

INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

The References in this Index are to the STAR *pages.

ABEYANCE.

1. Land, at common law, may be granted to pious uses, before there is a grantee in existence competent to take it, and in the meantime the fee will be in abeyance. *Town of Pawlet v. Clark*.....*293

ACCOUNTS, PUBLIC.

1. The comptroller of the treasury has a right to direct the marshal to whom he shall pay money received upon execution, and a payment according to such direction is good; and it seems, he may avail himself of it, upon the trial, without having submitted it, as a claim, to the accounting officers of the treasury. *United States v. Giles*.....*213
2. No debtor of the United States can, at the trial, set off a claim for a debt due to him by the United States, unless such claim shall have been submitted to the accounting officers of the treasury, and by them rejected, except in the cases provided for by the statute

Id. the two governments; this court can take no cognisance of it. The law does not connect that trespass with the subsequent seizure by the civil authority, under the process of the district court, so as to annul the proceedings of that court against the vessel. *The Richmond v. United States*.....*102

3. If, upon the breaking out of a war with this country, our citizens have a right to withdraw their property from the country of the enemy, it must be done within a reasonable time. Eleven months after the declaration of war is too late. *The St. Lawrence*,.*120
4. The condemnation of a vessel as enemy's property, for want of a claim, cannot prejudice a claim for her cargo; but it is still competent for the claimant of the cargo, to controvert the fact that the vessel was enemy's property, so far as that fact could prejudice his claim. *The Mary*.....*126
5. One claimant cannot be prejudiced by the contumacy of another.....*Id.*
6. The holder of a bottomry-bond cannot claim in a court of prize.....*Id.*
7. The president's instructions (to privateers) of the 28th of August 1812, protected an American vessel sailing from England, in August 1812, in consequence of the repeal of the British orders in council, and compelled by dangers of the seas to put into Ireland, where she was necessarily detained until April 1813, when she sailed again for the United States, under the protection of a British license. The continuity of the voyage was not broken.....*Id.*
8. If a British merchant purchase, with his own funds, two cargoes of goods, in consequence of, but not in exact conformity with, the orders of an American house, and ship them to America, giving the American house an option, within twenty-four hours after re-

ADMIRALTY.

1. If a vessel be captured by a superior force, and a prize-master and small force be put on board, it is not the duty of the master and crew of the captured vessel to attempt to rescue her; for they may thereby expose the vessel to condemnation although otherwise innocent. *The Short Staple v. United States*.....*56
2. If a merchant vessel of the United States be seized by the naval force of the United States within the territorial jurisdiction of a foreign friendly power, for a violation of the laws of the United States, it is an offence against that power, which must be adjusted between

INDEX.

ceipt of his letter, to take or reject both cargoes; and if they give notice, within the time, that they will take one cargo, but will consider as to the other; this puts it in the power of the British merchant, either to cast the whole upon the American house, or to resume the property and make them accountable for that which came to their hands. The right of property in the cargo, not accepted, does not, *in transitu*, vest in the American house, but remains in the British subject, and is liable to condemnation, he being an enemy. *The Frances*.....*183

9. The produce of an enemy's colony is to be considered as hostile property, so long as it belongs to the owner of the soil, whatever may be his national character in other respects, or whatever may be his place of residence. *Thirty hds. Sugar v. Boyle*...*191

10. An island in the temporary occupation of the enemy, is to be considered as an enemy's colony.....*Id.*

11. In deciding a question of the law of nations, this court will respect the decisions of foreign courts*Id.*

12. If the documentary evidence of the neutrality of the property be contradicted by the circumstances of the case, the court will not give time for further proof, unless there be a probability that those circumstances can be satisfactorily explained. *Cargo of the Ship Hazard*.....*205

13. This court will not allow a new claim to be interposed here, but will remand the cause to the circuit court, where it may be presented. *The Societè*.....*210

14. A test affidavit ought to state that the property, at the time of shipment, and also at the time of capture, did belong, and will, if restored, belong to the claimant; but an irregularity in this respect is not fatal. A test affidavit, by an agent, is not sufficient, if the principal be within the country, and within a reasonable distance from the court. But if test affidavits, liable to such objections, have been acquiesced in by the parties, in the courts below, the objections will not prevail in this court. *The Adeline*.....*245

15. The property of persons domiciled in France (whether they be Americans, Frenchmen or foreigners) is good prize, if re-captured after being twenty-four hours in possession of the enemy, that being the rule adopted in the French tribunals.....*Id.*

16. Further proof will be allowed by this court, where the national character and proprietary interest of goods re-captured do not distinctly appear*Id.*

17. Property unclaimed will be decreed as good prize*Id.*

18. If a seizure, by a collector, for the violation

of the revenue laws of the United States, be voluntarily abandoned, and the property be restored, before the libel or information be filed and allowed, the district court has not jurisdiction of the cause. *The Ann...**289

19. The district courts of the United States (being neutral) have jurisdiction to restore to the original Spanish owner (in amity with the United States) his property captured by a French vessel, whose force has been increased in the United States, if the prize be brought *infra praesidia*. *The Alerta*.....*359

20. In order to constitute a capture, some act should be done indicative of an intention to seize and retain as prize. It is sufficient, if such intention is fairly to be inferred from the conduct of the captor. *The Grotius*.*368

21. The stipulation in a treaty "that free ships shall make free goods," does not imply the converse proposition, that enemy ships shall make enemy goods. *The Nereide*.....*389

22. The treaty with Spain does not contain, either expressly or by implication, a stipulation that enemy ships shall make enemy goods.....*Id.*

23. The principle of retaliation, or reciprocity, is no rule of decision in the judicial tribunals of the United States.....*Id.*

24. A neutral may lawfully employ an armed belligerent vessel to transport his goods, and such goods do not lose their neutral character by the armament, nor by the resistance made by such vessel, provided the neutral do not aid in such armament or resistance, although he charter the whole vessel, and be on board at the time of such resistance. *Id.*

See DUTIES, 1, 2, 4; EMBARGO, 2: FREIGHT: NON-INTERCOURSE, 1, 2: SALVAGE, 1, 2.

AGENT.

1. A test affidavit made by an agent is not sufficient to support a claim, if the principal be in the country, and within a reasonable distance from the court. *The Adeline*...*245

ALIEN ENEMY.

1. If the plaintiff become an enemy, after judgment below, it is no objection to affirmance here. *Owens v. Hannay*.....*180

ALLEYS.

See WASHINGTON CITY, 1.

ANSWER.

1. A denial, in the answer of a defendant in chancery, that his testator gave authority to draw a bill of exchange, is not such an an-

swer to an averment of such authority, as will deprive the complainant of his remedy; unless the defendant also deny the subsequent assent of his testator to the drawing of such bill. *Clarke's Ex'r's v. Van Riemsdyk**154

2. It is error, to decide contrary to the answer, if it be neither contradicted by evidence nor denied by a replication. *Gettings v. Burch*.....*372

See EQUITY, 6, 7.

ATTACHMENT.

1. An equity of redemption of real estate in Maryland, was liable to attachment, before the act of 1810. *Pratt v. Law*.....*457

AUTHORITY.

1. A subsequent assent is equivalent to an original authority. *Clarke's Ex'r's v. Van Riemsdyk*.....*155

See BOND, 1, 3.

BANK.

1. By making a note negotiable in a bank, the maker authorizes the bank to advance, on his credit, to the owner of the note, the sum expressed on its face; and it would be a fraud upon the bank, to set up off-sets against this note, in consequence of any transactions between the parties. *Mandeville v. Union Bank*.....*9

BOND.

1. A bond taken by virtue of the 1st section of the embargo law of January 9th, 1808, is not void, although taken, by consent of parties, after the vessel had sailed. *Speake v. United States*.....*28

2. The obligors are estopped to deny that the penalty of such a bond is double the true value of the vessel and cargo.....*Id.*

3. The name of an obligor may be erased from a bond, and that of a new obligor inserted, by consent of all the parties, without making the bond void; such consent may be proved by parol evidence, and it is immaterial, whether the consent be given before or after the execution of the deed.*Id.*

4. It seems, that if the condition of a bond be to pay \$1700, or the duties which may be ascertained to be due upon certain goods imported, it is not in the option of the obligor to discharge the bond by payment of the \$1700; and that an obligee may recover,

even against the sureties, in an action at law upon the bond, more than the penalty. *Arnold v. United States**105

5. The sureties upon a marshal's bond, are not liable for money received by the marshal, upon execution, before the date of the bond, although it remain in his hands after that date. *United States v. Giles*.....*213

6. *Quære?* Whether the sureties in a marshal's bond are liable for money received by him, after his removal from office, upon an execution which remained in his hands at the time of such removal?.....*Id.*

BOTTOMRY.

1. The holder of a bottomry-bond has not such an interest as will support a claim to the vessel in a court of prize. *The Mary*....*126

CAPTURE.

See ADMIRALTY, 1, 7, 15, 19, 20.

CHANCERY.

See ANSWER.

CHEROKEES.

1. In the treaty of the 25th of October 1805, with the Cherokees, the reservation of three miles square for a garrison, lies below the mouth of the Highwassee, where the United States have placed the garrison. *Meigs v. McClung's Lessee*.....*11

CHURCH OF ENGLAND.

1. The religious establishment of England was adopted by the colony of Virginia, together with the common law upon that subject, so far as it was applicable to the circumstances of the colony. *Terrett v. Taylor*.....*43

2. The freehold of the church lands is in the parson*Id.*

3. The act of Virginia of 1776, confirming to the church its rights to lands, was not inconsistent with the constitution or bill of rights of Virginia; nor did the acts of 1784, ch. 88, and 1785, ch. 37, infringe any of the rights intended to be secured under the constitution, either civil, political or religious.*Id.*

4. The acts of Virginia, of 1798, ch. 9, and 1801, ch. 5, so far as they go to divest the episcopal church of the property acquired previous to the revolution, by purchase or donation, are unconstitutional and inoperative*Id.*

5. The act of Virginia of 1798, ch. 9, merely repeals the statutes passed respecting the church, since the revolution; and left in full

operation all the statutes previously enacted, so far as they are not inconsistent with the present constitution..... *Id.*

6. Church-wardens are not a corporation for holding lands..... *Id.*

7. Church lands cannot be sold, without the joint consent of the parson (if there be one) and the vestry..... *Id.*

8. If a grant be made of a tract of land in New Hampshire, in equal shares, to 63 persons, to be divided amongst them into 68 equal shares, with a specific appropriation of five shares, one of which is declared to be "for a glebe for the church of England, as by law established," that share is not holden in trust by the grantees, nor is it a condition annexed to their rights or shares. *Town of Pawlet v. Clark.*.....*292

9. The church of England is not a body corporate, and cannot receive a grant *eo nomine*. *Id.*

10. A grant to the church of such a place, is good at common law, and vests the fee in the parson and his successors. If such a grant be made by the crown, it cannot be resumed by the crown at its pleasure..... *Id.*

11. Land, at common law, may be granted to pious uses, before there is a grantee in existence competent to take it, and in the mean time the fee will be in abeyance. Such a grant cannot be resumed at the pleasure of the crown..... *Id.*

12. The common law, so far as it related to the erection of churches of the episcopal persuasion of England, the right to present or collate to such churches, and the corporate capacity of the persons thereof to take in succession, was reeognised and adopted in New Hampshire..... *Id.*

13. It belonged exclusively to the crown to erect the church in each town that should be entitled to take the glebe; and upon such erection, to collate, through the governor, a parson to the benefice..... *Id.*

14. A voluntary society of Episcopalians within a town, unauthorized by the crown, could not entitle themselves to the glebe..... *Id.*

15. Where no such church was duly erected by the crown, the glebe remained as an *hæreditas jacens*; and the state, which succeeded to the rights of the crown, might, with the assent of the town, alien or incumber it; or might erect an Episcopalian church therein, and collate, either directly, or through the vote of the town, indirectly, its parson, who would thereby become seised of the glebe *jure ecclesiæ*, and be a corporation capable of transmitting the inheritance..... *Id.*

16. By the revolution, the state of Vermont succeeded to all the rights of the crown, to the unappropriated, as well as appropriated glebes; and by the statute of Vermont, of

the 30th of October 1794, the respective towns became entitled to the property of the glebes therein situated..... *Id.*

17. No Episcopal church, in Vermont, can be entitled to the glebe, unless it was duly erected by the crown, before the revolution, or by the state since..... *Id.*

CLAIM.

See **ADMIRALTY**, 13, 14, 17.

COLLECTOR.

See **ADMIRALTY**, 18 : **DIRECT TAX**, 1 : **EMBARGO**, 2, 3.

COMPTROLLER.

1. The comptroller of the treasury has a right to direct the marshal to whom he shall pay money received upon execution. *United States v. Giles.*.....*213

COMPUTATION OF TIME.

1. Where computation of time is to be made from an act done, the day on which the act is done is to be included. *Arnold v. United States.*.....*105

CONSIDERATION.

1. In a patent, the obliteration of the consideration, does not make void the grant. *Polk's Lessee v. Wendall.*.....*87

2. *Quære?* Whether a subsequent incumbrancer can compel a prior incumbrancer to disclose the consideration which he gave for the notes of the debtor, upon which his incumbrance was founded? *Pratt v. Law.*.....*456

CONSTITUTION OF VIRGINIA.

See **CHURCH OF ENGLAND**, 3, 4, 5.

CONSTRUCTION.

1. In cases depending on the statutes of a state, the settled construction of those statutes, by the state courts, is to be respected. *Polk's Lessee v. Wendall.*.....*87

CONTINUITY OF VOYAGE.

See **ADMIRALTY**, 7.

CONTUMACY.

See **ADMIRALTY**, 5.

CORPORATION.

See CHURCH OF ENGLAND, 6, 9, 12.

COURSE AND DISTANCE.

See LAND, 15, 16, 19.

DEBTOR.

- No debtor of the United States can, at the trial, set off a claim for a debt due to him by the United States, unless such claim shall have been submitted to the accounting officers of the treasury and by them rejected, except in the cases provided for by the statutes. *United States v. Giles*.....*214

DEED.

See BOND, 1, 2, 3: LAND, 4, 5, 6, 10, 11, 18, 19, 21.

DEPOSITION.

See EQUITY, 6.

DEVISE.

- It is not necessary that an executor of a will, made in Virginia, devising to the executor, land in Kentucky, should take out letters testamentary, in Kentucky, to enable him to maintain an ejectment for the land, in Kentucky. *Doe, Lessee of Lewis, v. McFarland*.....*151

DIRECT TAX.

- Under the act of congress to lay and collect a direct tax (July 14th, 1798), before the collector could sell the land of an unknown proprietor, for non-payment of the tax, it was necessary that he should advertise the copy of the list of lands, &c., and a statement of the amount due for the tax, and the notification to pay, for sixty days, in four gazettes of the state, if there were so many. *Parker v. Rule's Lessee*.....*65

DOMICIL.

See ADMIRALTY, 15.

DUTIES.

- The double duties imposed by the act of July 1st, 1812, accrued upon goods which arrived within a collection district on that day. *Arnold v. United States*.....*104
- To constitute an importation, so as to attach the right to duties, it is necessary, not only that there should be an arrival within the

limits of the United States, and of a collection district, but also within the limits of some port of entry. *Id.*

- It seems, that if the condition of the bond be to pay \$1700, or the duties which may be ascertained to be due upon certain goods imported, it is not in the option of the obligor to discharge the bond, by payment of the \$1700, but the United States may recover, in an action at law upon that bond, against the sureties, the whole amount of the duties on those goods, although the duties amount to more than the penalty of the bond. *Id.*
- If captured goods, claimed by a neutral owner, be, by consent, sold under an order of the court, and afterwards, by the final sentence of the court, the proceeds are ordered to be restored to such owner, the amount of the duties due to the United States upon the importation of the goods, must be paid. *The Concord*..... *387
- But if the goods had been specifically restored, and withdrawn from the country, they wruld have been exempt from duties. *Id.*

EJECTMENT.

- If a plaintiff in ejectment claim in his declaration, the whole tract, a deed, showing that he has only an undivided interest in the tract, may be given in evidence. *Doe, Lessee of Lewis, v. McFarland*.....*151

See DEVISE.

EMBARGO.

- Quare?* Whether under the 1st and 2d embargo laws of 1807 and 1808, a registered vessel which had a clearance from one port to another of the United States, was liable to condemnation for going to a foreign port? *The Brig Short Staple*.....*55
- If a collector justify the detention of a vessel, under the 11th section of the embargo law of April 25th, 1808, he need not show that his opinion was correct, nor that he used reasonable care and diligence in ascertaining the facts upon which his opinion was formed. It is sufficient, that he honestly entertained the opinion upon which he acted. *Otis v. Watkins*..... *339
- Quare?* Whether, under that act, the collector was bound to transmit to the president a statement of the facts upon which he formed his opinion, that the vessel intended to violate the embargo laws? Whether he was bound in law, to use reasonable care and diligence in ascertaining the facts thus to be laid before the president? And whether he had a right, under that act, to remove a ves-

sel from one harbor to another, as well as to detain her?.....*Id.*

See BOND, 1, 2, 3.

ENEMY.

1. Fat cattle are provisions, or munitions of war, within the meaning of the act of congress of the 6th of July 1812. *United States v. Barber*.....*243

See ADMIRALTY, 3, 4, 8-10, 12, 15, 17: ALIEN ENEMY.

ENEMY COLONY.

See ADMIRALTY, 9, 10.

ENEMY LICENSE.

See ADMIRALTY, 7.

ENEMY SHIP.

See ADMIRALTY, 21, 22, 24.

ENTRY.

See LAND, 2, 3, 7, 11, 12, 13, 14: TENNESSEE.

EPISCOPAL CHURCH

See CHURCH OF ENGLAND.

EQUITY.

1. A bill in equity to enjoin a judgment at law, is not considered an original bill, and therefore, it is not necessary, in a court of limited jurisdiction, to make other parties, if the introduction of those parties should create a doubt as to the jurisdiction of the court. *Simms v. Guthrie*.....*19

2. A complainant in equity cannot obtain a decree for more than he asked in his bill.*Id.*

3. If the execution of an important exhibit of the complainant be not admitted by the defendant in his answer, who calls upon the complainant to make full proof thereof in the court below, this court will not presume that any other proof was made, than appears in the transcript of the record. *Drummond v. Magruder*.....*122

4. A copy of a deed, from the clerk of a court, without the certificate of the presiding judge, that the attestation of the clerk is in due form, cannot be received as evidence, in a suit in equity.*Id.*

5. If this court reverse a decree upon a technical objection to evidence (probably not made in the court below), it will not dismiss the

bill absolutely, but remand the cause to the court below for further proceedings.*Id.*

6. The answer of one defendant in chancery is not evidence against his co-defendant; nor is his deposition, although he had been discharged, under the act of assembly of Rhode Island (of 1757), from all debts and contracts prior to the date of the discharge; and although the debt in suit was a debt contracted prior to such discharge; such debt having been contracted in a foreign country. *Clarke v. Van Riemsdyk*.....*153

7. An answer in chancery although positive, and directly responsive to an allegation in the bill, may be outweighed by circumstances; especially, if it be respecting a fact which, in the nature of things, can not be within the personal knowledge of the defendant.*Id.*

8. A denial of previous authority, without a denial of subsequent assent, is not such an answer as will deprive the complainant of his remedy; for a subsequent assent is equivalent to an original authority.*Id.*

9. In Kentucky, courts of law will not look beyond the patent, but courts of equity will; and will give validity to the elder entry, against the elder patent. *Finley v. Williams*.....*164

10. It is error, to decide a cause against the answer of the defendant, if the answer be not denied by a replication, nor contradicted by evidence. *Gelttins v. Burch*.....*372

11. In a case where it would be difficult to ascertain the injury resulting from the breach of contract, or the sum in damages which would be a compensation for such injury, a court of equity will not themselves ascertain the injury, nor the damages, nor direct an issue *quantum damnicatus*. *Pratt v. Law*.....*457

12. Where a contract for the sale of land has been in part executed by the vendor, who is unable to convey all the land, a court of equity will decree repayment of a proportionate part of the purchase-money, with interest.*Id.*

13. If three persons mortgage their joint property, to indemnify the drawer of bills of exchange, for their accommodation, in case of protest; and if each of the mortgagors agree to take up a third part of the bills, upon their return under protest, and if two of them neglect to take up their two-thirds, whereby the other mortgagor is compelled to take up the whole of the bills, in consequence of which, he requests the drawer not to release the mortgage, but to hold it for his benefit, a lien in equity is thereby created upon the mortgaged premises, to the amount of two-thirds of the bills, in favor of that mortgagor who took up the whole.*Id.*

14. *Quære?* Whether a subsequent incumbrancer can compel a prior incumbrancer to disclose the consideration which he gave for the notes of the debtor, upon which his incumbrance was founded?.....*Id.*
 15. An equity of redemption, in Maryland, was liable to attachment, before the Maryland act of 1810.*Id.*

ERASURE.

See BOND, 3.

ERROR.

1. It is not necessary, that the transcript of the record should contain the names of the jurors. *Owens v. Hannay*.....*180
 2. If the facts stated in a plea do not amount to a justification in law, yet, if issue be joined thereon, and the facts be proved, as stated, it is error in the judge to instruct the jury, that the facts so proved did not, in law, maintain the issue on the part of the defendant. *Otis v. Watkins*.....*339

See ALIEN ENEMY: EQUITY, 10.

ESCAPE.

1. If a debtor, committed to the state jail, under process from a court of the United States, escape, the marshal is not liable. *Randolph v. Donaldson*.....*76

ESTOPPEL.

See BOND, 2.

EVANS, OLIVER.

1. The act of January 1808, for the relief of Oliver Evans, does not authorize those who erected his machinery, between the expiration of the old patent and the issuing of the new one, to use it, after the issuing of the latter. *Evans v. Jordan*.....*199

EVIDENCE.

1. A material alteration of a bond may be made by consent of all parties, without making the bond void, and such consent may be proved by parol evidence. *Speake v. United States*,*28
 2. A., being sole owner of bill of exchange, indorses it in bank, and delivers it to B., to deliver to C., for collection, and when collected to place it to the credit of A. and B. in account; C. collects the amount, but refuses to place it to the credit of A. and B., who settle their account with C., and pay him the balance; A. afterwards sues C. for the amount

received upon the bill; B. is a competent witness for A. *Taber v. Perrott*.....*39
 3. Circumstances may outweigh positive testimony. *The Struggle*.....*71
 4. *Quære?* Whether parol evidence can be given, that a surveyor intended to express the courses according to the true, and not according to the magnetic meridian? *McIver's Lessee v. Walker*.....*174

See EJECTMENT, 1: EQUITY, 3-8, 10.

EXECUTION.

See MARSHAL, 2-4.

FREE GOODS.

See ADMIRALTY, 21, 22.

FREE SHIPS.

See ADMIRALTY, 12, 21, 22.

FREIGHT.

1. If a neutral vessel be captured on her outward voyage from England to Amelia Island, carrying a hostile cargo, which is condemned, and if, by the charter-party, the outward cargo is to be carried free of freight, but the homeward cargo is to pay at a certain rate, to be ascertained by the nature of the cargo, yet the court will decree freight, *pro rata itineris*, of the outward cargo, to be assessed upon the principles of a *quantum meruit*. *The Society*.....*209

FURTHER PROOF.

See ADMIRALTY, 12, 16.

GLEBE.

See CHURCH OF ENGLAND.

GRANT.

See LAND, 4-8, 11, 21: CHURCH OF ENGLAND, 8-11.

HIGHWASSEE.

See CHEROKEES.

IMPORTATION.

See DUTIES, 2.

INJUNCTION.

See EQUITY, 1.

INSOLVENT.

1. It seems, that a discharge under the act of assembly of Rhode Island (of 1756), from all debts, duties, contracts and demands, outstanding at the time of such discharge, upon surrender of all the debtor's property, will not protect him against a debt contracted in a foreign country. *Clarke's Ex'r v. Van Reimsdyk*.....*155

See EQUITY, 6: PRIORITY OF PAYMENT.

INSTRUCTIONS.

See ADMIRALTY, 7.

ISSUE.

See ERROR, 2.

JURISDICTION.

1. This court has jurisdiction, where one party claims land under a grant from the state of New Hampshire, and the other under a grant from the state of Vermont, although, at the time of the first grant, Vermont was part of New Hampshire. *Town of Pawlet v. Clark*.....*292

See ADMIRALTY, 2, 13, 18, 19: EQUITY, 1.

JURORS.

See ERROR, 1.

JUSTIFICATION.

See ERROR, 2.

KENTUCKY.

See DEVISE: EJECTMENT, 1: EQUITY, 9: LAND, 9-14.

LAND.

1. The land law of Virginia, which gives a right of pre-emption to those who had marked and improved land before the year 1778, refers that right to the time when the improvement was made, and to the time of the passage of the act; and not to the time when the claim for such pre-emption was made before the commissioners. *Simms v. Guthrie*.....*19

2. If an entry be made by the assignee of a pre-emption right, it will be good, although the name of the assignor be not mentioned in the entry, if the entry refer to the warrant, and mention an improvement, provided the place be described with sufficient certainty in other respects.....*Id.*

3. The act of North Carolina (1783, c. 2), opening the land-office, did not prohibit a person

from making several different entries, amounting in the whole to more than 5000 acres, nor from purchasing the rights acquired by others by entries; nor from uniting several entries in one survey and patent; and such union of several entries is allowed by the act of 1784, ch. 19. *Polk's Lessee v. Wendall*.....*87

4. In a patent, the obliteration of the consideration does not make void the grant.....*Id.*

5. A patent justifies a presumption that all the previous requisites of the law have been complied with.....*Id.*

6. A patent is void at law, if the state had no title, or if the officer who issued the patent, had no authority so to do.....*Id.*

7. In North Carolina, the want of an entry nullifies a patent.....*Id.*

8. After the cession of land by North Carolina to the United States, the former had no right to grant those lands to any other grantee, who had not an incipient title before the cession. The question whether such incipient title existed, is, therefore, open at law.....*Id.*

9. It is not necessary that an executor of a will, in Virginia, devising to the executor, land in Kentucky, should take out letters testamentary, in Kentucky, to enable him to maintain an ejectment for the land, in Kentucky. *Doe, Lessee of Lewis, v. McFarland*.....*151

10. If a plaintiff in ejectment claim in his declaration, the whole tract, a deed showing that he has only an undivided interest in the tract, may be given in evidence.....*Id.*

11. In Kentucky, the courts of law will not look beyond the patent, but courts of equity will; and will give validity to the elder entry against an elder patent. *Finley v. Williams*.....*164

12. Between pre-emption rights, the prior improvement will hold the land, against a prior certificate, entry, survey and patent.....*Id.*

13. It is not essential to the dignity of an entry upon a pre-emption warrant, that the entry should, in terms, call for the improvement, although it must in fact include the improvement.....*Id.*

14. An entry calling for "the big blue lick," will not support a survey and patent for land at the upper blue lick; the lower blue lick being generally called "the big blue lick;" although there may be other calls in the entry which seem to designate the upper blue lick as the place intended.....*Id.*

15. If there be nothing in the patent to control the call for course and distance, the land must be bounded by the courses and distances of the patent, according to the magnetic meridian. *McIver's Lessee v. Walker*,*173

16. Course and distance must yield to a call for natural objects. *Id.*
 17. All lands are supposed to have been actually surveyed, and the intention of the grant is to convey the land according to the actual survey. *Id.*
 18. If a patent refer to a plat annexed, and if, in that plat, a water-course be laid down, as running through the land, the tract must be so surveyed as to include the water-course, and to conform, as near as may be, to the plat, although the lines thus run do not correspond with the courses and distances mentioned in the patent, and although neither the certificate of survey, nor the patent, calls for that water-course. *Id.*
 19. *Quare?* Whether parol evidence can be given, that a surveyor intended to express the courses according to the true, and not according to the magnetic, meridian? *Id.*
 20. This court has jurisdiction, where one party claims land under a grant from the state of New Hampshire, and the other under a grant from the state of Vermont, although, at the time of the first grant, Vermont was part of New Hampshire. *Town of Pawlet v. Clark.* *292
 21. A grant of a tract of land in equal shares to 63 persons, to be divided among them in 68 equal shares, with a specific appropriation of five shares, conveys only a sixty-eighth part to each person. If one of the shares be declared to be "for a glebe for the church of England as by law established," that share is not held in trust by the grantees, nor is it a condition annexed to their rights of shares. *Id.*
 22. A legislative grant cannot be repealed. *Id.*
 23. Where a contract for the sale of land has been in part executed, by a conveyance of part of the land, and the vendor is unable to convey the residue, a court of equity will decree the repayment of a proportionate part of the purchase-money, with interest. *Pratt v. Law.* *458
 24. An equity of redemption of real estate, in Maryland, was liable to attachment, before the act of 1810. *Id.*

See CHURCH OF ENGLAND: EQUITY, 13: WASHINGTON CITY, 1.

LAW OF NATIONS.

1. In deciding a question of the law of nations, the court will respect the decisions of foreign courts. *Thirty Hogsheads of Sugar v. Boyle.* *191

LEGISLATIVE GRANT.

See LAND, 22.

LIEN.

See EQUITY, 13.

MAGNETIC MERIDIAN.

See LAND, 18, 19.

MARSHAL.

1. If a debtor, committed to a state jail, under process from the courts of the United States, escape, the marshal is not liable. *Randolph v. Donaldson.* *76
 2. If a marshal, before the date of his official bond, receive, upon an execution, money due to the United States, with orders from the comptroller to pay it into the Bank of the United States, which he neglects to do, the sureties in his official bond, executed afterwards, are not liable therefor, upon the bond, although the money remain in the marshal's hands, after the execution of the bond. *United States v. Giles.* *912
 3. The comptroller of the treasury has a right to direct the marshal to whom he shall pay money received upon execution; and a payment, according to such direction, is good; and it seems, he may avail himself of it, upon the trial, without having submitted it as a claim to the accounting officers of the treasury. *Id.*
 4. *Quare?* Whether the sureties in a marshal's bond, conditioned for the faithful execution of his duty, "during his continuance in the said office," are liable for money received by him, after his removal from office, upon an execution which remained in his hands, at the time of such removal? *Id.*

MORTGAGE.

1. An equity of redemption of land, in Maryland, was liable to attachment, before the act of assembly of Maryland of 1810. *Pratt v. Law.* *459
 See EQUITY, 13.

MUNITIONS OF WAR.

See ENEMY, 1.

NEUTRALS.

1. Circumstances may outweigh documentary evidence of neutrality. *Cargo of The Hazard.* *205
 See ADMIRALTY, 21-4.

NEW HAMPSHIRE.

See CHURCH OF ENGLAND, 8-14: JURISDICTION, 3.

NON-INTERCOURSE.

1. The non-intercourse act of 28th of June 1809, which requires a vessel bound to a permitted port to give bond, in double the amount of vessel and cargo, not to go to a prohibited port, is applicable to a vessel sailing in ballast. *The Ship Richmond*.....*102
2. Under the non-intercourse act of 1809, a vessel from Great Britain had a right to lie off the coast of the United States, to receive instructions from her owners in New York, and, if necessary, to drop anchor, and in case of a storm, to make a harbor; and if prevented by a mutiny of her crew from putting out to sea again, might wait in the waters of the United States for orders. *The Cargo of The Fanny*.....*181

NORTH CAROLINA.

See LAND, 3-8.

OBLIGATION.

See BOND.

ORDERS IN COUNCIL.

See ADMIRALTY, 7.

ORPHANS' COURT.

1. It is error in the orphans' court for the county of Washington, in the district of Columbia, to decide a cause against the answer of a defendant, if the answer has not been denied by a replication; and if there be no evidence in the record contradicting that answer. *Gettings v. Burch*.....*372

PARSON.

See CHURCH OF ENGLAND, 13.

PATENT.

See LAND, 8-8, 11-18, 21, 22.

PATENT-RIGHT.

See EVANS, OLIVER.

PAWLET, TOWN OF.

See CHURCH OF ENGLAND.

PENAL STATUTES.

1. A party who offers an excuse for violating a penal statute, must make out the *vis major*

under which he shelters himself, so as to leave no reasonable doubt of his innocence. *The Struggle*.....*71

PIOUS USES.

See CHURCH OF ENGLAND, 11.

PLAT.

See LAND, 18.

PLEADINGS.

See BOND, 2: EMBARGO, 2: ERROR, 2.

PRACTICE.

See ADMIRALTY, 4-6, 14, 16-19: ALIEN ENEMY: ERROR, 1, 2: LAND, 9: SALVAGE, 1.

PRE-EMPTION.

See LAND, 2, 12, 13, 20.

PRESENTATION.

See CHURCH OF ENGLAND, 12.

PRESUMPTION.

See LAND, 5.

PRIORITY OF PAYMENT.

1. The 5th section of the act of the 3d of March 1797, giving a priority of payment to the United States out of the effects of their debtors, did not apply to a debt due before the passing of that act, although the balance was not adjusted at the treasury, until after the act was passed. *United States v. Bryan*.....*374

PRIVATEERS.

See ADMIRALTY, 7: SALVAGE.

PRIZE OF WAR.

See ADMIRALTY, 1, 3-7, 8-10, 12-17, 19-24: DUTIES, 4: FREIGHT: SALVAGE.

PRODUCE OF ENEMY'S SOIL.

See ADMIRALTY, 9, 10.

PROMISSORY NOTES.

See SET-OFF, 1.

PUBLIC ACCOUNTS.

See ACCOUNTS, PUBLIC.

RE-CAPTURE.

See ADMIRALTY, 15: SALVAGE.

RECIPROCITY.

See ADMIRALTY, 15, 23,

RESCUE.

See ADMIRALTY, 1.

RETALIATION.

See ADMIRALTY, 23.

SALVAGE.

1. American property re-captured may be restored on payment of salvage, although the libel pray condemnation of it as prize of war, and do not claim salvage. Salvage is an incident to the question of prize. *The Adeline*.....*244
2. By the act of the 3d of March 1800, one-sixth part only is allowed to a privateer for salvage, upon the re-capture of the cargo on board a private armed vessel of the United States, although one-half be allowed for the re-capture of the vessel.*Id.*

SEIZURE.

See ADMIRALTY, 2, 18.

SET-OFF.

1. By making a note negotiable at bank, the maker authorises the bank to advance, on his credit, to the owner of the note, the sum expressed on its face; and it would be a fraud upon the bank, to set up off-sets against the note, in consequence of any transactions between the parties. *Mandeville v. Union Bank*.....*9
2. No debtor of the United States can, at the trial, set off a claim for a debt due to him by the United States, unless such claim shall have been submitted to the accounting officers of the treasury of the United States and by them rejected, except in the cases provided for by statute. *United States v. Giles*.....*214

SPANISH TREATY.

See ADMIRALTY, 22.

STATE COURTS.

See CONSTRUCTION.

STATE JAIL.

See MARSHAL, 1.

STATUTES.

See CONSTRUCTION

SURETIES.

See BOND, 4-6.

SURVEY.

See LAND, 15-19

TAXES.

See DIRECT TAX.

TENNESSEE.

1. In Tennessee, the younger patent on the elder entry, prevails over the elder patent on the younger entry. *Polk's Lessee v. Wendall*.....*87

TEST AFFIDAVIT.

See ADMIRALTY, 14.

TRANSFER IN TRANSITU.

See ADMIRALTY, 8.

UNITED STATES.

See PRIORITY OF PAYMENT: SET-OFF, 2.

VERMONT.

See CHURCH OF ENGLAND, 8-14: JURISDICTION, 1.

VIRGINIA.

See CHURCH OF ENGLAND, 1-7: LAND, 1-2.

WASHINGTON CITY.

1. In the sales of lots in the city of Washington, the lots are not chargeable for their proportion of an internal alley, laid out for the common benefit of those lots, although the practice so to charge them have been heretofore universally acquiesced in by purchasers; and if a purchaser has acquiesced in that practice, and has received a conveyance ac-

cordingly, without objection, yet he does not thereby acquire a fee-simple in such proportion of the alley, and may in equity recover back the purchase-money which he has paid therefor. *Pratt v. Law*.....*456

2. If a purchaser of city lots stipulates to build, within a limited time, a house on every third lot purchased, or in that proportion, and receives conveyances for the greater part of the lots, he is not bound to build in propor-

326

tion to the lots conveyed, unless the whole number be conveyed.....*Id.*

WILL.

See DEVISE.

WITNESS.

See EQUITY, 6 : EVIDENCE, 2.











