

INDEX

TO

THE PRINCIPAL MATTERS

IN THIS VOLUME.

A.

ACTION.

No action at law will lie on the decretal order of a Court of Equity.
Hugh v. Higgs, 697

ADMIRALTY.

ports of New-York and Perth Amboy, without the captain's having delivered the manifests required by law to *the collector or surveyor of New-York and Perth Amboy*, is defective; the act requiring the manifest to be delivered to the collector or surveyor of a single port. *The Mary Ann*, 380. 385

1. The Non-Intercourse Act of the 18th of April, 1818, c. 65. prohibits the coming of British vessels to the ports of the United States, from a British port closed against the commerce of the United States, either directly, or through an open British port; but it does not prohibit the coming of such vessels from a British closed port, through a foreign port, (not British,) where the continuity of the voyage is fairly broken. *The Pitt*, 357. 377
2. A libel of information, under the 9th sec. of the Slave Trade Act of March 2d, 1807, c. 77. alleging that the vessel sailed from the
3. Under the same section, the libel must charge the vessel to be of the burthen of 40 tons or more. In general, it is sufficient to charge the offence in the words directing the forfeiture; but if the words are general, embracing a whole class of individual subjects, but must necessarily be so construed as to embrace only a subdivision of that class, the allegation must conform to the legislative sense and meaning. *Id.* 385
4. Where the libel is so informal and defective, that the Court cannot enter up a decree upon it, and the evidence discloses a case of forfeiture, this Court will not

amend the libel itself, but will remand the cause to the Court below, with directions to permit it to be amended. *Id.* 390

5. In cases of seizures made *on land* under the revenue laws, the District Court proceeds as a Court of common law, according to the course of the Exchequer on informations *in rem*, and the trial of issues of facts is to be by jury; but in cases of seizures *on waters navigable from the sea by vessels of ten or more tons burthen*, it proceeds as an Instance Court of Admiralty, by libel, and the trial is to be by the Court. *The Sarah*, 391. 394

6. A libel charging the seizure to have been made *on water*, when in fact it was made *on land*, will not support a verdict, and judgment or sentence thereon; but must be amended or dismissed. The two jurisdictions, and the proceedings under them, are to be kept entirely distinct. *Id.* 394

7. Note on the jurisdiction of the Instance Court in revenue causes. *Id.* Note *a.* 396

8. If a British ship come from a foreign port (not British) to a port of the United States, the continuity of the voyage is not broken, and the vessel is not liable to forfeiture, under the act of April 18th, 1818, c. 65. by touching at an intermediate British closed port, from necessity, and in order to procure provisions, without trading there. *The Frances and Eliza*, 398

9. A case of forfeiture, under the 27th section of the Registry of Vessels Act, of December 31, 1792, c. 146. for the fraudulent use of a register, by a vessel not actually entitled to the benefit of it. *The Luminary*, 407

10. Where the *onus probandi* is thrown on the claimant, in an Instance or revenue cause, by a *prima facie* case, made out on the part of the prosecutor, and the claimant fails to explain the difficulties of the case, by the production of papers and other evidence, which must be in his possession, or under his control, condemnation follows from the defects of testimony on the part of the claimant. *Id.* 411

See PRIZE.

ALIEN.

See CONSTITUTIONAL LAW, 16. 17. 18.

AMENDMENT.

See ADMIRALTY, 4.

ASSIGNMENT.

See CHANCERY, 14. 15. 16.

ATTORNEY.

1. A power of attorney, though irrevocable on its face, or as being given as a security, is revoked by the death of the party. *Hunt v. Rousmanier*, 174. 201
2. A power of attorney, *coupled with an interest in the thing*, survives the party giving it, and may be executed after his death. *Id.* 203
3. How far a Court of equity will compel the specific execution of a contract, intended to be secured by an irrevocable power of attorney, which was revoked by operation of law on the death of the party. *Id.* 207

B.

BILLS OF EXCHANGE AND
PROMISSORY NOTES.

1. Banks, and other commercial corporations, may bind themselves by the acts of their authorized officers and agents, without the corporate seal. *Fleckner v. U. S. Bank*, 338. 357
2. The negotiability of a promissory note, payable to order, is not restrained by the circumstance of its being given for the purchase of real property in Louisiana, and the notary, before whom the contract of sale is executed, writing upon it the words "*ne varietur*," according to the laws and usages of that State, and other countries governed by the Civil law. *Id.* 363
3. The statutes of usury of England, and of the States of the Union, expressly provide, that usurious contracts shall be utterly void; but, without such a provision, they are not void as against parties who are strangers to the usury. *Id.* 355
4. The statute, incorporating the Bank of the United States, does not avoid securities on which usurious interest may have been taken, and the usury cannot be set up as a defence to a note on which it is taken. It is merely a violation of the charter, for which a remedy may be applied by the Government. *Id.* 355

See EVIDENCE, 6, 7, 8.

C.

CHANCERY.

1. A letter of attorney may, in gene-

ral, be revoked by the party making it, and is revoked by his death. *Hunt v. Rousmanier*, 174. 201

2. Where it forms a part of a contract, and is a security for the performance of any act, it is usually made irrevocable in terms, or, if not so made, is deemed irrevocable in law. *Id.* 201
3. But, a power of attorney, though irrevocable during the life of the party, becomes (at law) extinct by his death. *Id.* 202
4. But if the power be *coupled with an interest*, it survives the person giving it, and may be executed after his death. *Id.* 202
5. To constitute a power *coupled with an interest*, there must be an interest *in the thing itself*, and not merely *in the execution of the power*. *Id.* 204
6. How far a Court of equity will compel the specific execution of a contract, intended to be secured by an irrevocable power of attorney, which was revoked by operation of law on the death of the party. *Id.* 207
7. The general rule, both at law, and in equity, is, that parol testimony is not admissible to vary a written instrument. *Id.* 211
8. But, in cases of fraud and mistake, Courts of equity will relieve. *Id.* 211
9. *It seems*, that a Court of equity will relieve in a case of mistake *of law* merely. *Id.* 211
10. A post-nuptial voluntary settlement, made by a man, who is not indebted at the time, upon his wife, is valid against subsequent creditors. *Sexton v. Wheaton*, 229
11. The statute 13 Eliz. c. 5. avoids all conveyances not made on a consideration deemed valuable in

- law, as against *previous* creditors.
Id. 242
12. But it does not apply to *subsequent* creditors, if the conveyance is not made with a fraudulent intent. *Id.* 238
13. What circumstances will constitute evidence of such a fraudulent intent. *Id.* 250
14. An insolvent debtor has a right to prefer one creditor to another, in payment, by an assignment *bona fide* made, and no subsequent attachment, or subsequently acquired lien, will avoid the assignment. *Spring v. S. C. Ins. Co.* 268. 282
15. Such an assignment may include choses in action, as a policy of insurance, and will entitle the assignee to receive from the underwriters the amount insured in case of a loss. It is not necessary, that the assignment should be accompanied by an actual delivery of the policy. *Id.* 268
16. Upon a bill of interpleader, filed by underwriters against the different creditors of an insolvent debtor, claiming the fund proceeding from an insurance made for account of the debtor, some on the ground of special liens, and others under the assignment, the rights of the respective parties will be determined. But, on such a bill, those of the co-defendants who fail in establishing any right to the fund, are not entitled to an account from the defendant, whose claims are allowed, of the amount and origin of those claims. *Id.* 292
17. On a bill of interpleader, the plaintiffs are, in general, entitled to their costs out of the fund. Where the money is not brought into Court, they must pay interest upon it. *Id.* 293
18. Under the act of Assembly of Virginia, of October, 1783, for the better locating and surveying the lands given to the officers and soldiers on Continental and State establishments, the State of Virginia has no right to call upon the person who was appointed one of the principal surveyors, to account for the fees received by him, of one dollar for every hundred acres, on delivering the warrants, towards raising a fund for the purpose of supporting all contingent expenses; the bill filed by the Attorney General of the State, to compel an account, not sufficiently averring the want of any proper private parties *in esse* to claim it. *Nicholas v. Anderson*, 365. 369
19. *Quære*, Whether, in such a case, the assignees of the warrants, or a part of them, suing in behalf of the whole, could maintain a suit in equity for an account? *Id.* 370
20. A trustee cannot purchase, or acquire by exchange, the trust property. *Wormley v. Wormley*, 421. 438
21. Where the trustee, in a marriage settlement, has a power to sell, and reinvest the trust property, whenever, in his opinion, the purchase money may be laid out advantageously for the *cestuis que trust*, that opinion must be fairly and honestly exercised; and the sale will be void where he appears to have been influenced by private and selfish interests, and the sale is for an inadequate price. *Id.* 442
22. *Quære*, How far a *bonæ fidei* purchaser, without notice of the breach of trust, in such a case, is bound to see to the application of the purchase money? *Id.* 442
23. Where the purchase money is to be reinvested upon trusts that re-

quire time and discretion, or the acts of sale and reinvestment are contemplated to be at a distance from each other, the purchaser is not bound to look to the application of the purchase money. *Id.*

443

24. But wherever the purchaser is affected with notice of the facts, which, in law, constitute the breach of trust, the sale is void as to him; and a mere general denial of all knowledge of fraud, will not avail him, if the transaction is such as a Court of equity cannot sanction. *Id.*

447

25. A *bonæ fidei* purchaser, without notice, to be entitled to protection, must be so, not only at the time of the contract or conveyance, but until the purchase money is actually paid. *Id.*

449

26. This Court will not suffer its jurisdiction, in an equity cause, to be ousted, by the circumstance of the joinder or non-joinder of merely *formal* parties, who are not entitled to sue, or liable to be sued, in the United States' Courts. *Id.*

451

27. Note on the subject of who are necessary parties to a bill in equity. *Id.* Note *a.*

451

CHARTER-PARTY.

See SHIPPING.

CHARITIES.

See CONSTITUTIONAL LAW, 15, 16, 17, 18.

COLLECTOR.

See CONSTRUCTION OF STATUTE, 3.

CONSTITUTIONAL LAW.

1. The act of the State of Kentucky, of the 27th of February, 1797, concerning occupying claimants of land, whilst it was in force, was repugnant to the constitution of the United States, but it was repealed by a subsequent act of the 31st of January, 1812, to amend the said act; and the last mentioned act is also repugnant to the constitution of the United States, as being in violation of the compact between the States of Virginia and Kentucky, contained in the act of the legislature of Virginia, of the 18th of December, 1789, and incorporated into the constitution of Kentucky. *Green v. Biddle*, 1. 69
2. By the common law, the statute law of Virginia, the principles of equity, and the civil law, the claimant of lands who succeeds in his suit, is entitled to an account of mesne profits, received by the occupant from *some period* prior to the judgment of eviction, or decree. *Id.* 74. 81
3. At common law, whoever takes and holds possession of land, to which another has a better title, whether he be a *bonæ fidei* or a *malæ fidei* possessor, is liable to the true owner for all the rents and profits which he has received: but the disseisor, if he be a *bonæ fidei* occupant, may recoup the value of the meliorations made by him against the claim of damages. *Id.* 75. 80
4. Equity allows an account of rents and profits in all cases, from the time of the title accrued, (provided it does not exceed six years,) unless under special circumstances, as where the defendant had

no notice of the plaintiff's title, nor had the deeds in which the plaintiff's title appeared in his custody, or where there has been laches in the plaintiff in not asserting his title, or where his title appeared by deeds in a stranger's custody; in all which, and other similar cases, the account is confined to the time of filing the bill.

Id. 78

5. By the civil law, the exemption of the occupant from an account for rents and profits is strictly confined to the case of a *bonæ fidei* possessor, who not only *supposes* himself to be the true owner of the land, but who is ignorant that his title is contested by some other person claiming a better right. And such a possessor is entitled only to the fruits or profits which were produced by his own industry, and not even to those, unless they were consumed. *Id.* 79

6. Distinctions between these rules of the civil and common law, and of the Court of Chancery, and the provisions of the acts of Kentucky, concerning occupying claimants of land. *Id.* 81, 82

7. The invalidity of a State law, as impairing the obligation of contracts, does not depend upon the extent of the change which the law effects in the contract. *Id.* 84

8. Any deviation from its terms, by postponing or accelerating the period of its performance, imposing conditions not expressed in the contract, or dispensing with the performance of those which are expressed, however minute or apparently immaterial in their effect upon the contract, impairs its obligation. *Id.* 341

9. The compact of 1789, between Virginia and Kentucky, was valid

under that provision of the constitution, which declares, that "no State shall, without the consent of Congress, enter into any agreement or compact with another State, or with a foreign power:"—no particular mode, in which that consent must be given, having been prescribed by the constitution; and Congress having consented to the admission of Kentucky into the Union, as a sovereign state, upon the conditions mentioned in the compact. *Id.* 85

10. The compact is not invalid upon the ground of its surrendering rights of sovereignty, which are unalienable. *Id.* 88

11. This Court has authority to declare a State law unconstitutional, upon the ground of its impairing the obligation of a compact between different States of the Union. *Id.* 92

12. The prohibition of the constitution embraces all contracts, executed or executory, between private individuals, or a State and individuals, or corporations, or between the States themselves. *Id.* 92

13. The appellate jurisdiction of this Court, in cases brought from the State Courts, arising under the constitution, laws, and treaties of the Union, is not limited by the value of the matter in dispute. *Buel v. Van Ness*, 312, 321

14. Its jurisdiction in such cases extends to a case where both parties claim a right or title under the same act of Congress, and the decision is against the right or title claimed by either party. *Id.* 323

15. A corporation for religious and charitable purposes, which is endowed solely by private benefactions, is a private eleemosynary

- corporation, although it is created by a charter from the government. *Society, &c. v. New-Haven*, 464. 480
16. The capacity of private individuals, (British subjects,) or of corporations, created by the crown, in this country, or in Great Britain, to hold lands or other property in this country, was not affected by the Revolution. *Id.* 481
17. The proper Courts in this country will interfere to prevent an abuse of the trusts confided to British corporations holding lands here to charitable uses, and will aid in enforcing the due execution of the trusts; but neither those Courts, nor the local Legislature where the lands lie, can adjudge a forfeiture of the franchises of the foreign corporation, or of its property. *Id.* 483
18. The property of British corporations, in this country, is protected by the 6th article of the treaty of peace of 1783, in the same manner as those of natural persons; and their title, thus protected, is confirmed by the 9th article of the treaty of 1794, so that it could not be forfeited by any intermediate legislative act, or other proceeding, for the defect of alienage. *Id.* 489. 491
19. The termination of a treaty, by war, does not divest rights of property already vested under it. *Id.* 492
20. Nor do treaties, in general, become extinguished, *ipso facto*, by war between the two governments. Those stipulating for a permanent arrangement of territorial, and other national rights, are, at most, suspended during the war, and revive at the peace, unless they are waived by the parties, or new and repugnant stipulations are made. *Id.* 493
21. The act of the legislature of Vermont, of the 30th of October, 1794, granting the lands in that State, belonging to "The Society for Propagating the Gospel in Foreign Parts," to the respective towns in which the lands lie, is void, and conveys no title under it. *Id.* 464
22. An insolvent debtor who has received a certificate of discharge from arrest and imprisonment under a State insolvent law, is not entitled to be discharged from execution at the suit of the United States. *United States v. Wilson*, 253
23. Note as to the effect of local statutes of limitation in suits brought by the United States, in their Courts. *Id.* Note a. 256
24. Note to the case of *Green v. Bidle*, Appx. Note I.
25. A title to lands, under grants to private individuals, made by Indian tribes or nations northwest of the river Ohio, in 1773 and 1775, cannot be recognised in the Courts of the United States. *Johnson v. McIntosh*, 543
26. Discovery, the original foundation of titles to land on the American continent, as between the different European nations, by whom conquests and settlements were made here. *Id.* 573
27. The European governments asserted the exclusive right of granting the soil to individuals, subject only to the Indian right of occupancy. *Id.* 574
28. Practice of Spain, France, Holland, and England, as to newly discovered countries. *Id.* 574
29. Recognition of the same principle in the wars, negotiations, and

- treaties, between the different European powers. *Id.* 581
30. Adoption of the same principle by the United States. *Id.* 584
31. The exclusive right of the British government to the lands occupied by the Indians, has passed to that of the United States. *Id.* 587
32. Foundation and limitation of the right of conquest. *Id.* 588
33. Application of the principle of the right of conquest to the case of the Indian savages. *Id.* 590
34. Effect of the proclamation of 1763. *Id.* 593
35. Case of the Mohegans. *Id.* 598
36. Memorial of 1755. *Id.* 598
37. Opinions of the Attorney General, &c. *Id.* 599
38. Titles in New-England under Indian grants. *Id.* 600
39. Charter of Rhode-Island. *Id.* 601
40. The Courts of the United States have jurisdiction of suits by or against executors and administrators, if they are citizens of different States, &c. although their testators or intestates might not have been entitled to sue, or liable to be sued in those Courts. *Chil-dress v. Emory,* 642
430. requiring, "that the owners, officers, and crew, who shall be employed on board such commissioned vessel, shall and will observe the treaties and laws of the United States." *Greeley v. United States,* 257
2. Where such breach appears upon demurrer, the defendants cannot, by law, claim a hearing under the Judiciary Act of September 24th, 1789, c. 20. s. 26. *Id.* 257
3. Under the 91st section of the Duty Act of 1799, c. 128. the share of a forfeiture, to which the Collector, &c. of the District, is entitled, is to be paid to the person who was the Collector, &c. in office at the time the seizure was made, and not to his successor in office at the time of condemnation and the receipt of the money. *Buel v. Van Ness,* 312. 320
4. The Act of the 10th of April, 1816, c. 44. incorporating the Bank of the United States, does not, by the 9th rule of the fundamental articles, prohibit the bank from discounting promissory notes, or receiving a transfer of notes in payment of a debt due the bank. *Fleckner v. Bank United States,* 333. 349

CONSTRUCTION OF STATUTE.

1. An American private armed vessel, duly commissioned, making collusive captures of enemy's property during the late war with Great Britain, and under colour of such captures introducing goods and merchandise into the United States, contrary to the provisions of the act of March 1, 1809, c. 195. revived and continued in force by the act of March 2, 1811, c. 306. thereby broke the condition of the bond given pursuant to the third section of the statute of June 26th, 1812, c.
5. The Bank of the U. S., and every other bank, not restrained by its charter, and also private bankers, on discounting notes and bills, have a right to deduct the legal interest from the amount of the note or bill, at the time it is discounted. *Id.* 350
6. The Bank of the U. S. is not restrained, by the 9th rule of the fundamental articles of its charter, from thus deducting interest, at the rate of 6 per cent., on notes or bills discounted by it. *Id.* 351
7. Under the 8th section of the act of 1812, to amend the act for the

incorporation of the city of Washington, a sale of unimproved squares or lots in the city, for the payment of taxes, is illegal, unless such squares and lots have been assessed, to the true and lawful proprietors thereof. *Corporation of Washington v. Pratt*, 681

8. The lien upon each lot, for the taxes, is several and distinct, and the purchaser of each holds his lot unencumbered with the taxes due on the other lots held by his vendor. *Id.*
9. The advertisement must contain a particular statement of the amount of taxes due on each lot separately. *Id.*
10. If the sale of one or more lots produce the amount of taxes actually due on the whole by the same proprietor, the corporation cannot proceed to sell further. *Id.*

See ADMIRALTY, 1, 2, 3. 8.

CORPORATION.

See BILLS OF EXCHANGE, 1. 4.
CONSTITUTIONAL LAW, 15, 16, 17, 18.

CONTRACT.

In what cases a Court of equity will relieve against a mistake of law merely. *Hunt v. Rousmanier*, 174. 211

COVENANT.

1. Where the acts stipulated to be done, are to be done at different times, the covenants are to be construed as independent of each other. *Goldsborough v. Orr*, 217. 225
2. Application of this principle to the peculiar circumstances of the case. *Id.* 225

VOL. VIII.

D.

DEBT.

1. In debt, a less sum may be recovered than that demanded in the writ, where an entire sum is demanded, and it is shown by the counts to consist of several distinct debts, or where the precise sum demanded is diminished by extrinsic circumstances. *Hughes v. Union Ins. Co.* 294. 310
2. Note on the same subject. *Appx. Note II.*

DEED.

See EVIDENCE, 5.

FRAUDS.

DEVISE.

1. J. B. devises all his real estate to the testator's son, J. B., jun., and his heirs lawfully begotten; and, in case of his death without such issue, he orders A. Y., his executors and administrators, to sell the real estate *within two years after the son's death*; and he bequeaths the proceeds thereof to his *brothers and sisters*, by name, and *their heirs for ever, or such of them as shall be living at the death of the son, to be divided between them in equal proportions, share and share alike.* All the brothers and sisters die, leaving issue. Then A. Y. dies, and afterwards J. B., jun., the son, dies without issue. *Heirs* is a word of limitation; and none of the testator's brothers and sisters being alive at the death of J. B., jun., the devise to them failed to

E

- take effect. *Daly v. James*, 495. 531
2. *Quære*, Whether a sale by the executors, &c. under such circumstances, is to be considered as valid in a Court of law? *Id.* 535
 3. However this may be, a sale, thus made, after the lapse of two years from the death of J. B., jun., is without authority, and conveys no title. *Id.* 535
 4. *Quære*, Under what circumstances a Court of equity might relieve, in case the trustee should refuse to exercise the power within the prescribed period, or should exercise the same after that period? *Id.* 536
 5. A power to A. Y., and his executors or administrators, to sell, may be executed by the executors of the executors of A. Y. *Id.* 495
- and been absent for four years, without having been heard from, is sufficient to let in secondary proof of his handwriting. *Spring v. S. C. Ins. Co.* 268. 282
6. No demand of payment, or notice of non-payment, *by a notary public*, is necessary in the case of promissory notes. A protest is (strictly speaking) evidence in the case of foreign bills of exchange only. *Nicholas v. Webb*, 326. 331
 7. But it is a principle, that memorandums made by a person, in the ordinary course of his business, of acts which his duty, in such business, requires him to do for others, are, in case of his death, admissible evidence of acts so done. *A fortiori*, the acts of a public officer are so admissible, though they may not be strictly official, if they are according to general usage, and the ordinary course of his office. *Id.* 334
 8. Therefore, the books of a notary public, proved to have been regularly kept, are admissible in evidence, after his decease, to prove a demand of payment, and notice of non-payment, of a promissory note. *Id.* 334

E.

EVIDENCE.

1. Where a party claims, in the Admiralty, under a condemnation in a foreign Court, the libel, or other proceeding, anterior to the sentence, must be produced, as well as the sentence itself. *The Nereyda*, 108. 168
2. What evidence of proprietary interest is required on farther proof. *Id.* 171
3. General rule, that parol testimony is not admissible to vary a written instrument. *Hunt v. Rousmanier*, 174. 211
4. In equity, cases of fraud and mistake are exceptions to this rule. *Id.* 211
5. Evidence that a subscribing witness to a deed had been diligently inquired after, having gone to sea,

See ADMIRALTY, 10.

EXECUTOR AND ADMINISTRATOR.

1. An executor or administrator is not liable to a judgment beyond the assets to be administered, unless he pleads a false plea. *Siglar v. Haywood*, 675
2. If he fail to sustain his plea of *plene administravit*, it is not necessarily a false plea, within his own knowledge: and, if it be found against him, the verdict ought to find the amount of as-

sets unadministered, and the defendant is liable for that sum only. *Id.*

3. In such a case, the judgment is *de bonis testatoris*, and not *de bonis propriis*. *Id.*

F.

FRAUDS.

The stat. 13 Eliz. c. 5. avoids all conveyances not deemed valuable in law, as against *previous* creditors; but not as against *subsequent* creditors, unless made with a fraudulent intent. *Sexton v. Wheaton*, 229. 242

See CHANCERY, 20, 21, 22, 23, 24, 25.

FREIGHT.

See SHIPPING.

I.

INFORMATION.

See ADMIRALTY, 2, 3, 4, 5, 6.

IMPROVEMENTS.

1. Common law as to accountability of *malæ fidei* and *bonæ fidei* possessor, for rents and profits. *Green v. Biddle*, 1. 74
2. Rule of equity as to rents and profits. *Id.* 77
3. Rule of the civil law. *Id.* 79

See CONSTITUTIONAL LAW, 1, 2, 3, 4, 5, 6.

INDIAN TITLES.

See CONSTITUTIONAL LAW, 24—38.

INSOLVENT.

See CHANCERY, 14, 15, 16.

CONSTITUTIONAL LAW, 22.

INTERPLEADER.

See CHANCERY, 16.

INSURANCE.

1. An insurance broker is entitled to a lien on the policy for premiums paid by him on account of his principal; and though he parts with the possession, if the policy afterwards comes into his hands again, his lien is revived, unless the manner of his parting with it manifests his intention to abandon the lien. In such a case, an intermediate assignee takes *cum onere*. *Spring v. S. C. Ins. Co.* 268. 286
2. But in the case of other liens acquired on the policy, if it be assigned, *bona fide*, for a valuable consideration, while out of the possession of the person acquiring the lien, and afterwards return into his hands, the lien does not revive as against the assignee. *Id.* 287
3. Insurance for 18,000 dollars on vessel valued at that sum, and 2000 dollars on freight valued at 12,000 dollars, on the ship *Henry*, "at and from Teneriffe, and at and from thence to New-York, with liberty to stop at Matanzas; the property warranted American." The policy was executed in 1807; and in the same year another policy was made, by the same underwriters, on freight for the same voyage, to the amount of 10,000 dollars, and the property was also warranted Ameri-

can, but there was no liberty to stop at Matanzas. The following representation was made to the underwriters on the part of the plaintiff, who was both owner and master of the ship: "We are to clear out for New-Orleans, the property will be under cover of Mr. John Paul, of Baltimore, who goes supercargo on board, yet Mr. Paul will only have part of the cargo to his consignment. There will be three other persons on board, that will have the remainder of the cargo in their care. We are to stop at the Matanzas, to know if there are any men of war off the Havanna." The vessel sailed from Teneriffe on the 17th of April, 1807, with a cargo belonging to Spanish subjects, but appearing to be the property of John Paul Dumeste, a citizen of the United States, and the same person called John Paul in the representation. The cargo was shipped under a charter-party executed by the plaintiff and Dumeste, representing New-Orleans as the place of destination. The ship arrived at the Havanna on the 7th of July, having put into Matanzas to avoid British cruisers, and unladed the cargo, which was there received by the Spanish owners, and the freight, amounting to 7000 dollars, paid to the plaintiff, who received it, "in full of all demands, for freight or otherwise, under or by virtue of the aforesaid charter-party and cargo." At the Havanna the ship took in a new cargo, belonging to merchants in New-York, and was lost, with the greater part of the cargo, on the voyage from Havanna to New-York. An action of debt was brought on the first policy for the value of the

ship and freight. The sum demanded in the writ was 20,000 dollars, but the plaintiff limited his demand at the trial to 18,000 dollars on the ship, and 420 dollars for the freight actually earned on the voyage from Havanna to New-York: *Held*, that he was entitled to recover. *Hughes v. Union Ins. Co.* 294. 304

J.

JURISDICTION.

1. The jurisdiction of this Court is not affected by the joinder or non-joinder of mere formal parties in an equity suit. *Wormley v. Wormley*, 451
2. Its jurisdiction, in a case arising under the occupying claimant laws of Kentucky, is not excluded by the tribunal appointed by the compact of 1789, between Virginia and Kentucky. *Green v. Biddle*, 90

See ADMIRALTY, 5, 6, 7.
CHANCERY, 26.

L.

LIEN.

1. By a charter-party, the sum of 30,000 dollars was agreed to be paid for the use or hire of the ship, on a voyage from Philadelphia to Madeira, and thence to Bombay, and at the option of the charterer to Calcutta, and back to Philadelphia, (with an addition of 2000 dollars, if she should proceed to Calcutta,) the whole payable on the return of the ship to Philadelphia, and before the discharge of her cargo there, in approved notes, not exceeding an average time of 90 days from the time at

which she should be ready to discharge her cargo. The charterer proceeded in the ship to Calcutta, and, with the consent of the master, (who was appointed by the ship-owners,) entered into an agreement with P. & Co. merchants there, that if they would make him an advance of money, he would deliver to them a bill of lading, stipulating for the delivery of the goods purchased therewith to their agents in Philadelphia, free of freight, who should be authorized to sell the same, and apply the proceeds to the repayment of the said advance, unless the charterer's bills, drawn on G. & S. of Philadelphia, should be accepted, in which event the agents of P. & Co. should deliver the goods to the charterer. The goods were shipped accordingly, and a bill of lading signed by the master, with the clause, "freight for the said goods having been settled here." The bills of exchange drawn by the charterer were refused acceptance, and the agents of P. & Co. demanded the goods, which the owners of the ship refused to deliver without the payment of freight: *Held*, that the owners of the ship had a lien on these goods for the freight. *Gracie and others v. Palmer and others*, 605

See INSURANCE, 1, 2.

LIMITATION.

See CONSTITUTIONAL LAW, 23.

LOCAL LAW.

1. Under the act of assembly of Maryland of 1795, (c. 56.) if the defendant appears, and dissolves the attachment, a declaration and

subsequent pleadings are not necessary, as in other actions, but the cause may be tried upon a *short note*. *Goldsborough v. Orr*, 217

2. *It seems*, under the same act, that an attachment will not lie in a case *ex contractu* for unliquidated damages for the non-delivery of goods. But where the plaintiff is entitled to a stipulated sum of money, in lieu of a specific article to be delivered, an attachment will lie. *Id.* 226
3. Note of the case of *Smith v. Gilmor*, in the Court of Appeals of Maryland. *Id.* Note b. 227
4. The Act of Assembly of Kentucky, of the 7th of February, 1812, "giving interest on judgments for damages, in certain cases," applies as well to cases depending in the Circuit Courts of the Union, as to proceedings in similar cases in the State Courts. *Sneed v. Wister*, 690
5. The party is as well entitled to interest in an action on an appeal bond, as if he were to proceed on the judgment, if the judgment be on a contract for the payment of money. He is entitled to interest from the rendition of the original judgment. *Id.*

See CHANCERY, 18, 19.

BILLS OF EXCHANGE, 2.

CONSTITUTIONAL LAW, 1, 2, 6.
21, 22, 23.

M.

MARRIAGE SETTLEMENT.

See CHANCERY, 10.
FRAUD.

MISTAKE.

See CHANCERY, 8, 9.

N.

NON-INTERCOURSE ACT.

See ADMIRALTY, 1. 8.

P.

PLEADING.

1. It is, in general, not necessary, in deriving title to a bill or note, through the endorsement of a partnership firm, or from the surviving partner, through the act of the law, to state particularly the names of the persons composing the firm. *Childress v. Emory*, 642
2. A declaration, averring that "J. C., by his agent, A. C., made" the note, &c. is good. *Id.*
3. A general profert of letters testamentary, is sufficient; and if the defendant would object to their insufficiency, he must crave oyer: or, if it be alleged that the plaintiffs are not executors, the objection must be taken by plea in abatement. *Id.*
4. Debt, against an executor, should be in the *detinet* only, unless he has made himself personally responsible, as by a *devastavit*. *Id.*
5. An action of debt lies, upon a promissory note, against executors. *Id.*
6. The wager of law, if it ever had a legal existence in the United States, is now completely abolished. *Id.*
7. Oyer is not demandable of a record; nor, in an action upon a bond for performance of covenants in another deed, can oyer of such deed be craved; for the defendant, and not the plaintiff, must show it, with a profert of it,

or an excuse for the omission.
Sneed v. Wister, 690

8. If oyer be improperly demanded, the defect is aided on a general demurrer; but it is fatal to the plea, where it is set down as a cause of demurrer. *Id.*
9. *Nil debet* is an improper plea to an action of debt upon a specialty or deed, where it is the foundation of the action. *Id.*

POWER.

See DEVISE.

PRACTICE.

1. The appellate jurisdiction of this Court, under the 25th section of the Judiciary Act of 1789, c. 20., may be exercised by a writ of error, issued by the clerk of a Circuit Court, under the seal of that Court, in the form prescribed by the Act of the 8th of May, 1792, c. 137. s. 9.; and the writ itself need not expressly state, that it is directed to a *final* judgment of the State Court, or that the Court is *the highest Court* of law or equity of the State. *Buel v. Van Ness*, 312. 320
2. It is not necessary to aver on the record, that the defendant in the Circuit Court was an inhabitant of the District, or was found therein at the time of serving the writ. Where the defendant appears, without taking the exception, it is an admission of the regularity of the service. *Gracie v. Palmer*, 605

See ADMIRALTY, 2, 3, 4, 5, 6. 10.
CHANCERY, 17.
CONSTITUTIONAL LAW, 13, 14.
CONSTRUCTION OF STATUTE, 2.
COVENANT.
DEBT.
EVIDENCE, 1, 2.

PRIZE.

1. *Quære*, Whether a regular sentence of condemnation in a Court of the captor, or his ally, the captured property having been carried *infra præsidia*, will preclude the Courts of this country from restoring it to the original owners, where the capture was made in violation of our laws, treaties, and neutral obligations? *La Nereyda*, 108. 174
2. Whoever claims under such a condemnation, must show, that he is a *bonæ fidei* purchaser, for a valuable consideration, unaffected with any participation in the violation of our neutrality by the captors. *Id.* 167
3. Whoever sets up a title, under a condemnation, as prize, is bound to produce the libel, or other equivalent proceeding, under which the condemnation was pronounced, as well as the sentence of condemnation itself. *Id.* 168
4. *Quære*, Whether a condemnation in the Court of an ally, of property carried into his ports by a co-belligerent, is valid? *Id.* 108
5. Where an order for farther proof is made, and the party disobeys, or neglects to comply with its injunctions, Courts of prize generally consider such disobedience, or neglect, as fatal to his claim. *Id.* 171
6. Upon such an order, it is almost the invariable practice, for the claimant (besides other testimony) to make proof by his own oath of his proprietary interest, and to explain the other circumstances of the transaction; and the absence of such proof and explanation always leads to considerable doubts. *Id.* 171
7. In cases of collusive capture, pa-

pers found on board one captured vessel, may be invoked into the case of another, captured on the same cruise. *The Experiment*, 261

8. A commission, obtained by fraudulent misrepresentations, will not vest the interests of prize. *Id.* 264
9. But a collusive capture, made under a commission, is not, *per se*, evidence that the commission was fraudulently obtained. *Id.* 264
10. A collusive capture vests no title in the captors, not because the commission is thereby made void, but because the captors thereby forfeit all title to the prize property. *Id.* 264
11. Collusive captures and violations of the revenue laws, committed by a private armed vessel, are a breach of the condition of the bond given by the owners, under the Prize Act of June 26, 1812, c. 430. s. 3. If such breach appear upon demurrer, the defendants are not entitled to a hearing in equity, under the Judiciary Act of 1789, c. 20. s. 26. *Greeley v. United States*, 257

R.

REGISTRY ACT.

See ADMIRALTY, 9.

S.

SHIPPING.

By a charter-party, the sum of 30,000 dollars was agreed to be paid for the use or hire of the ship, on a voyage from Philadelphia to Madeira, and thence to Bombay, and, at the option of the charterer, to Calcutta, and back to Phila-

delphia, (with an addition of 2000 dollars, if she should proceed to Calcutta,) the whole payable on the return of the ship to Philadelphia, and before the discharge of her cargo there, in approved notes, not exceeding an average time of 90 days from the time at which she should be ready to discharge her cargo. The charterer proceeded in the ship to Calcutta, and, with the consent of the master, (who was appointed by the ship-owners,) entered into an agreement with P. & Co. merchants there, that if they would make him an advance of money, he would deliver to them a bill of lading, stipulating for the delivery of the goods purchased therewith, to their agents in Philadelphia, free of freight, who should be authorized to sell the same, and apply the proceeds to the repayment of the said advance, unless the charterer's bills, drawn on G. & S., of Philadelphia, should be accepted; in which event, the agents of P. & Co. should deliver the goods to the charterer. The goods were shipped accordingly, and a bill of lading signed by the master, with the clause, "freight for the said goods having been settled here." The bills of exchange, drawn by the charterer, were refused acceptance, and the agents of P. & Co. demanded the goods, which the owners of the ship refused to deliver, without the payment of freight: *Held*, that

the owners of the ship had a lien on these goods for the freight.
Gracie v. Palmer, 605

SLAVE-TRADE ACT.

See ADMIRALTY, 2, 3.

SPECIFIC PERFORMANCE.

See ATTORNEY, 3.

T.

TITLES TO LAND.

See CONSTITUTIONAL LAW, 25—38.

TREATY.

See CONSTITUTIONAL LAW, 18, 19, 20.

TRUSTEE.

See CHANCERY, 20, 21, 22, 23, 24.

U.

USURY.

It is not usury for a bank to deduct the interest from the amount of a note, at the time of its being discounted. *Fleckner v. U. States' Bank*, 338. 354

See BILLS OF EXCHANGE AND PROMISSORY NOTES, 3, 4.

CONSTRUCTION OF STATUTE, 3, 5, 6.







