

INDEX

TO THE MATTERS CONTAINED IN THIS VOLUME.

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

ADMIRALTY.

1. The courts of the United States have exclusive jurisdiction of all seizures for a breach of the laws of the United States; and if the seizure be adjudged wrongful, and without probable cause, the party may proceed, at his election, by a suit at common law, or in the court of admiralty, for damages for the illegal act. *Slocum v. Mayberry*.....*1, 10
2. Under the judiciary act of the 20th September 1789, and the act of the 3d March 1803, causes of admiralty and maritime jurisdiction cannot be removed, by writ of error, from the circuit court, for re-examination in the supreme court; the appropriate mode of removing such causes is by appeal. *The San Pedro*.....*132, 137

See JURISDICTION, 1: PRIZE.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. A letter, written within a reasonable time, before or after the date of a bill of exchange, describing it in terms not to be mistaken, and promising to accept it, is, if shown to the person who afterwards takes the bill on the credit of the letter, a virtual acceptance, binding the person who makes the promise. *Coolidge v. Payson*.....*66
2. Review of the English cases on this subject.....*Id.*
3. Law of France as to previous acceptance.....*Id.* *75
4. American decisions on the same subject.....*Id.* *76
5. A demand of payment of a promissory note must be made of the maker, on the last day of grace; and where the indorser resides in a different place, notice of the default of the

maker should be put into the post-office, early enough to be sent by the mail of the succeeding day. *Lenox v. Roberts*.....*377

6. An action of debt will lie, by the payee or indorsee of a bill of exchange, against the acceptor, where it is expressed to be for value received. *Raborg v. Peyton*.....*385.

CHANCERY.

1. H., in contemplation of marriage with B., gave a bond for \$5000 and interest, to trustees, to secure to B. a support during the marriage, and after the death of H., in case she should survive him, and to their child or children, in case he should survive her; with condition, that if H. should, within the time of his life, or within one year after his marriage (whichsoever of the said terms should first expire), convey to the trustees, some good estate, real or personal, sufficient to secure the annual payment of \$300, for the separate use of his wife, during the marriage, and also sufficient to secure the payment of the said \$5000 to her use, in case she should survive her husband, to be paid within six months after his death; and in case of her death before her husband, to be paid to their child or children; or if H. should die before B., and by his will should, within a year from its date, make such devises and bequests as should be adequate to these provisions, then the bond to be void H. died, leaving his widow B., and a son, having, by his last will, devised a tract of 1000 acres of land, in the Mississippi Territory, to his son in fee; a tract of 10,000, acres in Kentucky, equally between his wife and son, with a devise over to her, in fee, of the son's moiety, if he died before he attained "the lawful age to will it away;" and

- the residue of his estate, real and personal, to be divided equally between his wife and son, with the same contingent devise over to her as with regard to the tract of 10,000 acres: the value of the property thus devised to her, beside the contingent interest, might have been estimated, at the time of H.'s death, at \$10,000. B. subsequently died, having made a nuncupative will, by which she devised all her estate, "whether vested in her by the will of her deceased husband or otherwise," to be divided between her son and the plaintiff in the cause, with a contingent devise of the whole to the survivor: the son afterwards died, and the plaintiff brought his bill to charge the lands of H. with the payment of the bond for \$5000 and interest, to which the plaintiff derived his right under the nuncupative will of B.: by the laws of Kentucky, this will did not pass the real estate of the testator, but was sufficient to pass her personal estate, including the bond: *held*, that the provision in the will of H., for his wife, must be taken in satisfaction of the bond, but subject to her liberty to elect under the will and the bond, and that this privilege was extended to her devisee, the plaintiff. *Hunter v. Bryant*. *32
2. Actual maintenance is equivalent to the payment of a sum secured for separate maintenance, and therefore, interest upon the bond during the husband's lifetime, was not allowed. *Id.*
3. Under all the circumstances of the case, it was determined, that the bond was chargeable on the residue of the estate, and of this, the personalty first in order. *Id.*
4. It is a universal rule of equity, that he who asks for a specific performance, must be in a condition to perform himself; therefore, in a suit for the specific performance of a contract, by conveying lands in Ohio, stipulated to be conveyed as the consideration for other lands sold in Kentucky, it was held, that the vendor, being unable to make a title free from incumbrances to the lands sold in Kentucky, was not entitled to a decree for a specific performance. *Morgan's Heirs v. Morgan*. *290
5. Origin of the doctrine of the English court of chancery as to the specific performance of agreement. *Id.* *302
6. Does not in general extend to the enforcing of agreements, respecting personal property. *Id.* *303
7. Vendee not obliged to take a defective title; but may elect to have compensation, by deduction from the purchase-money, in case of a mistake or misrepresentation as to quantity or quality, or the estate of the vendor in the property sold, and a specific performance as the residue. *Id.* *303
8. Moral certainty sufficient as to title. *Id.* *304
9. How far time is material in the enforcing of specific performance. *Id.*
10. In what cases, the court will direct an issue of *quantum damnificatus*, or a reference to the master, to ascertain the damages, where a specific performance is refused, but the party is entitled to damages. *Id.*
11. In order to obtain a specific performance of a contract, its terms should be so precise as that neither party can reasonably misunderstand them; if the contract be vague and uncertain, or the evidence to establish it be insufficient, a court of equity will not enforce it, but will leave the party to his legal remedy. *Colson v. Thompson*. *336, 341
12. The plaintiff, who seeks for a specific performance of an agreement, must show that he has performed, or offered to perform, on his part, the acts which formed the consideration of the alleged undertaking, on the part of the defendant. *Id.* *342
13. Cases where a court of equity will not decree the performance of agreements for want of certainty. *Id.* *341
14. The court will, if practicable, execute an uncertain agreement, by rendering it certain. *Id.*
15. Where all the property of the late Bank of the United States had been assigned by a general assignment, in trust, to assignees, for the purpose of liquidating its affairs, *Quere?* Whether any action at law could be maintained by the assignees, on certain promissory notes, indorsed to, and the property of the bank, which had not been specially assigned nor indorsed to the assignees? *Lenox v. Roberts*. *373
16. However this may be, it is clear, that a suit in equity might be maintained by the assignees against the party to the notes. *Id.* *376

See PRACTICE.

COLLUSIVE CAPTURE.

See EMBARGO, 8: PRIZE, 9, 14.

COVENANT.

1. A trustee is, in general, only suable in equity, but if he chooses to bind himself by a personal covenant, he is liable at law, for a breach of that covenant, although he describe himself as covenanting as trustee. *Duwall v. Craig*. *45, 56
2. Where the parties to a deed covenanted severally against their own acts and incumbrances, and also to warrant and defend against their own acts, and those of all other persons, with an indemnity in lands of an equivalent value, in case of eviction; it was

- held, that these covenants were independent, and that it was unnecessary to allege in the declaration, any eviction, or any demand or refusal to idemnify with other lands, but that it was sufficient to allege a prior incumbrance by the acts of the grantors, &c.; and that the action might be maintained on the first covenant in order to recover pecuniary damages. *Id.*
3. Where the grantors covenant generally against incumbrances made by them, it may be construed as extending to several, as well as joint incumbrances. *Id.*
 4. An averment of an eviction under an elder title is not always necessary to sustain an action on a covenant against incumbrances; if the grantee be unable to obtain possession, in consequence of an existing possession or seisin by a person claiming and holding under elder title, it is equivalent to an eviction, and a breach of the covenant *Id.*
 5. Manner in which a person who acts as agent for another must execute a deed, in order to avoid a personal responsibility. *56
 6. Cases illustrative of the doctrine that a trustee, agent, &c., who binds himself by a personal covenant, is liable at law for a breach of that covenant, although he describe himself as covenanting as trustee. *Id.*
 7. Distinction as to public agents. *Id.*
 8. Damages recoverable upon a breach of covenant of good right and title to convey against incumbrances, and for quiet enjoyment, and of general warranty. *Id.* *62
 9. Rules of the civil law, as to damages in case of eviction. *Id.* *65

See PLEADING, 1, 2, 3.

CONSTITUTIONAL LAW.

1. The courts of the United States have exclusive jurisdiction of all seizures made on land or water, for a breach of the laws of the United States, and any intervention of a state authority, which, by taking the thing seized out of the hands of the United States officer, might obstruct the exercise of this jurisdiction, is illegal. *Slocum v. Mayberry*. . . *1, 9
2. In such a case, the court of United States, having cognisance of the seizure, may enforce a redelivery of the thing, by attachment or other summary process. *Id.*
3. The question under such a seizure, whether a forfeiture has been actually incurred, belongs exclusively to the courts of the United States, and it depends upon the final decree of such courts, whether the seizure is to be deemed rightful or tortious. *Id.*
4. If the seizing officer refuse to institute proceedings to ascertain the forfeiture, the dis-

- trict court may, upon application of the aggrieved party, compel the officer to proceed to adjudication, or to abandon the seizure. *Id.*
5. Under the constitution of the United States, the power of naturalization is exclusively in congress. *Chirac v. Chirac*. . . . *259, 269
 6. The jurisdiction of the circuit court of the United States extends to a case between citizens of Kentucky, claiming lands exceeding the value of \$500, under different grants, the one issued by the state of Kentucky, and the other by the state of Virginia, upon warrants issued by Virginia, and locations founded thereon, prior to the separation of Kentucky from Virginia: it is the grant which passes the legal title to the land; and if the controversy be founded upon the conflicting grants of different states, the judicial power of the courts of the United States extends to the case, whatever may have been the equitable title of the parties prior to the grant. *Colson v. Lewis*. *377

DOMICIL.

1. It seems, that where a native citizen of the United States emigrated, before a declaration of war, to a neutral country, there acquired a domicile, and afterwards returned to the United States, during the war, and re-acquired his native domicile, he became a redintegrated American citizen; and could not, afterwards, *flagrante bello*, acquire a neutral domicile, by again emigrating to his adopted country. *The Dos Hermanos*. *77, 98
2. Effect of domicile on national character. Appendix, note I. *27, 28, 29

See PRACTICE, 10: TREATY, 2.

DUTIES.

1. The act of the 23d July 1813, imposing a duty according to the capacity of the still, on all stills employed in distilling spirits from domestic or foreign materials, and inflicting a penalty of \$100, and double duties, for using any still or stills, or other implements, in distilling spirituous liquors, without first obtaining a license, as required by the act, does not extend to the rectification or purification of spirits already distilled. *United States v. Tenbroek*. *248
2. The word insolvency, mentioned in the duty act of 1790, § 45; and repeated in the act of 1797, § 5, and of 1799, § 65, means a legal insolvency, which, whenever it occurs, the right of preference arises to the United States, as well as in the other specified cases to which the acts of 1797 and 1799 have extended the cases of insolvency. *TheLusson v. Smith*. *396, 424

3. But if, before the right of preference has accrued to the United States, the debtor has made a *bonâ fide* conveyance of his estate to a third person, or has mortgaged it to secure a debt, or if his property has been seized under an execution, the property is divested out of the debtor, and cannot be made liable to the United States. *Id.*
4. A judgment gives to the judgment-creditor a lien on the debtor's lands, and a preference over all subsequent judgment-creditors; but the law defeats the preference in favor of the United States, in the cases specified in the act of 1799, § 65. *Id.*

ELECTION AND SATISFACTION.

See CHANCERY, 1-3.

EMBARGO.

1. Where a seizure was made under the 11th section of the embargo act of April 1808, it was determined, that no power is given by law to detain the cargo, if separated from the vessel, and that the owner had a right to take the cargo out of the vessel, and to dispose of it in any way not prohibited by law; and in case of its detention, to bring an action of replevin therefor in the state court. *Slocum v. Mayberry*. *1, 10
2. In seizures under the embargo laws, the law itself is a sufficient justification to the officer, where the discharge of duty is the real motive, and not the pretext for detention; and it is not necessary to show probable cause. *Otis v. Walter*. *18, 21
3. But the embargo act of the 25th of April 1808, related only to vessels ostensibly bound to some port in the United States, and a seizure, after the termination of the voyage, is unjustifiable; and no further detention of the cargo is lawful, than what is necessarily dependent on the detention of the vessel. . *Id.*
4. It is not indispensable to the termination of a voyage, that a vessel should arrive at the terminus of her original destination; but it may be produced by stranding, stress of weather, or any other cause inducing her to enter another port, with a view to terminate her voyage *bonâ fide*. *Id.*
5. But if a vessel, not actually arriving at her port of original destination, excites an honest suspicion in the mind of the collector, that her demand of a permit to land the cargo was merely colorable, this is not a termination of the voyage, so as to preclude the right of detention. *Id.*
6. Under the embargo act of the 22d December 1807, the words "an embargo shall be laid," not only imposed upon the public officers, the duty of preventing the departure of

- registered or sea-letter vessels on a foreign voyage, but consequently, rendered them liable to forfeiture, under the supplementary act of the 9th January 1808. *The William King* *148, 153
7. In such case, if the vessel be actually and *bonâ fide* carried by force to a foreign port, she is not liable to forfeiture. *Id.*
 8. But if the capture under which it is alleged the vessel is compelled to go to a foreign port, be fictitious and collusive, condemnation will ensue. *Id.*

EVIDENCE.

1. Where a witness, a clerk to the plaintiff, swore that the several articles of merchandise contained in the account annexed to his deposition, were sold to the defendant by the plaintiff and were charged in the plaintiff's day-book, by the deponent and another person (since dead), and that the deponent delivered the goods, and further swore, that he had referred to the original entries in the day-book: held, that this was sufficient evidence to prove the sale and delivery of the goods. *McCoul v. Lekamp's Adm'r*. *111, 116
2. Law of France as to evidence of tradesmen's books. *Id.* *117
3. English cases on the same subject. . *Id.* *118
4. Rules of practice in the United States. . *Id.*
5. Interest in the subject-matter of the suit, a fatal objection to a witness, by the civil law. *Laidlaw v. Organ*. *192
6. The answer of one defendant to a bill in chancery cannot be used as evidence against his co-defendant; and the answer of an agent, is not evidence against his principal, nor are his admissions *in pais*, unless they are a part of the *res gestæ*. *Leeds v. Marine Ins. Co*. *380, 383

See PRIZE.

INDICTMENT.

1. Under the act of the 6th July 1812, "to prohibit American vessels from proceeding to or trading with the enemies of the United States, and for other purposes," living fat oxen, &c., are articles of provision and munitions of war, within the true intent and meaning of the act. *United States v. Sheldon*. *119
2. Driving living fat oxen, &c., on foot, is not a transportation thereof, within the true intent and meaning of the same act. *Id.*

JURISDICTION.

1. Where a seizure for a breach of the laws of the United States is finally adjudged wrong-

ful, and without probable cause, by their courts, the party may proceed, at his election, by a suit at common-law, or in the instance court of admiralty, for damages for the illegal act; but the common-law remedy in such case must be sought for in the state courts; the courts of the United States having no jurisdiction to decide on the conduct of their officers, in the execution of their laws, in suits at common law, until the case shall have passed through the state courts.

Slocum v. Mayberry.....*10

2. The jurisdiction of the circuit court having once vested, between citizens of different states, cannot be divested by a change of domicile of one of the parties, and his removal into the same state with the adverse party, *pendente lite*. *Morgan's Heirs v. Morgan*.....*290, 297
3. This court has not jurisdiction to issue a writ of *mandamus* to the register of a land-office of the United States, commanding him to enter the application of a party for certain tracts of land, according to the 7th section of the act of the 10th of May 1800, "providing for the sale of the lands of the United States north-west of the Ohio, and above the mouth of Kentucky river," which *mandamus* had been refused by the supreme court of the state of Ohio, upon a submission by the register to the jurisdiction of that court, being the highest court of law or equity in that state. *McCluny v. Silliman*.....*369
4. Cases where the courts of the United States have, or have not, authority to issue writs of *mandamus*.....*Id.* *370

See CONSTITUTIONAL LAW.

LICENSE.

1. The sailing under the enemy's license constitutes, of itself, an act of illegality, which subjects the property to confiscation, without regard to the object of the voyage, or the port of destination. *The Ariadne*....*143

LOCAL LAW.

1. It is essential to the validity of an entry, that the land intended to be appropriated should be so described as to give notice of the appropriation to subsequent locators. *Johnson v. Pannel's Heirs*.....*206, 208
2. In taking the distance from one point to another on a large river, the measurement is to be with its meanders, and not in a direct line.....*Id.*
3. In ascertaining a place to be found by its distance from another, the vague words

"about" or "nearly," and the like, are to be rejected, if there are no other words rendering it necessary to retain them; and the distance is to be taken positively.....*Id.*

4. Reasonable certainty is required, both in the descriptive call and the locative call of an entry: if the descriptive call will not inform a subsequent locator in what neighborhood he is to search for the land, the entry is defective, unless the particular object is one of sufficient notoriety: if, after having reached the neighborhood, the locative object cannot be found within the limits of the descriptive calls, the entry is also defective. A single call may, at the same time, be of such a nature (as, for example, a spring of general notoriety), as to constitute within itself a call of description and of location; but if this call be accompanied with another, such as a marked tree at the spring, it seems to be required, that both should be satisfied.....*Id.*
5. The call for an unmarked tree, of a kind which is common in the neighborhood of a place sufficiently described by the other parts of the entry, to be fixed with certainty, may be considered as an immaterial call.....*Id.*
6. Therefore, where the entry was in the following words, "D. P. enters 2000 acres, on a treasury-warrant, on the Ohio, about twelve miles below the mouth of Licking, beginning at a hickory and sugar tree on the river bank, running up the river from thence 1060 poles, thence at right angles to the same, and back for quantity," it was held, that the call for a sugar tree might be declared immaterial, and the location be sustained on the other calls..... *Id.*
7. The entry in this case was decreed to be surveyed, beginning twelve miles below the mouth of Licking, on the bank of the Ohio, and running up that river 1060 poles; which line was to form the base of a rectangular parallelogram, to include 2000 acres of land.....*Id.*
8. An error in description is not fatal in an entry, if it does not mislead a subsequent locator. The following entry, "H. M. enters 1687 acres of land on a treasury-warrant, No. 6168, adjoining Chapman Aston, on the west side, and Israel Christian, on the north, beginning at Christian's north-west corner, running thence west 200 poles; thence, north, parallel with Aston's line, until an east course to Aston's line will include the quantity," was held valid, although no such entry as that referred to could be found in the name of Aston, but the particular description clearly pointed out an entry in the name of Chapman Austin, as the one intended, and this, together with Christian's entry, satisfied

- the calls of H. M.'s entry. *Shipp v. Miller's Heirs*. *316
9. It is a general rule, that when all the calls of an entry cannot be complied with, because some are vague or repugnant, the latter may be rejected or controlled by other material calls, which are consistent and certain: course and distance yield to known, visible, and definite objects; but they do not yield, unless to calls more material and equally certain. *Id.*
10. It is a settled rule, that where no other figure is called for in an entry, it is to be surveyed in a square, coincident with the cardinal points, and large enough to contain the given quantity, and that the point of beginning is deemed to be the centre of the base line of such square. *Id.*
11. The act of Kentucky of 1797, taken in connection with preceding acts, declaring that entries for lands shall become void, if not surveyed before the first day of October 1798, with a proviso, allowing to infants and *femes covert* three years after their several disabilities are removed, to complete surveys on their entries: *held*, that if any one or more of the joint-owners be under the disability of infancy or coverture, it brings the entry within the saving of the proviso as to all the other owners. Distinction between this statute and a statute of limitations of personal actions. *Id.*
12. A call for a spring branch, generally, or for a spring branch, to include a marked tree at the head of such spring, is not a sufficiently specific locative call; and where further certainty is attempted to be given, by a call for course and distance, and the course is not exact, and the distance called for is a mile and a half from the place where the object is to be found, the entry is void for uncertainty. . . . *Id.*
13. By the act of incorporation of the Union Bank of Georgetown, § 11, the shares of any individual stockholders are transferable only on the books of the bank, according to the rules (conformable to law) established by the president and directors; and all debts due and payable to the bank, by a stockholder, must be satisfied, before a transfer shall be made, unless the president and directors should direct to the contrary: *Held*, that no person could acquire a legal title to any shares, except under a regular transfer, according to the rules of the bank; and if any person takes an equitable assignment, it must be subject to the rights of the bank, under the act of incorporation, of which he is bound to take notice. *Union Bank v. Laird*. . . * 390
14. A creditor may lawfully take and hold several securities for the same debt, and cannot be compelled to yield up either, until the debt

is paid; therefore, the bank has a right to take security from one of the parties to a bill or note discounted by it, and also to hold the shares of another party as security for the same. *Id.*

See STATUTES OF MARYLAND: STATUTES OF NORTH CAROLINA.

MASTER.

1. Where the owner of certain slaves, and also part-owner of a vessel, hired the slaves to the master of the vessel, to proceed as mariners on board, on a voyage, at the usual wages, and without any special contract of hiring: *held*, that the master, having acted with good faith, was not responsible for the escape of the slaves, in a foreign port, which was one of the contingents *termini* of the voyage; and, consequently, within the hazards to which the owner knew his property might be exposed; although it was doubtful, whether the master had strictly pursued his orders in going to such port. *Beverly v. Brooke*. *109
2. Duties of the master to the ship-owner, and extend of his responsibility. *Id.* *169
3. Effect of the illegal acts of the master upon the owner's property, and as the agent of the cargo. Appendix, note I. *37

PLEADING.

1. Variances between the writ and declaration, are matters pleadable in abatement only, and cannot be taken advantage of, upon general demurrer to the declaration. *Duwall v. Craige*. *45, 55
2. No *profert* of a deed is necessary, where it is stated only as inducement, and where the plaintiff is neither a party nor privy to it. . . *Id.*
3. Manner of assigning breaches upon the covenants of title, &c. *Id.* *62
4. In a writ of right, brought under the statute of Kentucky, where the demandant described his land by metes and bounds, and counted against the tenants jointly; *held*, that this was matter pleadable in abatement only, and and that, by pleading in bar, the tenants admitted their joint seisin, and lost the opportunity of pleading a several tenancy. *Liter v. Grean*. *306, 307
5. The tenants could not, in this case, severally plead, in addition to the *mise* or general issue, that neither the plaintiff, nor his ancestor, nor any other under or from whom he derived his title to the demanded premises, were ever actually seised or possessed thereof, or of any part thereof; because it amounted to the general issue, and was an application

- to the mere discretion of the court, which is not examinable upon a writ of error. . . . *Id.*
6. *Quære?* Whether the tenants could plead the *mise* severally, as to the several tenements held by them, parcel of the demandant's premises, without answering or pleading anything as to the residue? *Id.*
 7. Under such pleas, and the replication prescribed by the statute, the *mise* was joined; the parties proceeded to trial; and the following general verdict was found, viz: "The jury find that the demandant hath more mere right to hold the tenement, as he hath demanded, than the tenants, or either of them, have to hold the respective tenements set forth in their respective pleas, they being parcels of the tenement in the count mentioned:" it was *held*, that this verdict, being certain to a common intent, was sufficient to sustain a judgment. *Id.*
 8. Also held, that a joint judgment against the tenants for costs, as well as the land, was correct. *Id.*

PRACTICE.

1. A. L. brought an action of *assumpsit*, in the circuit court, and after issue joined, the plaintiff died, and the suit was revived by *scire facias*, in the name of his administratrix; while the suit was still depending, the administratrix intermarried with F. A., which marriage was pleaded *puis darrein continance*: *held*, that the *scire facias* was thereupon abated, and a new *scire facias* might be issued to revive the original suit, in the name of F. A. and wife, as the personal representative of A. L., in order to enable her to prosecute the suit until a final judgment, under the judiciary act of 1789, § 31. *McCoul v. Lekamp's Adm'r.* *111, 115
2. Under the judiciary act of 1789, and the act of the 3d of March 1803, causes of admiralty and maritime jurisdiction, or in equity, cannot be removed, by writ of error, from the circuit court, for re-examination in the supreme court. *The San Pedro.* *182
3. The appropriate mode of removing such causes is by appeal; and the regulations contained in the 22d and 23d sections of the judiciary act, respecting the time within which a writ of error shall be brought, when it shall operate as a *supersedeas*; the citation to the adverse party, the security to be given by the plaintiff in error, and the restrictions upon the appellate court as to reversals, &c., are applicable to appeals, and to be substantially observed; except that where the appeal is prayed at the same term when the decree is pronounced, a citation is not necessary. . . . *Id.*
4. Nature of the process of sequestration in

- the practice of the civil law. *Laidlaw v. Organ.* *179
5. Intervention, in the practice of the civil law, nature of. *Id.* *192
 6. A verdict is bad, if it varies from the issue in a substantial matter, or if it find only a part of that which is in issue; and though the court may give form to a general finding, so as to make it harmonize with the issue, yet, if it appears, that the finding is different from the issue, or is confined to a part only of the matter in issue, no judgment can be rendered upon the verdict. *Patterson v. United States.* *221
 7. A circuit court has no authority to issue a *certiorari*, or other compulsory process, to the district court, for the removal of a cause from that jurisdiction, before a final judgment or decree is pronounced. *Id.*
 8. In such a case, the district court may, and ought, to refuse obedience to the process of the circuit court; and either party may move the circuit court for a *procedendo*, after the transcript of the record is removed into that court, or may pursue the cause in the district court, as if it had not been removed. . . . *Id.*
 9. But if the party, instead of properly taking advantage of the irregularity in the proceedings, enters his appearance in the circuit court, takes defence, and pleads to issue, it is too late, after verdict, to object to the irregularity, and the supreme court, will, on error, consider the cause as an original suit in the circuit court. *Id.*
 10. The jurisdiction of the circuit court having vested, between citizens of different states, cannot be divested by a change of domicile of one of the parties, and his removal into the same state with the adverse party, *pendente lite*. *Morgan's Heirs v. Morgan.* . *290, 297
 11. Rule requiring all persons interested to be parties to a bill in chancery. *Id.* *298
 12. Exceptions to this rule. *Id.*
 13. Form of proceeding in writs of right. *Liter v. Green.* *306
 14. Distinction between a writ of right patent, and a writ of right close. *Id.* *311
 15. No writ of error lies to the highest court of law or equity of a state, under the 25th section of the judiciary act of 1789, unless there be something apparent on the record bringing the case within the appellate jurisdiction of this court. *Inglee v. Coolidge.* . . *363, 368
 16. The report of the judge who tries the cause at *nisi prius*, containing a statement of the facts, is not to be considered as a part of the record; the judgment being rendered upon a general verdict, and the report being mere matter *in pais*, to regulate the discretion of the court, as to the propriety of granting a

- new trial, the writ of error, in such a case, will be dismissed. *Id.*
17. Consequence of moving for a new trial, instead of tendering a bill of exceptions or having a special verdict found *Id.* *367
18. No costs are given, where the writ of error is dismissed for want of jurisdiction. *Id.* *368
19. But costs will be allowed, if the original defendant be also defendant in error. *Id.* *363
20. Where a chancery cause is set down for hearing, on the bill, answer and exhibits, without other pleadings, the whole of the answer must be considered as true. *Leeds v. Marine Ins. Co. of Alexandria.* . . . *380, 383
21. A writ of error does not lie, to carry to this court, a civil cause which has been carried from the district to the circuit court by writ of error. *United States v. Barker.* . . . *395
22. The United States never pay costs. *Id.*
23. The provision in the judiciary act of 1789, § 30, as to taking depositions *de bene esse*, does not apply to cases pending in this court, but only to cases in the district and circuit courts: testimony by depositions can be regularly taken for this court only under a commission issuing according to its rules. *The Argo.* *287
24. Further proof, in revenue or instance causes. *Id.* *289
- See ADMIRALTY, 1: BILL OF EXCHANGE, 5: CHANCERY, 15, 16: CONSTITUTIONAL LAW, 1-4, 6: JURISDICTION, 1-4: PRIZE.

PRIORITY.

See DUTIES, 2-4.

PRIZE.

1. The evidence to acquit or condemn, must come, in the first instance, from the papers and crew of the captured vessel. *The Dos Hermanos.* *76, 79
2. It is the duty of the captors, to bring the ship's papers into the registry of the district court, and to have the examinations of the principal officers and seamen taken on the standing interrogatories. *Id.*
3. It is exclusively upon these papers, that the cause is to be heard in the first instance. If, from the evidence, the property appears clearly to be hostile or neutral, condemnation or restitution immediately follows: if the property appears to be doubtful, or the case suspicious, further proof may be granted, according to the rules which govern the legal discretion of the court. *Id.*
4. If the parties have been guilty of gross fraud, or misconduct, or illegality, further

- proof is not^o allowed, and condemnation follows. *Id.*
5. Although some apology may be found, in the state of peace, which had so long existed previous to the late war, for the irregularities which had crept into the prize practice, that apology no longer exists; and if they should hereafter occur, it may be proper to withhold condemnation, even in the clearest cases, unless the irregularities are avoided or explained *Id.*
6. If a party attempts to impose upon the court, by knowingly or fraudulently claiming as his own, property belonging in part to others, he will not be entitled to restitution of that portion which he may ultimately establish as his own *Id.*
7. The claimants have no right to litigate the question, whether the captors were duly commissioned; the claimants have no *persona standi in judicio*, to assert the rights of the United States: but if the capture be made by a non-commissioned captor, the prize will be condemned to the United States. *Id.*
8. A question of proprietary interest, and concealment of papers: further proof ordered, open to both parties. *The Fortuna.* . . . *161
9. Where an enemy's vessel was captured by a privateer, and subsequently dispossessed by the force or terror of another, the prize was adjudged to the first captor, with costs and damages. *The Mary.* *123
10. A question of collusive capture: condemnation to the captors. *The Bothnea.* . . . *169
11. If the court below deny an order for further proof, when it ought to be granted, or allow it, when it ought to be denied, and the objection is taken by the party and appears on the record, the appellate court can administer the proper relief. *The Pizarro.* *227, 240
12. But, if evidence in the nature of further proof be introduced, and no formal order or objection appear on the record, it must be presumed to have been done by consent, and the irregularity is waived. *Id.*
13. Concealment on spoliation of papers, is not, *per se*, a sufficient ground for condemnation in a prize court: it is calculated to excite the vigilance and justify the suspicions of the court; but is open to explanation; and if the party, in the first instance, fairly, frankly and satisfactorily explains it, he is deprived of no right to which he is otherwise entitled. If, on the contrary, the spoliation is unexplained, or the explanation is unsatisfactory; if the cause labor under heavy suspicions, or gross prevarications, further proof is denied, and condemnation ensues from defects in the evidence which the party is not permitted to supply. *Id.*
14. French and Spanish law of spoliation of

- papers : application of the same : opinions of M. Portalis : principle of reciprocity. *Id.* *242
15. A question of collusive capture : Condemnation to the United States. *The George*. *278
16. A suit by the owners of captured property, lost through the fault and negligence of the captors, for compensation in damages. *The Anna Maria*. *327
17. The right of visitation and search is an unquestionable, belligerent right; but must be exercised with as much regard to the safety of the vessel detained, as is consistent with a thorough examination of her character and voyage. *Id.*
18. Detention after search, pronounced to be unjustifiable, under the particular circumstances of the case. *Id.*
19. The value of the captured vessel, and the prime cost of the cargo, with all charges, and the premium of insurance, where paid, allowed in ascertaining the damages. . . . *Id.*
20. A libel against a commander of a squadron, calling on him to proceed to adjudication, or to make restitution in value, of a vessel and cargo, detained for search by the captain of a frigate belonging to the squadron, and lost while in his possession : Libel dismissed. *The Eleanor*. *345
21. The commander of a squadron is liable to individuals for the trespasses of those under his command, in case of positive or permissive orders, or of actual presence and co-operation. But *quære*, how far he is responsible in other cases ? *Id.*
22. Where a capture has actually taken place, with the assent, express or implied, of the commander of a squadron, the prize-master may be considered as a bailee, to the use of the squadron, who are to share in the prize-money, and thus the commander may be made responsible; but not so as to mere trespasses, unattended with a conversion to the use of the squadron. *Id.*
23. The commander of a single ship is responsible for the acts of those under his command; as are, likewise, the owners of privateers, for the conduct of the commanders appointed by them. *Id.*
24. Detention for search is a right which a belligerent may exercise over every vessel, except a national vessel, which he meets with on the ocean. *Id.*
25. The principal right necessarily carries with it all the means essential to its exercise; among these may, sometimes, be included the assumption of the disguise of a friend, or an enemy, which is a lawful stratagem of war. If, in consequence of its use, the crew of the vessel detained abandon their duty, before they are actually made prisoners of war, and the vessel is thereby lost, the captors are not responsible. *Id.*
26. Whenever an officer seizes a vessel as prize, he is bound to commit her to the care of a competent prize-master and crew; not because the original crew, when left on board (in the case of a seizure of the vessel of a citizen or neutral), are released from their duty, without the assent of the master, but from the want of a right to subject the captured crew to the authority of the captor's officer. But this rule does not extend to the case of a mere detention for examination, which the commander of a cruising vessel may enforce by orders from his own quarter-deck, and may, therefore, send an officer on board the vessel detained, in order more conveniently to enforce it, without taking the vessel out of the possession of her own officers and crew. *Id.*
27. The modern usages of war authorize the bringing one of the principal officers of the vessel detained on board the belligerent vessel, with the papers, for examination. . . . *Id.*
28. Further illustration of these principles. *Appendix*, note I. *13, 14, 15
29. It is the practice of the court, in prize causes, to hear the cause, in the first instance, upon the evidence transmitted from the circuit court, and to decide from that evidence, whether it is proper to allow further proof. *The London Packet*. *371
30. Affidavits to be used as further proof in causes of admiralty and maritime jurisdiction, in this court, must be taken by commission. *Id.*
31. Principles and practice in prize causes. *Appendix*, note I. *1
32. Extent of the prize jurisdiction of the admiralty. *Id.* *1-6
33. Seizures by non-commissioned captors. *Id.* *7
34. Probable cause for captures. *Id.* *8
35. Responsibility of captors having a *bona fide* possession. *Id.* *9
36. Proceedings on sending in for adjudication. *Id.* *10
37. Capture without probable cause. . . . *Id.* *11
38. Proceedings to compel the captors to proceed to adjudication. *Id.* *12, 16
39. Liability of commanders of squadrons, and owners of privateers, for the loss of captured property. *Id.* *13
40. Custody of the captured property. . . . *Id.* *17
41. Prize libel and monition. *Id.* *19
42. Claims, and persons who are to conduct the proceedings. *Id.* *21
43. Rules of evidence. *Id.* *23
44. National character of persons and ships, how determined. *Id.* *27
45. Questions of proprietary interest. . . *Id.* *31

46. Act of the master, how far binding on the ship-owner.....*Id.* *37
 47. Re-captures and salvage.....*Id.* *40
 48. Unlivery, appraisement, sale and delivery on bail of the cargo.....*Id.* *49
 49. Questions of freight.....*Id.* *53
 50. Allowance of costs and expenses...*Id.* *56
 51. Restitution of the master's adventure.....*Id.* *58
 52. Claims of joint capture.....*Id.*
 53. Decree of condemnation or restitution.....*Id.* *68
 54. Condemnation to the captors, or as *droits*.....*Id.* *71
 55. Distribution of the prize proceeds...*Id.* *75
 56. Responsibility of prize-agents.....*Id.* *78
 57. President's instructions. *Appendix*, note II.....* 80
 58. Standing interrogatories. *Id.* Note III. *81

See DOMICIL : LICENSE.

SALE.

- Where a promissory note is given for the purchase of real property, the failure of consideration, through defect of title, must be total, in order to constitute a defence to an action on the note. *Greenleaf v. Cook*.....*13, 14
- Quære?* Whether, after receiving a deed, a party can avail himself, at law, even of a total failure of consideration?.....*Id.*
- But where the note is given with full knowledge of the extent of the incumbrances, and the party thus consents to receive the title, its defect is no legal bar to an action on the note.....*Id.*
- Any partial defect in the title or the deed, is not inquirable into by a court of law, in an action on the note; but the party must seek relief in chancery.....*Id.*
- Rule of the French law as to the recovery of purchase money on a failure of title...*Id.*
- It is not the duty of the vendee to communicate to the vendor intelligence of extrinsic circumstances which may influence the price of the commodity, where the particular information is exclusively within the knowledge of the vendee, but the means of intelligence are equally open to both parties; but, at the same time, each party must take care not to say or do anything tending to impose upon the other. *Laidlaw v. Organ*....*178, 195
- Doctrine of Pothier as to the respective obligations of the vendor and vendee in this respect.....*Id.* *185

SPECIFIC PERFORMANCE.

See CHANCERY, 4-14.

STATUTES OF KENTUCKY.

See LOCAL LAW, 11.

STATUTES OF MARYLAND.

See TREATY, 6-8.

STATUTES OF NORTH CAROLINA.

- The plaintiffs in ejectment claimed under a grant from the state of North Carolina, comprehending the lands for which the suit was brought, and the defendants claimed under a junior patent, and a possession of seven years, which, by the statutes of that state and Tennessee, constitutes a bar to the action, if the possession be under color of title: to repel this defence, the plaintiffs proved, that no corner or course of the grant, under which they claimed, was marked, except the beginning corner; that the beginning, and nearly the whole land, and all the corners, except one, were within the Cherokee Indian boundary, not having been ceded to the United States, until the year 1806, within seven years from which time the suit was brought, but the land in the defendant's possession, and for which the suit was brought, did not lie within the Indian boundary: *Held*, that, notwithstanding the laws of the United States prohibited all persons from surveying or marking any lands within the Indian territory, and the plaintiffs could not, therefore, survey the lands granted to them, the defendants were entitled to hold the part possessed by them for the period of seven years, under color of title. *McIver v. Rogan*.....*25
- A question relative to the title of the late Major-General Nathaniel Greene, to 25,000 acres of land, given to him, within the bounds of the land reserved for the use of the army, by the 10th section of the act of the legislature of North Carolina, passed in 1782, as a mark of the sense entertained by that state of his eminent services. *Rutherford v. Greene's Heirs*.....*196

TREATY.

- Under the Spanish treaty of 1795, stipulating that free ships shall make free goods, the want of such a sea-letter or passport, or such certificates as are described in the 17th article, is not a substantial ground of condemnation: it only authorizes capture and sending in for adjudication, and the proprietary interest in the ship may be proved by other equivalent testimony. But if, upon the original evidence, the cause appears extremely doubtful and suspicious, and further proof is

- necessary, the grant or denial of it rests on the same general rules which govern the discretion of the prize courts in other cases. *The Pizarro*. *244, 245
2. The term "subjects," in the 15th article of the treaty, when applied to persons owing allegiance to Spain, must be construed in the same sense as the term "citizens" or "inhabitants," when applied to persons owing allegiance to the United States, and extends to all persons domiciled in the Spanish dominions. *Id.*
 3. The Spanish character of the ship being ascertained, the proprietary interest of the cargo cannot be inquired into, unless so far as to ascertain, that it does not belonged to citizens of the United States, whose property, engaged in trade with the enemy, is not protected by the treaty. *Id.*
 4. The privilege of the neutral flag, of protecting enemy's property, conferred by treaty or otherwise, does not extend to a fraudulent use of the flag. *Id.* *247
 5. The stipulation of the Spanish treaty, taken in connection with the law of Spain, does not necessarily imply the converse proposition, that enemy's ships shall make enemy's goods, which is not expressed in the treaty. *Id.* *248
 6. The treaty of amity and commerce of 1778, with France, art. 11, enabling French subjects to purchase and hold lands in the United States, being abrogated in 1798; the act of Maryland of 1780, permitting the lands of a French subject, who had become a citizen of that state, dying intestate, to descend on the next of kin, being non-naturalized Frenchmen, with a proviso, vesting the land in the state, if the French heirs should not, within ten years, become resident citizens of the state, or convey the lands to a citizen; and the convention of 1800, between the United States and France, enabling the people of the
- one country, holding lands in the other, to dispose of the same by testament, and to inherit lands in the other, without being naturalized: *held*, that the latter treaty dispensed with the performance of the condition in the act of Maryland, and that the conventional rule applied equally to the case of those who took by descent, under the act, as to those who acquired by purchase, without its aid. *Chirac v. Chirac*. *259
 7. The further stipulation in the convention, "that in case the laws of either of the two states should restrain strangers from the exercise of the rights of property with respect to real estate, such real estate may be sold, or otherwise disposed of, to citizens or inhabitants of the country where it may be," does not affect the rights of a French subject, who takes, or holds, by the convention, so as to deprive him of the power of selling to citizens of this country; and gives to a French subject, who has acquired lands by descent, or devise (and, perhaps, in any other manner), the right, during life, to sell or otherwise dispose of the same, if lying in a state where lands purchased by an alien, generally, would be immediately escheatable. *Id.*
 8. Although the convention of 1800 has expired, the instant a descent is cast on a French subject, during its continuance, his rights become complete under it, and cannot be affected by its subsequent expiration. . . . *Id.*
 9. Modification of the *droit d'aubaine* in France, by treaties with other powers. . . . *Id.* *271

VERDICT.

See PLEADING, 7: PRACTICE, 6.

WRIT OF RIGHT.

See PLEADING, 4-8.

A. J. ...

...

...

...











