

# INDEX

TO THE

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- Where a bill was filed for a perpetual injunction, on judgments obtained on certain bills of exchange, drawn by the plaintiff, and negotiated to the defendant, and which had subsequently passed from the latter into the hands of third persons, by whom the judgments were obtained: *held*, that the injunction could not be decreed, until their answers had come in, although the bill stated, and the defendant admitted, that he had paid the judgments, and was then the only person interested in them, because such statement and admission might be made by collusion ..... *Id.*
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- The powers granted to congress are not exclusive of similar powers existing in the states, unless where the constitution has expressly in terms given an exclusive power to

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3. The example of the first class is to be found in the exclusive legislation delegated to congress over places purchased by the consent of the legislature of the state in which the same shall be, for forts, arsenals, dock-yards, &c.; of the second class, the prohibition of a state to coin money or emit bills of credit; of the third class, the power to establish an uniform rule of naturalization, and the delegation of admiralty and maritime jurisdiction. .... *Id.*

4. In all other classes of cases, the states retain concurrent authority with congress. .... *Id.*

5. But in cases of concurrent authority, where the laws of the states and of the Union are in direct and manifest collision, on the same subject, those of the Union being the supreme law of the land, are of paramount authority, and the state laws, so far, and so far only, as such incompatibility exists, must necessarily yield. .... *Id.*

6. The act of the 3d of March 1819, c. 76, § 5, referring to the law of nations for a definition of the crime of piracy, is a constitutional exercise of the power of congress to define and punish that crime. *United States v. Smith.* .... \*153, 157

7. Congress has authority to impose a direct tax on the district of Columbia, in proportion to the census directed to be taken by the constitution. *Loughborough v. Blake.* .... \*317

8. The power of congress to lay and collect taxes, duties, &c., extends to the district of Columbia, and to the territories of the United States, as well as to the states. .... *Id.*

9. But congress are not bound to extend a direct tax to the district and territories. .... *Id.*

10. The constitutional provision, that direct taxes shall be apportioned among the several states, according to their respective numbers, to be ascertained by a census, was not intended to restrict the power of imposing direct taxes to states only. .... *Id.*

11. The power of congress to exercise exclusive jurisdiction in all cases whatsoever, within the district of Columbia, includes the power of taxing it. .... *Id.*

12. The present constitution of the United States did not commence its operation until the first Wednesday in March 1789, and the provision in the constitution, that "no state shall make any law impairing the obligation of contracts," does not extend to a state law enacted before that day, and operating upon rights of property vested before that time. *Owings v. Speed.* .... \*420, 421

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3. The acts of agents do not derive their validity from professing on the face of them to have been done in the exercise of their agency; but the liability of the principal depends upon the facts, 1st, that the act was done in the exercise, and 2d, within the limits of the power delegated: And in ascertaining these facts, as connected with the execution of written instruments, except deeds, parol testimony is admissible. .... *Id.*

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## GRANT.

See LOCAL LAW, 4, 9, 10, 13, 15-17.

## LIMITATION OF ACTIONS.

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## LOCAL LAW.

1. Under the laws of Tennessee, where lands are sold by a summary proceeding for the payment of taxes, it is essential to the validity of the sale, and of the deed made thereon, that every fact necessary to give the court jurisdiction should appear upon the record. *McClung v. Ross.* .... \*116, 119

2. Under the statute of limitations of Tennessee, the running of the statute can only be stopped by actual suit, if the party claiming under it has peaceable possession for seven years, but such possession cannot exist, if the party having the better right take actual possession in pursuance of his right. .... *Id.*

3. One tenant in common may oust his co-tenant, and hold in severalty; but a silent

possession, unaccompanied by any act amounting to an ouster, or giving notice to the co-tenant that his possession is adverse, cannot be construed into an adverse possession..... *Id.*

4. The statute of limitations of Tennessee does not, like other statutes of limitation, protect a mere naked possession, but its operation is limited to a possession acquired and held under a grant, or a deed founded on a grant..... *Id.* \*121

5. Previous to the year 1775, H. S., of Virginia, cohabited with A. W., and had by her the appellants, whom he recognised as his children; in July 1775, he made his will, which was duly proved, after his decease, in which he described them as the children of himself, and of his wife A., and devised the whole of his property to them and their mother; in June 1776, he was appointed a colonel in the Virginia line, upon the continental establishment, and died in the service, having, in July 1776, intermarried with the mother, and died, leaving her pregnant with a child, who was afterwards born, and named R. S.; after the death of H. S., and the birth of his posthumous son, a warrant for a tract of military lands was granted by the state of Virginia to the posthumous son R. S., who died in 1796, in his minority, without wife or children, and without having located or disposed of the warrant; his mother also died before 1796: *Held*, that the children of H. S. were not entitled to the lands, as devisees under his will, under the act of assembly; nor did the will so far operate, as to render them capable of taking under the act, as being named his legal representatives in the will. *Stevenson's Heirs v. Sullivant*, \*207, 255

6. The appellants were not legitimatized by the marriage of H. S. with their mother, and his recognition of them as his children, under the 19th section of the act of descents of Virginia, of 1785, which took effect on the 1st of January 1787, and provides, that "where a man, having by a woman one or more children, shall afterwards intermarry with such woman, such child or children, if recognised by him, shall be thereby legitimated."..... *Id.*

7. The appellants were not, as illegitimate children of H. S. and A. W., capable of inheriting from R. S., under the 18th section of the same act of descents, which provides that, "In making title by descent, it shall be no bar to a party, that any ancestor, through whom he derives his descent from the intestine, is, or hath been, an alien; bastards also shall be capable of inheriting, or of transmitting inheritance, on the part of their mother, as if they had been lawfully begotten of such mother."..... *Id.*

8. The following entry is invalid, for want of that certainty and precision required by law: "William Perkins and William Hoy enter 6714 acres of land on a treasury-warrant, No. 10,692, to join Lawrence Thompson and James McMillan's entry of 1,000 acres that is laid on the adjoining ridge, between Spencer's creek and Hingston's fork of Licking, on the east, and to run east and south for quantity." The entry referred to in the foregoing was as follows: "9th of December 1782, Lawrence Thompson and James McMillan, assignee of Samuel Baker, enter 1000 acres on a treasury-warrant, No. 4222, on the dividing ridge between Hingston's fork of Licking, and Spencer's creek, a west branch of said fork, to include a large pond, in the centre of a square, and a white oak tree, marked X, also an elm tree marked V S, near the side of the pond." *Perkins v. Ramsey*..... \*269

9. There are cases in which a grant is absolutely void; as where the state has no title to the thing granted, or where the officer had no authority to issue the grant, &c. In such cases, the validity of the grant is necessarily examinable at law. *Polk's Lessee v. Wendell*..... \*293, 303.

10. A grant raises a presumption that every pre-requisite to its issuing has been complied with, and a warrant is evidence of the existence of an entry; but where the entry has never in fact been made, and the warrant is forged, no right accrues under the act of North Carolina of 1777, and the grant is void..... *Id.*

11. Where a party, in order to prove that there were no entries to authorize the issuing of the warrants, offered to give in evidence certified copies of warrants from the same office, of the same dates and numbers, but to different persons, and for different quantities of land: *Held*, that this was competent evidence, to prove the positive fact of the existence of the entries specified in the copies: but that in order to have a negative effect in disproving the entries alleged to be spurious, the whole abstract ought to be produced in court, or inspected under a commission, or the keeper of the document examined as a witness, from which the court might ascertain the fact of the non-existence of the contested entries..... *Id.*

12. In such a case, certificates from the secretary's office of North Carolina, introduced to prove, that on entries of the same dates with those alleged to be spurious, other warrants issued, and other grants were obtained in the names of various individuals, but none to the

party claiming under the alleged spurious entries, is competent circumstantial evidence to be left to the jury. In such a case, parol evidence that the warrants and locations had been rejected by the entry-taker as spurious, is inadmissible. .... *Id.*

13. It seems, that whether a grant be absolutely void, or voidable only, a junior grantee is not, by the law of Tennessee, permitted to avail himself of its nullity, as against an innocent purchaser without notice. .... *Id.*

14. The 17th section of the act, incorporating the Mechanics' Bank of Alexandria, providing "that all bills, bonds, notes, and every other contract or engagement on behalf of the corporation shall be signed by the president, and countersigned by the cashier; and the funds of the corporation shall, in no case, be liable for any contract or engagement, unless the same shall be signed and countersigned as aforesaid," does not extend to contracts and undertakings implied in law. *Mechanics' Bank v. Bank of Columbia*.....\*326, 335

15. It is essential to the validity of a grant, that the thing granted should be so described as to be capable of being distinguished from other things of the same kind; but it is not necessary, that the grant itself should contain such a description, as without the aid of extrinsic testimony, to ascertain precisely what is conveyed. *Blake v. Doherty*. \*359, 362

16. Natural objects called for in a grant may be proved by testimony, not found in the grant, but consistent with it. .... *Id.*

17. The following description, in a patent of the land granted, is not void for uncertainty, but may be made certain by extrinsic testimony: "A tract of land in our middle district, on the west fork of Cane creek, the waters of Elk river, beginning at a hickory, running north, 1000 poles, to a white oak; then east, 800 poles, to a stake; thence west, 800 poles, to the beginning, as *per* plat hereunto annexed doth appear." .... *Id.*

18. The plat and certificate of survey, annexed to the patent, and a copy of the entry on which the survey was made are admissible in evidence for this purpose. .... *Id.*

19. A general plan, made by authority, conformable to an act of the local legislature, may also be submitted, with other evidence, to the jury, to avail *quantum valere potest*, in ascertaining boundary. .... *Id.*

20. But a demarcation, or private survey, made by direction of a party interested under the grant, is inadmissible evidence, because it would enable the grantee to fix a vagrant grant by his own act. .... *Id.*

21. The boundary of the state of Kentucky extends only to low-water mark on the western side of the river Ohio; and does not include a peninsula or island, on the western or north-western bank, separated from the main land by a channel or bayou, which is filled with water only when the river rises above its banks, and is, at other times, dry. *Handley's Lessee v. Anthony*.....\*374

22. When a river is the boundary between two nations or states, if the property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one state (Virginia) is the original proprietor, and grants, the territory on one side only, it retains the river within its domain, and the newly-erected state extends to the river only, and the low-water mark is its boundary. .... *Id.*

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## PIRACY.

1. A commission issued by Aury, as "Brigadier of the Mexican republic" (a republic whose existence is unknown and unacknowledged), or as "Generalissimo of the Floridas" (a province in the possession of Spain), will not authorize armed vessels to make captures at sea. *United States v. Klintock*.....\*144, 149

2. *Quære?* Whether a person acting with good faith, under such a commission, may be guilty of piracy? .... *Id.*

3. However this may be, in general, under the

particular circumstances of this case, showing that the seizure was made, not *jure belli*, but *animo furandi*, the commission was held not to exempt the prisoner from the charge of piracy..... *Id.*

4. The opinion of this court in the case of the *United States v. Palmer*, 3 Wheat. 610, commented on and explained..... *Id.*

5. The act of the 30th of April 1790, c. 36, § 8, extends to all persons, on board all vessels, which throw off their national character by cruising piratically, and committing piracy on other vessels. *United States v. Furlong*, *Id.*..... \*152, 184, 192

6. The act of the 2d of March 1819, c. 76, § 5, referring to the law of nations for a definition of the crime of piracy, is a constitutional exercise of the power of congress to define and punish that crime. *United States v. Smith*..... \*153, 157

7. The crime of piracy is defined by the law of nations with reasonable certainty..... *Id.*

8. Robbery, or forcible depredation upon the sea, *animo furnandi*, is piracy, by the law of nations and by the act of congress. *Id.*; *United States v. Furlong*..... \*161, 184.

9. Citations to show that piracy is defined by the law of nations..... \*163

10. The 8th section of the act of the 30th of April 1790, c. 36, for the punishment of certain crimes against the United States, is not repealed by the act of the 3d of March 1819, c. 76, to protect the commerce of the United States, and to punish the crime of piracy. *United States v. Furlong*, \*184, 192

11. In an indictment for a piratical murder (under the act of the 30th of April 1790, c. 36, § 8), it is not necessary that it should allege the prisoner to be a citizen of the United States, nor that the crime was committed on board a vessel belonging to citizens of the United States; but it is sufficient to charge it as committed from on board such a vessel, by a mariner sailing on board such a vessel..... *Id.*

12. The words "out of the jurisdiction of any particular state," in the act of the 30th of April 1790, c. 36, § 8, are construed to mean out of the jurisdiction of any particular state of the Union..... *Id.*

13. A vessel lying in an open roadstead of a foreign country, is "upon the high seas," within the act of 1790, c. 36, § 8..... *Id.*

14. A citizen of the United States fitting out a vessel in a port of the United States, to cruise against a power in amity with the United States, is not protected by a foreign commission from punishment for any offence committed against the property of citizens of the United States..... *Id.*

15. The courts of the United States have jurisdiction, under the act of the 30th of April, 1790, c. 36, of murder or robbery committed on the high seas, although not committed on board a vessel belonging to citizens of the United States, as if she had no national character, but was held by pirates, or persons not lawfully sailing under the flag of any foreign nation. *United States v. Holmes*..... \*412, 416

16. In the same case, and under the same act, if the offence be committed on board of a foreign vessel, by a citizen of the United States; or on board a vessel of the United States, by a foreigner; or by a citizen or foreigner, on board of a piratical vessel, the offence is equally cognisable by the courts of the United States..... *Id.*

17. It makes no difference, in such a case, and under the same act, whether the offence was committed on board of a vessel, or in the sea, as by throwing the deceased overboard and drowning him, or by shooting him, when in the sea, though he was not thrown overboard..... *Id.*

18. In such a case, and under the same act, where the vessel, from on board of which the offence was committed, sailed from Buenos Ayres, where she had enlisted her crew; but it did not appear by legal proof, that she had a commission from the government of Buenos Ayres, or any ship's papers or documents from that government, or that she was ever recognised as a ship of that nation, or of its subjects, or who were the owners, where they resided, or when or where the vessel was armed or equipped; but it did appear in proof, that the captain and crew were chiefly Englishmen, Frenchmen, and citizens of the United States; that the captain was by birth a citizen of the United States, domiciled at Baltimore, where the privateer was built: *Held*, that the burden of proof of the national character of the vessel was on the prisoners..... *Id.*

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6. Upon a piratical capture, the property remains in the original owners, and cannot be forfeited for the misconduct of the captors in violating the municipal laws of the country where the vessel seized by them is carried *The Josefa Segunda*.....\*338, 357
7. But where the capture is made by a regularly commissioned captor, he acquires a title to the captured property, which can only be divested by re-capture, or by the sentence of a competent tribunal of his own country; and the property is subject to forfeiture for a violation, by the captor, of the revenue or other municipal laws of the neutral country into which the prize may be carried.....*Id.*
8. *Quære?* Whether, when a prize has been taken by a privateer, fitted out in violation of our neutrality, the vessels of the United States have a right to re-capture the prize, and bring it into our ports for adjudication? *La Amistad de Rues*,.....\*385, 388
9. In cases of marine torts, the probable profits of a voyage are not a fit rule for the ascertainment of damages.....*Id.*
10. In cases of violation of our neutrality, by any of the belligerents, if the prize comes voluntarily within our territory, it is restored to the original owners by our courts; but their jurisdiction for this purpose, under the law of nations, extends only to restitution of the specific property, with costs and expenses, during the pendency of the suit, and does not extend to the infliction of vindictive damages, as in ordinary cases of marine torts.....*Id.*
11. Where the original owner seeks for restitution in our courts, upon the ground of a violation of our neutrality by the captors, the *onus probandi* rests upon him, and if there be reasonable doubt respecting the facts, the court will decline to exercise its jurisdiction.....*Id.*
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