INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

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

ADMIRALTY.

1. Where the pleadings in an admiralty cause are too informal and defective to pronounce a final sentence upon the merits, the cause will be remanded by this court to the circuit court, with directions to permit the pleadings to be amended, and for further proceedings. *The Divina Pastora*.....*52, 64
2. A collector of the customs, who makes a seizure of goods, for an asserted forfeiture, and before the proceedings *in rem* are consummated by a sentence of condemnation, is removed from office, acquires an inchoate right, by the seizure, which, by the subsequent decree of condemnation, gives him an absolute vested right to his share of the forfeiture, under the collection act of the 2d March 1799. *Van Ness* v. *Buel*.....*74
3. In case of civil salvage, where, under its peculiar circumstances, the amount of salvage is discretionary, appeals should not be encouraged, upon the ground of minute distinctions of merit, nor will the court reverse the decision of an inferior court, unless it manifestly appear that some important error has been committed. *The Sybil*.....*98
4. The demand of the ship-owners for freight and general average, in such a case, is to be pursued against that portion of the cargo which is adjudged to the owners of the goods, by a direct libel or petition; and not by a claim interposed in the salvage cause.....*Id.*
5. Any citizen may seize property forfeited to the use of the government, either by the municipal law, or as prize, in order to enforce the forfeiture; and it depends upon the government, whether it will act upon the seizure; if it proceed to enforce the forfeiture by legal process, this is a sufficient confirmation of the seizure. *The Caledonian*.....*100
6. The admiralty possesses a general jurisdiction in cases of suits by material-men, *in personam* and *in rem*. *The General Smith*.....*438
7. Where the proceeding by material-men is *in rem*, to enforce a specific lien, it is incumbent upon the party to establish the existence of such lien, in the particular case.....*Id.*
8. Where repairs have been made, or necessaries furnished to a foreign ship, or to a ship in the port of the state to which she does not belong, the general maritime law gives the party a lien on the ship itself for his security, and he may maintain a suit *in rem*, in the admiralty, to enforce his right..*Id.*
9. But as to repairs or necessaries in the port or state to which the ship belongs, the case is governed altogether by the local law; and no lien is implied, unless by that law....*Id.*
10. By the common law, material-men furnishing repairs to a domestic ship have no particular lien upon the ship itself for their demand.....*Id.*
11. A shipwright who has taken a ship into his possession to repair it, is not bound to part with the possession, until he is paid for the repairs; but if he parts with the possession (of a domestic ship), or has worked upon it, without taking possession, he has no claim upon the ship itself.....*Id.*
12. The common law being the law of Maryland on this subject, material-men cannot maintain a suit *in rem*, in the district court of Maryland, for supplies furnished to a domestic ship, although they might have maintained a suit *in personam* in that court.....*Id.*

See DUTIES, 1–3: DOMICIL: LICENSE: PRACTICE, 5, 6: PRIZE.

AUTHENTICATED
U.S. GOVERNMENT
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ALIEN.

1. An alien may take an estate in lands by the act of the parties, as by purchase, but he cannot take by the act of the law, as by descent. *Orr* v. *Hodgson*.....*453
2. Where a person dies, leaving issue, who are aliens, the latter are not deemed his heirs in law; but the estate descends to the next of kin, who have an inheritable blood, in the same manner as if no such alien issue were in existence.....*Id.*
3. The 6th article of the treaty of peace of 1783, between the United States and Great Britain, completely protected the titles of British subjects to lands in the United States, which would have been liable to forfeiture, by escheat, for the defeat of alienage; that article was not meant to be confined to confiscations *jure belli*.....*Id.*
4. The 9th article of the treaty of 1794, between the United States and Great Britain, applies to the title of the parties, whatever it is, and gives it the same legal validity as if the parties were citizens; it is not necessary, that they should show an actual possession or seisin, but only that the title was in them, at the time the treaty was made.....*Id.*
5. The 9th article of the treaty of 1794, did not mean to include any other persons than such as were British subjects or citizens of the United States.....*Id.*

See CHANCERY, 29.

AMENDMENTS.

See ADMIRALTY, 1.

BANKRUPT.

See CONSTITUTIONAL LAW, 1, 2, 5: LEX LOCI.

CHANCERY.

1. In 1790, S. H., a citizen of Virginia, made his last will, containing the following bequest: "Item, what shall remain of my military certificates, at the time of my death, both principal and interest, I give and bequeath to The Baptist Association that, for ordinary, meets at Philadelphia, annually, which I allow to be a perpetual fund for the education of youths of the Baptist denomination, who shall appear promising for the ministry, always giving a preference to the descendants of my father's family:" In 1792, the legislature of Virginia passed an act repealing all English statutes: In 1795, the testator died: The Baptist Association in question had existed as a regularly organized body, for many years before the date of his will; and in 1797, was incorporated by the legislature of Pennsylvania, by the name of "The Trustees of the Philadelphia Baptist Asscciation:" *Held*, that the association, not being incorporated at the testator's decease, could not take this trust as a society. *Baptist Association* v. *Hart's Ex'rs*.....*1
2. The above bequest could not be taken by the individuals who composed the association at the death of the testator; the subsequent incorporation of the association did not give it the capacity of taking this bequest; there are no persons who could entitle themselves to the benefit of this legacy, were it not a charity; and it is not sustainable in this court, as a charity.....*Id.*
3. Such a legacy would be sustained in England.....*Id*
4. The English statute of 43 Eliz. gives validity to some devises to charitable uses, which were not valid, independent of that statute.....*Id.*
5. Charitable bequests, where no legal interest is vested, and which are too vague to be claimed by those for whom the beneficial interest was intended, cannot be established by a court of equity, exercising its ordinary jurisdiction, independent of the statute 43 Eliz.....*Id.*
6. Such charitable bequests cannot be established by a court of equity, enforcing the prerogative of the king as *parens patriæ*, independent of the statute 43 Eliz.....*Id.*
7. If, in England, a charitable bequest of this nature, could be enforced by virtue of the king's prerogative as *parens patriæ*, *quære?* How far the principle is applicable in the courts of the United States?.....*Id.*
8. Note on charitable bequests, *Appendix*, Note I.....*3
9. The rudiments of the law of charities derived from the Roman law.....*Id.*
10. The statute of the 43 Eliz., c. 4, the principal source of the law of charities.....*Id.* *5
11. No cases are considered as charitable, unless they fall within the words or intent of the statute.....*Id.* *6
12. Modes of relief under the statute.....*Id.* *7
13. What charities are within the statute.....*Id.* *9
14. Mode of construing charitable bequests..*Id.*
15. How far a court of equity, sitting in one jurisdiction, can execute charitable bequests for foreign objects in another jurisdiction.....*Id.* *17
16. Mode of administering charities in chancery.....*Id.* *19
17. Remedy for misapplication of charity funds.....*Id.* *21
18. The circuit courts of the Union have chancery jurisdiction in every state; they have

the same chancery powers, and the same rules of decision in equity cases in all the states. *United States* v. *Howland*..*108, 115

19. The circuit court has jurisdiction, on a bill in equity filed by the United States against the debtor of their debtor, they claiming a priority under the act of 1799, § 65, notwithstanding the local law of the state where the suit is brought allows a creditor to proceed against the debtor of his debtor by a peculiar process at law..... *Id.*

20. Upon a bill in equity, filed by the United States, proceeding as ordinary creditors against the debtor of their debtor, for an account, &c., the original debtor to the United States ought to be made a party, and the account taken between him and his debtor.. *Id.*

21. The equitable lien of the vendor of land for unpaid purchase-money, is waived by any act of the parties, showing that the lien is not intended to be retained; as, by taking separate securities for the purchase-money. *Brown* v. *Gilman*.....*255, 296

22. An express contract that the lien shall be waived to a certain extent, is a waiver of the lien to any greater extent..... *Id.*

23. Where the deed itself remains an escrow, until the first payment is made, and is then delivered as the deed of the party, and the vendor consents to rely upon the negotiable notes of the purchaser, indorsed by third persons, for the residue of the purchase-money, this is such a separate security as extinguishes the lien..... *Id.*

24. Note on the subject of lien on land for unpaid purchase-money..... *Id.* *292

25. Bill for rescinding a contract for the sale of lands, on the ground of defect of title, dismissed, with costs. *Orr* v. *Hodgson*...*453

26. Under the registry act of Ohio, which provides that certain deeds "shall be recorded in the county in which the lands, tenements and hereditaments, so conveyed or affected, shall be situate, within one year after the day on which such deed or conveyance was executed; and unless recorded in the manner and within the time aforesaid, shall be deemed fraudulent against any subsequent *bonâ fide* purchaser, without knowledge of the existence of such former deed of conveyance," lands lying in Jefferson county were conveyed by deed; and a new county, called Tuscarora county, was erected, partly from Jefferson, after the execution and before the recording of the deed, in which new county the lands were included, and the deed was recorded in Jefferson: *Held*, that the registry was not sufficient, either to preserve its legal priority, or to give it the equity arising from constructive notice. *Astor* v. *Wells*..*467, 486

27. Notice of a prior incumbrance to an agent, is notice to the principal..... *Id.*

28. Under the statute of fraudulent conveyances of Ohio, which provides, that "every gift, grant or conveyance of lands, tenements, hereditaments, &c., made or obtained with intent to defraud creditors of their just and lawful debts and damages, or to defraud or deceive the person or persons who shall purchase such lands. &c., shall be deemed utterly void, and of no effect," *held*, that a *bonâ fide* purchaser, without notice, could not be affected by the intent of the grantor to defraud creditors..... *Id.*

29. A court of equity will not decree the specific performance of an agreement concerning lands, in favor of aliens who are incapable of holding the estate to their own use. *Orr* v. *Hodgson*.....*465

CHARITIES.

See CHANCERY, 1–15, 17, 18.

COLLECTOR.

See ADMIRALTY, 2.

CONSTITUTIONAL LAW.

1. Since the adoption of the constitution of the United States, a state has authority to pass a bankrupt law, provided such law does not impair the obligation of contracts, within the meaning of the constitution, art. 1, § 10; and provided there be no act of congress in force, to establish a uniform system of bankruptcy, conflicting with such law. *Sturges* v. *Crowninshield*.....*122, 192

2. The act of New York, passed on the 3d of April 1811 (which not only liberates the person of the debtor, but discharges him from all liability for any debt contracted previous to his discharge, on his surrendering his property in the manner it prescribes), so far as it attempts to discharge the contract, is a law impairing the obligation of contracts, within the meaning of the constitution of the United States, and is not a good plea in bar of an action brought upon such contract..... *Id.*

3. Whenever the terms in which a power is granted by the constitution to congress, or whenever the nature of the power itself requires that it should be exercised exclusively by congress, the subject is as completely taken away from the state legislatures, as if they had been expressly forbidden to act on it.. .....*Id.* *193

4. Statutes of limitation and usury laws, unless retroactive in their effect, do not impair the obligation of contracts, and are constitutional..... *Id.* *206

5. A state bankrupt or insolvent law (which not only liberates the person of the debtor, but discharges him from all liability for the debt), so far as it attempts to discharge the contract, is repugnant to the constitution of the United States; and it makes no difference in the application of this principle, whether the law was passed before or after the debt was contracted. *McMillan* v. *McNeill*..*209

6. The act of assembly of Maryland, of 1793, c. 30, incorporating the Bank of Columbia, and giving to the corporation a summary process by execution, in the nature of an attachment, against its debtors, who have, by an express consent in writing, made the bonds, bills or notes by them drawn or indorsed, negotiable at the bank, is not repugnant to the constitution of the United States or of Maryland. *Bank of Columbia* v. *Okely*.....*236, 240

7. But the last provision in the act of incorporation, which gives this summary process to the bank, is no part of its corporate franchises, and may be repealed or altered at pleasure, by the legislative will..... *Id.*

8. Congress has power to incorporate a bank. *McCulloch* v. *State of Maryland*.....*316

9. The government of the Union is a government of the people; it emanates from them; its powers are granted by them; and are to be exercised directly on them, and for their benefit..... *Id.*

10. The government of the Union, though limited in its powers, is supreme within its sphere of action; and its laws, when made in pursuance of the constitution, form the supreme law of the land..... *Id.*

11. There is nothing in the constitution of the United States, similar to the articles of confederation, which excludes incidental or implied powers..... *Id.*

12. If the end be legitimate, and within the scope of the constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect..... *Id.*

13. The power of establishing a corporation is not a distinct sovereign power or end of government, but only the means of carrying into effect other powers which are sovereign. Whenever it becomes an appropriate means of exercising any of the powers given by the constitution to the government of the Union, it may be exercised by that government..... *Id.*

14. If a certain means to carry into effect an of the powers expressly given by the constitution to the government of the Union, be an appropriate measure not prohibited by the constitution, the degree of its necessity is a question of legislative discretion, not of judical cognisance..... *Id.*

15. The act of the 19th April 1816, "to incorporate the subscribers to the Bank of the United States," is a law made in pursuance of the constitution..... *Id.*

16. The Bank of the United States has, constitutionally, a right to establish its branches or offices of discount and deposit within any state..... *Id.*

17. The state, within which a branch of the Bank of the United States may be established, cannot, without violating the constitution, tax that branch..... *Id.*

18. The state governments have no right to tax any of the constitutional means employed by the government of the Union to execute its constitutional powers..... *Id.*

19. The states have no power, by taxation or otherwise, to retard, impede, burden or in any manner control, the operation of the constitutional laws enacted by congress to carry into effect the powers vested in the national government..... *Id.*

20. This principle does not extend to a tax paid by the real property of the Bank of the United States, in common with the other real property in a particular state, nor to a tax imposed on the proprietary interest which the citizens of that state may hold in this institution, in common with the other property of the same description throughout the state.. *Id.*

21. The charter granted by the British crown to the trustees of Dartmouth College, in New Hampshire, in the year 1769, is a contract, within the meaning of that clause of the constitution of the United States (art. 1, § 10), which declares, that no state shall make any law impairing the obligation of contracts. The charter was not dissolved by the revolution. *Dartmouth College* v. *Woodward*.....*518

22. An act of the state legislature of New Hampshire, altering the charter of Dartmouth College, in a material respect, without the consent of the corporation, is an act impairing the obligation of the charter, and is unconstitutional and void..... *Id.*

23. Under its charter, Dartmouth College was a private, not a public corporation. That a corporation is established for the purpose of general charity, or for education generally, does not, *per se*, make it a public corporation, liable to the control of the legislature.... *Id.*

See CHANCERY, 18: PRACTICE, 3, 4.

CONTRACT.

1. A. offered to purchase of B. two or three hundred barrels of flour, to be delivered at Georgetown (District of Columbia), by the first water, and to pay for the same $9.50 *per* barrel; and to the letter containing this offer, required an answer, by the return of the wagon by which the letter was sent: this wagon was, at that time, in the service of B., and employed by him in conveying flour from his mill to Harper's Ferry, near to which place A. then was: his offer was accepted by B., in a letter sent by the first regular mail to Georgetown, and received by A. at that place; but no answer was ever sent to Harper's Ferry: *Held*, that the acceptance, communicated at a different place from that indicated by A., imposed no obligation binding upon him. *Eliason* v. *Henshaw*....*225
2. An offer of a bargain, by one person to another, imposes no obligation upon the former, unless it be accepted by the latter, according to the terms on which the offer was made; any qualification of, or departure from, those terms, invalidates the offer, unless the same be agreed to by the party who made it....*Id.*

See FRAUDS, 4.

COVENANT.

1. Where the defendant in ejectment, for lands in North Carolina, has been in possession, under title in himself, and those under whom he claims, for a period of seven years, or upwards, such possession is, by the statute of limitations of North Carolina, a conclusive legal bar against the action by an adverse claimant, unless such claimant bring himself, by positive proof, within some of the disabilities provided for by that statute: in the absence of such proof, the title shown by the party in possession is so complete, as to prove, in an action upon a covenant against incumbrances, that a recovery obtained by the adverse claimant was not by a paramount legal title. *Somerville* v. *Hamilton*.....*230, 233
2. *Quære?* Whether, in an action upon a covenant against incumbrances, the plaintiff is bound to show that the adverse claimant recovered, in the suit by which the plaintiff is evicted, by title paramount, or whether the recovery itself is *primâ facie* evidence of that fact?.....*Id.*

DEED.

See CHANCERY, 26–28: EVIDENCE, 1: FRAUDS, 3.

DOMICIL.

1. The property of a house of trade, established in the enemy's country, is condemnable as prize, whatever may be the personal domicil of the partners. *The Friendschaft*...*105

DUTIES.

1. By the conquest and military occupation of a portion of the territory of the United States, by a public enemy, that portion is to be deemed a foreign country, so far as respects our revenue laws. *United States* v. *Rice*.....*247, 254
2. Goods imported into it, are not imported into the United States, and are subject to such duties only as the conqueror may impose.....*Id.*
3. The subsequent evacuation of the conquered territory by the enemy, and resumption of authority by the United States, cannot change the character of past transactions; the *jus postliminii* does not apply to the case; and goods previously imported do not become liable to pay duties to the United States, by the resumption of their sovereignty over the conquered territory.....*Id.*

See PRIORITY.

EJECTMENT.

1. A patent issued on the 18th November 1784, for 1000 acres of land, in Kentucky, to J. C. who had previously, in July 1784, covenanted to convey the same to M. G., the ancestor of the lessor of the plaintiff, and on the 23d June 1786, M. G. made an agreement with R. B., the defendant in ejectment, to convey to him 750 acres, part of the tract of 1000 acres, under which agreement, R. B. entered into possession of the whole tract; and on the 11th April 1787, J. C., by direction of M. G., conveyed to R. B., the 750 acres, in fulfilment of said agreement, which were severed by metes and bounds from the tract of 1000 acres. J. C. and his wife, on the 26th April 1791, made a conveyance in trust of all his property, real and personal, to R. J. and E. C.: on the 12th February 1813, R. J., as surviving trustee, conveyed to the heirs of M. G., under a decree in equity, that part of the 1000 acres not previously conveyed to R. B., and in the part so conveyed under the decree, was included the land claimed in ejectment. R. B., the defendant, claimed the land in controversy, under a patent for 400 acres, issued on the 15th September 1795, founded on a survey made for B. N., May 12th, 1782; and under a deed of the 13th of December 1796,

from one Coburn, who had, in the winter and spring of 1791, entered into and fenced a field, within the bounds of the original patent for 1000 acres to J. C., claiming to hold the same under B. N.'s survey of 400 acres: *Held*, that upon the issuing of the patent to J. C., in November 1784, the possession then being vacant, he became, by operation of law, vested with a constructive actual seisin of the whole tract included in his patent; that his whole title passed by his prior conveyance to M. G. (the ancestor of the plaintiff's lessor); and that when it became complete at law, by the issuing of the patent, the actual constructive seisin of J. C. passed to M. G., by virtue of that conveyance. Also *held*, that when, subsequently, in virtue of the agreement made in June 1786, between M. G. and R. B. (the defendant), the latter entered into possession of the whole tract, under this equitable title, his possession being consistent with the title of M. G., and in common with him, was the possession of M. G. himself, and inured to the benefit of both, according to the nature of their respective titles. And that, when, subsequently, in April 1787, by the direction of M. G., J. C. conveyed to the defendant 750 acres, in fulfilment of the agreement between M. G. and the defendant, and the same were severed by metes and bounds, in the deed, from the tract of 1000 acres, the defendant became sole seised, in his own right, of the 750 acres so conveyed; but as he still remained in the actual possession of the residue of the tract, within the bounds of the patent, which possession was originally acquired under M. G., the character of his tenure was not changed by his own act, and therefore he was *quasi* tenant to M. G., and, as such, continued the actual seisin of the latter, over his residue at least, up to the deed from Coburn to the defendant in 1798. Also *held*, that if Coburn, in 1791, when he entered and fenced a field, &c., had been the owner of B. N.'s survey, his actual occupation of a part would not have given him a constructive actual seisin of the residue of the tract included in that survey, that residue being at the time of his entry and occupation in the adverse seisin of another person (M. G.), having an older and better title; but there being no evidence that Coburn was the legal owner of B. N.'s survey, his entry must be considered as an entry without title, and consequently, his disseisin was limited to the bounds of his actual occupancy. *Barr* v. *Gratz*.....*213

2. The deed from J. C. and wife, to D. J. and E. C., in 1791, was not within the statute of champerty and maintenance of Kentucky; for as to all the land not in the actual occupancy of Coburn, the deed was operative, the grantors and those holding under them having at all times had the legal seisin.... *Id.*
3. The deed of 1813, from R. J., surviving trustee, under the decree in equity, was valid, without being approved by the court, and recorded in the court, according to the statute of Kentucky of the 16th February 1808.. *Id.*
4. Where the defendant in ejectment, for lands in North Carolina, has been in possession under title in himself, and those under whom he claims, for a period of seven years, or upwards, such possession is, by the statute of limitations of North Carolina, a conclusive legal bar against the action by an adverse claimant, unless such claimant brings himself, by positive proof, within some of the disabilities provided for by that statute. *Somerville* v. *Hamilton*.....*230, 233
5. An agreement, by parol, between two proprietors of adjoining lands, to employ a surveyor to run the dividing line between them, and that it should be thus ascertained and settled, which was executed, and the line accordingly run and marked on a plat by the surveyor, in their presence, as the boundary, *held* to be conclusive, in an action of ejectment, after a corresponding possession of 20 years by the parties, and those claiming under them respectively. *Boyd* v. *Graves*.....*513

See EVIDENCE, 1–4.

ERROR.

See PRACTICE, 1–4.

EVIDENCE.

1. The party who sets up a title must furnish the evidence necessary to support it. If the validity of a deed depend on an act *in pais*, the party claiming under it is as much bound to prove the performance of the act, as he would be bound to prove any matter of record on which the validity of the deed might depend. *Williams* v. *Peyton*.....*77
2. In the case of lands sold for the non payment of taxes, the marshal's deed is not even *primâ facie* evidence that the pre-requisites required by law have been complied with..... *Id.*
3. A deed, more than thirty years old, proved to have been in the possession of the lessors of the plaintiff in ejectmont, and actually asserted by them as the ground of their title, in a chancery suit, is admissible in evidence, without regular proof of its execution. *Barr* v. *Gratz*.....*221
4. In general, judgments and decrees are

evidence only in suits between parties and privies; but the doctrine is wholly inapplicable to a case, where a decree in equity was introduced on the trial of an ejectment, not as *per se* binding upon any rights of the other party, but as an introductory fact to a link in the chain of the plaintiff's title, and constituting a part of the muniments of his estate.....*Id.*

5. The seal to the commission of a new government, not acknowledged by the government of the United States, cannot be permitted to prove itself; but the fact, that the vessel cruising under such commission is employed by such new government, may be established by other evidence, without proving the seal. *The Estrella*.....*303
6. Where the privateer, cruising under such a commission, was lost, subsequent to the capture in question, the previous existence of the commission on board was allowed to be proved by parol evidence.....*Id.*

See COVENANT, 1, 2: EJECTMENT, 4.

FRAUDS.

1. E. B. C., having an interest in a cargo at sea, agreed with J. W. for the sale of it, and J. W. signed the following agreement in writing: "J. W. agrees to purchase the share of E. B. C. in the cargo of the ship Aristides, W. P. Z., supercargo, say at $2522.83, at fifteen per cent. advance on said amount, payable at five months from this date, and to give a note or notes for the same, with an approved indorser." In compliance with this agreement, J. W. gave his notes for the sum mentioned, and in an action upon the notes, the want of a legal consideration, under the statute of frauds, being set up as a defence, on the ground of the defect of mutuality in the written contract; the court below left it to the jury to infer from the evidence, an actual performance of the agreement; the jury found a verdict for the plaintiff, and the court below rendered judgment thereon. The judgment affirmed by this court. *Weightman* v. *Caldwell*.....*85
2. Note on the 17th section of the statute of frauds, as to the sale of goods.....*Id.* *89
3. A deed made upon a valuable and adequate consideration, which is actually made and the change of property *bonâ fide*, or such as is purported to be, cannot be considered as a conveyance to defraud creditors. *Wheaton* v. *Sexton*.....*503, 507
4. An agreement by parol, between two proprietors of adjoining lands, to employ a surveyor to run the dividing line between them, and that it should be thus ascertained and settled, which was executed, and the line accordingly run and marked on a plat, by the surveyor, in their presence, as the boundary, is conclusive, in an action of ejectment, after a correspondent possession of 20 years by the parties and those claiming under them. Such an agreement is not within the statute of frauds, as being a contract for the sale of lands, or any interest in or concerning them. *Boyd* v. *Graves*.....*513

See CHANCERY, 26–28.

INSOLVENT LAW.

See CONSTITUTIONAL LAW, 1, 2, 5.

JURISDICTION.

See CHANCERY, 5–7, 18, 19: PRIZE, 2, 3, 7, 9.

LEX LOCI.

1. A discharge under a foreign bankrupt law is no bar to an action in the courts of this country, on a contract made here. *McMillan* v. *McNeill*.....*209, 213

LIBEL.

See PRACTICE.

LICENSE.

1. A vessel and cargo, which is liable to seizure as enemy's property, or for sailing under the pass or license of the enemy, may be seized after her arrival in a port of the United States, and condemned as prize of war. The *delictum* is not purged, by the termination of the voyage. *The Caledonian*.....*100
2. The circumstance of a vessel having been sent into an enemy's port for adjudication, and afterwards permitted to resume her voyage, *held* to raise a violent presumption, that she had a license, which the claimant not having repelled by explanatory evidence, condemnation was pronounced. *The Langdon Cheves*.....*103

LIMITATION OF ACTIONS.

See CONSTITUTIONAL LAW, 4: EJECTMENT, 4.

LOCAL LAW.

1. The statute of charitable uses of the 43 Eliz., c. 4, is not in force in Virginia. *Baptist Association* v. *Hart's Ex'rs*.....*1
2. If there is nothing in a patent to control the call for course and distance, the land must be bounded by the courses and distances of of the patent, according to the magnetic meridian; but it is a general principle, that

the course and distance must yield to natural objects called for in the patent. *McIver's Lessee* v. *Walker*.....*444, 447

3. All lands are supposed to be actually surveyed, and the intention of the grant is to convey the land, according to the actual survey; consequently, distances must be lengthened or shortened, and courses varied, so as to conform to the natural objects called for.....*Id.*

4. If a patent refer to a plat annexed, and if in that plat, a water-course be laid down as running through the land, the tract must be so surveyed as to include the water-course, and to conform as nearly as may be to the plat, although the lines, thus run, do not correspond with the courses and distances mentioned in the patent, and although neither the certificate of survey nor the patent called for that water-course.....*Id.*

5. The rule which prevails in Kentucky and Ohio, as so land titles, is, that, at law, the patent is the foundation of title, and neither party can bring his entry before the court: but a junior patentee, claiming under an elder entry, may, in chancery, support his equitable title. *McArthur* v. *Browder*.....*488, 491

6. A description which will identify the lands, is all that is necessary to the validity of a grant: but the law requires that an entry should be made with such certainty, that subsequent purchasers may be enabled to locate the adjacent *residuum*.....*Id.*

7. An entry for 1000 acres of land in Ohio, on Deer creek, "beginning where the upper line of Ralph Morgan's entry crosses the creek, running with Morgan's line, on each side of the creek, 400 poles, thence up the creek, 400 poles in a direct line, thence from each side of the given line, with the upper line, at right angles with the side lines, for quantity," is a valid entry.....*Id.*

8. Distinction between amending and withdrawing an entry.....*Id.*

See Chancery, 19: Constitutional Law, 6, 7: Covenant, 1: Ejectment, 1–4.

POWER.

1. In the case of a naked power, not coupled with an interest, the law requires that every pre-requisite to the exercise of that power should precede its exercise. *Williams* v. *Peyton*.....*77, 79

PRACTICE.

1. A writ of error will not lie on a judgment of nonsuit. *Evans* v. *Phillips*.....*73

2. The refusal of the court to grant a motion for a new trial, affords no ground for a writ of error. *Barr* v. *Gratz*.....*220

3. Where a cause is brought to this court, by writ of error, or appeal, from the highest court of law or equity of a state, under the 25th section of the judiciary act of 1789, upon the ground, that the validity of a statute of the United States was drawn in question, and that the decision of the state court was against its validity, &c.; or that the validity of a statute of a state was drawn in question, as repugnant to the constitution of the United States, and the decision was in favor of its validity; it must appear, from the record, that the act of congress, or the constitutionality of the state law *was* drawn into question. *Miller* v. *Nicholls*.....*311, 315

4. But it is not required, that the record should, in terms, state a misconstruction of the act of congress, or that it was drawn into question; it is sufficient to give this court jurisdiction of the cause, the record should show that an act of congress was applicable to the case.....*Id.*

5. Depositions, taken on further proof, in one prize cause, cannot be invoked into another. *The Experiment*.....*84

6. Practice of invoking testimony in prize causes.....*Id.*

7. A sale under a *fi. fa.*, duly issued, is legal, as respects the purchaser, provided the writ be levied upon the property, before the return-day, although the sale be made after the return-day, and the writ be never actually returned. *Wheaton* v. *Sexton*....*503, 506

8. Depositions taken according to the proviso in the 30th section of the judiciary act of 1789, under a *dedimus potestatem*, "according to common usage, when it may be necessary to prevent a failure or delay of justice," are, under no circumstances, to be considered as taken *de bene esse*, whether the witnesses reside beyond the process of the court or within it; the provisions of the act relative to depositions taken *de bene esse* being confined to those taken under the enacting part of the section. *Sergeant* v. *Biddle*....*508

See Admiralty, 1, 4, 5: Chancery, 20.

PRIORITY.

1. The United States are not entitled to priority over other creditors, under the act of 1799, § 65, upon the ground of the debtor having made an assignment for the benefit of creditors, unless it is proved, that the debtor has made an assignment of *all* his property. *United States* v. *Howland*.... ...*108, 116

2. Where the deed of assignment conveys only

the property mentioned in a schedule annexed to the deed, and the schedule does not purport to contain *all* the property of the party who made it, the *onus probandi* is thrown on the United States, to show that the assignment embraced all the debtor's property.....*Id.*

3. The decisions on the subject of the priority of the United States in case of insolvency, &c., collected.....*Id.* *118

PRIZE.

1. The government of the United States having recognised the existence of a civil war between Spain and her colonies, but remaining neutral, the courts of the Union are bound to consider as lawful those acts which war authorizes, and which the new governments in South America may direct against their enemy. *The Divina Pastora*.....*52, 63
2. Unless the neutral rights of the United States (as ascertained by the law of nations, the acts of congress, and treaties) are violated by the cruisers sailing under commissions from those governments, captures by them are to be regarded by us as other captures, *jure belli*, are regarded; the legality of which cannot be determined in the courts of a neutral country.....*Id.*
3. Note on the jurisdiction of neutral courts over belligerent captures made in violation of the neutral jurisdiction.....*Id.* *65
4. Different public acts by which the government of the United States has recognised the existence of a civil war between Spain and her colonies. *Appendix*, Note II.....*23
5. Prize code of Buenos Ayres and Chili...*Id.*
6. Where restitution of captured property is claimed, upon the ground, that the force of the cruiser making the capture has been augmented within the United States, by enlisting men, the burden of proving such enlistment is thrown upon the claimant; and that fact being proved by him, it is incumbent upon the captors to show, by proof, that the persons so enlisted were subjects or citizens of the prince or state under whose flag the cruiser sails, transiently within the United States, in order to bring the case within the proviso of the 2d section of the act of June 5th, 1794, and of the act of the 20th April 1818. *The Estrella*.....*298, 306
7. The right of adjudicating on all captures and questions of prize belongs exclusively to the courts of the captor's country: but, it is an exception to this general rule, that where the captured vessel is brought, or voluntarily comes, *infra præsidia* of a neutral power, that power has a right to inquire whether its own neutrality has been violated by the cruiser which made the capture; and if such violation has been committed, is in duty bound to restore to the original owner property captured by cruisers illegally equipped in its ports.....*Id.*
8. No part of the act of the 5th June 1794, is repealed by the act of the 3d March 1817. The act of 1794 remained in force, until the act of the 20th April 1818, by which all the provisions respecting our neutral relations were embraced, and all former laws on the same subject were repealed.....*Id.*
9. In the absence of any act of congress on the subject, the courts of the United States would have authority, under the general law of nations, to decree restitution of property captured in violation of their neutrality, under a commission, issued within the United States, or under an armament, or augmentation of the armament, or crew of the capturing vessel, within the same.....*Id.*
10. A cruiser, equipped at the port of Carthagena, in South America, and commissioned under the authority of the Province of Carthagena, one of the United Provinces of New Grenada, at war with Spain, sailed from the said port, and captured on the high seas, as prize, a vessel and cargo belonging to the subjects of the king of Spain, and put a prize-crew on board, and ordered her to proceed to the said port of Carthagena: the captured vessel was afterwards fallen in with by a private armed vessel of the United States, and the cargo taken out and brought into the United States for adjudication, as the property of their enemy. The original Spanish owner, and the prize-master from the Carthagenian privateer, both claimed the goods. The possession was decreed to be restored to the Carthagenian prize-master. *The Neustra Senora de la Caridad*.....*497
11. War having been recognised to exist between Spain and her colonies, by the government of the United States, it is the duty of the courts of the United States, where a capture is made by either of the belligerent parties, without any violation of our neutrality, and the captured prize is brought innocently within our jurisdiction, to leave things in the same state they find them; or to restore them to the state from which they have been forcibly removed by the act of our own citizens.....*Id.*
12. The Spanish treaty held not to apply to the above case, as the court could not consider the Carthagenian captors as pirates, and the capture was not made within the jurisdictional limits of the United States, the only two cases in which the treaty enjoins restitution.....*Id.*

See DOMICIL: LICENSE: PRACTICE, 5, 6.

SALE.

See CHANCERY, 21–24.

STATUTES OF KENTUCKY.

See EJECTMENT, 2, 3: LOCAL LAW.

STATUTES OF MARYLAND.

See CONSTITUTIONAL LAW, 6, 7.

STATUTES OF NORTH CAROLINA.

See COVENANT, 1: EJECTMENT, 4.

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STATUTES OF OHIO.

See CHANCERY, 26, 28: LOCAL LAW.

STATUTES OF VIRGINIA.

See LOCAL LAW, 1.

TRADE WITH THE ENEMY.

See LICENSE, 1.

TREATY.

See ALIEN: PRIZE, 12.