

This branch of the subject received attention in a note to *Lynch v. Fallon* (1876), and *Bollman v. Loomis* (1874), reported in full in 16 AMERICAN LAW REGISTER 331, and 15 Id. 75; S. C., 11 R. I. 311, and 41 Conn. 581. Other cases are collected and reviewed in 26 Id. 562.

The broker is not put to the trouble of obtaining definite terms between the seller and buyer. See *Veazie v. Parker* (1881), 72 Me. 443; abstracted in 21 AMERICAN LAW REGISTER 69, and leading article in 26 Id. 565.

The broker's duty of faithfulness to his employer was upheld in *Young v. Hughes* (1880), 32 N. J. Eq. 372, and *Hughes v. Young* (1879), 31 Id. 60; abstracted in 19 AMERICAN LAW REGISTER 582, and 18 Id. 788. Other cases are considered in 26 Id. 564. J. B. U.

LEGAL NOTES.

STATE REPUDIATION.—It seems to me that the problem referred to by A Jurist (*ante*, page 15) is extremely simple. A State cannot impair the obligations of a contract: a State cannot be sued. These two somewhat antagonistic rules, work the apparent contradiction in which A Jurist seems to think the Court has fallen. But while it is an anomaly in municipal law to start with creating a rule, and at the same time withdraw all power to enforce it, in this particular case we have not done this; we have laid down a very wise, universal rule, and prohibited a particular mode of enforcing it. Nor is there wanting analogy in the law for private persons. A contract after six years is no ground for a suit, or rather the debtor is suable or not at his mere option. Is the contract obliterated? Certainly not. It remains for every possible purpose, saving that of being enforced by a suit against the contractor. It sustains a pledge, for example. Remove the obstacle of the statutory prohibition, and the contract has the same force as it had on the day of the breach: and this may be done by the State or by the party.

Precisely analogous, but with much greater scope, is the effect of the rules in respect of contracts with the State. The State is as powerless to destroy the contract or to take from it any incident as is a private person or corporation. It differs not from many persons in freedom from compulsion in respect to its contracts (married women at common law, infants, ambassadors, and probably others), but the contracts remain. But is capacity to compel performance, the only incident of contract? Is not freedom from duty otherwise compulsory, an important thing? Is not the right to discharge an obligation important? Is not the power to enforce a right as against all men, even though agents of the State, important; even though the State cannot be made a defendant or its property taken in execution? All these incidents of a contract remain and can be inferred, and cannot be limited or restricted by the State. Possibly the framers of the Constitution had not in their minds the humiliating conception of a State inducing the citizen to pay his money, and then destroying his right to the thing purchased, if it was in the form of an executory obligation of the State. They certainly contemplated bring-

ing the State to book ; but this was a little too high a flight for even the days of purity and unselfish patriotism, and was promptly withdrawn.

The real difficulty in the problem, however, is not logical ; it lies in the absurdity of applying to the things we call *States*, a prerogative that is essential to a State in the proper sense of that word. To endow a municipality with this prerogative, is manifestly absurd. What element is there in a State of the American Union that, distinguishing it from a municipality, demands exemption from compulsion to be honest and true? which exemption is only justified by the duty which is higher than the duty to perform promises ; that is, the duty to preserve the Nation, and that is removed from the States to the imperial power of the central government.

A STUDENT IN POLITICS.

CONTEMPT OF COURT is the subject of a new Statute in California, approved by Governor Markham, February 17th instant. The most important section will be seen to be the twelfth subdivision. The bill was caused by the imprisonment of Mr. Barry, of the San Francisco *Star*, for reflecting upon one of the Superior Judges of that city. It is well that such power is taken away, for it ought never to be exercised by the Judiciary. The full text of the bill is furnished by the *Alla*, as follows :

"SECTION 1. Section 1209 of the Code of Civil Procedure of California is hereby amended so as to read as follows :

"Section 1209. The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court :

"1. Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceeding.

"2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

"3. Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk Sheriff, Coroner, or other person appointed or elected to perform a judicial or ministerial service.

"4. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

"5. Disobedience of any lawful judgment, order, or process of the court.

"6. Assuming to be an officer, attorney, counsel of a court, and acting as such without authority.'

"7. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

"8. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial.

"9. Any other unlawful interference with the process or proceedings of a court.

"10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

"11. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be