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TO THE

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7. Where a party claiming title to lands under an act of congress, brought a bill for a conveyance, and stated several equitable circumstances in aid of his title, and the state court where the suit was brought, having dismissed the bill, and the cause being brought to this court by appeal, under the 25th section of the judiciary act of 1789, upon the ground of an alleged misconstruction of the act of congress, under which the title was claimed, by the state court: *Held*, that this court could not take into consideration any distinct equity arising out of the contracts or transactions of the parties, and creating a new and independent title, but was confined to an examination of the plaintiff's title, as depending upon the construction of the act of congress. *Matthews v. Zane*. *164
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2. But any unlawful consideration, moving from the preferred creditor, to induce the preference, will avoid the deed which gives it. *Id.*
3. It is not necessary to the validity of such a deed, that the creditors, for whose benefit it is made, should have notice of the execution of the deed, provided they afterwards assent to the provisions made for their benefit. *Id.*
4. Nor it is any objection to the validity of the deed, that it was made by the grantor, in the hope and expectation, that it would prevent a prosecution for a felony, connected with his transactions with his creditors; if the favored creditors have done nothing to excite that hope, and the deed was not made with their concurrence, and with a knowledge of the motives which influenced the grantor, or was not afterwards assented to by them, under some express or implied engagement to suppress the prosecution. *Id.*
5. Nor will it be invalidated, by the fact, that the trustee, to whom the conveyance is made, being the father-in-law of the debtor, received the conveyance with a view of concealing the felony, and preventing a prosecution of his son-in-law, provided it was not executed with the concurrence of the *cestuis que trust*, and a knowledge on their part of the motives which influenced the trustee, or was not afterwards assented to by them, under some engagement to suppress the prosecution. *Id.*

INSURANCE.

1. Under a policy containing the following clause: "And lastly, it is agreed, that if the above vessel, upon a regular survey, should be thereby declared unseaworthy, by reason of her being unsound or rotten, then the assurers shall not be bound to pay their

subscription on this policy," and it was found by the jury, that the vessel was seaworthy at the time of the commencement of the risk, and when she sailed on the voyage insured: *Held*, that proof, by a regular survey, of unsoundness at any subsequent period of the voyage, discharged the underwriters. *Dorr v. Pacific Ins. Co.* *581

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3. But the survey must correspond with the contract; and if the vessel be declared unseaworthy for any additional cause, besides being "unsound or rotten," it is not conclusive evidence of unseaworthiness. *Id.*

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4. One heir may, by disseisin of his co-heirs, acquire an exclusive possession, upon which the statute will run, both against his co-heirs and against creditors. *Id.*

LOCAL LAW.

1. A warrant and survey authorize the proprietor of them to demand the legal title, but do

- not, in themselves, constitute a legal title: until the consummation of the title by a grant, the person who acquires an equity holds a right, subject to examination. *Miller v. Kerr*. *1
2. Where the register of the land-office of Virginia had, by mistake, given a warrant for military services in the continental line, on a certificate authorizing a warrant for services in the state line, and in recording it, pursued the certificate, and not the warrant, it was held, that this court could not support a prior entry and survey, on a warrant thus issued by mistake, against a senior patent. *Id*.
3. Where the plaintiffs seek to set aside the legal title, because they have the superior equity, it is consistent with the principles of the court, to rebut this equity by any circumstances which may impair it: and the legal title cannot be made to yield to an equity founded on the mistake of a ministerial officer. *Id*.
4. Where plats are returned and grants made, without an actual survey, the rule of construction which has been adopted, in order to settle the conflicting claims of different parties, is, that the most material, and most certain, calls shall control those which are less material and less certain. *Newson v. Pryor*. *7
5. A call for a natural object, as a river, a known stream, a spring, or even a marked line, will control both course and distance. *Id*.
6. There is no distinction between a call to stop at a river, and a call to cross a river. *Id*.
7. Where a grant was made for 5000 acres of land, "lying on both sides of the two main forks of Duck river, beginning, &c., and running thence west, 894 poles, to a white oak, thence south, 894 poles, to a stake crossing the river, thence east, 894 poles, to a stake, thence north, 894 poles, to the beginning, crossing the south fork;" it was held, that it must be surveyed so as to extend the second line of the grant such a distance on the course called for, as would cross Duck river to the opposite bank. . . . *Id*.
8. Under the laws of Massachusetts and Connecticut, the power of an administrator to sell the real estate for the payment of debts must be exercised within a reasonable time, which is to be fixed by analogy to the statute of limitations. *Ricard v. Williams*. *59
9. The patent issued on a military-warrant, under the law of Virginia, is *prima facie* evidence that every pre-requisite of the law was complied with. *Bouldin v. Massie*. *122
10. The loss of a paper must be established, before its contents can be proved: but where the patent issues upon an assignment of the warrant, and the legal title is thus consummated, the assignment itself being no longer a paper essential to that title, the same degree of proof of its existence cannot be required, as if it were relied on as composing part of the title. *Id*.
11. Where there is a strong degree of probability, that the assignment has been lost or destroyed, through accident, its non-production by the party claiming under it, ought not to operate against him, so as to defeat his legal title. *Id*.
12. The original law of Virginia, which authorizes the assignment of warrants, did not require, that it should be made by indorsement, or by an instrument annexed to the warrant. *Id*.
13. It is a rule, both at law and in equity, that a party must recover on the strength of his own title, and not on the weakness of his adversary's title. *Watts v. Lindsey*. . . *158
14. To support an entry, the party claiming under it must show that the objects called for are so described, or are so notorious, that others, by using reasonable diligence, can readily find them. *Id*.
15. The following entry was pronounced, under the circumstances, to be void for uncertainty: "7th of August, 1787, Capt. Ferdinand O'Neal enters 1000 acres, &c., on the waters of the Ohio, beginning at the north-west corner of Stephen T. Mason's entry, No. 654, thence with his line, east 400 poles, north 400 poles, west 400 poles, south 400 poles." The entry of Stephen T. Mason referred to, being as follows: "7th of August 1787, Stephen T. Mason, assignee, &c., enters 100 acres of land on part of a military-warrant, No. 2012, on the waters of the Ohio, beginning 640 poles north from the mouth of the third creek running into the Ohio, above the mouth of the Little Miami river; thence running west 160 poles, north 400 poles, east 400 poles, thence to the beginning." *Id*.
16. The Ohio and Little Miami rivers are identified and notorious objects. *Id*.
17. But the third creek above the mouth of the Little Miami, is to be taken according to the numerical order of the creeks, unless some other stream has, by general reputation or notoriety, been so considered. *Id*.
18. Cross creek, the stream which the party claiming under O'Neal's entry, assumed for the beginning to run the 640 poles north from the mouth of the third creek, as called for in Mason's entry, not being in fact numerically the third creek above the mouth of the Little Miami, and there being no sat-

- isfactory proof that it had acquired that designation by reputation—the claim was pronounced invalid.*Id.*
19. A statute, for the commencement of which no time is fixed, commences from its date. *Matthews v. Zane**164
20. The lands included within the Zanesville district, by the act of congress of the 3d of March 1803, § 6, could not, after that date, be sold at the Marietta land-office. *Id.*
21. The decision of this court in *Matthews v. Zane*, 5 Cranch 92, revised and confirmed. *Id.*
22. A patent is a title from its date, and conclusive against all those whose rights did not commence previous to its emanation. *Hoofnagle v. Anderson*.*212
23. Courts of equity consider an entry as the commencement of title, and will sustain a valid entry against a patent founded on a prior defective entry, if issued after such valid entry was made.*Id.*
24. But they never sustain an entry made after the date of the patent.*Id.*
25. The above case attempted to be taken out of the general rule, upon the ground, that the equity of the party claiming under the entry commenced before the legal title of the other party consummated.*Id.*
26. But the circumstances of the case, and the equity arising out of it, were not deemed by the court sufficient to take it out of the general rule.*Id.*
27. The owner of a survey, made in conformity with his entry, and not interfering with any other person's right, may abandon his survey after it has been recorded. *Taylor v. Myers*.*23
28. The proviso in the act of congress of March 2d, 1807, § 1, which annuls all locations made on lands previously surveyed, applies to subsisting surveys, to those in which an interest is claimed; not to those which have been abandoned, and in which no person has an interest.*Id.*
29. A question on the validity of a certificate for a settlement-right in Kentucky, and of the entry thereof in the surveyor's office. *Crocket v. Lee**522
30. It is a settled rule, that the decree must conform to the allegations in the pleadings, as well as the proofs in the cause.*Id.*
31. Therefore, when the question is on the validity of a location, and neither its vagueness nor its certainty are distinctly put in issue by the pleadings, the testimony to that point will be disregarded by this court; but if the merits appear to justify it, the case will be remanded to the court below, with directions to permit the pleadings to be amended.*Id.*
32. The turnpike-road stock, paid in as a part of the capital of the Union Bank of Alexandria, before its incorporation, became the common property of the association, so as to be subject to be sold and distributed among the members, after the charter, which directed, that the capital stock should consist of money only, was accepted; and those who subscribed the road stock, or the assignees, are not entitled to have the same returned specifically to them. *Holbrook v. Union Bank of Alexandria*.*553

NOTES.

See BILLS OF EXCHANGE, &c.

PATENT.

1. A party cannot entitle himself to a patent for more than his own invention; and if the patent be for the whole of a machine, he can maintain a title to it, only by establishing that it is substantially new in its structure and mode of operation. *Evans v. Eaton*. *356
2. If the same combination existed before, in machines of the same nature, up to a certain point, and the party's invention consists in adding some new machinery, or some improved mode of operation, to the old, the patent should be limited to such improvement; for if it includes the whole machine, it includes more than his invention, and therefore, cannot be supported.*Id.*
3. When the patent is for an improvement, the nature and extent of the improvement must be stated in the specification, and it is not sufficient, that it be made out and shown at the trial, or established by comparing the machine specified in the patent with former machines in use.*Id.*
4. The former judgment of this court in the same case (3 Wheat. 454) commented on, explained and confirmed.*Id.*
5. It is no objection to the competency of a witness in a patent cause, that he is sued in another action for an infringement of the same patent. *Evans v. Hettich*.*453
6. The 6th section of the patent act of 1793, which requires a notice of the special matter to be given in evidence by the defendant, under the general issue, does not include all the matters of defence which the defendant may be legally entitled to make. And where the witness was asked, whether the machine used by the defendant was like the model exhibited in court of the plaintiff's patented machine, *held*, that no notice was necessary to authorize the inquiry.*Id.*

PAYMENT.

1. A person owing money under distinct contracts, has a right to apply his payments to whichever debt he may choose, and this power may be exercised, without any express direction given at the time. *Taylor v. Sandiford**13
2. A direction may be evidenced by circumstances, as well as by words: and a positive refusal to pay one debt, and an acknowledgment of another, with a delivery of the sum due upon it, would be such a circumstance*Id.*

PRACTICE.

1. This court will not grant a rehearing in an equity cause, after it has been remitted to the court below, to carry into effect the decree of this court, according to its mandate. *Brouder v. McArthur**60
2. In cases brought to this court by appeal from the highest state court, under the 25th section of the judiciary act of 1789, this court is confined to an examination of the right, title, claim or exemption, set up by the party, as depending upon the construction of the law or treaty, &c., of the United States, under which it is set up. *Matthews v. Zane**206
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5. In real actions, the death of the ancestor, without having appeared to the suit, abates the suit, and it cannot be revived and prosecuted against the heirs of the original defendant. *Macker's Heirs v. Thomas**530
6. If the heirs be made parties, by order of the court in which the suit is brought, and judgment is entered against them by default, for want of a plea, upon a summons and count against the original defendant, they may sue out a writ of error, and reverse the judgment.*Id.*

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1. The commission conclusive proof of the national character of a public ship. *The Santissima Trinidad**283
2. During the existence of the civil war between Spain and her colonies, and previous

to the acknowledgment of the independence of the latter by the United States, the colonies were deemed by us belligerent nations, and entitled to all the sovereign rights of war against their enemy.*Id.*

3. Our municipal laws do not prohibit the trade in contraband articles. It is merely subject, by the laws of nations, to the penalty of confiscation, in case of capture.*Id.*
4. In cases of capture, supposed to be in violation of our neutrality, where the enlistment of men within our territory is proved, the *onus probandi* is thrown on the claimant, to prove that such enlistment was lawful, as being of the subjects of the state under whose flag the capture was made.*Id.*
5. The sixth article of the Spanish treaty of 1795 only provides for the restitution of Spanish ships captured within our jurisdiction.*Id.*
6. *Quere?* As to the right of expatriation.*Id.*
7. Supposing such a right to exist, it cannot be exercised, without a *bona fide* change of domicile, and can never be asserted as a cover for fraud, or to justify a crime against the country, or any violation of its laws.*Id.*
8. An augmentation of force, or illegal outfit, within the neutral territory, only affects captures made during the cruise for which such augmentation or outfit was made.*Id.*
9. Captures by public ships, as well as by privateers, if made in violation of our neutrality, are subject to restitution.*Id.*
10. Case of *The Exchange*, 7 Cranch 116, distinguished from this case.*Id.*
11. *Quere?* How far a condemnation as prize, in the court of the captor's country, will oust the jurisdiction of a neutral tribunal, proceeding *in rem* against the captured property, for a violation of the neutral jurisdiction.*Id.*
12. Such a condemnation will not oust the jurisdiction of the neutral tribunal, which has custody of the *res capta*, before its condemnation in the court of the captor.*Id.*
13. Prizes made by armed vessels, which have violated the statutes for preserving the neutrality of the United States, will be restored, if brought into our ports. *The Gran Para*.*471
14. But this court has never decided, that the offence adheres to the vessel, under whatever change of circumstances that may take place, nor that it cannot be deposited at the termination of the cruise, in preparing for which it was committed; but if this termination be merely colorable, and the vessel was originally equipped, with the intention of being employed on the cruise, during which the capture was made, the *delictum* is not purged.*Id.*
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