

# INDEX

TO THE

## MATTERS CONTAINED IN THIS VOLUME.

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

### ADMIRALTY.

1. A question of fact, under the 46th section of the collection law of the 2d of March 1799, c. 123, exempting from duty the wearing-apparel, and other personal baggage, of persons arriving in the United States. *The Robert Edwards*. . . . . \*187
2. Where the *res gestæ*, in a revenue cause, are incapable of explanation, consistently with the innocence of the party, condemnation follows, although there be no positive testimony of the offence having been committed. . . . *Id.*
3. Although a mere intention to evade the payment of duties be not, *per se*, a cause of forfeiture, yet when a question arises, whether an act has been committed, which draws after it that consequence, such intention will justify the court in not putting on the conduct of the party, in respect to the act in question, an interpretation as favorable as, under other circumstances, it would be disposed to do. . . . . *Id.*
4. In all proceedings *in rem*, on an appeal, the property follows the cause into the circuit court, and is subject to the disposition of that court; but it does not follow the cause into the supreme court, on an appeal to that court. *The Collector*. . . . . \*194
5. After an appeal from the district to the circuit court, the former court can make no order respecting the property, whether it has been sold, and the proceeds paid into court, or whether it remains specifically, or its proceeds remain, in the hands of the marshal. . . . . *Id.*
6. It is a great irregularity, for the marshal to keep the property, or the proceeds thereof, in his own hands, or to distribute the same among the parties entitled, without a special

- order from the court; but such an irregularity may be cured, by the assent and ratification of all the parties interested, if there be no *mala fides*. . . . . *Id.*
7. Under the 67th section of the collection act of the 2d of March 1799, c. 123, goods were entered by an agent of the owner, on his behalf, and the entry included only a part of the goods which the packages contained, and the owner subsequently made a further, or post-entry of the residue of the goods; and the packages were opened, several days afterwards, and examined by the collector, in the presence of two merchants, and their contents found to agree with the two entries, taken together, but to differ materially from the first entry: *held*, that the collector was not precluded from making a seizure of the goods, after the second entry, for a variance between the contents of the packages and the first entry, and that such seizure must be followed by confiscation, unless it should appear, that such difference proceeded from accident and mistake, and not from an intention to defraud the revenue. *United States v. Six Packages of Goods*. . . . . \*520

See PRACTICE, 4: PRIZE.

### AGENT AND PRINCIPAL.

1. H. and others, merchants, in Baltimore, consigned a vessel and cargo to W. and others, merchants, in Amsterdam, with instructions to them respecting her ulterior destination, which showed, that on the failure of getting a freight to Batavia, or of selling the vessel at a price limited, she was to proceed to St. Petersburg, and there take in a return-cargo of Russia goods for the United States, but with instructions to the master committing to him

the management of the ulterior voyage. No freight to Batavia could be obtained, and the vessel could not be sold for the price limited at Amsterdam; and W. and others, purchased, in Amsterdam, with the concurrence of the master, a return-cargo of Russian goods, partly with the money of H. and others, and partly with money advanced by themselves. On the return of the vessel to Baltimore, H. and others objected to the purchase of this cargo in Amsterdam, as being contrary to express orders, and gave notice to W. and others, of their determination to hold them responsible for all losses sustained in consequence of this breach of instructions; but received the goods and sold them. W. and others brought an *assumpsit* against H. and others, to recover from them the moneys advanced; the declaration contained the three usual money counts: *Held*, 1st. That the plaintiffs had a demand in law against the defendants, which could be maintained in this form of action: 2d. That whether the plaintiffs could, or could not, be made responsible, in any form of action which might be devised, for the possible loss resulting from the breaking up of the intended voyage to St. Petersburg, the defendants were not entitled to a deduction from the plaintiffs' demand, for the amount of such loss. *Wilkins v. Hollingsworth*,.....\*240, 251

#### BANKRUPT.

See CONSTITUTIONAL LAW, 2: LOCAL LAW, 5, 6.

#### BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. Where the second day of grace falls on Saturday, it is the last day of grace; and notice of non-payment, given to the drawer of a bill, on that day, after a demand upon the acceptor, on the same day, is sufficient to charge the drawer. *Bussard v. Levering*,.....\*102
2. Notice to the drawer, by putting the same into the post-office, where the persons live in different places, is good.....*Id.*
3. After demand of the maker of a note, on the third day of grace, notice to the indorser, on the same day, is sufficient, by the general law-merchant. *Lindenberger v. Beall*.....\*104
4. Evidence of a letter, containing notice, having been put into the post-office, directed to the indorser, at his place of residence, is sufficient proof of the notice, to be left to the jury, and it is unnecessary to give notice to the defendant to produce the letter, before such evidence can be admitted.....*Id.*
5. No protest of a promissory note, or inland bill of exchange, is necessary. *Young v. Bryan*.....\*146
6. A protest of an inland bill or promissory note is not necessary, nor is it evidence of the facts stated in it. *Union Bank v. Hyde*.....\*572
7. The following undertaking of the indorser of a promissory note, "I do request that hereafter any notes that may fall due in the Union Bank, in which I am, or may be indorser, shall not be protested, as I will consider myself bound in the same manner as if the said notes had been or should be legally protested," *held*, to be ambiguous as to whether it amounted to a waiver of demand and notice; and parol proof admitted, to show that it was the understanding of the parties, that the demand and notice required by law to charge the indorser, should be dispensed with....*Id.*

#### CHANCERY.

1. There is no difference in respect to the conclusiveness of a judgment at law and of a decree in chancery; both are conclusive as to the facts directly in controversy. *Hopkins v. Lee*.....\*109, 113
2. A decree cannot be pronounced, on the testimony of a single witness, unaccompanied by corroborating circumstances, against a positive denial, by the defendant, of any matter directly charged in the bill, in the defendant's answer, or answer in support of his plea. *Hughes v. Blake*.....\*453
3. A replication to a plea is an admission of the sufficiency of the plea, as much as if it had been set down for argument, and allowed; and all that the defendant has to do, is, to prove it, in point of fact; and a dismissal of the bill, on the hearing, is then a matter of course.....*Id.*
4. Under what circumstances, a plea of a former judgment at law, for the same cause of action, is a good bar in equity.....*Id.*
5. To establish the existence of a trust, the *onus probandi* lies on the party who alleges it. *Prevost v. Gratz*.....\*481
6. In general, length of time is no bar to a trust, clearly established to have once existed; and where fraud is imputed and proved, length of time ought not to exclude relief.....*Id.*
7. But as length of time necessarily obscures all human evidence, and deprives parties of the means of ascertaining the nature of the original transactions, it operates, by way of presumption, in favor of innocence, and against imputation of fraud.....*Id.*
8. The lapse of forty years, and the death of all the original parties, deemed sufficient to presume the discharge and extinguishment of

- a trust, proved once to have existed, by strong circumstances; by analogy to the rule of law, which, after a lapse of time, presumes the payment of a debt, surrender of a deed, and extinguishment of a trust, where circumstances require it. . . . .*Id.*
9. The general rule is, that time is not of the essence of a contract of sale; and a failure on the part of the purchaser, or vendor, to perform his contract, on the stipulated day, does not, of itself, deprive him of his right to a specific performance, when he is able to comply with his part of the engagement. *Bra-shier v. Gratz*. . . . . \*528
10. But circumstances may be so changed, that the object of the party can no longer be accomplished, and he cannot be placed in the same situation, as if the contract had been performed in due time; in such a case, a court of equity will leave the parties to their remedy at law. . . . .*Id.*
11. Part performance will, under some circumstances, induce the court to relieve. . . . .*Id.*
12. But where a considerable length of time has elapsed, where the party demanding a specific performance has failed to perform his part of the contract, and the demand is made, after a great change in the title, and the value of the land, and there is a want of reciprocity, in the obligations of the respective parties, a court of equity will not interfere. . . . .*Id.*
13. Who are necessary parties in equity. *Kerr v. Watts*. . . . . \*550, 558
14. Application of the law of set-off and lien in equity, under peculiar circumstances. *Leeds v. Marine Insurance Company*. . . . . \*565

COLLECTOR.

See EMBARGO.

CONSTRUCTION OF STATUTE.

1. Where, in a contract with the secretary of war, for supplying the troops of the United States with provisions, specific prices are stipulated for rations issued at certain places mentioned in the contract; and it is further provided, that "should any rations be required, at any places not specified in this contract, the price of the same shall be hereafter agreed on, betwixt the public and the contractor;" if the parties cannot agree upon the price for the rations, thus required, a reasonable compensation is to be allowed, and is to be proved by competent evidence, and settled by a jury; and the contractor, upon the trial, is at liberty to show, that the

- sum allowed by the secretary at war is not a reasonable compensation. *United States v. Wilkins*. . . . . \*135
2. Under the 3d and 4th sections of the act of the 3d of March 1797, c. 74, the defendant is entitled, at the trial, to the full benefit of any credit in his favor, whether arising out of the particular transaction for which he was sued, or out of distinct and independent transactions, which would constitute a legal or equitable set-off, in whole or in part, of the debt sued for by the United States. . . . .*Id.*

See ADMIRALTY, 1, 2, 3, 7: EMBARGO.

CONSULS.

See PRIZE, 12, 13, 24, 25.

CONTRACT.

See AGENT AND PRINCIPAL: CHANCERY, 9-12: SALE.

CONSTITUTIONAL LAW.

1. The record of a judgment in one state, is conclusive evidence in another, although it appear that the suit in which it was rendered, was commenced by an attachment of property, the defendant having afterwards appeared and taken defence. *Mayhew v. Thatcher*. . . . . \*129
2. An act of a state legislature which discharges a debtor from all liability for debts contracted previous to his discharge, on his surrendering his property for the benefit of his creditors, is a law impairing the obligation of contracts, within the meaning of the constitution of the United States, so far as it attempts to discharge the contract: and it makes no difference, in such a case, that the suit was brought in a state court of the state, of which both the parties were citizens, when the contract was made, and the discharge obtained, and where they continued to reside, until the suit was brought. *Farmers' and Mechanics' Bank v. Smith*. . . . . \*131
3. To an action of trespass against the sergeant-at-arms of the house of representatives of the United States, for an assault and battery and false imprisonment, it is a legal justification and bar, to plead, that a congress was held and sitting, during the period of the trespasses complained of, and that the house of representatives had resolved, that the plaintiff had been guilty of a breach of the privileges of the house, and of a high contempt of the dignity and authority of the same; and had

ordered that the speaker should issue his warrant to the sergeant-at-arms, commanding him to take the plaintiff into custody, wherever to be found, and to have him before the said house, to answer to the said charge; and that the speaker did accordingly issue such a warrant, reciting the said resolution and order, and commanding the sergeant-at-arms to take the plaintiff into custody, &c., and delivered the said warrant to the defendant: By virtue of which warrant the defendant arrested the plaintiff, and conveyed him to the bar of the house, where he was heard in his defence, touching the matter of the said charge, and the examination being adjourned from day to day, and the house having ordered the plaintiff to be detained in custody, he was accordingly detained by the defendant, until he was finally adjudged to be guilty, and convicted of the charge aforesaid, and ordered to be forthwith brought to the bar, and reprimanded by the speaker, and then discharged from custody; and after being thus reprimanded, was actually discharged from the arrest and custody aforesaid. *Anderson v. Dunn*. . . . . \*204

4. This court has, constitutionally, appellate jurisdiction, under the judiciary act of 1789, c. 20, § 25, from the final judgment or decree of the highest court of law or equity of a state, having jurisdiction of the subject-matter of the suit, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of such their validity; or of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption, specially set up or claimed by either party, under such clause of the constitution, treaty, statute or commission. *Cohens v. Virginia*. . . . . \*264, 375

5. It is no objection to the exercise of this appellate jurisdiction, that one of the parties is a state, and the other a citizen of that state. . . . . *Id.*

6. The act of congress of the 4th of May 1812, entitled, "an act further to amend the charter of the city of Washington," which provides (§ 6) that the corporation of the city shall be empowered, for certain purposes, and under certain restrictions, to authorize the drawing of lotteries, does not extend to authorize the corporation to force the sale of

the tickets in such lottery, in states where such sale may be prohibited by the state laws. . . . . *Id.*

7. Decision of the House of Lords respecting the power of commitment for contempts in the case of *Burdett v. Abbott*, 14 East 1. Note to the case of *Anderson v. Dunn*. \*221
8. Resolutions of the legislature of Virginia of 1810, upon the proposition from Pennsylvania to amend the constitution, so as to provide an impartial tribunal to decide disputes between the state and federal judiciaries. Note to *Cohens v. Virginia*. . . . . \*358

#### DUTIES.

See ADMIRALTY, 1, 2, 3, 7.

#### EMBARGO.

1. Under the embargo act of the 25th April 1808, c. 170, if a vessel, not actually arriving at her port of original destination, excites an honest suspicion in the mind of the collector, that her demand of a permit to land the cargo was merely colorable, this is not a termination of the voyage, so as to preclude the right of detention. *Otis v. Walter*. \*583
2. Under what circumstances, the collector has a right to land the cargo of the vessel thus detained. . . . . *Id.*

#### EVIDENCE.

1. A judgment or decree of a court of competent jurisdiction is conclusive, wherever the same matter is again brought in controversy. *Hopkins v. Lee*. . . . . \*109, 113
2. But the rule does not apply to points which come only collaterally under consideration, or are only incidentally considered, or can only be argumentatively inferred from the decree. . . . . *Id.*
3. A replication to a plea in chancery, is an admission of its sufficiency in point of equity, and all that the defendant has to do, is to prove it in point of fact. *Hughes v. Blake*. . . . . \*453, 472
4. Effect of length of time, in raising a legal and equitable presumption of the extinguishment of a trust, payment of debt, &c. *Prevost v. Gratz*. . . . . \*481, 504
5. A parol exchange of lands, or parol evidence, that a conveyance should operate as an exchange, will not convey any estate or interest in lands. *Clark v. Graham*. . . . . \*577

See BILLS OF EXCHANGE AND PROMISSORY NOTES.

## INSURANCE.

1. Where, in a policy of insurance, a technical total loss is asserted, as the ground of recovery, the loss must be occasioned by the immediate operation of some of the perils insured against, and it is not sufficient that the voyage be abandoned, for fear of the operation of the peril. *Smith v. Universal Ins. Co.*.....\*176
2. The insurers do not undertake, that the voyage shall be performed, without delay, or that the perils insured against shall not occur; they undertake only for losses sustained by those perils; and if any peril does begin to act upon the subject, yet, if it be removed, before any loss takes place, and the voyage is not thereby broken up, but is, or may be, resumed, the assured cannot abandon for a total loss.....*Id.*
3. Insurance on munitions of war, laden on board a neutral vessel, on a voyage from New York, to and at a port or ports, place or places, in the gulf of Mexico, from the Balize to Campeachy, both inclusive, and from either, back to New York, &c., with a memorandum, that the insurers should be free from any loss arising from illicit or prohibited trade. The goods insured were prohibited from being imported into the ports of New Spain, in possession of the royalists, by the laws of Old Spain, but were permitted to be introduced into such ports as were in possession of the insurgents. The vessel and cargo arrived off a place in possession of the patriot-general, Mina, and the master made an agreement to sell the cargo to him, deliverable from time to time, as he should want it, at St. Ander; but before the cargo could be delivered, the vessel was chased off by Spanish armed ships, and after making several attempts to return, was compelled to proceed to the Balize for repairs; after which, she again approached the coast, but found it still in possession of the royalists, General Mina having retired into the interior. The objects of the voyage being thus defeated, the vessel returned to New York with the original cargo on board; and the assured then abandoned to the underwriters, not having before had information of the breaking up of the voyage: *Held*, that the assured were not entitled to recover as for a total loss of the voyage.....*Id.*
4. In a claim for a technical total loss, the loss of the voyage must be occasioned by the immediate operation of a peril insured against.....*Id.*
5. If a peril begins to act upon the subject, yet, if it be removed before any loss takes place, and the voyage is not thereby broken up, but

is or may be resumed, the insured cannot abandon for a total loss.....*Id.*

## JURISDICTION.

1. The circuit court has jurisdiction of a suit brought by the indorsee of a promissory note, who is a citizen of one state, against the indorser, who is a citizen of a different state, whether a suit could be brought in that court by the indorsee, against the maker, or not. *Young v. Bryan*.....\*146
2. A division of the judges of the circuit court, on a motion for a new trial, in a civil or a criminal case, is not such a division of opinion as is to be certified to this court for its decision, under the 6th section of the judiciary act of 1802, c. 291. *United States v. Daniel*.....\*542
3. A state court cannot issue a *mandamus* to an officer of the United States. *McClung v. Silliman*.....\*598

See CONSTITUTIONAL LAW, 4-6: PRACTICE, 2, 3.

## LEX LOCI.

See LOCAL LAW, 13.

## LIMITATION OF ACTIONS.

See CHANCERY, 5-8.

## LOCAL LAW.

1. The circuit court for the district of Columbia has authority to adjourn to a distant day, and the adjourned session is considered as the same term. *Mechanics' Bank of Alexandria v. Withers*.....\*106
2. Where the regular term began on the 3d Monday in April, and the court continued to sit, *de die in diem*, until the 16th of May, when it adjourned to the 4th Monday of June; *held*, that a defendant, against whom an office-judgment had been entered on the 16th of May, had a right, under the law and practice of Virginia, to appear at the adjourned session, and have the default set aside, on giving special bail, and pleading issuably. *Id.*
3. Under the act of assembly of Virginia, the defendant may enter special bail, and defend the suit, at any time before the entering up of judgment upon a writ of inquiry executed; and the appearance of the defendant, or the entry of special bail, before such judgment, discharges the appearance bail. *Barile v. Coleman*.....\*476
4. If the defendant does not appear, or give special bail, the appearance bail may defend the suit, and is liable to the same judgment as the defendant would have been liable to;

- but the defendant cannot appear and consent to a reference, the report and judgment on which is to bind the appearance bail as well as himself; such a joint judgment is erroneous and will be reversed as to both. *Id.*
5. The third section of the act of congress of March 30th, 1803, for the relief of insolvent debtors in the district of Columbia, does not create any express or implied exception to the operation of the statute of limitations, by making the insolvent a trustee for his creditors, in respect to his future property, or by making any demand, included in the schedule of his debts, a debt of record. *Bowie v. Henderson*. . . . . \*514
6. The including of a demand in the schedule of the insolvent's debt, is sufficient evidence to sustain an issue, on a replication of a new promise, to the plea of the statute of limitations, if the period of limitation has not elapsed after the date of the schedule. . . . *Id.*
7. The decision of this court, in *Massie v. Watts*, 6 Cranch 148, revised and confirmed. *Kerr v. Watts*. . . . . \*550
8. The rule applied in equity to the relief of *bonâ fide* purchasers, without notice, is not applicable to the case of purchasers of military land-warrants, under the laws of Virginia. . . . . *Id.*
9. Such purchasers are considered as affected with notice, by the record of the entry, and also of the survey; and subsequent purchasers are considered as acquiring the interest of the person making the entry: so that purchasers under conflicting entries are considered as purchasing under distinct rights, in which case the rule, as to innocent purchasers, does not apply. . . . . *Id.*
10. The principle, that only parties or privies, or purchasers *pendente lite*, are bound by a decree in equity, how applied to this case. *Id.*
11. The surveys actually made on the military land-warrants of Virginia, have not the force of judicial acts, or of acts done by the deputations of officers, as general agents of the continental officers. . . . . *Id.*
12. A power to convey lands must possess the same requisites, and observe the same solemnities, as are necessary in a deed directly conveying the lands. *Clark v. Graham* \*577
13. A title to lands can only be acquired and lost, according to the laws of the state in which they are situate. . . . . *Id.*
14. The laws of Ohio require all deeds of land to be executed in the presence of two witnesses, and a deed executed in the presence of one witness only, is void. . . . . *Id.*
15. It is a universal rule, that course and distance yield to natural and ascertained objects. *Preston's Heirs v. Bowmar*. . . . . \*580
16. But where these objects are wanting, and the course and distance cannot be reconciled, there is no universal rule, that obliges the court to prefer the one to the other. . . . *Id.*
17. Cases may exist, in which the one or the other may be preferred, according to the circumstances. . . . . *Id.*
18. In a case of doubtful construction, the claim of the party in actual possession ought to be maintained, especially, where it has been upheld by the decisions of the state tribunals. *Id.*
19. The power given to the corporation of Georgetown, by the act of Maryland of November 1797, c. 56, to grade the streets of that city, is a continuing power, and the corporation may, from time to time, alter the grades so made. *Goszler v. Corporation of Georgetown*. . . . . \*593
20. The ordinance of May 1799, by which the corporation of Georgetown first exercised the power of grading the streets, is not in the nature of a compact, and may be altered by the corporation. . . . . *Id.*
21. Under the laws in relation to the Mutual Assurance Society of Virginia, property offered for insurance, on which the premium has not been paid, and which is sold, without notice, is not liable for the premium in the hands of the vendee. *Mutual Assurance Society v. Faxon*. . . . . \*606
22. The execution, by a public officer, of a power to sell lands for the non-payment of taxes, must be in strict pursuance of the law under which it is made, or no title is conveyed. *Thatcher v. Powell*. . . . . \*119
23. It is essential to the validity of the sale of lands for taxes, under the laws of Tennessee, that it should appear on the record of the court, by which the order of sale is made, that the sheriff had returned, that there were no goods and chattels of the delinquent proprietor, out of which the taxes could be made. . . . . *Id.*
24. The publications which are required by law to be made, subsequent to the sheriff's return, and previous to the order of sale, are indispensable preliminaries to a valid order of sale. . . . . *Id.*
25. In summary proceedings, where a court exercises an extraordinary power, under a special statute, which prescribes its course, that course ought to be strictly pursued, and the facts which give jurisdiction, ought to appear on the face of the record; otherwise, the proceedings are not merely voidable, but absolutely void, as being *coram non-judice*. *Id.*
26. In construing local statutes respecting real property, this court is governed by the decisions of the state tribunals. . . . . *Id.*
27. As, by the laws of Louisiana, questions of

fact in civil cases are tried by the court, unless either of the parties demand a jury; in an action of debt on a judgment, the interest on the original judgment may be computed, and make part of the judgment, in Louisiana, without a writ of inquiry and the intervention of a jury. *Mayhew v. Thatcher*...\*129

PLEADING.

See PRACTICE, 3, 5, 7-10.

PRACTICE.

1. An equity suit, where an appeal has been taken from the circuit court to this court, but not prosecuted, will be dismissed, upon producing a certificate from the court below, that the appeal has been taken and not prosecuted. *Randolph v. Barber*.....\*128
2. A decree of the highest court of equity of a state, affirming the decretal order of an inferior court of equity of the same state, refusing to dissolve an injunction, granted on the filing of the bill, is not a final decree, within the 25th section of the judiciary act of 1789, c. 20, from which an appeal lies to this court. *Gibbons v. Ogden*.....\*448
3. In order to maintain a suit in the circuit court, the jurisdiction must appear on the record; as, if the suit is between citizens of different states, the citizenship of the respective parties must be set forth. *Sullivan v. Fulton Steam-Boat Company*.....\*450
4. An admiralty suit, where an appeal has been taken from the circuit court to this court, but not prosecuted, will be dismissed, upon producing a certificate from the court below, that the appeal has been taken, and not prosecuted. *The Jonquille*.....\*452
5. The defendant's denial, in his answer in support of his plea, in conclusive, unless contradicted by the testimony of more than one witness, or one witness accompanied with corroborating circumstances. *Hughes v. Blake*.....\*453, 468
6. In an equity cause, the *res* in litigation may be sold by order of the circuit court, and the proceeds invested in stocks, notwithstanding the pendency of an appeal to this court. *Spring v. South Carolina Ins. Co.*....\*519
7. In real or personal actions, at common law, the death of parties, before judgment, abates the suit; and it requires the aid of some statutory provision, like that of the 31st section of the judiciary act of 1789, c. 20, to enable the suit to be prosecuted by, or against, the personal representative or heir of the deceased, where the cause of action survives. *Green v. Watkins*.....\*260

8. In writs of error upon judgments already rendered, in personal actions, if the plaintiff in error dies, before assignment of errors, the writ abates, at common law; but if, after assignment of errors, the defendant may join in error, and proceed to get the judgment affirmed, if not erroneous, and may then revive it against the representatives of the plaintiff.....*Id.*
9. But a writ of error, in personal actions, does not abate by the death of the defendant in error, whether in happen before or after errors assigned; and the personal representatives may not only be admitted, voluntarily, to become parties, but a *scire facias* may issue to compel them.....*Id.*
10. By the rules of this court, if either party, in real or personal actions, die, pending the writ of error, his representatives in the personalty or realty, may voluntarily become parties, or may be compelled to become parties, in the manner prescribed by the rule....*Id.*

PRIZE.

1. Whether a capture be made by a duly commissioned captor, or not, is a question between the government and the captor, with which the claimant has nothing to do. *The Amiable Isabella*.....\*1, 66
2. If the capture be made by a non-commissioned captor, the government may contest the right of the captor, after a decree of condemnation and before a distribution of the prize proceeds; and the condemnation must be to the government.....*Id.*
3. The 17th article of the Spanish treaty of 1795, so far as it purports to give any effect to passports, is imperfect and inoperative, in consequence of the omission to annex the form of passport to the treaty.....*Id.*
4. *Quære?* Whether if the form had been annexed, and the passport were obtained by fraud, and upon false suggestions, it would have the conclusive effect attributed to it by the treaty?.....*Id.*
5. *Quære?* Whether sailing under enemy's convoy, be a substantive cause of condemnation?.....*Id.*
6. By the Spanish treaty of 1795, free ships make free goods; but the form of the passport, by which the freedom of the ship was to have been conclusively established, never having been duly annexed to the treaty, the proprietary interest of the ship is to be proved according to the ordinary rules of the prize court, and if thus shown to be Spanish, will protect the cargo on board, to whomsoever the latter may belong.....*Id.*
7. By the rules of the prize court, the *onus pro-*

- bandi* of a neutral interest rests on the claimant ..... *Id.*
8. The evidence to acquit or condemn, must come, in the first instance, from the ship's papers, and the examination of the captured persons..... *Id.*
9. Where these are not satisfactory, further proof may be admitted, if the claimant has not forfeited his right to it, by a breach of good faith..... *Id.*
10. On the production of further proof, if the neutrality of the property be not established beyond reasonable doubt, condemnation follows..... *Id.*
11. The assertion of a false claim, in whole or in part, by an agent, or in connivance with the real owner, is a substantive cause of condemnation..... *Id.*
12. A foreign consul has a right to claim or libel, *in rem*, where the rights of property of his fellow-subjects are in question, without any special authority from those for whose benefit he acts. *The Bello Corrunes*. \*152, 168
13. But a consul cannot receive actual restitution of the *res* in controversy, without a special authority from the particular individuals who are entitled..... *Id.*
14. A citizen of the United States cannot claim, in their courts, the property of foreign nations in amity with the United States, captured by him in war, wheresoever the capturing vessel may have been equipped, or by whomsoever commissioned..... *Id.*
15. In case of an illegal capture, in violation of the neutrality of this country, the property of the lawful owners cannot be forfeited for a breach of its revenue laws, by the captors, or persons who have rescued the property from their possession ..... *Id.*
16. Whatever difficulty there may be, under our municipal institutions, in punishing, as pirates, citizens of the United States, who take from a state at war with Spain, a commission to cruise against that power, contrary to the 14th article of the Spanish treaty, yet there is no doubt, that such acts are to be considered as piratical acts, for all civil purposes, and the offending parties cannot appear, and claim in our courts the property thus taken..... *Id.*
17. It seems, that the terms, "a state with which the said king shall be at war," in the 14th article of the treaty, include the South American provinces which have revolted against Spain..... *Id.*
18. But however this may be, the neutrality act of June 1797, c. 1, extends the same prohibition, with all its consequences, to a colony revolting, and making war against its parent country ..... *Id.*
19. In the case of such an illegal capture, the property of the lawful owners cannot be forfeited, for a violation of the revenue law of this country, by the captors, or by persons who have rescued the property from their possession..... *Id.*
20. The right of salvage may be forfeited, by spoliation, smuggling, or other gross misconduct of the salvors..... *Id.*
21. Where a capture is made of the property the subjects of a nation in amity with the United States, by a vessel built, armed, equipped and owned in the United States, such capture is illegal, and the property, if brought within our territorial limits, will be restored to the original owners. *La Conception*..... \*235, 238
22. Where a transfer of the capturing vessel, in the ports of the belligerent state, under whose flag and commission she sails on a cruise, is set up, in order to legalize the capture, the *bona fides* of the sale must be proved, by the usual documentary evidence, in a satisfactory manner..... *Id.*
23. This court does not recognise the existence of any lawful court of prize at Galveston, nor of any Mexican republic or state, with power to authorize captures in war. *The Nueva Anna and Liebre*..... \*193
24. Citation from De Steck as to the powers of consuls. Note to the *Bello Corrunes*..... \*156
25. Opinion of M. Portalis on the right of consuls to claim in a court of prize. Note to the *Bello Corrunes*, Note V., *Appendix*..... \*59
26. Articles of the Spanish treaty of 1795, referred to in the case of the *Amiable Isabella*, *Appendix*, Note I..... \*3
27. Decisions of the French council of prizes respecting the form and effect of passports to neutral vessels. Note II. to the case of the *Amiable Isabella*, *Appendix*..... \*12
28. Articles of the French, Dutch, Swedish and Prussian treaties, referred to in the *Amiable Isabella*, *Appendix*, Note III..... \*23
29. Convention of 1801 between Russia and Great Britain, referred to in the above case. *Appendix*, Note IV..... \*52

## SALE.

1. In an action at law, by the vendee against the vendor, for a breach of the contract, in not delivering the thing sold, the proper measure of damages is, not the prize stipulated in the contract, but the value at the time of the breach.....
- 2., This rule applies to the sale of real as well as personal property: but, *quære*? whether it is the proper measure of damages, in the case of an action for eviction? *Hopkins v. Lee*..... \*109, 118

## SET-OFF.

See AGENT AND PRINCIPAL.

## SPECIFIC PERFORMANCE.

See CHANCERY, 9-12.

## STATUTES OF MARYLAND.

See LOCAL LAW, 19, 20.

## STATUTES OF OHIO.

See LOCAL LAW, 14.

## STATUTES OF VIRGINIA.

See LOCAL LAW, 2-4, 8.

## TREATY.

See PRIZE, 3-6, 16, 17, 26-9.

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