

INDEX

TO THE

PRINCIPAL MATTERS IN THIS VOLUME.

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ABANDONMENT.

1. If a cargo consists partly of memorandum articles, no abandonment, for mere deterioration in value, during the voyage, can be valid, unless the damage, on the non-memorandum articles, exceed a moiety of the value of the whole cargo, including the memorandum articles. *Marcadier v. Chesapeake Ins. Co.**40

ABATEMENT.

1. If there be several tenants, claiming several parcels of land, by distinct titles, they cannot lawfully be joined in one writ of right; and if they be, they may plead in abatement of the writ. *Green v. Lister*.....*230
2. If the demandant demand against any tenant more land than he holds, he may plead non-tenure, as to the parcel not holden; but the writ will abate only as to the parcel whereof non-tenure is pleaded, and admitted, or proved.....*Id.*
3. Under the act of Kentucky to amend process in chancery and common law, the party may recover, although he prove only part of the claim in his declaration; but it does not enable him to join parties in an action, who could not be joined at the common law..*Id.*
4. Notwithstanding the act of Virginia of 1786, reforming the method of proceeding in writs of right, the tenant still has the full benefit of the ordinary pleas in abatement..*Id.*
5. If tenants, claiming different parcels of land, by distinct titles, omit to plead that matter in abatement, and join the *mise*, it is an admission that they are joint-tenants of the whole; and the verdict, if for the demandant, for any parcel of the land, may be general, that he hath more mere right to hold the same than the tenants; and if of any

parcel, for the tenants, that they have more mere right to hold the same than the demandant.....*Id.*

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ADMINISTRATION.

1. So long as a qualified executor is capable of exercising the authority with which he has been invested by the testator, that authority cannot be conferred, either with or without limitation, by the court of ordinary, on any other person; and if, during such capability of the executor, the ordinary grant administration, either absolute or temporary, to another person, that grant is absolutely void. *Griffith v. Frazier*.....*9

ADMIRALTY.

1. The penalty of the 50th section of the collection law of 2d of March 1799, which requires a permit for the landing of goods imported, applies to goods the importation of which is prohibited by law. *Hartford v. United States*.....*109
2. British property, found in the United States, on land, at the commencement of hostilities with Great Britain, cannot be condemned as enemy's property, without a legislative act, authorizing its confiscation. The act of the legislature, declaring war, is not such an act. *Brown v. United States*.....*110
3. Timber, floated into a salt-water creek, where the tide ebbs and flows, leaving the ends of the timber resting on the mud at

- low-water, and prevented, by booms, from floating away at high-water, is to be considered as landed. *Id.*
4. After a declaration of war, an American citizen cannot lawfully send a vessel to the enemy's country, to bring away his property. *The Rapid* *155
5. A vessel, owned by citizens of the United States, on her voyage from Naples to the United States, hears of the declaration of war between the United States and Great Britain, and having a British license to carry her cargo to Great Britain, changes her course for that country; is captured by the British, libelled and acquitted upon her license; sells her cargo, purchases a return-cargo, sails for the United States, and is captured by an American cruiser: good prize. *The Alexander* *169
6. It is a good capture, although only a prize-master be put on board. *Id.*
7. The sailing, on a voyage, under the license and passport of protection of the enemy, in furtherance of his views or interests, constitutes such an act of illegality as subjects the ship and cargo to confiscation as prize of war. *The Julia*, *181; *The Aurora*, *203; *The Hiram*, *444
8. The acceptance and use of an enemy's license, on a voyage to a neutral port, prosecuted in furtherance of the enemy's avowed objects, is illegal, and subjects vessel and cargo to confiscation. *The Aurora*, *203
9. It is not necessary, in order to subject the property to condemnation, for sailing under an enemy's license, that the person granting the license should be duly authorized to grant it, provided the person receiving it take it with the expectation that it will protect his property from the enemy. *Id.*
10. The case of a vessel and cargo, belonging to a citizen of one belligerent nation, captured on the high seas by a cruiser of the other belligerent, given to a neutral, and by him brought into a port, and libelled in a court of his own country, between which and the nation to which the vessel originally belonged war breaks out, before final adjudication, is a case of salvage; one moiety adjudged to the libellants and the other moiety to remain subject to the future order of the court below; and to be restored to the original owner, after the termination of the war, unless legislative provision should previously be made for the confiscation of enemy's property found in the country at the declaration of war. The act of bringing in the cargo, although consisting of articles the importation of which was prohibited by law, was not, under such circumstances, a clause for forfeiture of the property. *The Adventure*, *221
11. If a citizen of the United States establish his domicile in a foreign country, between which and the United States hostilities afterwards break out, any property shipped by such citizen, before knowledge of the war, and captured by an American cruiser, after the declaration of war, is good prize. *The Venus*, *253
12. Upon a shipment of goods, to be sold on joint account of the shipper and consignee, or of the shipper alone, at the option of the consignee, the right of property does not vest in the consignee, until he has made his election. *Id.*
13. If two partners own jointly a commercial house in New York, and one of them obtain an American register for a ship, by swearing that he, together with his partner, of the city of New York, merchant, are the only owners of the vessel, when in fact his partner was domiciled in England, the vessel is liable to forfeiture, under the act of congress of December 31st, 1792. *Id.*
14. Goods purchased by British merchants, before the war between the United States and Great Britain, in pursuance of orders from American citizens, and shipped to the agent of the British merchants in the United States (who was also an American citizen), "on account and risk of an American citizen" (no circumstances of fraud or unfairness appearing in the transaction), were vested in the American citizens, at the time of shipment, and were not liable to condemnation, although the vessel sailed from England after the declaration of war was known there. *The Merrimack*, *317
15. But if goods be purchased as above, although the accompanying invoices, bills of lading and letters be addressed to the American citizens for whom the purchases were made, and all concur to show the property to be in them, yet if these documents be inclosed in a letter from the shippers to their agent in the United States, directing him not to deliver the goods, in a certain event, nor until he should have received payment in cash, the property in the goods continued in the shipper at the time of capture, and they were liable to condemnation. *Id.*
16. Goods, by the same ship, purchased as above, and consigned to the agent of the consignors (being an American citizen), in whose name the bill of lading was made out, but the bills of parcels and invoice in the name of the American merchants for whom the purchases were made; the shipment also being expressed to be on their account, although the goods are spoken of in the letter of the consignors as British property; vested in the American merchants at the time of

- shipment; and where not liable to condemnation. The circumstance that the goods continued, during the whole voyage, at the risk of the shippers, is immaterial. *Id.*
17. A British subject, naturalized in the United States, went to Great Britain, in a time of peace, for the purpose of trade, but with the intention to return to the United States; he continued in Great Britain a year after his knowledge of war between Great Britain and the United States, for the purpose of winding up the business; but engaged in no new commercial transactions with the enemy, and actually returned to the United States in a little more than a year after knowledge of the war; yet he was considered as an enemy, and his goods were condemned. *The Frances, Thompson's Claim*. *335
18. Goods appearing by the ship's papers to be a consignment from alien enemies to American merchants, were condemned *in toto*, although further proof was offered, that American merchants were jointly interested, and that they had a lien upon the goods, in consequence of advances made by them. Further proofs on those points refused. *Id.*
19. Where the affidavits produced on the order for further proof are positive, although their credibility be impaired by the non-production of letters mentioned therein, yet a second order for further proof will be allowed in the appellate court. *The Frances, Graham's Claim*. *348
20. Goods shipped by a British merchant to an American house (partly in conformity with orders, and partly without orders), who had an option to accept or reject the whole invoice, in a limited time, remain the property of the shippers, until the election be made to accept them. *The Frances, Dunham Claim*. *354
21. An intention of a consignor of goods to vest the right of property in the consignee, is not sufficient to effect such a change of property, until the goods are received by the consignee, or some evidence is given of his agreement to take them on his own account; until that time, the goods are at the risk of the shippers; and if they are enemies, the goods, if captured, are good prize. The result is the same, although the consignee be the agent of a third person, who had directed him to order the goods, unless it appear that he did actually order them. *The Frances, French's Claim*. *359
22. The commercial domicil of a merchant, at the time of the capture of his goods, determines the character of those goods, hostile or neutral. *The Frances, Gillespie's Claim*. *363
23. Property engaged in an illicit intercourse with the enemy, is to be condemned to the captors, not to the United States. A municipal forfeiture, under the laws of the United States, is absorbed in the more general operation of the law of war. The prize act of 26th June 1812, operates as a grant from the United States to the captors, of all property rightfully captured by commissioned privateers, as prize of war. *The Sally*. *382
24. Further proof, inconsistent with that already in the case, will not be admitted. *The Euphrates*. *385
25. The forfeiture of goods, for violation of the non-intercourse act of March 1st, 1809, takes place, upon the commission of the offence, and avoids a subsequent sale to an innocent purchaser, although there may have been a regular permit for landing the goods, and although the duties may have been paid. *United States v. Bags of Coffee*. *398
26. A forfeiture under the 3d section of the act of 28th June 1809, will overreach a *bonâ fide* sale to a purchaser for valuable consideration, without notice of the offence. *United States v. Brig Mars*. *417
27. No lien upon enemy's property, by way of pledge for the payment of purchase-money, or otherwise, is sufficient to defeat the rights of the captors, in a prize court, unless in very peculiar cases, where the lien is imposed by a general law of the mercantile world, independent of any contract between the parties. *The Frances, Irvin's Claim*. *418
28. Where goods are sent upon the account and risk of the shipper, the delivery to the master is a delivery to him, as agent of the shipper, not of the consignee; and it is competent to the consignor, at any time before actual delivery to the consignee, to countermand it, and thus to prevent the consignee's lien from attaching. *Id.*
29. Under the 8th section of the prize act of June 26th, 1812, the president had authority to issue the instructions of the 28th of August 1812. *The Thomas Gibbons*. *421
30. The commissions of the privateers of the United States may be qualified and restrained by the instructions of the president. *Id.*
31. A shipment made, even after a knowledge of the war, is to be considered as having been made in consequence of the repeal of the orders in council, if made within so early a period thereafter, as would leave a reasonable presumption, that the knowledge of that repeal would produce a suspension of hostilities on the part of the United States. *Id.*
32. By the mere act of illicit intercourse, the property of a citizen is not divested *ipso facto*; it is only liable to be condemned as enemy property, or as adhering to the enemy, if rightfully captured during the voyage. *Id.*
33. The president's instructions of 28th of Au-

- gust 1812, were meant to protect all British merchandise on board an American ship, without any exception on account of British proprietary interest. *Id.*
34. A vessel sailing to an enemy's country, after knowledge of the war, and taken, bringing from that country a cargo, consisting chiefly of enemy goods, is liable to confiscation as prize of war. *The St. Lawrence*. *434
35. Suppression of papers, where it appears to have been intentional and fraudulent, and attended with other suspicious circumstances, is good cause for refusing further proof. But where the suppression appears to be owing to accident or mistake, and no other suspicious circumstances appear in the case, further proof may be allowed. *Id.*
36. Trading with the enemy is not excused, by the necessity of obtaining funds to pay the expenses of the ship; nor by the opinion of an American minister, expressed to the master, that by undertaking the voyage, he would violate no law of the United States. *The Joseph*. *451
37. If an American vessel be captured, on a circuitous voyage to the United States, in the former part of which voyage she has been guilty of conduct subjecting her to confiscation, although at the time of capture she is committing no illegal act, she must be condemned. *Id.*
38. Where the *termini* of a voyage are already fixed, the continuity of such voyage cannot be broken, by a voluntary deviation of the master, for the purpose of carrying on an intermediate trade. *Id.*
39. A capture as prize of war may lawfully be made, within the territorial limits of the United States, at any place below low-water mark. *Id.*
40. Further proof will be allowed, on the part of the captors, as to the fact of capture. *The Grotius*. *456

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1. A purchaser of real estate, in Alexandria, is not personally liable for arrears of taxes assessed before his purchase. *Common Council of Alexandria v. Preston*. *53

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1. An appeal lies to this court from the sentence of the circuit court for the district of Columbia, affirming the sentence of the orphans' court of Alexandria county, which dis-

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1. Upon an assignment of a plat and certificate of survey, obtained on a land-warrant, in Virginia, for 2000 acres, the assignee, who obtains a patent thereupon, in his own name, is not obliged to account with the assignor for the surplus, if upon the resurvey it appear that the tract contains 2700 acres. *Vowles v. Craig*. *372

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1. Upon the death of an assignee under the bankrupt law of the United States, the right of action for a debt due to the bankrupt is vested in the executor of the assignee. *Richards v. Maryland Ins. Co.*. *85
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1. Where the general owner of a ship retains the possession, command and navigation of the same, and contracts to carry a cargo, on freight, for the voyage, the charter-party is to be considered as a mere affreightment, sounding in covenant, and the freighter is not

clothed with the character or legal responsibility of ownership: but the general owner is to be considered as owner for the voyage, and if he be master of the vessel, he cannot commit barratry. *Marcardier v. Chesapeake Ins. Co.*.....*40

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1. Under the 11th section of the embargo act of the 25th of April 1808, the collector was justified in detaining a vessel, by his honest opinion, that there was an intention to violate the provisions of the embargo laws. It was not necessary for him to show that his suspicion was reasonable. *Crowell v. McFadon.*.....*94

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2. The Maryland act of limitations of three years, is a good bar to an action of *assumpsit* for money had and received, brought to try the title to lands in the city of Washington, under the 5th section of the act of Maryland, of November 1791, c. 45. *Beatty v. Burnes.*.....*98
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2. A conveyance of wild or vacant lands gives a constructive seisin thereof, in deed, to the grantee, and entitles him to all the legal remedies incident to the estate.....*Id.*
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2. By the law of South Carolina, administration *durante absentia executoris* cannot be granted, after probate of the will and letters testamentary granted.....*Id.*
3. If an executor do not cause himself to be made party to a suit brought in the lifetime, and in the name of the testator, and pending at his death, it is to be considered as a voluntary abandonment of the action, so as to exclude the executor from the benefit of the equity of the exceptions to the statute of limitations. *Richards v. Maryland Ins. Co.*.....*85

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1. Where a technical total loss is sought to be maintained, upon the mere ground of deterioration of the cargo, at an intermediate port, to a moiety of its value, all deterioration of *memorandum* articles must be excluded from the estimate. Therefore, in a cargo of a mixed character, no abandonment, for mere deterioration in value, during the voyage, can be valid, unless the damage on the *non-memorandum* articles exceed a moiety of the whole cargo, including the *memorandum* articles. *Marcardier v. Chesapeake Ins. Co.*,*39
2. Where the general owner of a ship retains the possession, command and navigation of the same, and contracts to carry a cargo, on freight, for the voyage, the charter-party is to be considered as a mere affreightment, sounding in covenant, and the freighter is not clothed with the character or legal responsibility of ownership. In such case, the general owner is also owner for the voyage; and if he be the master of the vessel, he is incapable of committing barratry.....*Id.*
3. When a cargo is insured by divers policies, in some of which the rate of exchange is fixed, at which the prime cost of the cargo shall be valued; in ascertaining the amount of the interest of the assured, upon settlement of those policies in which the rate of exchange is fixed, the whole cargo is to be valued at that rate of exchange, without regard to the rate of exchange by which the value may have been ascertained in the other policies. *Pleasants v. Maryland Ins. Co.*.....*56
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2. If the declaration be upon a joint note, and the defendant plead that it is the separate note of one of the defendants, and was given to and accepted by the plaintiff in full satisfaction of the debt, the plea is bad, on special demurrer, because it amounts to the general issue.....*Id.*

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1. After a lapse of seven years, the court will refuse to decree a specific performance of a contract, in the part execution of which the complainants, or those under whom they claim, have expended large sums of money, although the first default was on the part of the defendant, and although it be probable, that the failure of the defendant, in that respect, has prevented the completion of the execution of the contract on the part of the complainants; circumstances having so changed that neither party could derive, from the execution of the contract, all the benefits which were at first expected. *Pratt v. Carroll*.*471

STATUTE OF USES.

See CONVEYANCE, 3.

STOPPAGE IN TRANSITU.

See ADMIRALTY, 14, 27, 28.

SUPPRESSION OF PAPERS.

See ADMIRALTY, 35.

SURPLUS LAND.

See ASSIGNMENT.

SURVEY.

See ASSIGNMENT.

SUSPICION.

See COLLECTOR.

TAXES.

See ALEXANDRIA.

TENURE, JOINT.

See WRIT OF RIGHT, 2, 4, 5, 14.

TENURE, SOLE.

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TITLE.

See LIMITATIONS, 5-7.

TRADING WITH THE ENEMY.

See ADMIRALTY, 4, 5, 7, 8, 9, 11, 12, 14-18, 20-3, 27, 28, 31-2, 34, 36-8.

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See COLUMBIA, 1.

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See ADMIRALTY, 23 : INSOLVENT, 2.

USAGE OF TRADE.

See INSURANCE, 5.

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See CONVEYANCE, 3.

VACANT LANDS.

See COLUMBIA, 3 : CONVEYANCE, 1, 2, 3.

VENDEE.

See ADMIRALTY, 25, 26 : ALEXANDRIA : ASSIGNMENT : PURCHASER, 2, 3.

VIRGINIA.

See ASSIGNMENT : LANDS, 1 : WRIT OF RIGHT.

WAR.

See ADMIRALTY, 2-12, 14-18, 20-3, 27-40.

WASHINGTON CITY.

See COLUMBIA, 2, 3.

WILD LANDS.

See CONVEYANCE, 1, 2, 3.

WILL.

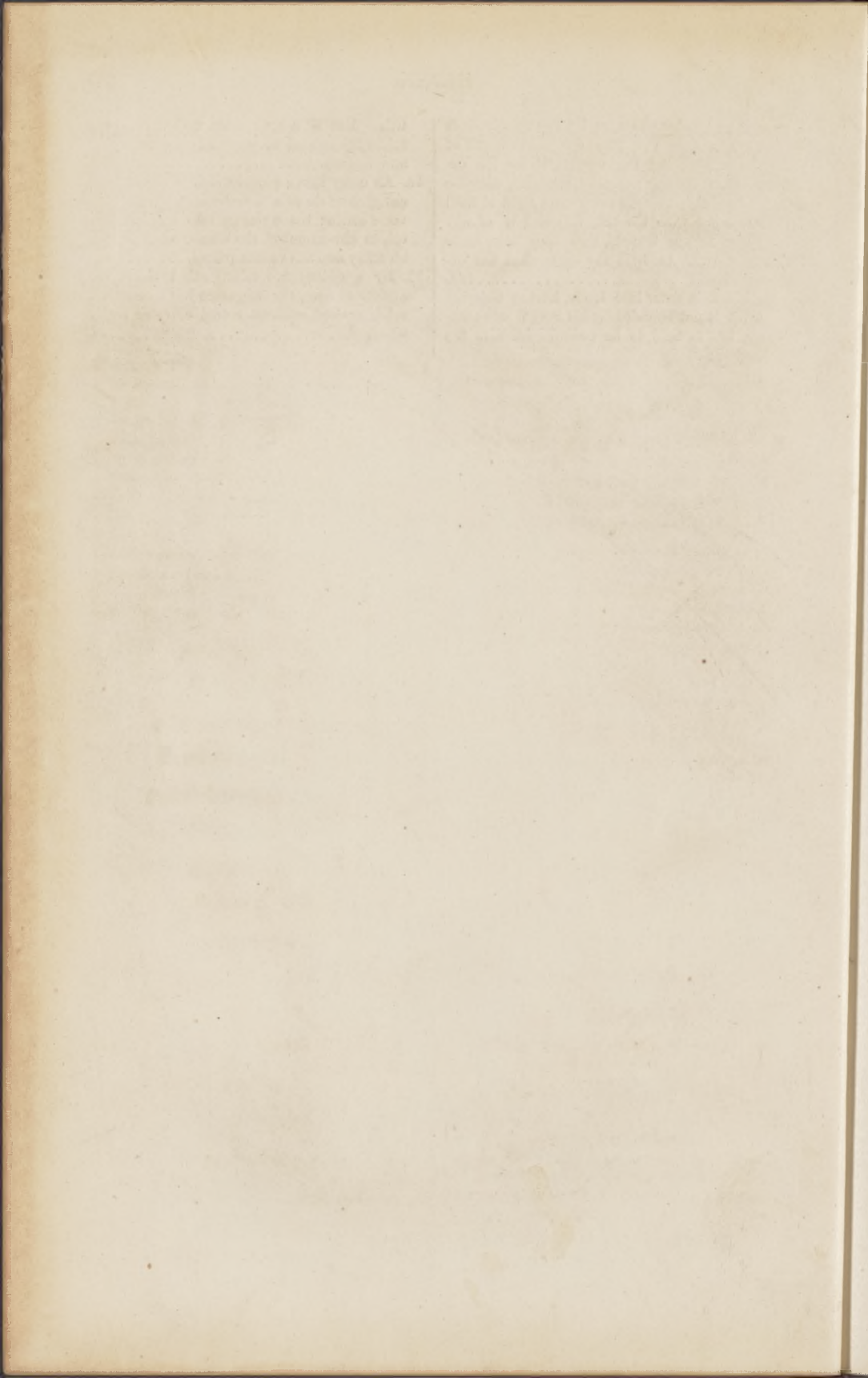
See APPEAL, 1 : LANDS, 1.

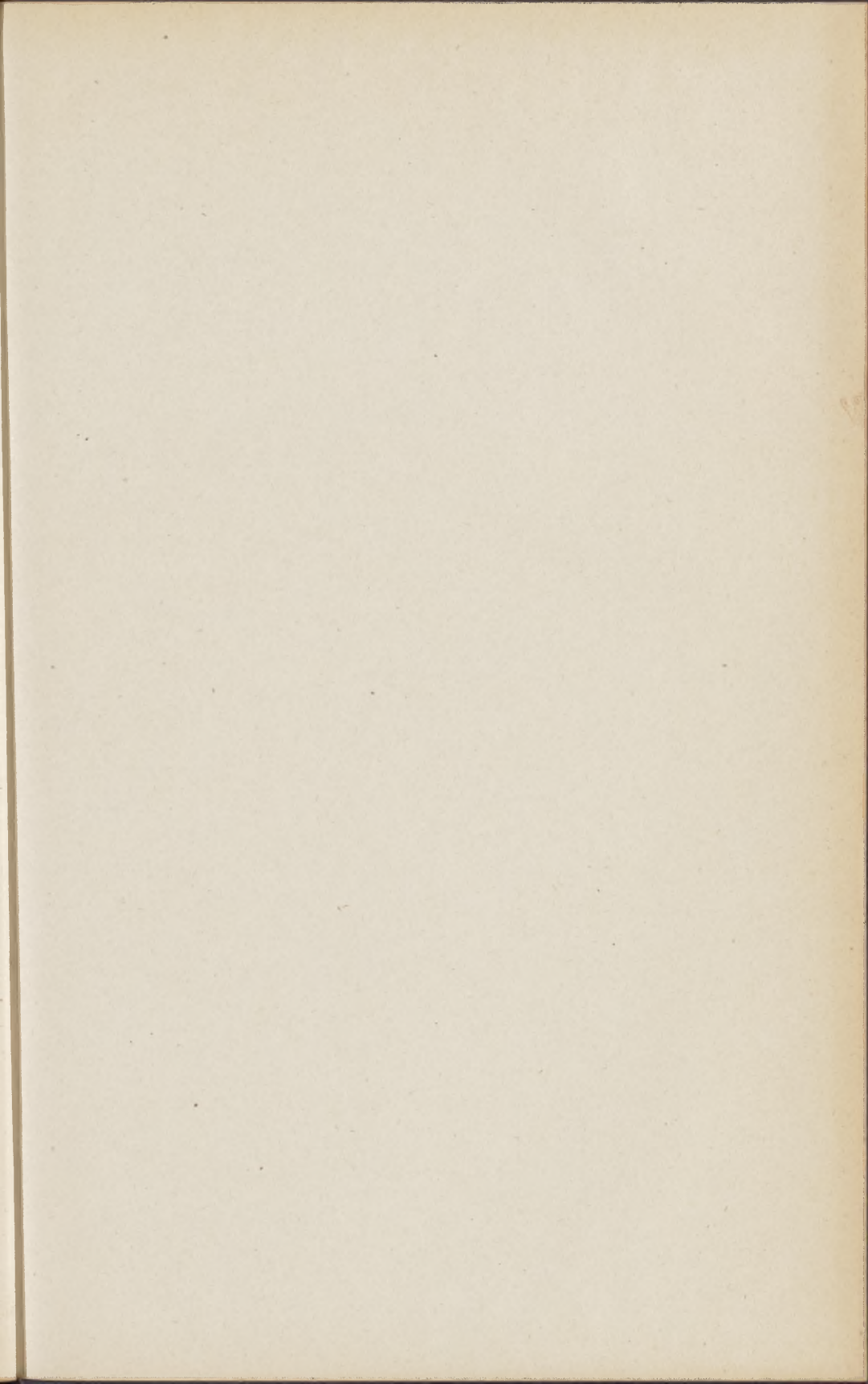
WRIT OF RIGHT.

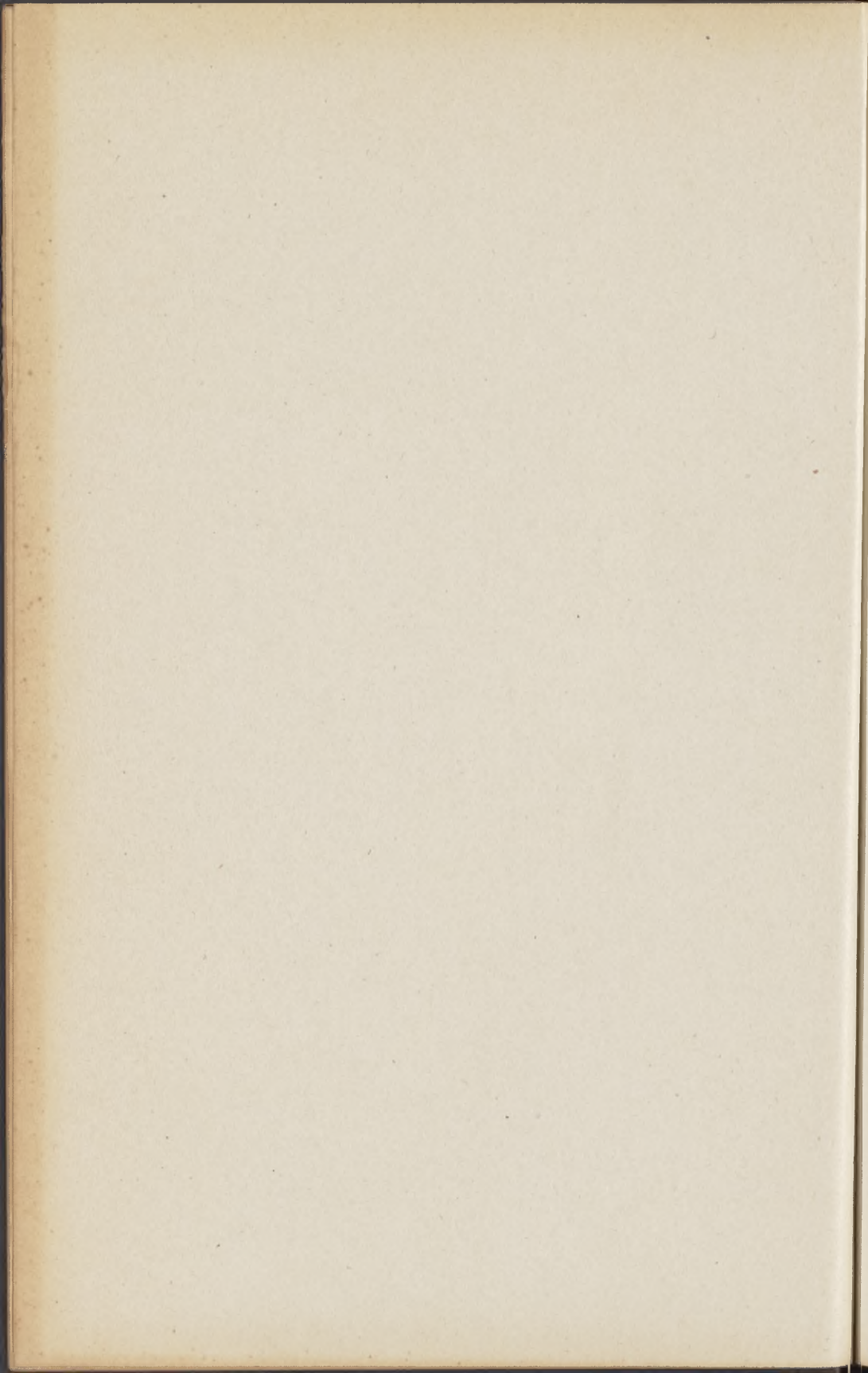
1. The circuit courts of the United States have jurisdiction in writs of right, where the property demanded exceeds \$500 in value; and if, upon the trial, the demandant recover less, he is not to be allowed his costs; but, at the discretion of the court, may be adjudged to pay costs. *Green v. Liler*.....*229

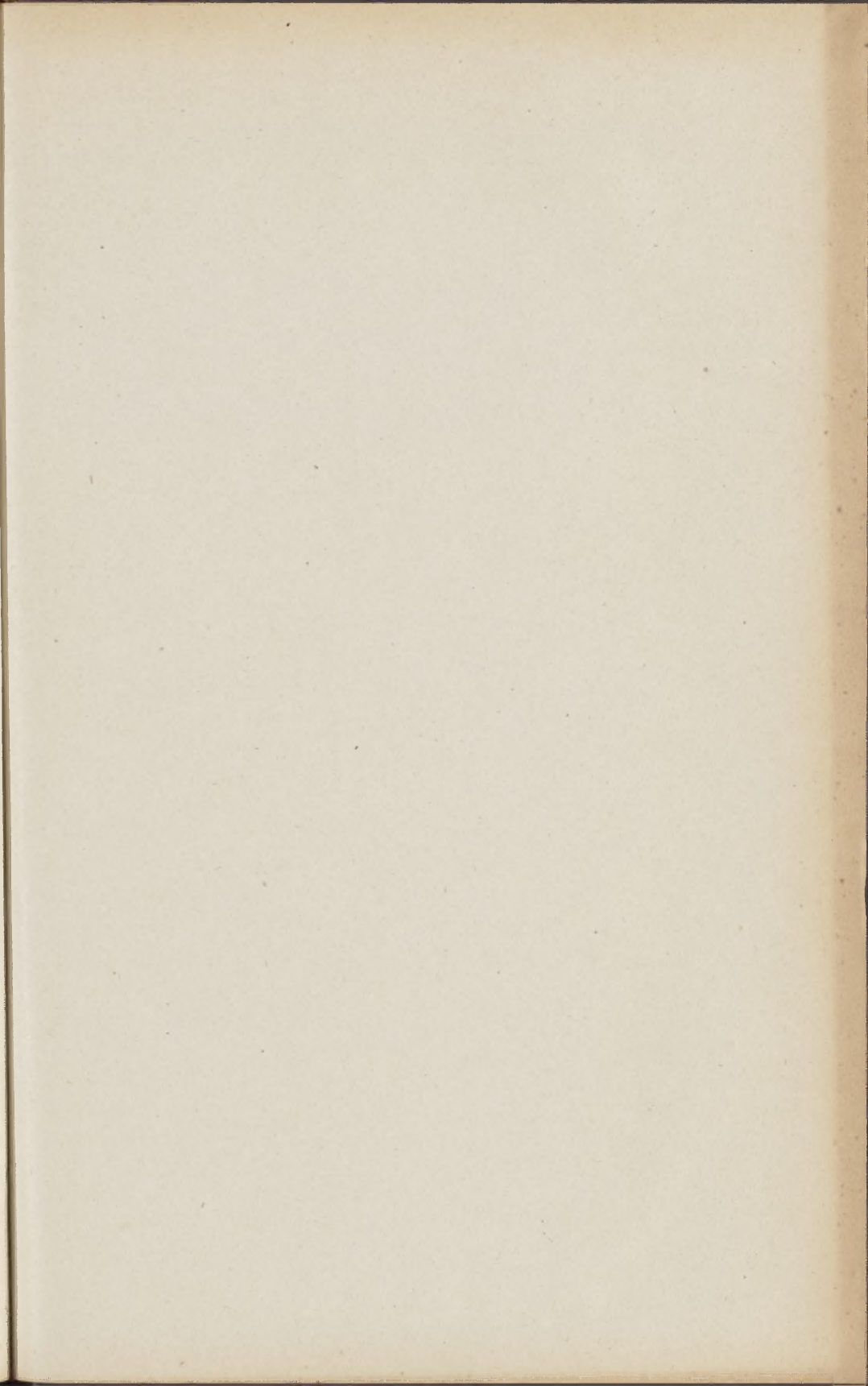
2. At common law, a writ of right will not lie, except against the tenant of the freehold demanded.....*Id.*
3. If there be several tenants, claiming several parcels of land, by distinct titles, they cannot lawfully be joined in one writ; and if they are, they may plead in abatement.....*Id.*
4. If the demandant demand against any tenant more land than he holds, he may plead non-tenure as to the parcel not holden; but the writ will abate only as to the parcel whereof non-tenure is pleaded, and admitted or proved.....*Id.*
5. Under the act of Kentucky, to amend process in chancery and common law, the party may recover, although he prove only part of the claim in his declaration; but this does not enable him to join parties in an action, who could not be joined at the common law.....*Id.*
6. The act of Virginia of 1786, reforming the method of proceeding in writs of right, did not vary the rights or legal predicament of the parties, as they existed at the common law. It did not, therefore, change the nature and effect of the pleadings; and notwithstanding that act, the tenant will have the full benefit of the ordinary pleas in abatement. The clause in the act which provides that the tenant, at the trial, may, on the general issue, give in evidence any matter which might have been specially pleaded, is confined to matters in bar.....*Id.*
7. Under the act of Virginia of 1786, the tenant may, at his election, plead any special matter in bar, in a writ of right, or give it in evidence, on the *mise* joined.....*Id.*
8. The act of Virginia of 1786 did not change the nature of the inquiry as to the titles of the parties to a writ of right.....*Id.*
9. In order to support a writ of right, it is not necessary to prove an actual entry, under title, nor actual taking of *esplees*: a constructive seisin in deed is sufficient.....*Id.*
10. Under the land law of Virginia, the whole legal estate and seisin of the commonwealth pass to the patentee, upon the issuing of his patent.....*Id.*
11. A conveyance of wild or vacant lands, gives a constructive seisin thereof, in deed to the grantee, and attaches to him all the legal remedies incident to the estate; *à fortiori*, this principle applies to a patent.....*Id.*
12. In Kentucky, the patent is the completion of the legal title; and it is the legal title only that can come in controversy in a writ of right.....*Id.*
13. A better subsisting title in a third person, is no defence in a writ of right.....*Id.*
14. If tenants claiming different parcels of land, by distinct titles, omit to plead that

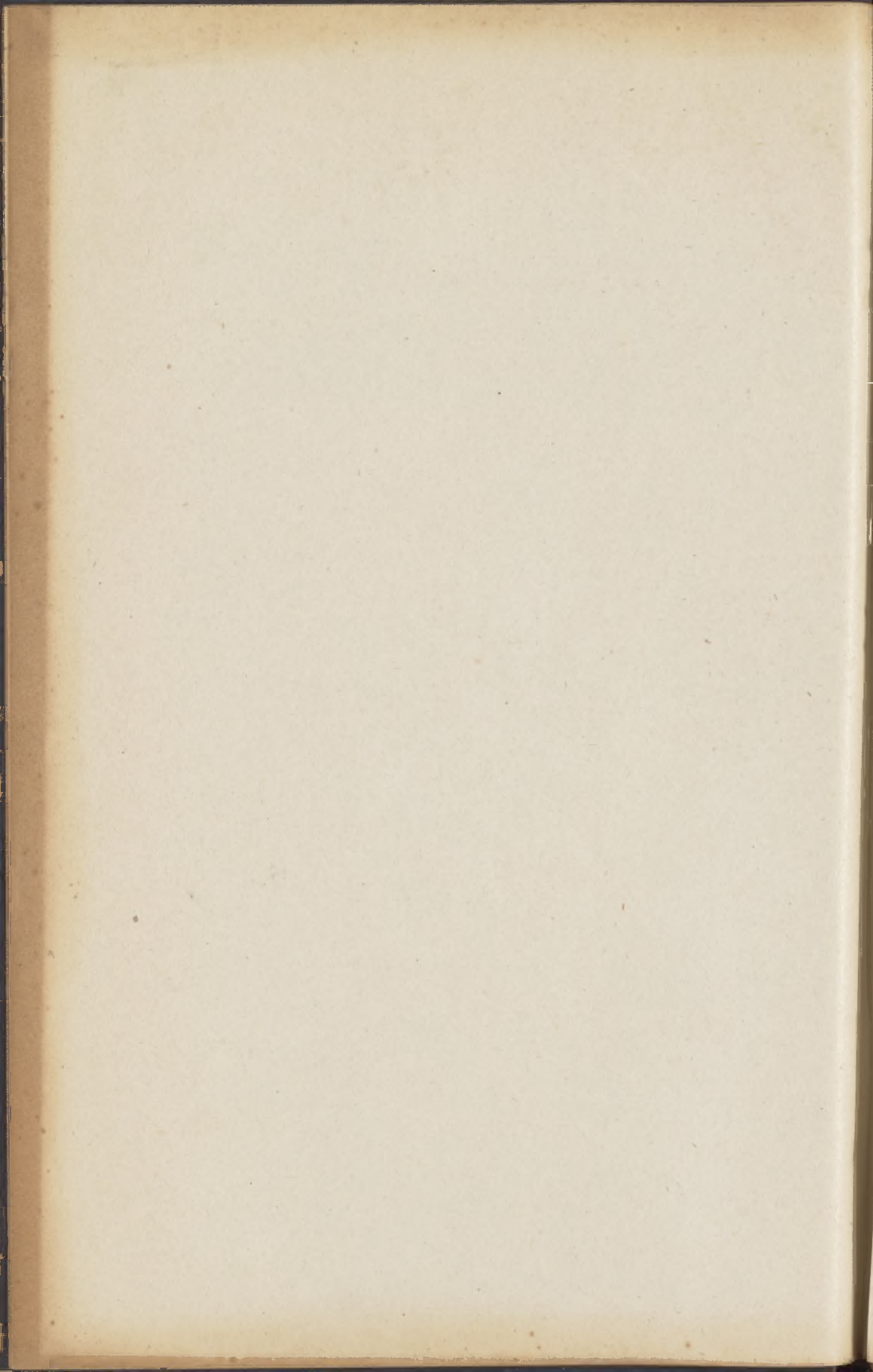
- matter by abatement, and join the *mise*, it is an admission that they are joint-tenants of the whole; and the verdict, if for the demandant for any parcel of the land, may be general that he hath more mere right to hold the same than the tenants; and if of any parcel for the tenants, that they have more mere right to hold the same than the demandant. *Id.*
15. If a man enter into lands, having title, his seisin is not bounded by his actual occupancy, but is held to be co-extensive with his title. But if a man enter, without title, his seisin is confined to his possession by metes and bounds. *Id.*
16. An entry into a parcel which is vacant, will not give seisin of a parcel which is in an adverse seisin; but an entry into the last parcel, in the name of the whole, will inure as an entry into the vacant parcel. *Id.*
17. By a conveyance taking effect under the statute of uses, the bargainee has a complete seisin in deed, without actual entry or livery of seisin. *Id.*

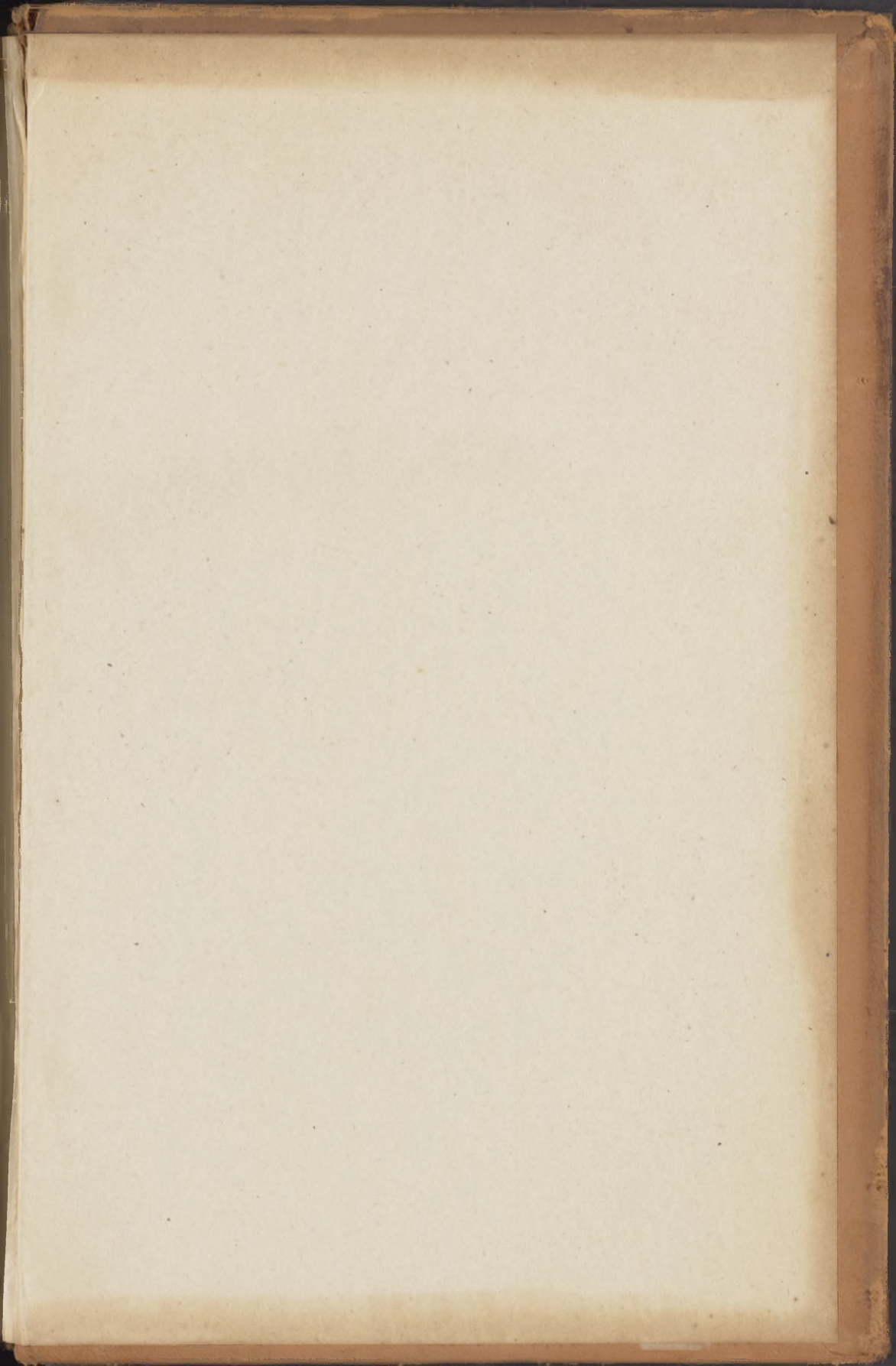












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