity of the tax, paid without protest into the county treasury, out of moneys belonging to A., a sum sufficient to redeem the lands so sold, and received the tax certificate therefor, which he took in his own name. He also paid a portion of the taxes for 1871 and 1872. The statute provides that, on the non-redemption of lands within three years from the day of the sale thereof for taxes, the treasurer may, on the presentation of the certificate, execute a deed to the purchaser, or refund the amount paid therefor, if he discovers that, by reason of error or irregularity, the lands ought not to be conveyed. This court having decided that the lands were not taxable, C., in 1874, offered to return the tax-certificate to the county treasurer, and demanded that the moneys paid by him be refunded. That demand having been refused, he brought this action to recover them. *Held*, 1. That C. cannot be

PAYMENT (*continued*).
regarded as a purchaser of the lands. 2. That the payments by him so made, there having been neither fraud, mistake of fact, nor duress, were voluntary, in such a sense as to defeat the action. 3. That the statute of Kansas, as construed by the Supreme Court of that State, does not, upon the facts of the case, entitle him to recover. *Lamborn* v. *County Commissioners*, 181.

PENNSYLVANIA. See *Constitutional Law*, 13.

PERILS OF THE SEA. See *Contracts*, 2.

PLEADING. See *Criminal Law*, 5; *Practice*, 7; *Rebellion, The*, 5.

1. In Illinois, a copy of the written instrument on which the action is founded must be filed with the declaration, and it constitutes part of the pleadings in the case. *Nauvoo* v. *Ritter*, 389.
2. Where bonds issued by a municipal corporation, having lawful authority to issue them upon the performance of certain conditions precedent, refer upon their face to such authority, and there is printed on their back a copy of an ordinance declaring such performance, it is not error, in an action against the corporation by an innocent holder of them, to sustain a demurrer to a special plea tendering an issue as to the authority of the corporation to issue them, or as to matters of fact contained in the recital of such ordinance. *Id.*

POLICE POWERS. See *States, Police Powers of.*

POWER OF SALE. See *Mortgage*, 1, 2.

PRACTICE. See *Bill of Exceptions; Equity of Redemption; Jurisdiction*, 13; *New Trial; Parties; Pleading*, 1; *Probable Cause, Certificate of.*

1. Where it can see that no harm resulted to the appellant, this court will not reverse a decree on account of an immaterial departure from the technical rules of proceeding. *Allis* v. *Insurance Company*, 144.
2. Where, in an action against a county, to recover the amount due on coupons detached from bonds issued by it in payment of its subscription to the capital stock of a railroad company, the declaration avers that the plaintiff is a *bona fide* holder of them for value before maturity, and such averment is traversed, it is competent for him, notwithstanding the presumption of law in his favor, to maintain the issue by direct affirmative proof. *County of Macon* v. *Shores*, 272.
3. Where the holder of the coupons, by producing them on the trial, and by other proofs, shows a clear right to recover, and the matters put in evidence by the county do not tend to defeat that right, it is not error to instruct the jury to find for him. *Id.*
4. When a cause, reached in its regular order upon the docket, has, under Rule 16, been dismissed by reason of the appellant's non-appearance, for which no just cause existed, it will not, over the objection of the appellee, be reinstated. *Hurley* v. *Jones*, 318.

PRACTICE (*continued*).

5. In view of the crowded state of the docket, the court announces its determination to enforce rigidly the rule requiring causes to be ready for hearing when they are reached. *Id.*
6. Where the burden of proof is on the plaintiff, and the evidence submitted to sustain the issue is such that a verdict in his favor would be set aside, the court is not bound to submit the case to the jury, but may direct them to find a verdict for the defendant. *Herbert* v. *Butler*, 319.
7. Assumpsit against an insurance company upon a life policy. Plea, *non assumpsit*, with an agreement that either party might introduce any matter in evidence which would be legally admissible if it had been specially pleaded. Leave was subsequently granted the defendant to file a plea of *puis darrein continuance*. There was also an agreement which provided for the admission of the record of a suit in equity then pending in the Supreme Court of New York, whereto the parties hereto, and others claiming the benefit of the policy, were parties, and stipulated that any further proceedings therein might be filed as a part of the agreement at any time before the trial of this action. A decree was rendered by said court November 26, that the company pay the full amount of the policy to the credit of the suit, for the benefit of such of the other parties as should be found to be thereunto entitled, and that upon such payment the company be released and discharged from further liability on said policy, and that the several claimants be enjoined from suing thereon. The amount was thereupon forthwith paid into court. On the 25th of November the plaintiff stated his case, whereupon the hearing was postponed until the 29th of that month, when the defendant, no evidence having as yet been submitted, filed with the clerk of the court a duly certified transcript of said decree. On the trial, leave was refused the defendant to set up the matter of that suit and decree by way of plea, or put it in evidence, under the agreement. *Held*, that the decree was a final determination of the claim of the plaintiff below, and should have been admitted as matter of evidence, having the same force and effect in a court of the United States as in the courts of New York. *Insurance Company* v. *Harris*, 331.
8. An appeal from the decree which the Circuit Court passed in exact accordance with the mandate of this court upon a previous appeal will, upon the motion of the appellee, be dismissed with costs. *Stewart* v. *Salamon*, 361.
9. The court reaffirms the ruling in *Laber* v. *Cooper* (7 Wall. 565), that, where a case has been tried and a verdict rendered as if the pleadings had been perfect, the failure to demur or to reply to a special plea setting up a matter of defence furnishes no ground for reversing the judgment. *Nauvoo* v. *Ritter*, 389.
10. A., a citizen of Tennessee, filed his bill in the Circuit Court of the

PRACTICE (*continued*).

United States, sitting in that State, against B., a citizen of Ohio. A corporation created by the laws of Tennessee was an indispensable party to any relief to A. which a court of equity could give. The court, on a final hearing upon the pleadings and proofs, dismissed the bill. *Held*, that the dismissal should have been without prejudice. *Kendig* v. *Dean*, 423.

11. A writ of error sued out upon a judgment on a money demand will be dismissed where it affirmatively appears from the record, taken as a whole, that the amount actually in dispute is not sufficient to give this court jurisdiction. *Gray* v. *Blanchard*, 564.

PRE-EMPTION. See *Mexican Land-Grants.*

A "*bona fide* pre-emption claimant" is one who has settled upon lands subject to pre-emption, with the intention to acquire them, and who, in order to perfect his right to them, has complied, or is proceeding to comply, in good faith with the requirements of the pre-emption laws. *Hosmer* v. *Wallace*, 575.

PRESUMPTION. See *Constitutional Law*, 8; *Contracts*, 3; *Death, Presumption of; Jurisdiction*, 4; *Letters-patent*, 8.

PRIMA FACIE CASE. See *Jurisdiction*, 1, 2.

PRIVATE LAND-CLAIMS. See *French and Spanish Land-Grants; Mexican Land-Grants.*

PROBABLE CAUSE, CERTIFICATE OF.

A., a collector of internal revenue, seized certain whiskey belonging to B., for the condemnation and forfeiture whereof proceedings were afterwards, at the suit of the United States, brought in the proper court. The court rendered a judgment dismissing them, and "it appearing that the seizure, though improperly made, was made by his superior officer, the supervisor," ordered that a certificate of probable cause be issued to A. B. brought trespass against the supervisor. *Held*, 1. That the certificate was a bar to the suit. 2. That the motive of the court for granting it makes no part of the record, and should not have been recited therein. *Stacey* v. *Emery*, 642.

PROCESS. See *Foreclosure*, 2; *Jurisdiction*, 13; *Tax, Enforcement of the Payment thereof*, 5.

PROCLAMATION OF THE PRESIDENT. See *Intercourse and Trade*, 1.

PROFITS. See *Infringement*, 1-3; *Letters-patent*, 16.

PROPERTY. See *Assignee in Bankruptcy*, 1.

PROPERTY, USE OF. See *States, Police Power of.*

PUBLIC ADMINISTRATOR.

The statute of Missouri of 1868 (1 Wagner's Stat., ed. 1872, p. 122, sect. 8) does not authorize a suit by a public administrator in that State against a foreign insurance company doing business there, to enforce

PUBLIC ADMINISTRATOR (*continued*)
the payment of a policy of insurance, not made or to be executed in that State, upon the life of a citizen of Wisconsin, who neither resided, died, nor left any estate in Missouri. *Insurance Company* v. *Lewis*, 682.

PUBLIC LANDS. See *Land-Grant Railroads; Mexican Land-Grants; Swamp and Overflowed Lands.*

PUBLIC MORALS. See *States, Police Power of*, 1–4.

PUBLIC OFFICER. See *Bond*, 2.

PUBLIC SAFETY. See *States, Police Power of*, 1–4.

PUBLIC USE. See *Letters-patent*, 9, 10.

PUIS DARREIN CONTINUANCE. See *Practice*, 7.

PURCHASER. See *Payment.*

RAILROAD COMPANY. See *Alabama; Court of Equity; Municipal Bonds*, 1; *Subscriptions to Stock; Taxation, Exemption from.*

REASONABLE SECURITY. See *Clearance.*

REBELLION, THE. See *Clearance; Constitutional Law*, 7–11; *Criminal Law*, 1–5; *Intercourse and Trade.*

1. Cotton owned by a British subject, although he never came to this country, was, if found during the rebellion within the Confederate territory, a legitimate subject of capture by the forces of the United States, and the title thereto was transferred to the government as soon as the property was reduced to firm possession. *Young* v. *United States*, 39.
2. Within two years after the rebellion closed, if he had given no aid or comfort thereto, he could, under the act of March 12, 1863 (12 Stat. 820), have maintained a suit in the Court of Claims, to recover the proceeds of his cotton so captured which were paid into the treasury. *Id.*
3. If he furnished munitions of war and supplies to the Confederate government, or did any acts which would have rendered him liable to punishment for treason had he owed allegiance to the United States, he gave aid and comfort to the rebellion, within the meaning of that act, and was thereby excluded from the privileges which it confers. *Id.*
4. By giving such aid and comfort, he committed, in a criminal sense, no offence against the United States, and he was therefore not included in the pardon and amnesty granted by the proclamation of the President of Dec. 25, 1868 (15 Stat. 711). *Id.*
5. A., a resident of Adams County, Mississippi, whose cotton was there burnt by B., in May, 1862, brought an action for its value against the latter, who set up as a defence that that State, whereof he was at that date a resident, was then in subjection to and under the control of the "Confederate States;" that an act of their congress,

REBELLION, THE (*continued*).

approved March 6, 1862, declared that it was the duty of all military commanders in their service to destroy all cotton whenever, in their judgment, the same should be about to fall into the hands of the United States; that, in obedience to that act, the general commanding the forces in Mississippi issued an order, directed to officers under his command in that State, to burn all cotton along the Mississippi River likely to fall into the hands of the forces of the United States; that the provost-marshal of the county was charged with executing within it that order; that A.'s cotton was likely to fall into the hands of the United States; that the provost-marshal ordered and required B. to burn it; and that B. did burn it, in obedience to the said act and the orders of the commanding general and provost-marshal. *Held*, 1. That the said act, as a measure of legislation, can have no force in any court recognizing the Constitution of the United States as the supreme law of the land. 2. That it did not assume to confer upon such commanders any greater authority than they, by the laws and usages of war, were entitled to exercise. 3. That the orders, as an act of war, exempted from responsibility a soldier of the Confederate army who executed them, at the suit of the owner of such cotton, who, at the time of its destruction, was a voluntary resident within the lines of the insurrection. 4. That the plea should, upon demurrer, be deemed as sufficiently averring the existence of such relations between B. and the Confederate military authorities as entitled him to make the same defence as if he had been such soldier. *Ford* v. *Surget*, 594.

RECEIVERS. See *Court of Equity*.

RECITALS IN MUNICIPAL BONDS, EFFECT OF. See *Municipal Bonds*, 1, 2; *Pleading*, 2.

RECONVEYANCE. See *Swamp and Overflowed Lands*, 1.

RECORD. See *Bill of Exceptions; Jurisdiction*, 10, 13; *Practice*, 11; *Probable Cause, Certificate of.*

The doings of a county court of Missouri can be shown only by its record. *County of Macon* v. *Shores*, 272.

REFEREES.

1. The power, with the consent of the parties, to appoint referees, and refer to them a pending cause, is incident to all judicial administration, where the right exists to ascertain the facts as well as to pronounce the law. *Newcomb* v. *Wood*, 581.
2. Any issues in an action, whether they be of fact or of law, may be so referred by sect. 281 of the Code of Ohio. *Id.*
3. A party who goes to trial before referees, without requiring an oath to be administered to them, waives any objection to the omission of such oath. *Id.*

REFEREES (*continued*).

4. The fact that an award was signed by only two of three referees was not called to the attention of the court when their report was confirmed and judgment rendered thereon. *Held*, that it furnished no ground for reversing the judgment. *Id.*

REPEAL. See *Tax*, *Enforcement of the Payment thereof*, 4.

1. A recital in a statute, that a former statute was repealed or superseded by subsequent acts, is not conclusive as to such repeal or supersedure. Whether a statute was so repealed is a judicial, not a legislative question. *United States* v. *Claflin*, 546.
2. A statute covering the whole subject-matter of a former one, adding offences and varying the procedure, operates not cumulatively, but by way of substitution, and, therefore, impliedly repeals it. In the absence of any repealing clause, it is, however, necessary to the implication of a repeal that the objects of the two statutes are the same. If they are not, both statutes will stand, though they refer to the same subject. *Id.*
3. The second section of the act of Congress of March 3, 1823 (3 Stat. 781), entitled "An Act to amend an act entitled 'An Act further to regulate the entry of merchandise imported into the United States from any adjacent territory,'" was supplied by the fourth section of the act of July 18, 1866 (14 id. 179), and thereby repealed. *Stockwell* v. *United States* (13 Wall. 531) reviewed. *Id.*

RESIGNATION. See *Officer of the Army.*

REVISED STATUTES OF THE UNITED STATES.

The following sections referred to and explained: —

Sect. 2504. See *Imports*, *Duties on*, 1.
Sect. 3082. See *Smuggling*, 2.
Sect. 3477. See *Claims against the United States.*

REVOCATION OF ACCEPTANCE OF A RESIGNATION. See *Officer of the Army.*

REWARD. See *Bailment*, 1.

ROYALTY. See *Infringement*, 2.

SALE. See *Bankruptcy*, 2; *Mortgage*, 2.

SECOND ASSESSMENT. See *Internal Revenue*, 9.

SECRETARY OF THE TREASURY. See *Clearance*, 1, 2; *Collector of Customs.*

SEIZURE. See *Imports*, *Duties on*, 2; *Internal Revenue*, 1–5.

SETTLEMENT. See *Mexican Land-Grants.*

SHARES OF STOCK, TRANSFER OF. See *Corporation*, 1, 2.

SHIPPER. See *Clearance*, 1.

SMOKING-TOBACCO. See *Internal Revenue*, 1, 2.

SMUGGLING.

1. An action of debt cannot be maintained by the United States to recover the penalties prescribed by the fourth section of the act of Congress approved July 18, 1866 (14 Stat. 179), entitled "An Act to prevent smuggling, and for other purposes." That act contemplated a criminal proceeding and not a civil remedy. *United States* v. *Claflin*, 546.
2. Nor does sect. 3082 of the Revised Statutes authorize a civil action. *Id.*

SOUTH CAROLINA. See *Limitations, Statute of*, 1; *Parties.*

SPECIAL ASSESSMENTS. See *District of Columbia*, 4.

SPECIE PAYMENTS. See *Jurisdiction*, 8.

SPECIFICATIONS. See *Letters-patent*, 11, 20–22.

STATE COURTS, APPELLATE JURISDICTION OF THIS COURT OVER JUDGMENTS AND DECREES OF. See *Jurisdiction*, 3, 5.

STATES, POLICE POWER OF. See *Constitutional Law*, 1–5, 14.

1. Where, by the application of the invention or discovery for which letters-patent have been granted by the United States, tangible property comes into existence, its use is, to the same extent as that of any other species of property, subject, within the several States, to the control which they may respectively impose in the legitimate exercise of their powers over their purely domestic affairs, whether of internal commerce or of police. *Patterson* v. *Kentucky*, 501.
2. A party to whom such letters-patent were, in the usual form, issued for "an improved burning oil," whereof he claimed to be the inventor, was convicted in Kentucky for there selling that oil. It had been condemned by the State inspector as "unsafe for illuminating purposes," under a statute requiring such inspection, and imposing a penalty for selling or offering to sell within the State oils or fluids, the product of coal, petroleum, or other bituminous substances, which can be used for such purposes, and which have been so condemned. It was admitted on the trial that the oil could not, by any chemical combination described in the specification annexed to the letters-patent, be made to conform to the standard prescribed by that statute. *Held*, that the enforcement of the statute interfered with no right conferred by the letters-patent. *Id.*

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

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

STATUTE, REPEAL OF. See *Repeal.*

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

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

1799. March 2. See *Collector of Customs.*

1799. March 2. See *Imports, Duties on*, 3.

STATUTES OF THE UNITED STATES (*continued*).

1823. March 3. See *Repeal*, 3.
1824. May 26. See *French and Spanish Land-Grants*, 1.
1850. Sept. 27. See *Donation Act.*
1850. Sept. 28. See *Swamp and Overflowed Lands*, 1.
1853. Feb. 26. See *Assignee in Bankruptcy*, 2.
1854. July 17. See *Donation Act.*
1857. March 3. See *Swamp and Overflowed Lands*, 2.
1860. June 22. See *French and Spanish Land-Grants*, 1, 2, 4, 6.
1862. May 20. See *Clearance*, 1.
1862. July 1. See *Land-Grant Railroads*, 1–4.
1863. Feb. 26. See *Claims against the United States.*
1863. March 3. See *Criminal Law*, 1.
1863. March 12. See *Rebellion, The*, 2, 3.
1864. July 2. See *Intercourse and Trade*, 2.
1864. July 2. See *Land-Grant Railroads*, 2–4.
1865. March 3. See *Internal Revenue*, 2, 4.
1866. July 3. See *Land-Grant Railroads*, 3.
1866. July 13. See *Internal Revenue*, 1, 2.
1866. July 18. See *Repeal*, 3.
1866. July 18. See *Smuggling*, 1.
1866. July 23. See *Mexican Land-Grants*, 5.
1866. July 26. See *Land-Grant Railroads*, 5.
1872. June 1. See *New Trial.*
1874. June 20. See *District of Columbia*, 2.
1875. March 3. See *Internal Revenue*, 6.
1878. June 19. See *District of Columbia*, 4.

STIPULATION. See *Bond*, 1; *Infringement*, 3.

STOCK, TRANSFER OF. See *Corporation.*

STOCKHOLDERS. See *Estoppel*, 1; *Jurisdiction*, 8.

STOLEN PROPERTY. See *Bailment*, 1.

SUBSCRIPTIONS TO STOCK. *See Municipal Bonds*, 1.

Sect. 14, art 11, of the Constitution of Missouri of 1865, did not take away from a county the authority, which had been previously conferred by statute, to subscribe for stock in a railroad company. *County of Macon* v. *Shores*, 272.

SUPERVISOR OF INTERNAL REVENUE. See *Probable Cause, Certificate of.*

SWAMP AND OVERFLOWED LANDS.

The legislature of Iowa having, by an act passed Feb. 2, 1853, granted to the counties in which the same were respectively situated the swamp and overflowed lands to which the State was entitled under the act of Congress of Sept. 28, 1850 (9 Stat. 519), the county of Wright presented its claim to the Department of the Interior. Having been informed by A., its agent, that the same had been rejected, and that,

SWAMP AND OVERFLOWED LANDS (*continued*).

under the ruling adopted, but little hope remained of its final allowance, the county, July 9, 1862, through its board of supervisors, entered into a contract with the American Emigrant Company to convey to it "all the swamp and overflowed lands of said county, and all the proceeds thereof, and claim for the same on the United States and all other parties," the company agreeing, in payment therefor, to spend $500 in such public improvements in the county as the board should require, to take the lands subject to the provisions of the said act of Congress and the existing laws of Iowa, and to release the State and the county from any liability to reclaim the lands. The contract was submitted to the vote of the county, and eighty-nine out of the ninety votes which were cast were in favor of affirming it. Neither the supervisors nor the voters knew the nature or the value of what they were selling. The company was informed in regard to both, and it withheld the information from the county officers. Subsequently, A., who had become the agent of the company, and was then acting in its interest, procured the reversal of the former ruling of the department, presented the renewed claim of the county, and secured an allowance of several hundred acres of unsold lands in place, $981 in money, and scrip for about six thousand acres in lieu of swamp lands which had been sold by the United States. Jan. 7, 1867, the county, in fulfilment of the contract, conveyed to the company, by deed, a large quantity of lands. The county, in 1870, no improvements having been made, filed this bill, praying for the annulment and cancellation of the contract, for a reconveyance of the lands, saving the rights of intermediate purchasers, and for an accounting, so far as the company had sold said lands, or received money on account of swamp lands due the county. *Held*, 1. That the fact that all the parties knew that they were dealing with a trust-fund devoted by the donor to a specific purpose demanded the utmost good faith on the part of the company. 2. That, in view of the provision for the diversion of the fund, the gross inadequacy of the compensation, and the successful speculation at the expense of the rights of the public, the county is entitled to the relief prayed. *Emigrant Company* v. *County of Wright*. 339.

2. The act of March 3, 1857 (11 Stat. 251), confirmed to the several States their selections of swamp lands, which had then been reported to the Commissioner of the General Land-Office, so far as the lands were then "vacant and unappropriated, and not interfered with by an actual settlement" under existing laws. *Martin* v. *Marks*, 345.

3. The selections so confirmed could not be set aside, nor could titles to any of the land which they embraced, unless it came within the exceptions mentioned in that act, be thereafter conveyed by the United States to parties claiming adversely to the swamp-land grant. *Id.*

TAX. See *Constitutional Law*, 12, 13; *Internal Revenue*, 1–4, 6.

TAX, ENFORCEMENT OF THE PAYMENT THEREOF.

1. In March and July, 1867, A. entered into contracts with the city of Memphis to pave certain streets. Most of the work was done after the passage of an act of the legislature of Tennessee of Dec. 3, 1867, by which contiguous territory was annexed, and designated as the ninth and tenth wards of the city, but none of it was done in them. An act of the legislature of Dec. 1, 1869, declared that the people residing within the limits of them should not be taxed to pay any part of the city debt contracted prior to the passage of said act of 1867. In March, 1875, A., in whose favor a decree against the city for the money due him for work done under his contracts had been rendered, obtained a *mandamus* commanding the city to levy a tax for its satisfaction. *Held*, 1. That the debt which the decree represents was contracted in March and July, 1867. 2. That the purpose of the act of 1869 was to relieve that territory from municipal obligations previously incurred for objects in which it had no interest when the obligations were assumed, and in regard to which it had no voice. 3. That no contract relation ever existed between A. and the people of that territory. 4. That the act of 1869 interfered, therefore, with no vested rights, impaired the obligation of no contract, and violated no provision of the Constitution of that State in regard to taxation. *United States* v. *Memphis*, 284.
2. The action of the court below, in excluding from the operation of the *alias* writ of *mandamus* the property on which the assessments by the front foot for the cost of the pavement had been paid, having been had in compliance with the petition of A., he cannot be permitted to complain of it here. *Id.*
3. Whether the basis of the levy was to be the assessment of 1875 or that of 1876 is a matter of no importance. The rights of A. were secured by the requirement of the writ, that the city should levy a tax sufficient to yield to him the sum therein mentioned. *Id.*
4. On March 16, 1875, A. obtained a decree against Memphis for the payment to him of $292,133.47, for materials furnished and work done under contracts entered into with that city in 1867 for paving certain streets. Execution having been issued, and returned unsatisfied, the court, on the 22d of that month, awarded an alternative writ of *mandamus*, to compel the city to exercise the power conferred by an act of the legislature passed March 18, 1873, and levy "a tax, in addition to all taxes allowed by law," sufficient to pay the decree. The city answered that said act had been repealed by one passed March 20, 1875, and that the tax which, by the act of Feb. 13, 1854, it was authorized to levy for all purposes had been levied, and its powers were therefore exhausted. A. demurred to the answer; the demurrer was sustained, and the writ made peremptory March 30, 1875. The act passed March 20, 1875, was approved by the gov-

TAX, ENFORCEMENT OF THE PAYMENT THEREOF (*continued*).

ernor of the State on the twenty-third day of that month. *Held*, 1. That the repealing act did not become a law until its approval by the governor. 2. That prior thereto, A., by his decree and the alternative *mandamus*, which was a proceeding commenced by virtue of the act of March 18, 1873, had acquired a vested right, which was not defeated by the repealing act, to have a tax, payable in lawful money, levied sufficient to pay him, although it required the levy of a tax beyond the rate mentioned in the act of 1854. *Memphis* v. *United States*, 293.

5. A., having a decree against the city of Memphis for the payment of money, obtained in March, 1875, a *mandamus*, commanding her to levy upon all the taxable property of the city a tax sufficient in amount to pay the decree. The city thereupon passed an ordinance levying a special tax, in professed conformity with the writ. A., finding that such special tax did not include merchants' capital, which, under the laws of the State, was taxable for general purposes, and that the required sum would not be raised, moved for a further peremptory *mandamus*, commanding that such merchants' capital, as assessed and returned for taxation for the year 1875, be included by the city within the property to be taxed for the payment of his decree, in accordance with the original writ. The court awarded the writ accordingly. *Held*, that the *mandamus* to compel the city to levy and collect the tax for the payment of the decree was process in execution, and that the court below rightfully exercised control over it in deciding that its order to levy a tax upon all the property of the city included the capital of merchants taxable under the laws of the State for general purposes. *Memphis* v. *Brown*, 300.

TAXATION, EXEMPTION FROM. See *District of Columbia*, 1, 2.

1. A provision in the charter of a railroad company that "the capital stock of said company shall be for ever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, machinery, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer," does not, after the expiration of that period, exempt from taxation the road, with its fixtures, &c., although the same were purchased with or represented by capital. *Railroad Companies* v. *Gaines*, 697.

2. In 1875, the State of Tennessee enacted a railroad tax law, the eleventh section of which provided that a railroad company accepting that section as a special amendment to its charter, and paying annually to the State one and one-half per cent on its gross receipts, should be exempt from other provisions of the act, and that such payment should be in full of all taxation. A company whose char-

TAXATION, EXEMPTION FROM (*continued*).

ter, granted in 1846, exempted from taxation its capital stock for ever, and its road, fixtures, &c., for a specific period, which expired March 28, 1877, accepted the provisions of that section, and paid, for 1875 and 1876, the required percentage. That section having been declared by the Supreme Court of the State to be unconstitutional, it was repealed by an amendment, passed in 1877, which required such companies as had accepted and complied with its provisions to be assessed anew under the other sections of the act of 1875, credit to be given for sums paid by them, and any excess to be refunded. In a suit by the company to restrain the assessment and collection of the tax, — *Held*, that the Constitution of 1870, as construed by the highest judicial authority in the State, required all property to be uniformly taxed; and hence the legislature could not, in 1875, bind the State not to tax the company otherwise than as that section provides, upon the surrender by the company of its charter exemptions. Said amendment, so far as it subjected the property to taxation after March 28, 1877, did not, therefore, impair the obligation of a contract. *Id.*

3. A., a railroad company, was by its charter invested, "for the purpose of *making and using said road*, with all the powers, rights, and privileges, and subject to all the disabilities and restrictions, that have been conferred and imposed upon" company B. The latter was by its charter exempt from taxation upon its capital stock for ever, and upon its road, fixtures, &c., for a term of years. *Held*, that the grant to A. did not include immunity from taxation. *Id.*

TAXES. See *Constitutional Law*, 7–11; *District of Columbia*, 2; *Payment.*

TENNESSEE. See *Constitutional Law*, 7–11; *Criminal Law*, 1–5; *Tax, Enforcement of the Payment thereof*, 1; *Taxation, Exemption from*; *Vested Rights.*

In Tennessee, an act passed by the legislature does not become a law until its approval by the governor. *Memphis* v. *United States*, 293.

TITLE. See *French and Spanish Land-Grants.*

TOBACCO. See *Internal Revenue*, 1–8.

TRADE AND INTERCOURSE. See *Intercourse and Trade.*

TRANSPORTATION. See *Contracts*, 4.

TREASON. See *Rebellion, The*, 3, 4.

TRIAL. See *Referees*, 1.

TRUST. See *Estoppel*, 1.

TRUSTEE. See *Jurisdiction*, 6.

TRUST-FUND. See *Court of Equity; Swamp and Overflowed Lands*, 1.

UNAVOIDABLE ACCIDENT. See *Contracts*, 2.

USURY.

In order to sustain the defence of usury when a contract is, on its face, for legal interest only, there must be proof that there was some corrupt agreement, device, or shift to cover usury, and that it was in full contemplation of the parties. *Hotel Company* v. *Wade*, 13.

VERDICT. See *Practice*, 9.

VESSEL, CHARTER OF. See *Contracts*, 2, 3.

VESTED RIGHTS. See *Constitutional Law*, 5; *Tax, Enforcement of the Payment thereof*, 1, 4.

1. Vested rights acquired by a creditor under and by virtue of a statute of a State granting new remedies, or enlarging those which existed when the debt was contracted, are beyond the reach of the legislature, and the repeal of the statute will not affect them. *Memphis* v. *United States*, 293.
2. Sect. 49 of the Code of Tennessee, declaratory of the law of that State respecting the effect of repealing statutes, is in accord with this doctrine. *Id.*

VOLUNTARY PAYMENT. See *Payment.*

WAIVER. See *Referees*, 4.

A party who goes to trial before referees, without requiring an oath to be administered to them, waives any objection to the omission of such oath. *Newcomb* v. *Wood*, 581.

WITNESS. See *Evidence*, 4.

WORDS.

"Beyond the Seas." See *Limitations, Statute of*, 2.

"*Bona fide* Pre-emption Claimant." See *Pre-emption.*

"Sold." See *French and Spanish Land-Grants*, 6.

"Sold or otherwise Disposed of." See *French and Spanish Land-Grants*, 6.

"Sold or Removed for Sale." See *Internal Revenue*, 3.

WRIT OF ERROR. See *New Trial; Practice*, 11.

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