

INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

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ADMIRALTY.

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5. The courts of the United States have exclusive cognisance of questions of forfeiture, upon all seizures made under the laws of the United States, and it is not competent for a state court to entertain or decide such question of forfeiture. If a sentence of condemnation be definitively pronounced by the proper court of the United States, it is conclusive that a forfeiture is incurred; if a sentence of acquittal, it is equally conclusive against the forfeiture: and in either case, the question cannot be again litigated

- in any common-law forum. *Gelston v Hoyt*. *246, 311
6. Where a seizure is made for a supposed forfeiture, under a law of the United States, no action of trespass lies, in any common-law tribunal, until a final decree is pronounced, upon the proceeding *in rem* to enforce such forfeiture; for it depends upon the final decree of the court proceeding *in rem*, whether such seizure is to be deemed rightful or tortious, and the action, if brought before such decree is made, is brought too soon. . . *Id.*
 7. If a suit be brought against the seizing officer, for the supposed trespass, while the suit for the forfeiture is depending, the fact of such pending, may be pleaded in abatement, or as a temporary bar of the action. If, after a decree of condemnation, then that fact may be pleaded as a bar; if after an acquittal, with a certificate of reasonable cause of seizure, then that may be pleaded as a bar. If, after an acquittal, without such certificate, then the officer is without any justification for the seizure, and it is definitively settled to be a tortious act. If, to an action of trespass, in a state court, for a seizure, the seizing officer plead the fact of forfeiture in his defence, without averring a *lis pendens*, or a condemnation, or an acquittal with a certificate of reasonable cause of seizure, the plea is bad; for it attempts to put in issue the question of forfeiture, in a state court. *Id.*
 8. At common law, any person may, at his peril, seize for a forfeiture to the government, and if the government adopt his seizure and the property is condemned, he is justified. *Id.*
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17. *Quære?* Whether courts of common law have concurrent jurisdiction with the admiralty, over murder committed in bays, &c., which are inclosed parts of the sea?.....*Id.*
18. Congress having, in the 8th section of the act of 1790, provided for the punishment of murder, &c., committed upon the high seas, or in any river, haven, basin or bay, out of the jurisdiction of any particular state," it is not the offence committed, but the bay, &c., in which it is committed, that must be out of the jurisdiction of the state.....*Id.*
19. The grant to the United States, in the constitution, of all cases of admiralty and maritime jurisdiction, does not extend to a cession of the waters in which those cases may arise, or of general jurisdiction over the same. Congress may pass all laws which are necessary for giving the most complete effect to the exercise of the admiralty and maritime jurisdiction granted to the government of the Union; but the general jurisdiction over the place, subject to this grant, adheres to the territory, as a portion of territory, not yet given away; and the residuary powers of legislation still remain in the state.....*Id.*
20. Congress have power to provide for the punishment of offences, committed by persons on board a ship of war of the United States, wherever that ship may lie. But congress have not exercised that power, in the case of a ship lying in the waters of the United States; the words "within any fort, arsenal, dock-yard, magazine, or in any other place or district of country, under the sole and exclusive jurisdiction of the United States," in the third section of the act of 1790, not extending to a ship of war, but only to objects in their nature fixed and territorial.....*Id.*
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5. A person born in the colony of New Jersey, before the declaration of independence, and residing there until 1777, but who then joined the British army, and ever after adhered to the British government, has a right to take lands by descent, in the state of New Jersey.*12
6. A person born in England, before the declaration of independence, and who always resided there, and never was in the United States, cannot take lands in Maryland, by descent.*13
7. By the acts of Maryland of 1780, ch. 45 and 49, the equitable interests of British subjects, in lands were confiscated, and vested in the state, without office found, prior to the treaty of 1783, so that the British *cestui que trust* was not protected by the stipulations in that treaty, against future confiscations, nor by the stipulation in the treaty of 1794, securing to British subjects, who then held lands in this country, the right to continue to hold them.*13
8. An alien may take, by purchase, a freehold or other interest in land, and may hold it against all the world except the king, and even against him, until office found; and is not accountable for the rents and profits previously received. *Craig v. Leslie*.*589
9. Where W. R. claimed title to lands in Kentucky, derived from a warrant issued in 1774, by the governor of Virginia, on which a grant issued in 1788, to W. S., who was a native subject of the king of Great Britain, and who left Virginia prior to the year 1776, and had never since returned to the United States; *held*, that W. S. took a legal title to the lands, under the warrant and grant, which not having been divested by any act of Virginia, prior to the treaty of 1794, was rendered absolute and indefeasible, by the 9th article of that treaty. *Craig v. Radford*.*594, 599

See CHANCERY, 6: TREATY, 1.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. Where a general authority is given to draw bills from a certain place, on account of advances there made, the undertaking is to re-

place the money at that place; and interest is to be allowed according to the *lex loci*. *Lanusse v. Barker*.*101, 146

2. Where a bill of exchange was indorsed to T. T. T., treasurer of the United States, who received it in that capacity, and for account of the United States, and the bill had been purchased by the secretary of the treasury (as one of the commissioners of the sinking-fund, and as agent of that board), with the money of the United States, and was afterwards indorsed by T. T. T., treasurer of the United States, to W. & S., and by them presented to the drawees for acceptance, and protested for non-acceptance and non-payment, and sent back by W. & S. to the secretary of the treasury; *held*, that the indorsement to T. T. T. passed such an interest to the United States, as enabled them to maintain an action on the bill, against the first indorser; and that the United States might recover in an action against the first indorser, without producing from W. & S. a receipt or re-indorsement of the bill, W. & S. being presumed to have acted as the agents or bankers of the United States; and all the interest which W. & S. ever had in the bill, was divested by the act of returning it to the party from whom it was received. *Dugan v. United States*.*172
3. *Quære?* Whether, when a bill is indorsed to an agent, for the use of his principal, an action on the bill can be maintained by the principal in his own name? However this may be, between private parties, the United States are permitted to sue in their own name, wherever it appears, not only on the face of the instrument, but from all the evidence, that they alone are interested in the subject-matter of the controversy. *Id.*
4. If a person who indorses a bill to another, whether for value, or for the purpose of collection, comes again to the possession thereof, he is to be regarded, unless the contrary appears in evidence, as the *bond fide* holder and proprietor of such bill, and is entitled to recover thereon, notwithstanding there may be on it one or more indorsements in full, subsequent to the indorsement to him, without producing any receipt or indorsement back to him, from either of such indorsees, whose names he may strike from the bill, or not, as he thinks proper. *Id.*
5. The indorser of a promissory note, who has been charged, by due notice of the default of the maker, is not entitled to the protection of a court of equity as a surety; the holder may proceed against either party, at his pleasure, and does not discharge the indorser, by not issuing, or by countermanding, an execution against the maker. *Lenox v. Prout*.*520, 525

6. By the statute of Maryland of 1763, ch. 23, § 8, which is perhaps only declaratory of the common law, an indorser has a right to pay the amount of the note or bill to the holder, and to be subrogated to all his rights, by obtaining an assignment of the holder's judgment against the maker. *Id.*

CHANCERY.

1. Bill for the specific performance of an agreement for the sale of lands : The contract enforced. *McIver v. Kyger*. *53
2. The remedies in the courts of the United States, at common law and in equity, are to be, not according to the practice of state courts, but according to the principles of common law and equity, as distinguished in that country from which we derive a knowledge of those principles. Consistently with this doctrine, it may be admitted, that where, by the statutes of a state, a title which would otherwise be deemed merely equitable, is recognised as a legal title, or a title which would be valid at law is, under circumstances of an equitable nature, declared void, the rights of the parties in such case may be as fully considered in a suit at law, in the courts of the United States, as in any state court. *Robinson v. Campbell*. *212, 220
3. Explanation of the decree in *Dunlop v. Hepburn* (1 Wheat. 179), that the defendants were only to be accountable for the rents and profits of the lands (referred to in the proceedings) actually received by them. *Dunlop v. Hepburn*. *231
4. The indorser of a promissory note, who has been charged, by due notice of the default of the maker, is not entitled to the protection of a court of equity as a surety ; the holder may proceed against either party, at his pleasure, and does not discharge the indorser, by not issuing, or by countermanding, an execution against the maker. *Lenox v. Prout*. *520, 525
5. The answer of a defendant in chancery, though he may be interested to the whole amount in controversy, is conclusive evidence, if uncontradicted by any witness in the cause. *Id.*
6. R. C., a citizen of Virginia, being seised of real property in that state, made his will : " In the first place, I give, devise, bequeath unto J. L." and four others, " all my estate, real and personal, of which I may die seised and possessed, in any part of America, in special trust, that the afore-mentioned persons, or such of them as may be living at my death, will sell my personal estate to the highest bidder, on two years' credit, and my real estate on one, two and three years' credit, provided satisfactory security be given, by bond and deed of trust ; in the second place, I give and bequeath to my brother, T. C.," an alien, " all the proceeds of my estate, real and personal, which I have herein directed to be sold, to be remitted to him, accordingly as the payments are made, and I hereby declared the aforesaid J. L." and the four other persons, " to be my trustees and executors for the purposes afore mentioned." *Held*, that the legacy given to T. C., in the will of R. C., was to be considered as a bequest of personal estate, which he was capable of taking for his own benefit, though an alien. *Craig v. Leslie*. *563
7. Equity considers land, directed in wills or other instruments, to be sold, and converted into money, as money ; and money directed to be employed in the purchase of land, as land. *Id.*
8. Where the whole beneficial interest in the land or money, thus directed to be employed, belongs to the person for whose use it is given, a court of equity will permit the *cestui qui trust* to take the money, or the land, at his election, if he elect before the conversion is made. *Id.*
9. But in case of the death of the *cestui qui trust*, without having determined his election, the property will pass to his heirs, or personal representatives, in the same manner as it would have done, if the conversion had been made, and the trust executed in his lifetime. *Id.*
10. The case of *Roper v. Radcliffe*, 9 Mod. 167, examined ; distinguished from the present case, and, so far as it conflicts with it, overruled. *Id.*
11. Land, devised to trustees to sell for the payment of debts and legacies, is to be deemed as money. *Id.* *582
12. The heir-at-law has a resulting trust in such lands, after the debts and legacies are paid, and may come into equity and restrain the trustee from selling more than sufficient to pay them ; or may offer to pay them himself, and pray a conveyance of the part of the land, not sold, in the first case, and the whole, in the latter, which property, in either case, will be land, and not money. *Id.*
13. But if the intent of the testator appears to have been, to stamp upon the proceeds of the land directed to be sold, the quality of personalty, not only for the particular purposes of the will, but to all intents, the claim of the heir-at-law to a resulting trust is defeated, and the estate is considered to be personal. *Id.* *583

COMMON LAW.

See ADMIRALTY, 5-8, 14, 17: CHANCERY, 2:
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CONSTITUTIONAL LAW.

1. A judgment of a state court has the same credit, validity and effect, in every other court within the United States, which it had in the court where it was rendered; and whatever pleas would be good to a suit thereon, in such state, and none others, can be pleaded in any other court within the United States. *Hamp-ton v. McConnell*. *234
2. Under the judiciary act of 1789, § 25, giving appellate jurisdiction to the supreme court of the United States, from the final judgment or decree of the highest court of law or equity of a state, in certain cases, the writ of error may be directed to any court in which the record and judgment on which it is to act may be found; and if the record has been remitted by the highest court, &c., to another court of the state, it may be brought by the writ of error from that court. *Gels-ton v. Hoyt*. *246, 303
3. The remedies in the courts of the United States, at common law and in equity, are to be, not according to the practice of state courts, but according to the principles of common law and equity, as defined in Eng-land. This doctrine reconciled with the de-cisions of the courts of Tennessee, per-mitting an equitable title to be asserted in an action at law. *Robinson v. Camp-bell*. *212
4. Remedies, in respect to real property, are to be pursued according to the *lex loci rei sitæ*. *Id.*

See ADMIRALTY, 5-7, 16, 17, 19, 20: PRACTICE,
14: STATUTES OF TENNESSEE, 1-8.

DEED.

See EJECTMENT, 3.

DOMICIL.

1. The native character does not revert, by a mere return to his native country, of a mer-chant, who is domiciled in a neutral country, at the time of capture; who afterwards leaves his commercial establishment in the neutral country to be conducted by his clerks in his absence; who visits his native country merely on mercantile business, and intends to return to his adopted country. Under these circumstances, the neutral domicile still continues. *Th. Friendschaft*. *14

2. British subjects, resident in Portugal (though entitled to great privileges), do not retain their native character, but acquire that of the country where they reside and carry on their trade. *Id.*
3. By the law of this country, the rule of reciprocity prevails upon the re-capture of the property of friends. The law of France deny-ing restitution upon salvage, after twenty-four hours' possession by the enemy, the property of persons domiciled in France is condemned as prize by our courts, on re-capture, after being in possession of the enemy that length of time. *The Star*. . . *78.

DUTIES.

See ADMIRALTY, 4.

EJECTMENT.

1. A conveyance by the plaintiff's lessor, dur-ing the pendency of an action of ejectment, can only operate upon his reversionary inter-est, and cannot extinguish the prior lease. The existence of such lease is a fiction; but it is upheld for the purposes of justice: if it expire during the pendency of a suit, the plaintiff cannot recover his term at law, without procuring it to be enlarged by the court, and can proceed only for antecedent damages. *Robinson v. Campbell*. . . . *223
2. Effect of an outstanding superior title, in ejectment. *Id.* *224
3. Although the grantees in a deed, executed after, but recorded before, another convey-ance of the same land, being *bonâ fide* pur-chasers without notice, are, by law, deemed to possess the better title; yet, where L. conveyed to C. the lands in controversy spe-cifically, describing himself as devisee of A. S., by whom the land was owned in his life-time, and by a subsequent deed (which was first recorded), L. conveyed to B., "all the right title and claim, which he, the said A. S., had, and all the right, title and interest which the said L. holds, as legatee and representative to the said A. S., deceased, of all land lying and being within the state of Kentucky, which cannot, at this time, be particularly de-scribed, whether by deed, patent, mortgage, survey, location, contract or otherwise," with a covenant of warranty against all persons claiming under L., his heirs and assigns—it was held, that the latter conveyance operated only upon lands, the right, title and interest of which was then in L., and which he de-rived from A. S., and, consequently, could not defeat the operation of the first deed upon the land specifically conveyed. *Brown v. Jackson*. *449

EVIDENCE.

See CHANCERY, 5 : PRACTICE, 2, 3, 4, 6, 12, 13,
15, 16, 18.

FURTHER PROOF.

See PRIZE, 1, 2.

GUARANTEE.

1. B. a merchant in New York, wrote to L., a merchant in New Orleans, on the 9th January 1806, mentioning that a ship, belonging to T. & Son, of Portland, was ordered to New Orleans for freight, and requesting L. to procure a freight for her, and purchase and put on board of her 500 bales of cotton, on the owners' account; "for the payment of all shipments on the owners' account, thy bills on T. & Son, of Portland, or me, sixty days sight, shall meet due honor." On the 13th February, B. again wrote to L., reiterating the former request, and inclosing a letter from T. & Son, to L., containing their instructions to L., with whom they afterwards continued to correspond, adding "thy bills on me, for their account, for cotton they order shipped by the Mac, shall meet with due honor." On the 24th July 1806, B. again wrote L. on the same subject, saying, "the owners wished her loaded on their own account, for the payment of which thy bills on me shall meet with due honor, at sixty days sight." L. proceeded to purchase and ship the cotton, and drew several bills on B., which were paid; he afterwards drew two bills on T. & Son, payable in New York, which were protested for non-payment, they having, in the meantime, failed; and about two years afterwards, drew bills on B., for the balance due, including the two protested bills, damages and interest: *Held*, that the letters of the 13th February, and 24th July contained no revocation of the undertaking in the letter of the 9th January, that although the bills on T. & Son were not drawn according to B.'s assumption, this could only effect the right of L., to recover the damages paid by him on the return of the bills, but that L. had still a right to recover on the original guarantee of the debt. It was also *held*, that L., by making his election to draw upon T. & Son, in the first instance, did not thereby preclude himself from resorting to B., whose undertaking was, in effect, a promise to furnish the funds necessary to carry into execution the adventure. Also, *held*, that L. had a right to recover from B., the commissions, disbursements and other charges of the transaction. *Lanusse v. Barker*...*101

2. The cases on the subject of guarantee collected.....*148

See BILLS OF EXCHANGE, &C., 5, 6.

INSURANCE.

1. Insurance on a vessel and freight, "at and from Teneriffe to the Havana, and at from thence to New York, with liberty to stop at Matanzas," with a representation, that the vessel was to stop at Matanzas, to know if there were any men of war off the Havana: the vessel sailed on the voyage insured, and put into Matanzas to avoid British cruisers, who were then off the Havana, and were in the practice of capturing neutral vessels trading from one Spanish port to another; while at Matanzas, she unloaded her cargo, under an order from the Spanish authorities; and afterwards proceeded to the Havana, whence she sailed on her voyage for New York, and was afterwards lost by the perils of the sea; it was proved, that the stopping and delay at the Havana were necessary to avoid capture; that no delay was occasioned by discharging the cargo, and that the risk was not increased, but diminished: *Held*, that the order of the Spanish government was obtained under such circumstances, as took from it the character of a *vis major* imposed upon the master, and was, therefore, no excuse for discharging the cargo; but that the stopping and delay at Matanzas were permitted by the policy, and that the unloading the cargo was not a deviation. *Hughes v. Union Ins. Co.*.....*159
2. To entitle the plaintiff to recover, in an action on a policy of insurance, the loss must be occasioned by one of the perils insured against; the insured cannot recover for a loss by barratry, unless the barratry produced the loss; but it is immaterial, whether the loss so produced occurred during the institution of the barratry or afterwards. *Swan v. Union Ins. Co.*.....*168
3. Cases on the subject of barratry....*Id.* *171
4. A vessel, within a port, blockaded after the commencement of her voyage, and prevented from proceeding on it, sustains a loss by a peril within that clause of the policy, insuring against the "arrests, restraints and detentions of kings," &c., for which the insurers are liable; and if the vessel so prevented be a neutral, having a board a neutral cargo, laden before the institution of the blockade, the restraint is unlawful. *Olivera v. Union Ins. Co.*.....*183
5. A blockade does not, according to modern usage, extend to a neutral vessel, found in port, nor prevent her coming out with the

cargo which was on board when the blockade was instituted.....*Id.*

6. A technical total loss must continue to the time of abandonment. *Quere?* As to the application of this principle to a case, where the loss was by a restraint on a blockade, and proof made of the commencement of the blockade, but no proof that it continued to the time of abandonment?.....*Id.*

JURISDICTION.

1. *McR.*, a citizen of Kentucky, brought a suit in equity, in the circuit court of Kentucky, against C. C., stated to be a citizen of Virginia, and E. J. and S. E., without any designation of citizenship; all the defendants appeared and answered; and a decree was pronounced for the plaintiff: it was *held*, that if a joint interest vested in C. C. and the other defendants, the court had no jurisdiction over the cause; but that if a distinct interest vested in C. C., so that substantial justice (so far as he was concerned), could be done, without affecting the other defendants, the jurisdiction of the court might be exercised as to him alone. *McCameron v. Roberts.* *591
2. This court has no jurisdiction of causes brought before it, upon a certificate of division of opinion of the judges of the circuit court for the district of Columbia; the appellate jurisdiction of this court, in respect to that court, only extends to the final judgments and decrees of the latter. *Ross v. Triplett.*.....*600

See ADMIRALTY, 5, 6, 16-24; CONSTITUTIONAL LAW, 2, 3; PATENT, 7; PRACTICE, 14; PRIZE, 10-14.

LIBEL.

See PRACTICE, 11.

LICENSE.

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2. Cases on the subject of licenses collected.....*Id.* *207

LIMITATION OF ACTIONS.

1. The terms "beyond seas," in the proviso or saving clause of a statute of limitations, are equivalent to, without the limits of the state where the statute is enacted; and a party, who is without those limits, is entitled to

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See STATUTES OF TENNESSEE, 4.

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1. Note on the laws of Louisiana. *Shepherd v. Hampton.*.....*202
2. If, under the Virginia land-law, the warrant must be lodged in the office of the surveyor, at the time when the survey is made, his certificate, stating that the survey was made by virtue of the governor's warrant, and agreeable to the royal proclamation of 1763, is sufficient evidence, that the warrant was in his possession at that time. *Craig v. Radford.*.....*594, 597
3. The 6th sec. of the act of Virginia of 1748, entitled, "an act directing the duty of surveyors of lands," is merely directory to the officer, and does not make the validity of the survey depend upon his conforming to its requisitions.....*Id.*
4. A survey, made by the deputy-surveyor, is, in law, to be considered as made by the principal surveyor.....*Id.*

See BILLS OF EXCHANGE, &c., 1, 6; CHANCERY, 1, 2; EJECTMENT, 3; STATUTES OF GEORGIA: STATUTES OF NORTH CAROLINA: STATUTES OF TENNESSEE.

NON-INTERCOURSE.

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NOTES.

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1. *Quere?* Whether, under the general patent law, improvements on different machines can be comprehended in the same patent, so as to give a right to the exclusive use of the several machines, separately, as well as a right to the exclusive use of those machines in combination? *Evans v. Eaton.*.....*444
2. However this may be, the act of the 21st of January 1808, ch. 117, "for the relief of Oliver Evans," authorizes the issuing to him of a patent for his invention, discovery and improvements in the art of manufacturing flour, and in the several machines applicable to that purpose.....*Id.*
3. *Quere?* Whether congress can constitutionally decide the fact, that a particular individual is an author or inventor of a certain writing or invention, so as to preclude judi-

- cial inquiry into the originality of the authorship or invention. *Id.*
4. The act of the 21st of January 1808, for the relief of Oliver Evans, does not decide the fact of the originality of his invention, but leaves the question open to investigation, under the general patent law. *Id.*
 5. Under the 6th section of the patent law, ch. 156, if the thing secured by patent had been in use, or had been described in a public work, anterior to the supposed discovery, the patent is void, whether the patentee had a knowledge of this previous use or description, or not. *Id.*
 6. Oliver Evans may claim, under his patent, the exclusive use of his inventions and improvements in the art of manufacturing flour and meal, and in the several machines which he has invented, and in his improvement on machines previously discovered; but where his claim is for an improvement on a machine, he must show the extent of his improvement, so that a person understanding the subject may comprehend distinctly in what it consists. *Id.*
 7. The act for the relief of O. Evans is grafted on the general patent law, so as to give him a right to sue in the circuit court, for an infringement of his patent-rights, although the defendant may be a citizen of the same state with himself. *Id.*
 8. Note on the patent laws. *Appendix, note II.* *13

See PRACTICE, 18, 19.

PIRACY.

1. A robbery committed on the high seas, although such robbery, if committed on land, would not, by the laws of the United States, be punishable with death, is piracy, under the 8th section of the act of 1790, ch. 36, for the punishment of certain crimes against the United States; and the circuit courts have jurisdiction thereof. *United States v. Palmer* *610
2. The crime of robbery, as mentioned in the act, is the crime of robbery as recognised and defined at common law *Id.*
3. The crime of robbery, committed by a person who is not a citizen of the United States, on the high seas, on board of a ship, belonging exclusively to subjects of a foreign state, or on persons in a foreign vessel, is not piracy, under the act, and is not punishable in the courts of the United States. *Id.*
4. When a civil war rages in a foreign nation, one part of which separates itself from the old established government, and erects itself into a distinct government, the courts of the

Union must view such newly-constituted government as it is viewed by the legislative and executive departments of the government of the United States; if that government remains neutral, but recognises the existence of a civil war, the courts of the Union cannot consider as criminal, those acts of hostility which war authorizes, and which the new government may direct against its enemy. *Id.*

5. The same testimony which would be sufficient to prove that a vessel or person is in the service of an acknowledged state, is admissible to prove that they are in the service of such newly-created government; its seal cannot be allowed to prove itself, but may be proved by such testimony as the nature of the case admits: And the fact that a vessel or person is in the service of such government may be established otherwise, should it be impracticable to prove the seal. *Id.*

PLEADING.

1. If an action be brought against an officer making a seizure under the laws of the United States, for a supposed trespass, while the suit for the forfeiture is depending in the United States courts, the fact of such pendency may be pleaded in abatement, or as a temporary bar of the action. If the action is brought, after a decree of condemnation, then that fact may be pleaded as a bar; if after an acquittal, with a certificate of reasonable cause of seizure, then that may be pleaded as a bar. If, after an acquittal, without such certificate, then the officer is without any justification for the seizure, and it is definitively settled to be a tortious act. If, to an action of trespass in a state court for a seizure, the seizing officer plead the fact of forfeiture in his defence, without averring a *lis pendens*, or a condemnation, or an acquittal, with a certificate of reasonable cause of seizure, the plea is bad; for it attempts to put in issue the question of forfeiture, in a state court. *Gelston v. Hoyt*. *246
2. The statute of 1794, ch. 50, § 3, prohibiting the fitting out any ship, &c., for the service of any foreign prince, &c., to cruise against the subjects, &c., of any other foreign prince, &c., does not apply to any new government, unless it has been acknowledged by the United States, or by the government of the country to which such new government previously belonged. And a plea setting up a forfeiture under that statute, in fitting out a ship to cruise against such new state, must aver such recognition, or it is bad. *Id.*

3. A plea justifying a seizure under the statute of 1794, ch. 50, need not state the particular prince or state, by name, against whom the ship was intended to cruise.....*Id.*
4. A plea justifying a seizure and detention by virtue of the 7th section of the statute of 1794, ch. 50, under the express instructions of the president, must aver that the naval or military force of the United States was employed for that purpose, and that the seizer belonged to the force so employed.....*Id.*
5. To trespass for taking and detaining, and converting property, it is sufficient to plead a justification of the taking and detention; and if the plaintiff relies on the conversion, he should reply it, by way of new assignment.....*Id.*
6. A plea alleging a seizure for a forfeiture as a justification, should not only state the facts relied on to establish the forfeiture, but aver that the property thereby became, and was, actually forfeited, and was seized as forfeited.....*Id.*

PRACTICE.

1. Informal and imperfect proceedings in the district court, corrected and explained in the circuit court. *The Friendschaft* ...*14
2. A bill of lading, consigning the goods to a neutral, though unaccompanied by an invoice or letter of advice, is sufficient evidence to lay a foundation for the introduction of further proof.....*Id.*
3. Spoliation of papers, by the enemy master, will not preclude a neutral claimant from further proof.....*Id.*
4. Prize practice of France, as to further proof.....*Id.* *49
5. Decree in an instance cause affirmed, with damages, at the rate of six per centum *per annum*, on the amount of the appraised value of the cargo (the same having been delivered to the claimant on bail), including interest from the date of the decree of condemnation in the district court. *The Diana*...*58
6. A witness offered to be examined *vivâ voce*, in open court, in an instance cause, ordered to be examined out of court. *The Samuel*.....*77
7. Decree of restitution affirmed in this court, with a certificate of reasonable cause of seizure, in an instance cause, on further proof. *The San Pedro**78
8. An agreement of the parties, entered on the transcript, stating the amount of damages to be adjudged to one of the parties upon several alternatives (the verdict stating no alternative), not regarded by this court as a part of the record brought up by the writ of error; but a *venire de novo* awarded, to have the

- damages assessed by a jury, in the court below. *Lanusse v. Barker*.....*147
9. A conveyance by a plaintiff's lessor, during the pendency of an action of ejectment, can only operate upon his reversionary interest, and cannot extinguish the prior lease; if the lease expire, during the pendency of a suit, the plaintiff cannot recover his term, at law, without having it enlarged by the court, and can proceed only for antecedent damages. *Robinson v. Campbell*.....*212
10. Note on the effect of an outstanding title in a third person, in ejectment.....*Id.* *224
11. Libel for a forfeiture of goods imported into the United States, and alleged to have been exported from Bordeaux, in France, and invoiced at a less sum than the actual cost, at the place of exportation, contrary to the 6th section of the collection law, ch. 128; it appeared, that the goods were originally shipped from Liverpool, and were landed at Bordeaux. Restitution decreed, upon the evidence as to the cost of the goods at Bordeaux—the form of the libel excluding all inquiry as to their cost at Liverpool, the place where they were originally shipped, and as to continuity of voyage. *United States v. 150 Crates**232
12. Where a neutral ship-owner lends his name to cover a fraud with regard to the cargo, this circumstance will subject the ship to condemnation. *The Fortuna*.....*236
13. It is a relaxation of the rules of the prize court, to allow time for further proof, in a case where there has been a concealment of material papers.....*Id.*
14. This court has no jurisdiction, under the 25th section of the judiciary act of 1789, ch. 20, unless the judgment or decree of the state court, be a final judgment or decree. A judgment reversing that of an inferior court, and awarding a *venire facias de novo*, is not a final judgment. *Houston v. Moore*...*433
15. The captors are competent witnesses upon an order for further proof, where the benefit of it is extended to both parties. *The Anne*.....*435
16. The captors are always competent witnesses, as to the circumstances of the capture, whether it be joint, collusive or within neutral territory.....*Id.*
17. Irregularities on the part of the captors, originating from mere mistake or negligence, which work no irreparable mischief, and are consistent with good faith, will not forfeit their rights of prize.....*Id.*
18. Under the 6th section of the patent law of 1793, ch. 156, the defendant pleaded the general issue, and gave notice that he would prove, at the trial, that the machine for the use of which, without license, the suit was

- brought, had been used previous to the alleged invention of the plaintiff, in several places which were specified in the notice, or in some of them, "and also, at sundry other places, in Pennsylvania, Maryland and elsewhere in the United States;" the defendant, having given evidence as to some of the places specified, offered evidence as to others not specified: *Held*, that this evidence was admissible: but that the powers of the court, in such a case, are sufficient to prevent, and will be exercised to prevent, the patentee from being injured by surprise. *Evans v. Eaton*.....*454
19. Testimony on the part of the plaintiff, that the persons, of whose prior use of the machine the defendant had given evidence, had paid the plaintiff for licenses to use the machine, ought not to be absolutely rejected, though entitled to very little weight.....*Id.*
20. The circuit courts have no power to set aside their decrees in equity, on motion, after the term at which they are rendered. *Cameron v. McRoberts*.....*591

See JURISDICTION.

PRESIDENT.

See ADMIRALTY, 13.

PRIZE.

1. A bill of lading, consigning the goods to a neutral, but unaccompanied by an invoice or letter of advice, is not sufficient evidence to entitle the claimant to restitution; but is sufficient to lay a foundation for the introduction of further proof. *The Friendship*.....*14
2. The fact of invoices and letters of advice not being found on board, may induce a suspicion that papers have been spoliated; but even if it were proved, that an enemy master, carrying a cargo chiefly hostile, had thrown papers overboard, a neutral claimant, to whom no fraud is imputable, is not thereby precluded from further proof.....*Id.*
3. A blockade does not, according to modern usage, extend to a neutral vessel, found in port, nor prevent her coming out, with the cargo, which was on board, when the blockade was instituted. *Olivera v. Union Ins. Co.*.....*194
4. Cases on the subject of licenses collected.....*207
5. A question of proprietary interest and concealment of papers: further proof ordered, open to both parties: on the production of further proof by the claimant, condemnation pronounced. *The Fortuna*.....*237
6. Where a neutral ship-owner lends his name to cover a fraud with regard to the cargo, this circumstance will subject the ship to condemnation.....*Id.*
7. Relaxation of the rules of the court, in allowing further proof, in a case of concealment of papers.....*Id.*
8. A neutral cargo, found on board an armed enemy's vessel, is not liable to condemnation as prize of war. *The Atlanta*.....*409
9. A question of proprietary interest: further proof ordered.....*Id.*
10. It is not competent for a neutral consul, without the special authority of his government, to interpose a claim on account of the violation of the territorial jurisdiction of his country. *The Anne*.....*435
11. *Quære?* Whether such a claim can be interposed, even by a public minister, without the sanction of the government, in whose tribunals the cause is pending?.....*Id.*
12. A capture made within neutral territory, is, as between the belligerents, rightful; and its validity can only be questioned by the neutral state.....*Id.*
13. If the captured ship commence hostilities, upon the capture, within neutral territory, she forfeits the neutral protection, and the capture is not an injury for which redress can be sought from the neutral sovereign....*Id.*
14. The district courts of the United States have jurisdiction of questions of prize, and its incidents, independent of the special provisions of the prize act of the 26th June 1812. *The Amiable Nancy*.....*546
15. On an illegal seizure, the original wrongdoers may be made responsible, beyond the loss actually sustained, in a case of gross and wanton outrage; but the owners of a privateer, who are only constructively liable, are not bound to the extent of vindictive damages.*Id.*
16. An item for loss by deterioration of the cargo, not occasioned by the improper conduct of the captors, rejected.....*Id.*
17. The probable or possible profits of an unfinished voyage, afford no rule to estimate the damages, in a case of marine trespass.....*Id.*
18. The prime cost or value of the property lost, and in case of injury, the diminution in value, by reason of the injury, with interest thereon, affords the true measure for estimating damages in such a case.....*Id.*
19. An item for the ransom of the vessel and cargo, which had been subsequently seized by another belligerent (as alleged, for want of papers), of which the vessel had been deprived by the first captors, rejected, under the particular circumstances of the case...*Id.*

See DOMICIL: LICENSE: PIRACY: PRACTICE,
1-4, 15-17: SALVAGE.

SALE.

1. In an action by the vendee, for a breach of the contract of sale by the vendor, in not delivering the article, the measure of damages is the price of the article, at the time of the breach of the contract, and not at any subsequent period. *Shepherd v. Hampton*..... *200
2. *Quære?* How far this rule applies to a case, where advances of money have been made by the purchaser, under the contract?..... *Id.*
3. One citizen of the United States has no right to purchase of, or sell to, another, a license or pass from the public enemy, to be used on board an American vessel. *Patton v. Nicholson*..... *204

SALVAGE.

1. An American vessel was captured by the enemy, and after condemnation and sale to a subject of the enemy, was re-captured by an American privateer: *Held*, that the original owner was not entitled to restitution, on payment of salvage, unde the salvage act of the 3d March 1800, and the prize act of 26th June 1812. *The Star*..... *78
2. By the general maritime law, a sentence of condemnation completely extinguishes the title of the original proprietor..... *Id.*
3. The British salvage acts reserve the *jus postliminii*, as to vessels of British subjects, even after condemnation, unless they have been, after capture, set forth as ships of war..... *Id.*
4. The statute of the 43 Geo. III., ch. 160, § 39, has no further altered the previous British law, than to fix the salvage at uniform stipulated rates, instead of leaving it to depend upon the length of time the re-captured ship was in the hands of the enemy. *Id.*
5. Neither of the British statutes extend to neutral property..... *Id.*
6. The 5th section of the prize act of 1812, does not repeal any of the provisions of the salvage act of the 3d of March 1800, but is merely affirmative of the pre-existing law. *Id.*
7. By our law, the rule of reciprocity prevails, upon the re-capture of the property of friends..... *Id.*
8. Note on the laws of the different maritime countries of Europe as to recaptures and salvage *93
9. Law of Great Britain..... *94
10. Law of France..... *95
11. Law of Spain, Portugal and Holland... *97
12. Law of Denmark and Sweden..... *98
13. Re-captures from pirates *99

SPECIFIC PERFORMANCE.

See CHANCERY, 1.

STATUTES OF GEORGIA.

1. The terms "beyond seas," in the proviso or saving clause of the statute of limitations of Georgia, of 1767, are equivalent to, without the limits of the state; and a party who is without those limits, is entitled to the benefit of the exception. *Murray v. Baker*... *541

STATUTES OF NORTH CAROLINA.

1. The state of North Carolina, by her act of cession of the western lands, of 1789, recited in the act of congress of 1790, accepting that cession, and by her act of 1803, ceding to Tennessee the right to issue grants, parted with her right to issue grants for lands within the state of Tennessee, upon entries made before the cession. *Burton v. Williams*.... *529
2. But, it seems, that the holder of such a grant may resort to the equity jurisdiction of the United States courts for relief.... *Id.*
3. Under the cession act of North Carolina, of 1789, ratified by the act of congress of 1790, the United States held the domain of the vacant lands in Tennessee, subject to the right which North Carolina retained of perfecting the inchoate titles created under her laws *Id.*
4. The act of North Carolina of 1803, granted to Tennessee, irrevocably, the power of perfecting titles to land reserved to North Carolina, by the cession act, and was assented to by congress, in their act of 1806..... *Id.*
5. The act of congress of 1806 does not violate the cession act..... *Id.*

STATUTES OF TENNESSEE.

1. By the compact of 1802, settling the boundary line between Virginia and Tennessee, and the laws made in pursuance thereof, it is declared, that all claims and titles to lands derived from Virginia, or North Carolina or Tennessee, which have fallen into the respective states, shall remain as secure to the owners thereof, as if derived from the government within whose boundary they have fallen, and shall not be prejudiced or affected by the establishment of the line. Where the titles both of the plaintiff and defendant in ejectment were derived under grant from Virginia, to lands which fell within the limits of Tennessee, it was held, that a prior settlement right thereto, which would, in equity, gave the party a title, could not be asserted as a sufficient title, in an action of ejectment, brought in the circuit court of Tennessee. *Robinson v. Campbell*..... *212

2. Although the state courts of Tennessee have decided that under their statutes (declaring an elder grant founded on a junior entry to be void), a junior patent founded on a prior entry will prevail at law against a senior patent, founded on a junior entry; this doctrine has never been extended beyond cases within the express purview of the statute of Tennessee, and cannot apply to titles deriving all their validity from the laws of Virginia, and confirmed by the compact between the two states.....*Id.*
3. The general rule is, that remedies in respect to real property are to be pursued according to the *lex loci rei sitæ*. The statutes of the two states are to be construed as giving the same validity and effect to the titles in the disputed territory, as they had, or would have, in the state by which they were granted, leaving the remedies to enforce such titles to be regulated by the *lex fori*.....*Id.*
4. In this case, it was held, that the statute of limitations of Tennessee was not a good bar to the action, there being no proof that the lands in controversy were always within the original limits of Tennessee, and the statute could not begin to run, until it was ascertained by the compact of 1802, that the land fell within the jurisdictional limits of Tennessee.....*Id.*

STATUTES OF VIRGINIA.

See LOCAL LAW, 2, 3.

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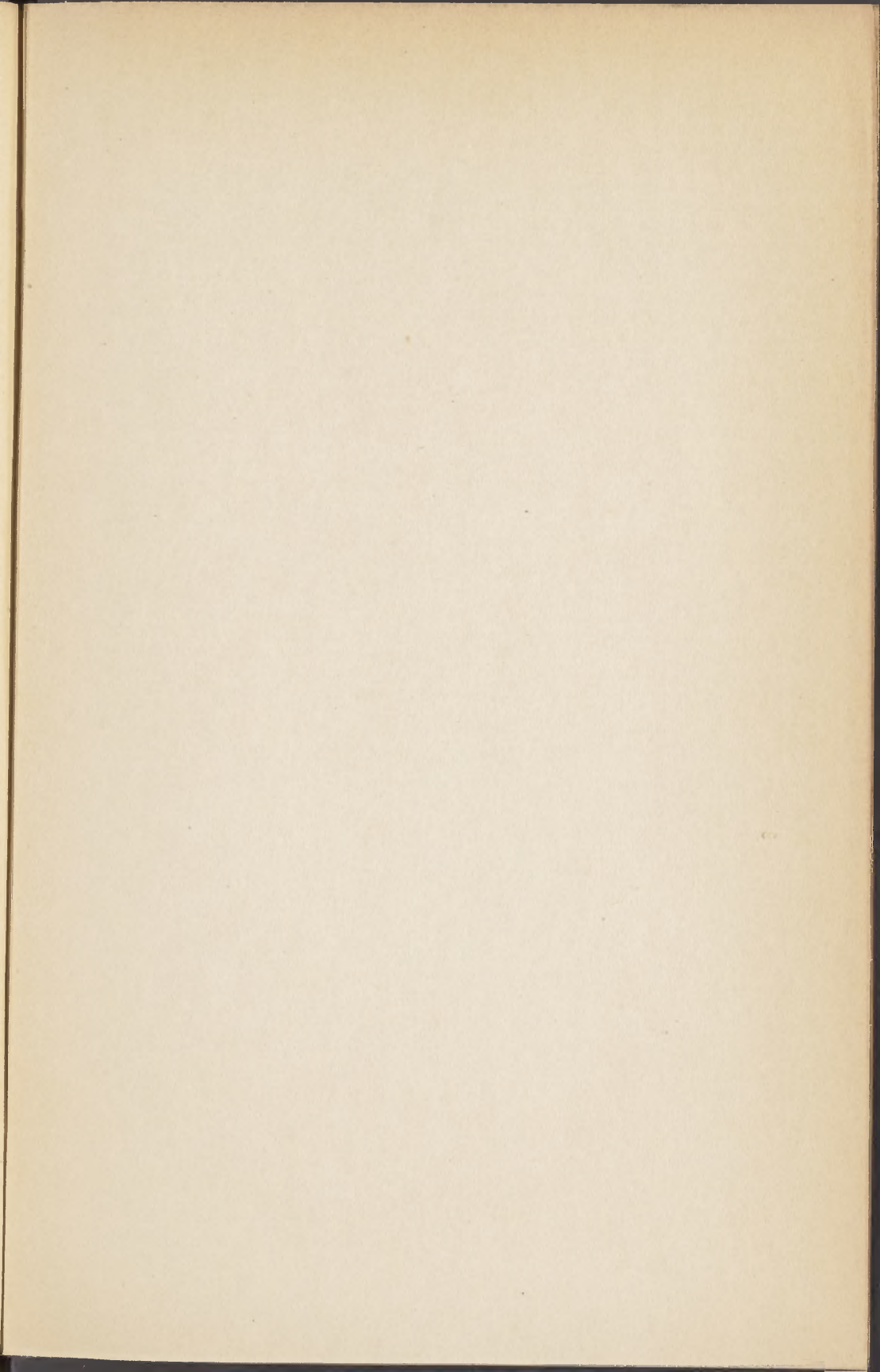
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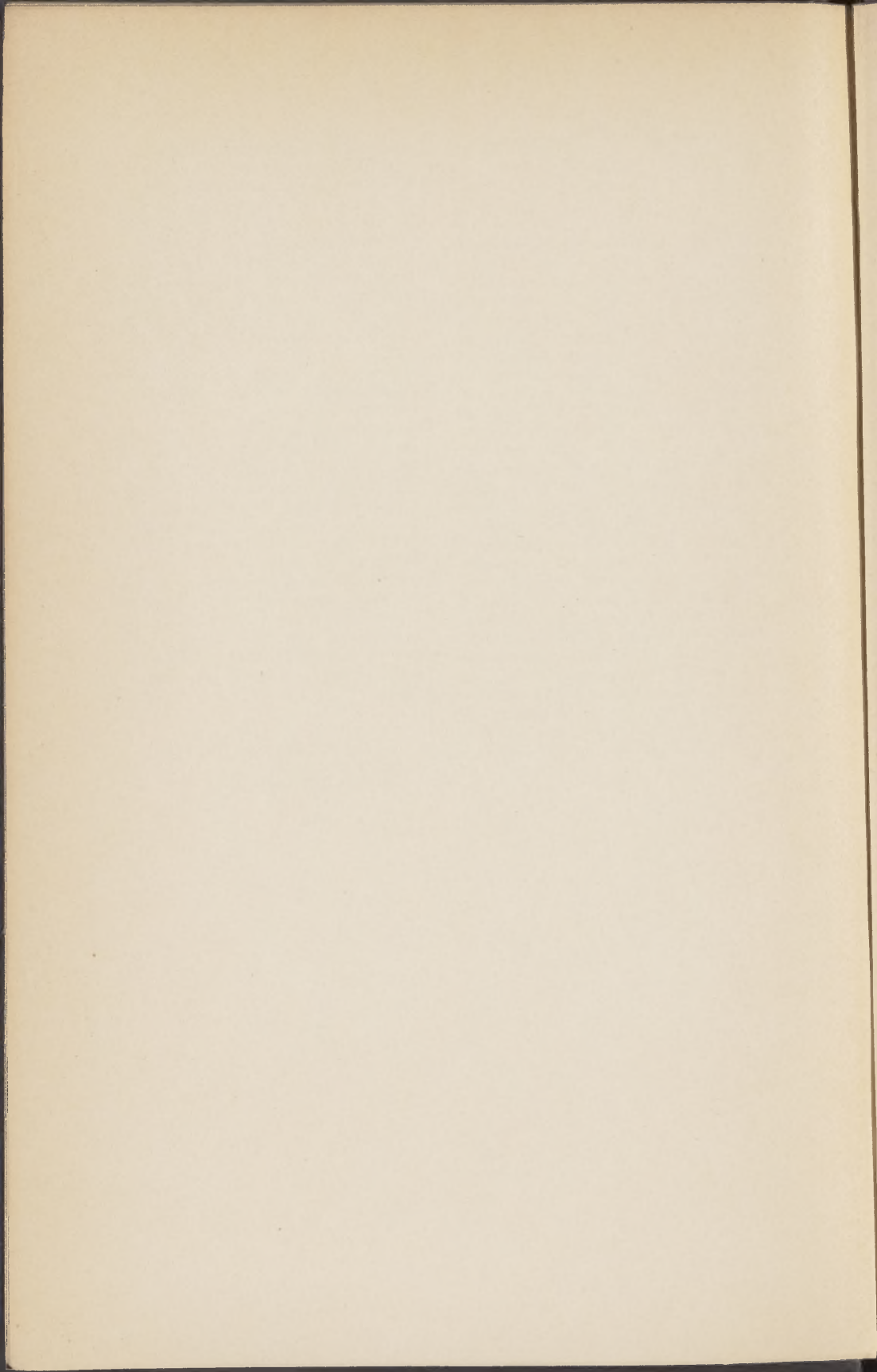
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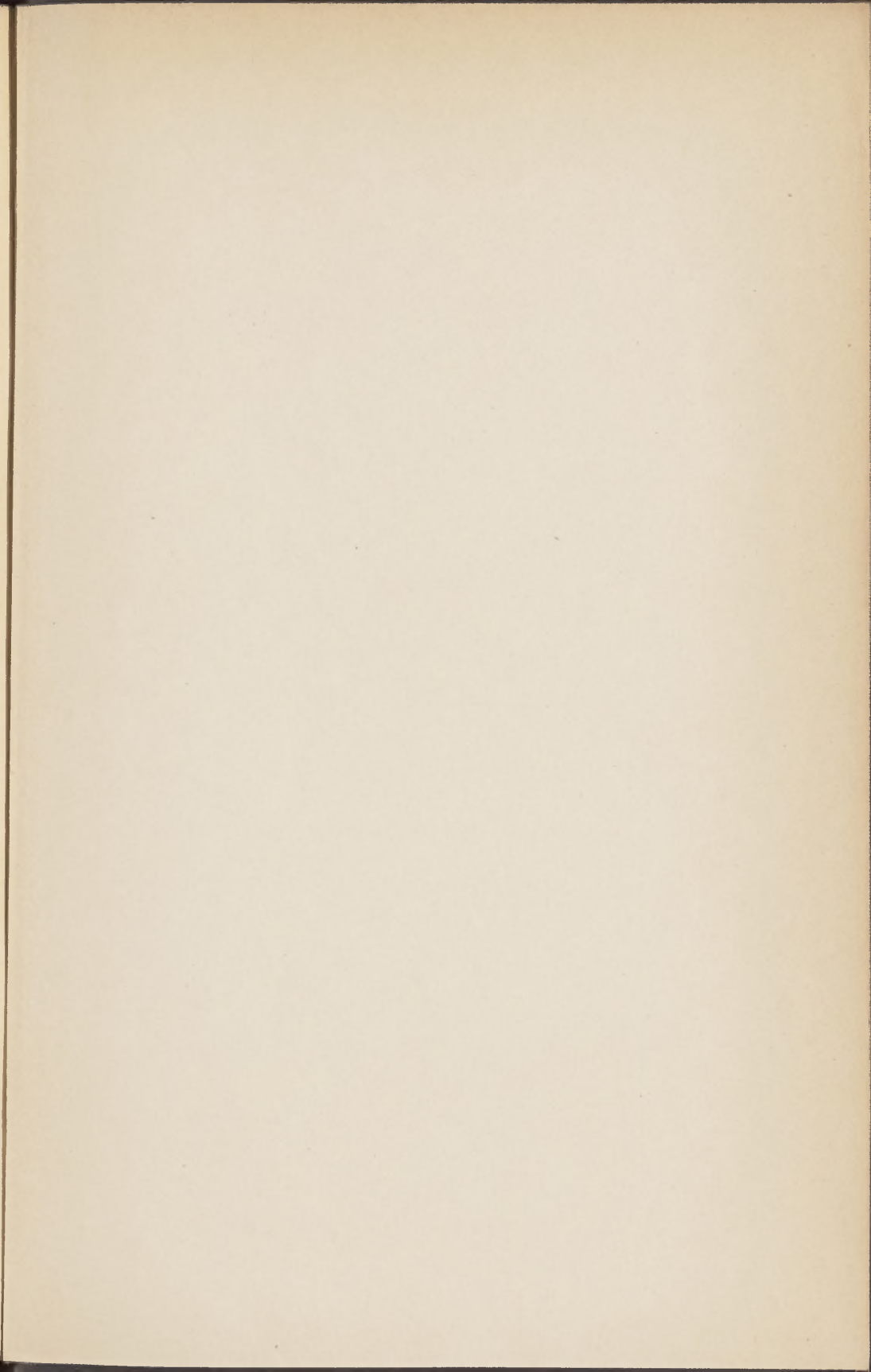
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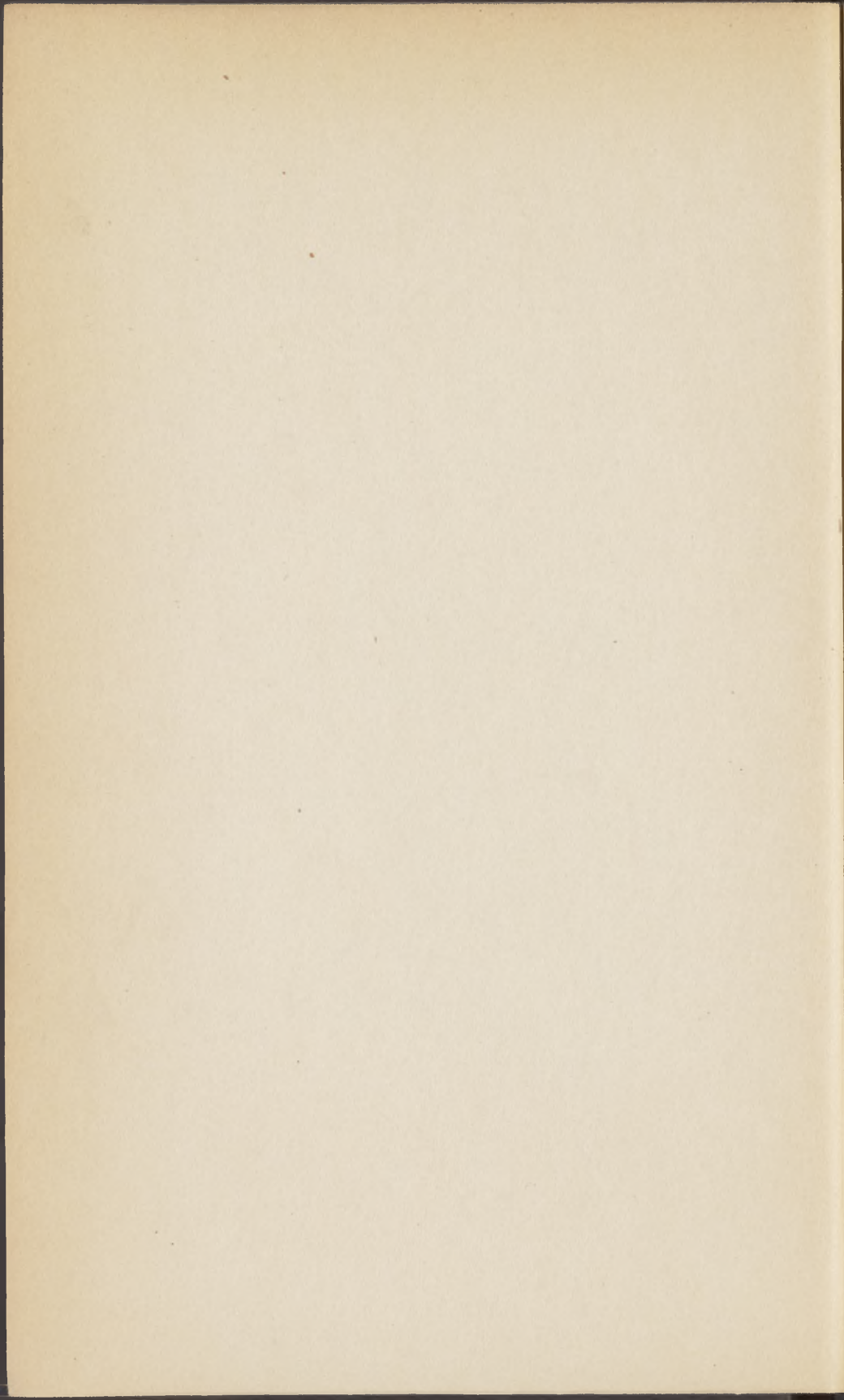
1. G. C., born in the colony of New York, went to England in 1738, where he resided until his decease: and being seised of lands in New York, he, on the 30th November, 1776, in England, devised the same to the defendant, and E. C., as tenants in common, and died so seised, on the 10th December 1776; the defendant and E. C., having entered, and becoming possessed, E. C., on the 3d December 1791, bargained and sold to the defendant all his interest; the defendant and E. C. were both born in England, long before the revolution; on the 22d March 1791, the legislature of New York, passed an act, to enable the defendant to purchase lands, and to hold all other lands which he might then be entitled to, within the state, by purchase or descent, in fee-simple, and to sell and dispose of the same, in the same manner as any natural-born citizen might do; the defendant, at the time of the action brought, still continued to be a British subject: *Held*, that he was entitled, under the 9th section of the treaty of 1794, between the United States and Great Britain, to hold the lands so devised to him by G. C., and transferred to him and transferred to him by E. C. *Jackson ex dem. The People of New York v. Clarke*...*1

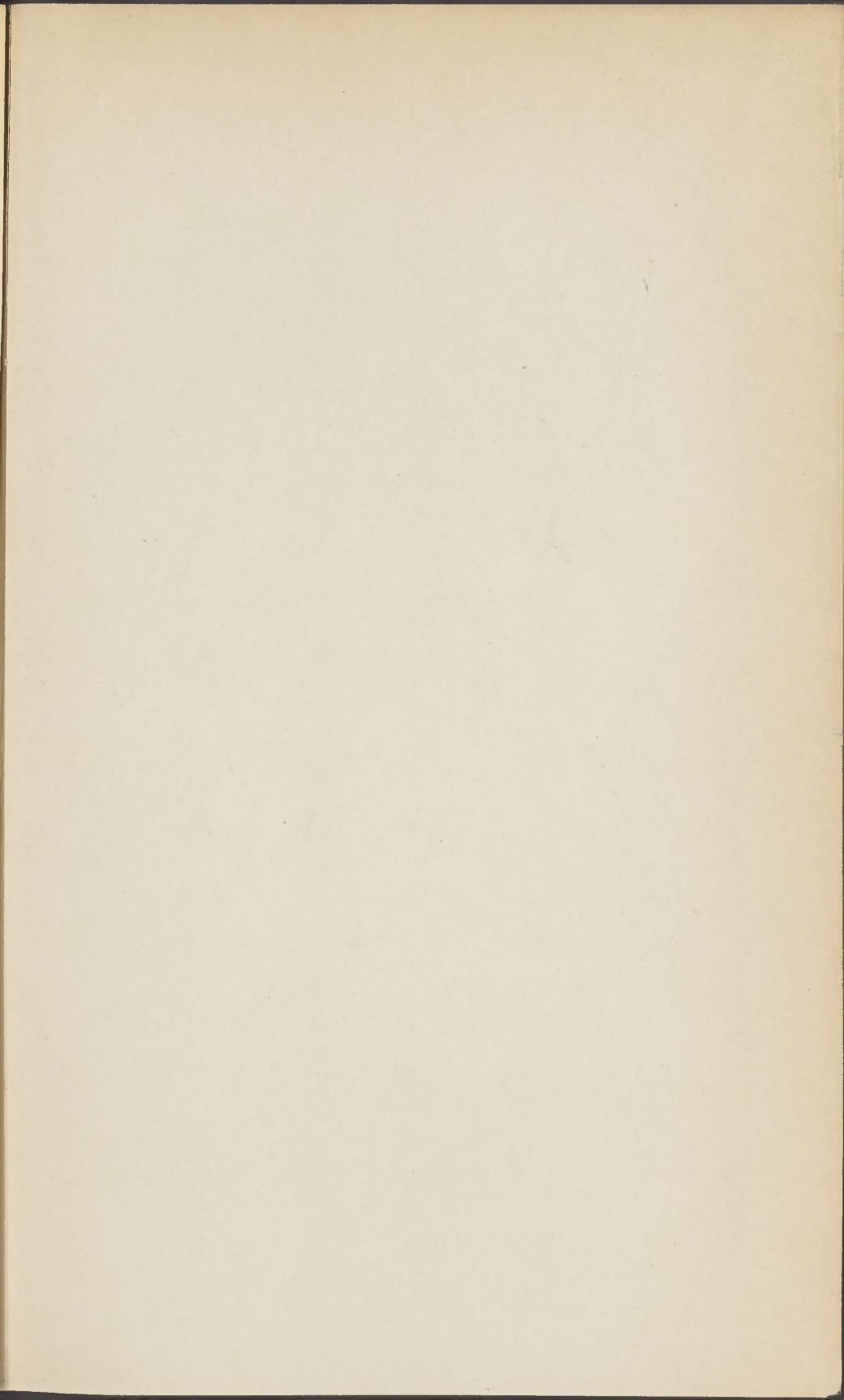
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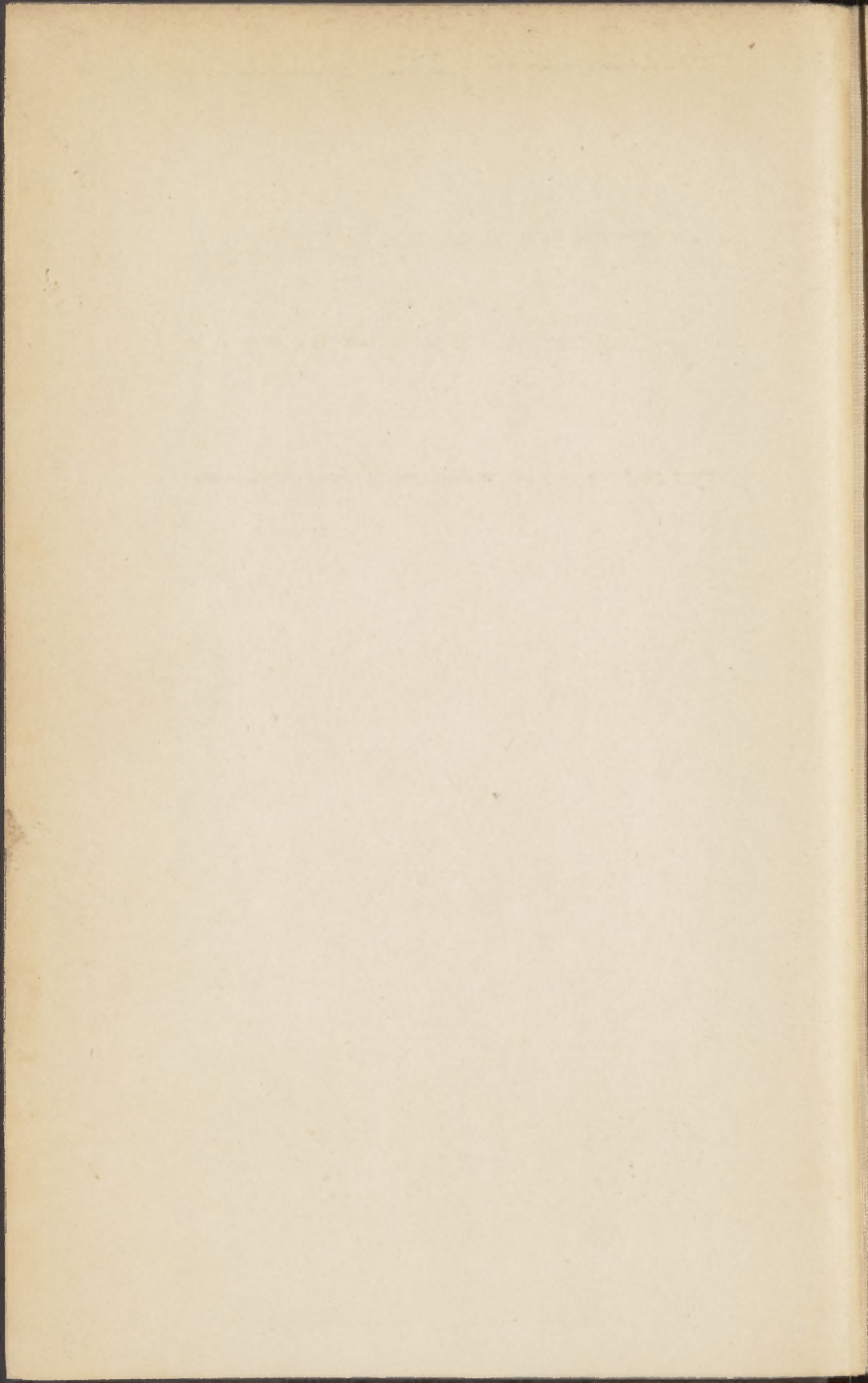












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Set 1

