ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

COURT OF APPEALS OF MARYLAND.[2]

COURT OF CHANCERY OF NEW JERSEY.[3]

AGENT.

Notice of his Authority.—A party dealing with an agent for a special purpose must ascertain at his own peril the agent's power. And where an agent's contract to sell land at a fixed price has been approved by the principal, the purchaser has no right to infer from that fact that the agent has power to alter the terms of the contract: *The National Iron Armor Company* v. *Bruner*, 4 C. E. Green.

An agent with restricted power to sell a tract of land at a given price, has no power to bind his principal by any representation as to the quantity or quality of the land. Such representations, if false, may avoid the contract: *Id*

ARBITRATION AND AWARD.

Government Claims.—An Act of Congress referring a claim against the government to an officer of one of the executive departments to examine and adjust, does not, even though the claimant and government act under the statute and the account is examined and adjusted, make the case one of arbitrament and award in the technical sense of these words, and so as to bind either party as by submission to award: *Gordon* v. *United States*, 7 Wall.

Hence, a subsequent act repealing the one making the reference (the claim not being yet paid) impairs no right and is valid. *DeGroot* v. *United States*, 5 Wall. 432, affirmed: *Id.*

Semble, that the court does not sanction the allowance of interest on claims against the government: *Id.*

ATTORNEY.

Privileged Communication.—An agreement made in the presence of an attorney between his client and a third person, is not a privileged communication: *Carr* v. *Weld*, 4 C. E. Green.

CHARITABLE USES.

Object of the Statute.—The object of the statute of charitable uses in England was not to restrain gifts to such uses, but to enforce and make valid such gifts in certain cases in which they had before been held void because the object was too vague and indefinite: *Norris et al.* v. *Thomson's Ex'rs. et al.*, 4 C. E. Green.

The statute of charitable uses has never been enacted in this state,

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[1] From J. W. Wallace, Esq., Reporter; to appear in 7 Wall. Rep.

[2] From J. S. Stockett, Esq., Reporter; to appear in 28 Md. Rep.

[3] From C. E. Green, Esq., Reporter; to appear in 4 C. E. Green's Rep.

and therefore English decisions founded upon its provisions may not be of authority here, but such as declare gifts void on account of the objects being too vague and indefinite upon principles adopted as part of the common law before the statute, should be regarded: *Id.*

A power of appointment given to one by a will to give or devise certain property among such benevolent, religious, or charitable institutions as he may think proper, is void because so vague and indefinite that it cannot be enforced. And the defect in this case would not be aided in England by the statute of charitable uses: *Id.*

Where a power to dispose of property is conferred upon a person to whom a life estate or some other interest in it is given, this is a power in gross and can be relinquished or surrendered, but where such power is given to one who has no interest in the property it is a power simply collateral and cannot be surrendered: *Id.*

An act of the legislature which in a particular case authorizes the surrender of such power when simply collateral, or confirms such surrender when made, is constitutional and valid; it divests or takes away no vested or settled rights: *Id.*

Change in Name and other Particulars of Corporation Trustee.— Where a testator devises the income of property in trust primarily for one object, and if the income is greater than that object needs, the surplus to others (secondary ones), a bill in the nature of a bill *quia timet*, and in anticipation of an incapacity in the trusts to be executed hereafter, and when a surplus arises (there being no surplus now, nor the prospect of any), will not lie by heirs at law (supposing them otherwise entitled, which here they were decided not to be), to have this surplus appropriated to them on the ground of the secondary trusts having, subsequently to the testator's death, become incapable of execution: *Girard* v. *Philadelphia*, 7 Wall.

Neither the identity of a municipal corporation, nor its right to hold property devised by it, is destroyed by a change of its name, an enlargement of its area, or an increase in the number of its corporators. And these are changes which the legislature has power to make: *Id.*

Ex. gr.: A city having the name of "The Mayor, Aldermen, and Citizens of Philadelphia," covered two square miles, was surrounded by twenty-eight incorporated municipalities, more populous than itself, and which, with it, covered a hundred and twenty-nine miles square, and made the county of Philadelphia. An Act of Assembly enacted that the name above given should be changed to "The City of Philadelphia," and the boundaries of the said city extended so as embrace the whole territory of the county, and that all the powers of the said corporation, as enlarged and modified by the act, should be exercised and have effect within the said county, and over the inhabitants thereof. The act also consolidated the aggregated debt of all the corporations and made it the debt of the new city, and largely extended and changed the organization of the old city.

Held, that the original corporation was not destroyed, and (the consolidating act having declared that all the estates held by any of the corporations affected by the act should be held "upon and for the same uses, trusts, limitations, charities, and conditions as the same were then held") that the new city had every capacity to take and hold, and every power to execute trusts which were possessed by the old one: *Id.*

Under the will of Stephen Girard (for the terms of which see the case in full in 7 Wallace) the whole final residuary part of his estate was left to the old city of Philadelphia, in trust, to apply the income:—

i. For the maintenance and improvement of his college as a primary object, and after that to enable the corporation,

ii. To improve its police.

iii. To improve the city property and the general appearance of the city, and to diminish the burden of taxation.

The court having declared that so long as any portion of the income should be found necessary for improvement and maintenance of the college, the second and third objects could claim nothing, and the whole income being, in fact, necessary for the college:—

Held—*i.* That no question arose *at this time* as to whether the new city should apply the surplus under the trusts for the secondary objects to the benefit of the new city, or to that portion of it alone embraced in the limits of the old one.

ii. That whether or not the trusts being, as was decided in *Vidal* v. *Girard*, 2 Howard 127, in themselves valid, Girard's heirs could not inquire or contest the right of the city corporation to take the property or to execute the trust; this right belonging to the state alone as *parens patriæ*: *Id.*

CONFLICT OF LAWS. See *Corporation.*

Law of Domicil and of Situs.—A., B., and C., were residents and citizens of New York. A. being indebted to both B. and C., and having certain chattels personal in Illinois, mortgaged them to B. Two days afterwards, and before the mortgage could be recorded in Illinois, or the property be delivered there—both record and delivery being necessary by the laws of Illinois, though *not* by those of New York, to the validity of the mortgage as against third parties—C. issued an attachment, a proceeding *in rem*, out of one of the courts of Illinois, and, under its laws, in due form, levied on and sold the property. B. did not make himself a party to this suit in attachment, though he had notice of it, and, by the laws of Illinois, a right to take defence to it; but after its termination, brought suit in New York against C. for taking and converting the chattels. C. pleaded in bar the proceedings in attachment in Illinois. The New York courts—holding that the only question was B.'s property in the chattels on the day of the attachment; that the existence or non-existence of such property was to be decided by the law of the domicil of the parties, to wit, New York; and finally that by this law the property was complete in B. on the execution of the mortgage—adjudged, that the proceedings in attachment in Illinois were not a bar. But,

Held, by this court, that by such judgment the "full faith and credit" required by the Federal Constitution had not been given in the state of New York to the judicial proceedings of the state of Illinois: and that so the judgment below was erroneous: *Green* v. *Van Buskirk*, 7 Wall.

The fiction of law that the domicil of the owner draws to it his personal estate wherever it may happen to be, yields whenever, for the purposes of justice, the actual *situs* of the property should be examined: *Id.*

By the laws of Illinois an attachment on personal property there, will

take precedence of an unrecorded mortgage executed in another state where record is not necessary, though both the owner of the chattels, the attaching creditor, and the mortgage creditor are residents of such other state: *Id.*

CONSTITUTIONAL LAW. See *Conflict of Laws.*

Right to sue in United States Courts.—The constitutional right of citizens of one state to sue, in the Federal courts, citizens of another (within which right comes that of citizens of one state to sue a municipal corporation chartered by another and where the corporators are all citizens of that other) cannot be defeated by statutory limitation: *Cowles* v. *Mercer Co.*, 7 Wall.

CORPORATION.

Lex loci contractus—The rule of Comity—How Foreign Laws are to be proved.—A corporation can have no legal existence, out of the boundaries of the sovereignty by which it is created. It exists by force of the law; and where that ceases to operate and is no longer obligatory. the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty. But while it must live and have its being in that state only, there is no insuperable objection to its power of contracting in another. Being an artificial person, it may, like natural persons, through the intervention of agents, make contracts within the scope of its limited powers in a state where it does not reside; provided such contracts are permitted to be made by the laws of the place: *B. and O. Railroad Co.* v. *Glenn*, 28 Md.

Corporations, unlike natural persons, cannot change their domicil; they have a stationary habitation, and can only have transactions away from their home through their agents: *Id.*

Where a corporation derives its charter from the state of Virginia alone, its domicil is in that state exclusively. It cannot reside here and in Virginia at the same time under the one charter: *Id.*

The validity of a deed made by a corporation created by the laws of Virginia, must be determined by the laws of that state; if it be legal there it is so here, unless it violates good morals, or is repugnant to some law or policy of this state. If it be fraudulent and void according to the laws of Virginia, the fraud attaches to it here, and vitiates it: *Id.*

It is a general principle, admitting of few exceptions, that in construing contracts made in a foreign country, the courts are governed by the *lex loci*, as to the essence of the contract; that is, the rights acquired and the obligations created by it: *Id.*

The rule of comity adopts the law of the country where the contract is made, in determining its nature, construction, and validity, unless such construction is *contra bonos mores*, or against some positive law of the place where the contract is sought to be enforced: *Id.*

No right can be derived under any contract made in express opposition to the laws of the place in which such contract is made: *Id.*

An assignment of personal property within our limits belonging to parties abroad, may be made according to the foreign law, where our own citizens, in assigning similar property, are required to conform to our laws regulating such assignment: *Id.*

The unwritten law of a foreign country is a fact to be proved, as

other facts, by the testimony of experts; the statutory law, by the law itself, or an exemplified copy: *Id.*

COURTS.

Statutory Jurisdiction—Judicial Sales when called in question collaterally.—Where special and extraordinary powers are given by statute to a court in relation to a subject-matter, of which such court had no jurisdiction independent of the statute, all the requisites of the statute must be strictly complied with, to render the exercise of the powers so given valid: *Cockey* v. *Cole*, 28 Md.

Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or not, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought in opposition to them, even prior to a reversal: *Id.*

Sales ratified by a court having jurisdiction, when collaterally called in question, should be upheld by every legal intendment. And if errors and irregularities exist, they are to be corrected by some direct proceeding, either before the same or an appellate court: *Id.*

COURT OF CLAIMS. See *Revenue Laws.*

DEBTOR AND CREDITOR.

Wearing Apparel.—A lace shawl is wearing apparel and exempt from execution. Whether it is of greater value than the owner ought to wear in her condition in life as to property, cannot be inquired into, where it was bought for her use before judgment or claim against her: *Frazier and Wife* v. *Barnum*, 4 C. E. Green.

Rings and jewelry are not wearing apparel and are liable for debt, and as it may be out of the power of the sheriff to levy on or take possession of them, being usually worn on the person, a receiver will be appointed and an order made for their delivery to him: *Id.*

An assignment of an annuity, though due from parties and properties out of the jurisdiction of this court, made by the person to whom it belongs to a receiver here under the direction of this court, is good, and would enable the receiver to collect it in a foreign state. But where the fund held in trust for the debtor has proceeded from some person other than the debtor himself, it is exempt: *Id.*

Fraudulent Sale.—A sale, far below value, of a railroad with its franchises, rolling-stock, &c., under a decree of foreclosure, set aside as fraudulent against creditors; the sale having been made under a scheme between the directors of the road and the purchasers, by which the directors escaped liability on endorsements which they had made for the railroad company. And the purchasers held to be trustees to the creditors' complainant, for the full value of the property purchased, less a sum which the purchasers had actually paid for a large lien claim presented as for its apparent amount, but which they had bought at a large discount. Interest on the balance from the day of purchase to the day of final decree in the suit to be added: *Drury* v. *Cross*, 7 Wall.

But because the full value of the property sold was not shown with sufficient certainty, the case was sent back for ascertainment of it by a master: *Id.*

EASEMENT.

Title by Time—Mill-Dam.—The courts of this state have, by analogy to the statute relating to title to other real property, adopted twenty years as the term for acquiring an easement by enjoyment. The adverse enjoyment must have been continuous and to the full extent for the whole of the time: *Carlisle and Others* v. *Cooper*, 4 C. E. Green.

In case of a dam, the easement acquired is not the right of maintaining a dam or structure upon the land of the party himself, but the right to flow back the water on the land of his neighbor. His neighbor has no right of action for the mere building of the dam, unless it throws the water back upon his land; his suffering it is no acquiescence in anything from which a grant or permission can be presumed: *Id.*

No one is bound to measure the dam of an adjoining proprietor, and employ an engineer to calculate whether, if kept tight and full, it will throw water upon him. But when it does throw water upon him, if he permits it for twenty years a grant will be presumed. But this only to the extent to which his land was habitually or usually overflowed: *Id.*

The rule is that any interruption of enjoyment during the acquisition of an easement that is within the twenty years, will defeat the acquisition. After the acquisition is complete, no interruption or cessation, except for twenty years, or with a plain intention to abandon, will destroy the easement: *Id.*

Where the dam is a permanent structure, it is not necessary that the water should be kept constantly in it to its full capacity, nor that it should be always kept in perfect repair; it is the height of the water as ordinarily kept in the dam, when kept in repair as dams are kept for profitable and economical use, that will fix the height acquired by prescription. If a dam is permitted for one or more years to be out of repair so as not to injure the land above it, that time will not be counted in the prescription; the prescription is interrupted and must commence anew: *Id.*

This rule must apply only to such dams as are permanent, and to such gates and movable parts as are constantly used and kept in their places to raise the height of the water. Boards or gates that are only used in seasons of low water, so as to increase the water in a mill-pond, without overflowing the lands above, and used at intervals only, cannot gain the right to keep the dam at the height to which they raise it, if that will make the level of the water upon the lands of the upper proprietor higher than maintained for twenty years: *Id.*

When an easement to flow water is claimed by adverse enjoyment the whole burden of proof is on the claimant: *Id.*

EQUITY.

Sales under a Decree—Vacation of Sales—Substitution of Purchaser.—A sale under a decree of a court of equity should not be vacated and set aside for causes that the parties interested might, with reasonable diligence and effort, have obviated. Every intendment will be made to support such a sale; and it is only where the court can see

that injustice will be done by the ratification of a sale, to a party not in default, that it will interfere to prevent it: *Farmers' Bank of Maryland* v. *Clarke*, 28 Md.

A sale *bonâ fide* made, will not be set aside because of a diversity of opinion among witnesses as to the value of the property, unless it appear that the price reported is so grossly inadequate, as to do injury to parties not in default: *Id.*

The ratification or rejection of a sale under a decree in equity, must depend on the state of facts existing at its date, and not on subsequent events. As the purchaser is made to bear all loss by depreciation subsequent to the time of sale, he should be entitled to all profit that he may be able to make of the property after that time: *Id.*

A court of equity will allow the substitution of one person in place of another, as purchaser of property, sold under its decree, having a proper regard to his ability to comply with the terms of sale: *Id.*

FRAUD. See *Debtor and Creditor.*

Fraud by two Parties—Evidence.—In an action against two defendants for fraudulently obtaining the property of the plaintiff, the declaration alleged that the fraud was a matter of pre-arrangement between them. The fraud of one of the defendants was not contested, and as to the other defendant, *Held*, that his subsequent participation in the fraud and its fruits was as effective to charge him as preconcert and combination for its execution. Every act of each in furtherance of the common design was in contemplation of law the act of both: *Lincoln* v. *Claflin et al.*, 7 Wall.

Where fraud in the purchase or sale of property is in issue, evidence of other frauds of like character committed by the same parties, at or near the same time, is admissible: *Id.*

Where two persons are engaged together in the furtherance of a common design to defraud others, the declarations of each relating to the enterprise are evidence against the other, though made in the latter's absence: *Id.*

Interest is not allowable as a matter of law, in cases of tort. Its allowance as damages rests in the discretion of the jury: *Id.*

GOVERNMENT CLAIMS. See *Arbitration, Revenue Laws.*

INTEREST. See *Fraud.*

Coupons.—Interest warrants or coupons in a negotiable form, draw interest after payment of them is unjustly neglected or refused: *Aurora* v. *West*, 7 Wall.

INTERNATIONAL LAW.

Sale of Vessel by Belligerent.—A case in prize heard on "further proofs," though the transcript disclosed no order for such proofs; it having been plain, from both parties having joined in taking them, that either there was such an order, or that the proofs were taken by consent: *The Georgia*, 7 Wall.

A *bonâ fide* purchase for a commercial purpose by a neutral, in his own home port, of a ship of war of a belligerent that had fled to such port in order to escape from enemy vessels in pursuit, but which was

bonâ fide dismantled prior to the sale and afterwards fitted up for the merchant service, does not pass a title above the right of capture by the other belligerent: *Id.*

JUDGMENT.

Estoppel—Res judicata.—A judgment, to operate as an estoppel, must be upon the same subject-matter, and between the same parties: *McKinzie* v. *B. and O. Railroad Co.*, 28 Md.

The term "parties," is not restricted to those who appear as plaintiff and defendant upon the record; it includes those who are directly interested in the subject-matter of the suit, knew of its pendency, and had the right to control and direct or defend it: *Id.*

Justice requires that every cause be once fairly and impartially tried; but the public tranquillity demands that having been once so tried, all litigation of that question and between the same parties, should be closed for ever: *Id.*

LANDLORD AND TENANT.

Distress—Tenant's Remedy for an unlawful Distress—Property in hands of Receiver.—Where a landlord has levied a distress, and taken thereunder property of sufficient value to satisfy the rent then due, he cannot, without the consent of his tenant or other lawful cause, abandon his proceedings, and then levy a second distress for the same rent, upon the same or any other property of his tenant: *Everett, Adm. of Tough*, v. *Neff.* 28 Md.

Should a landlord abandon his first distress without justifiable cause, and levy a second, the tenant's remedy for the taking under the latter, is trespass, case, or trover: *Id.*

Where property is rightfully in the hands of a receiver, it is in the custody of the court, and cannot be distrained upon without the permission of the court by whom the receiver was appointed: in such case the landlord must apply to the court for an order on the receiver to pay the rent, or for leave to proceed by distress or otherwise: *Id.*

LEGAL TENDER NOTES.

Contracts for Gold Coin.—A bond given in December, 1851, for payment of a certain sum in gold and silver coin, lawful money of the United States, with interest also in coin, at a rate specified, until repayment, cannot be discharged by a tender of United States notes issued under the Act of Congress of February 25th and two subsequent acts, and by them declared to be lawful money and a legal tender for the payment of debts: *Bronson* v. *Rodes*, 7 Wall.

When obligations made payable in coin are sued upon, judgment may be entered for coined dollars and parts of dollars: *Id.*

State Taxes payable in Gold.—An enactment in a state statute that "the sheriff shall pay over to the county treasurer the full amount of the state and school taxes in gold and silver coin," and that "the several county treasurers shall pay over to the state treasurer the state tax in gold and silver coin," infers as a legitimate if not a necessary consequence that the taxes named were required to be *collected* in coin. But if in the judgment of this court, this inference were not a true one, yet the Supreme Court of the state having held it to be a true one, this court will follow their adjudication: *Lane County* v. *Oregon*, 7 Wall.

The clause in the Act of Congress of February 25th 1862, and two subsequent acts, making notes of United States a legal tender for debts, has no reference to taxes imposed by state authority: *Id.*

MANDAMUS.

Municipal Corporation—Mandamus to levy Tax.—A return to a mandamus ordering a municipal corporation forthwith to levy a specific tax upon the taxable property of a city for the year 1865, sufficient to pay a judgment specified, collect the tax, and pay the same, or show cause to the contrary by the next term of the court, is not answered by a return that the defendants, "in obedience to the order of the court, did proceed to levy a tax of one per cent. upon the taxable property of the said city, for the purpose of paying the judgment named in the information, and *other claims*, and that the said tax is sufficient in amount to pay the said judgment and other claims for the payment of which it was levied." The return should have disclosed the whole act constituting the levy, so as to enable the court to determine whether it was sufficient to pay the judgment of the relator. It was also erroneous in returning that the tax was levied to pay this judgment "and *other claims:*" *Benbow* v. *Iowa City*, 7 Wall.

MUNICIPAL CORPORATION. See *Constitutional Law, Mandamus.*

NUISANCE.

Suit by Individual for Public.—An individual cannot maintain a suit to restrain a nuisance which injures him only in rights enjoyed by him as one of the public. In such case, an information must be filed for the public, in the name of the attorney-general, on behalf of the state; and it makes no difference as to the remedy, that the individual would be much more inconvenienced by the nuisance than most others: *Higbee* v. *The C. & A. R. R. Co.*, 4 C. E. Green.

But where the injury complained of is the building of a railroad station in the street in front of complainant's property, and he owns the soil in the street upon which it is built, the injury is to his individual rights, and not as part of the public, and the suit must be brought in his own name: *Id.*

Smoke, Noise, &c., in Cities.—When the prosecution of a business of itself lawful, in the neighborhood of a dwelling-house, renders the enjoyment of it materially uncomfortable by the smoke and cinders or noise or offensive odors produced by such business, although not in any degree injurious to health, the carrying on such business there is a nuisance, and will be restrained by injunction: *Ross and Others* v. *Butler*, 4 C. E. Green.

A clear, unmistakable nuisance, which it is intended to commit periodically, will not be permitted on the ground that it does not exist the greater part of the time, but only for a small part of it: *Id.*

The qualification that a lawful business will not be restrained for every trifling inconvenience and that persons must not stand on extreme rights and bring actions in respect to every matter of annoyance, does not refer to the *proportion of time* for which the nuisance is continued, but only to the *degree or kind of* annoyance: *Id.*

Matters that are an annoyance by being merely disagreeable or un-

sightly, as a well-kept butcher shop, or a green grocer, near a costly dwelling-house, or any other business that attracts crowds of orderly persons, or numbers of carts and carriages, although very undesirable neighbors, are not nuisances, even should they seriously affect the value of the property by driving away tenants, and prevent it being let to any who would pay high rents: *Id.*

Because a certain part of a town is occupied by tradesmen and mechanics for residences and carrying on trades which occasion some degree of noise, smoke and cinders, and contains no elegant or costly dwellings, and is not inhabited by the wealthy and luxurious, it is not *therefore a proper and convenient place* for carrying on a business which renders the dwellings there uncomfortable to the owners and their families by offensive smells, smoke, cinders, or intolerable noises: *Id.*

A dense smoke laden with cinders (caused by the burning of pine wood) and continued for twelve hours twice in each month, falling upon and penetrating houses and premises at distances varying from forty to two hundred feet, held to cause such injury, annoyance and discomfort as to constitute a legal nuisance: *Id.*

Partnership.

Compensation to Agent by Share of Profits.—A participation in the profits of any business or undertaking, to constitute one a partner, must be a general participation in the profits as such. A person who is not a principal, has no control of the business, and no power as a partner in the firm, but who is employed as a superintendent or agent, receiving by way of compensation for his services a certain share of the profits, is not thereby a partner: *Hargrave* v. *Conroy*, 4 C. E. Green.

Such relation does not, as between the parties, constitute them partners, and generally does not as to strangers. If the profits are so greatly out of proportion to the services rendered as to show that the arrangement is a shift to avoid responsibility, and that creditors are injured by the abstraction of so large a part of the avails of the business, it will be held, as to them, that such person is a partner: *Id.*

But where a party agrees to serve another for a part of the profits to be derived from the business, but they are by the express terms of the agreement to be paid for his services, he cannot call for an account as partner, but he has a right to an account of the profits, and to the aid of this court in discovery and taking an account of profits: *Id.*

Where a party under a contract to perform a certain work at a certain rate, has performed part, and the performance of the residue was prevented without the fault of either party, he is entitled to payment in proportion, at the rate agreed upon for the whole: *Id.*

Patent.

New Substance from Combination of known Materials.—When a patent is claimed for a discovery of a new substance by means of chemical combinations of known materials, it should state the component parts of the new manufacture claimed with clearness and precision, and not leave the person attempting to use the discovery to find it out "by experiment:" *Tyler* v. *City of Boston*, 7 Wall.

The term "*equivalent*," when used with regard to the chemical action of such fluids as can be discovered only by experiment, only means *equally good: Id.*

Whether one compound of given proportions is substantially the same as another compound, varying the proportions, is a question of fact and for the jury: *Id.*

PLEADING.

Rules—Practice—Res Judicata.—In a case having long and complicated pleadings, where a second count of a declaration has been left by the withdrawal of a plea without an answer, so that judgment might have been had on it by *nil dicit*, a superior court will not, on error, infer, as of necessity, that a judgment below for the plaintiff was thus given; the case being one where after such withdrawal there were numerous demurrers, pleas, replications, and rejoinder, arising from a first count, and the proceedings showing that these were the subject of controversy. The second count will be taken to be waived: *Aurora City* v. *West*, 7 Wall.

A reversal in a court of last resort, *remanding a case*, cannot be set up as a bar to a judgment in an inferior court on the same case: *Id.*

The rule that judgment will be given against the party who commits the first fault in pleading does not apply to faults of mere form: *Id.*

The plea of *res judicata* applies to every objection urged in a second suit, when the same objection was open to the party within the legitimate scope of the pleadings in a former one, and might have been presented in it: *Id.*

PRIZE. See *International Law*.

PUBLIC LANDS.

Meandered Streams—Rights of Riparian Proprietor.—The meander lines run in surveying fractional portions of the public lands bordering upon navigable rivers, are run not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction, and which is to be paid for by the purchaser: *Railroad Co.* v. *Shurmeir*, 7 Wall.

Congress in providing, as it does in one or more acts relating to the survey and sale of public lands bordering upon rivers—that navigable rivers, within the territory to be surveyed, should be deemed to be public highways, and that where the opposite banks of any stream, not navigable, should belong to different persons, the stream and the bed thereof should become common to both—meant to enact that the common-law rules of riparian ownership should apply in the latter case, but that the title to lands bordering on navigable streams should stop at the stream and not come to the *medium filum*: *Id.*

But such riparian proprietors have the same right to construct suitable landings and wharfs, for the convenience of commerce and navigation, as riparian proprietors on navigable waters affected by the ebb and flow of the tide: *Id.*

A government grant of land in Minnesota (9.28 acres) bounded on one side by the Mississippi, was *held* to include a parcel (2.78 acres) four feet lower than the main body, and which at very low water was separated from it by a slough or channel 28 feet wide through which no water flowed but in which water remained in pools; where at medium water it flowed through the depression, making an island of the parcel; and where at high water the parcel was submerged; the whole place

having previous to the controversy been laid out as a city, and the municipal authorities having graded and filled up the place to the river edge of the parcel: *Id.*

If by the laws in force in Minnesota in 1859, the recording of a town or city plot indicating a dedication for a public purpose of certain parts of the land laid out, operated as a conveyance in fee to the town or city, yet it could operate only as a conveyance of the fee subject to the purpose indicated by the dedication, and subject to that it must be held by any future claimant: *Id.*

RECEIVER. See *Debtor and Creditor, Landlord and Tenant.*

REVENUE LAWS.

Duties paid under protest—Jurisdiction of Court of Claims.—Under the Act of Congress of February 26th 1845, relative to the recovery of duties paid under protest, a written protest signed by the party, with a statement of the definite grounds of objection to the duties demanded and paid, is a condition precedent to a right to sue in any court for their recovery: *Nichols* v. *United States*, 7 Wall.

Cases arising under the revenue laws are not within the jurisdiction of the Court of Claims: *Id.*

SUPREME COURT OF THE UNITED STATES.

Jurisdiction—Practice.—If it is apparent from the record that this court has not acquired jurisdiction of a case for want of proper appeal or writ of error, it will be dismissed although neither party ask it: *Edmonson* v. *Bloomshire*, 7 Wall.

An appeal or writ of error which does not bring to this court a transcript of the record before the expiration of the term to which it is returnable, is no longer a valid appeal or writ: *Id.*

Although a prayer for an appeal, and its allowance by the court below, constitute a valid appeal though no bond be given (the bond being to be given with effect at any time while the appeal is in force), yet if no transcript is filed in this court at the term next succeeding the allowance of the appeal, it has lost its vitality as an appeal: *Id.*

Such vitality cannot be restored by an order of the Circuit Court made afterwards, accepting a bond made to perfect that appeal. Nor does a recital in the citation, issued after such order, that the appeal was taken as of that date, revive the defunct appeal or constitute a new one: *Id.*

WILL.

Testamentary Competency—Undue Influence.—The law concedes to a man of sound mind the right to dispose of his property in any manner he may deem proper consistent with its policy; and it is no valid objection to a will that the testator gave his property to his wife, or to strangers to his blood, provided he was mentally competent, and was free from undue influence at the time: *Higgins et al.* v. *Carlton*, 28 Md.

It is not sufficient to avoid a will, that its dispositions are imprudent and unaccountable: *Id.*

The influence to vitiate a will, must be an unlawful influence, and exerted to such a degree as to amount to force or coercion, destroying