

# INDEX

## TO THE

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3. 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.*
4. 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
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#### EQUITY.

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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.*
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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
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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
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  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
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  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. *Quere?* 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 holden 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.* . . . . \*212
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. *Quere?* 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 sail-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, 3-8, 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-

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

## WILL.

See DEVISE.

## WITNESS.

See EQUITY, 6 : EVIDENCE, 2.

















