INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

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

ADMIRALTY.

1. The African slave-trade is contrary to the law of nature, but is not prohibited by the positive law of nations. *The Antelope*. *66, 114
2. Although the slave-trade is now prohibited by the laws of most civilized nations, it may still be lawfully carried on by the subjects of those nations who have not prohibited it by municipal acts or treaties..... *Id.*
3. The slave-trade is not piracy, unless made so by the treaties or statutes of the nation to whom the party belongs..... *Id.*
4. The right of visitation and search does not exist in time of peace. A vessel engaged in the slave-trade, even if prohibited by the laws of the country to which it belongs, cannot, for that cause alone, be seized on the high seas, and brought in for adjudication, in time of peace, in the courts of another country; but if the laws of that other country be violated, or the proceeding be authorized by treaty, the act of capture is not, in that case, unlawful..... *Id.*
5. It seems, that in case of such a seizure, possession of Africans is not a sufficient evidence of property, and that the *onus probandi* is thrown upon the claimant, to show that the possession was lawfully acquired. ...*Id.*
6. Africans who are first captured by a belligerent privateer, fitted out in violation of our neutrality, or by a pirate, and then recaptured and brought into the ports of the United States, under a reasonable suspicion that a violation of the slave-trade acts was intended, are not to be restored, without full proof of the proprietary interest; for in such a case, the capture is lawful..... *Id.*
7. And whether, in such a case, restitution ought to be decreed at all, was a question on which the court was equally divided.... *Id.*
8. Where the court is equally divided, the decree of the court below is, of course, affirmed, so far as the point of division goes ..... *Id.*
9. Although a consul may claim for subjects unknown of his nation, yet restitution cannot be decreed, without specific proof of the individual proprietary interest..... *Id.*
10. A question of fact under the slave-trade acts, as to a vessel claimed by a Spanish subject, as having been engaged in the trade, under the laws of his own country, but proved to have been originally equipped in the United States for the voyage in question. *The Plattsburgh* *133
11. Under the slave-trade act of 1794, c. 11, the forfeiture attaches, where the original voyage is commenced in the United States, whether the vessel belongs to citizens or foreigners, and whether the act is done *suo jure*, or by an agent, for the benefit of another person who is not a citizen or resident of the United States..... *Id.*
12. Circumstances of a pretended transfer to a Spanish subject, and the commencement of a new voyage in a Spanish port, held not to be sufficient to break the continuity of the original adventure, and to avoid the forfeiture..... *Id.*
13. It is not necessary, to incur the forfeiture under the slave-trade acts, that the equipments for the voyage should be completed. It is sufficient if any preparations are made for the unlawful purpose..... *Id.*
14. The secretary of the treasury has authority, under the remission act of the 3d of March 1797, c. 361, to remit a forfeiture or penalty accruing under the revenue laws, at any

time, before or after a final sentence of condemnation or judgment for the penalty, until the money is actually paid over to the collector for distribution. *United States* v. *Morris*.....*246

15. Such remission extends to the shares of the forfeiture or penalty to which the officers of the customs are entitled, as well as to the interest of the United States.....*Id.*

16. The district courts have jurisdiction, under the slave-trade acts, to determine who are the actual captors, under a state law made in pursuance of the 4th section of the slave-trade act of 1807, c. 77, and directing the proceeds of the sale of the negroes to be paid, "one moiety for the use of the commanding officer of the capturing vessel," &c. *The Josefa Segunda*.....*312

17. In order to constitute a valid seizure, so as to entitle the party to the proceeds of a forfeiture, there must be an open, visible possession claimed, and authority exercised, under the seizure..... *Id.*

18. A seizure once voluntarily abandoned, loses its validity..... *Id.*

19. A seizure, not followed by an actual prosecution, or by a claim in the district court, before a hearing on the merits, insisting on the benefit of the seizure, becomes a nullity..... *Id.*

20. Under the 7th section of the slave-trade act of 1807, c. 77, the entire proceeds of the vessel are forfeited to the use of the United States, unless the seizure be made by armed vessels of the navy, or by revenue-cutters; in which case, distribution is to be made in the same manner as prizes taken from an enemy..... *Id.*

21. Under the act of the state of Louisiana of the 13th of March 1818, passed to carry into effect the 4th section of the slave-trade act of congress of 1807, c. 77, and directing the negroes imported contrary to the act to be sold and the proceeds to be paid, "one moiety for the use of the commanding officer of the capturing vessel and the other moiety to the treasurer of the Charity Hospital of New Orleans, for the use and benefit of the said hospital," no other person is entitled to the first moiety than the commanding officer of the armed vessels of the navy or revenue-cutter, who may have made the seizure, under the 7th section of the act of congress. *Id.*

22. *Quære?* How far the state legislatures may authorize the condemnation of vessels as unseaworthy, by tribunals or boards constituted by state authority in the absence of any general regulation made by congress, under its power of regulating commerce, or as a branch of the admiralty jurisdiction? *Janney* v. *Columbian Ins. Co.*.....*418

23. Under the duty act of 1799, c. 126, § 48, it is no cause of forfeiture, that the casks, which are marked and accompanied with the certificates required by the act, contain distilled spirits which have not been imported into the United States, or a mixture of domestic with foreign spirits; the object of the act being the security of the revenue, without interfering with those mercantile devices which look only to individual profit, without defrauding the government. *Sixty Pipes of Brandy*..... *421

24. The district court has not jurisdiction of a suit for wages earned on a voyage, in a steam-vessel, from Shippingport, in the state of Kentucky, up the river Missouri, and back again to the port of departure, as a cause of admiralty and maritime jurisdiction. *The Thomas Jefferson*..... *428

25. The admiralty has no jurisdiction over contracts for the hire of seamen, except in cases where the service is actually performed upon the sea, or upon waters within the ebb and flow of the tide..... *Id.*

26. But the jurisdiction exists, although the commencement or termination of the voyage is at some place beyond the reach of the tide. It is sufficient, if the service be essentially a maritime service..... *Id.*

27. *Quære?* Whether, under the power to regulate commerce among the several states, congress may not extend the remedy, by the summary process of the admiralty, to the case of voyages on the western waters?..... *Id.*

28. However this may be, the act of 1790, c. 29, for the government and regulation of seamen in the merchant service confines the remedy in the district courts to such cases as ordinarily belong to the admiralty jurisdiction..... .....*Id.*

29. Upon an appeal from a mandate to carry into effect a former decree of the court, nothing is before the court but the proceedings subsequent to the mandate. *The Santa Maria*.....431

30. But the original proceedings are always before the court, so far as is necessary to determine any new points in the controversy between the parties, which are not determined by the original decree..... *Id.*

31. After a general decree of restitution in this court, the captors, or purchasers under them, cannot set up in the court below, new claims for equitable deductions, meliorations, and charges, even if such claims might have been allowed, had they been asserted before the original decree..... *Id.*

32. Nor can the claimants, or original owners, in such a case, set up a claim for interest upon the stipulation taken in the usual form, for the appraised value of the goods, interest not

being mentioned in the stipulation itself ..... *Id.*
33. Nor can interest be decreed against the captors, personally, by way of damages for the detention and delay, no such claim having been set up, upon the original hearing in the court below, nor upon the original appeal to this court..... *Id.*
34. The case of Rose *v.* Himely (5 Cranch 313) reviewed, explained and confirmed,.... *Id.*
35. Upon a mandate to the circuit court, to carry into effect a general decree of restitution by this court, where the property has been delivered upon a stipulation for the appraised value, and the duties paid upon it, by the party to whom it is delivered, the amount of the duties is to be deducted from the appraised value..... *Id.*
36. The courts of the United States, proceeding as courts of admiralty and maritime jurisdiction, have jurisdiction in cases of maritime torts, in *personam* as well as *in rem*. *Manro* v. *Almeida*..... 473.
37. The courts of the United States, proceeding as courts of admiralty and maritime jurisdiction, may issue the process of attachment to compel appearance, both in cases of maritime torts and contracts..... *Id.*
38. Under the process act of 1792, c. 137, § 2, the proceedings in cases of admiralty and maritime jurisdiction, in the courts of the United States, are to be according to the modified admiralty practice in our own country, engrafted upon the British practice; and it is not sufficient reason for rejecting a particular process, which has been constantly used in admiralty courts of this country, that it has fallen into desuetude in England.... *Id.*
39. The process by attachment may issue, wherever the defendant has concealed himself, or absconded from the country, and the goods to be attached are within the jurisdiction of the admiralty..... *Id.*
40. It may issue against his goods and chattels, and against his credits and effects in the hands of third persons. ..... *Id.*
41. The remedy by attachment in the admiralty, in maritime cases, applies even where the same goods are liable to the process of foreign attachment, issuing from the courts of common law..... *Id.*
42. It applies to the case of a piratical capture, and the civil remedy is not merged in the criminal offence..... *Id.*
43. In case of default, the property attached may be condemned to answer the demand of the libellant..... *Id.*
44. It is not necessary that the property to be attached should be specified in the libel. *Id.*
45. It seems, that an attachment cannot issue, without an express order of the judge, but it may be issued simultaneously with the monition; and where the attachment issued in this manner, and in pursuance of the prayer of the libel, this court will presume that it was regularly issued..... *Id.*

ALIEN.

1. The treaty of 1778, between the United States and France, allowed the citizens of either country to hold lands in the other; and the title once vested in a French subject, to hold lands in the United States, was not divested by the abrogation of that treaty, and the expiration of the subsequent convention of 1800. *Carneal* v. *Banks*.....*181

ATTACHMENT.

See Admiralty, 37, 39–45.

CAPTORS.

See Prize, 1, 2

CHANCERY.

1. Although bills of review are not strictly within the statute of limitations, yet courts of equity will adopt the analogy of the statute, in prescribing the time within which they shall be brought. *Thomas* v. *Brockenbrough*.....*146
2. Appeals in equity causes being limited by the judiciary acts of 1789 § 22, and of 1803, § 2, to five years after the decree, the same period of limitation is applied to bills of review..... *Id.*
3. *Quære?* Whether a bill of review, founded upon matter discovered since the decree, is also barred by the lapse of five years?..... *Id.*
4. It is in the discretion of the court, to grant leave to file a bill of review for that cause. *Id.*
5. Although the statutes of limitation do not expressly apply to courts of equity, yet the period which takes away a right of entry, or an ejectment, is held, by analogy, to bar relief in equity, even where the period of limitation for a writ of right, or other real action, has not expired. *Elmendorf* v. *Taylor*.*152
6. The rule which requires all the parties in interest to be brought before the court, does not affect the jurisdiction, but is subject to the discretion of the court, and may be modified according to circumstances..... *Id.*
7. The joinder of improper parties, as citizens of the same state, &c., will not affect the jurisdiction of the circuit courts in equity, as between the parties who are properly before the court, if a decree may be pronounced as between the parties who are citizens of the same state. *Carneal* v. *Banks*.. .....*181
8. A decree must be sustained by the allegations

of the parties, as well as by the proofs in the cause, and cannot be founded upon a fact not put in issue by the pleadings..... *Id.*

9. In the courts of the United States, wherever the case may be completely decided as between the litigant parties, an interest existing in some other person, whom the process of the court cannot reach, as, if such a party be a resident of another state, will not prevent a decree upon the merits. *Elmendorf* v. *Taylor*.....*167

10. Bill to rescind a contract for the exchange of lands dismissed, under the special circumstances of the case. *Carneal* v. *Banks*.*181

11. A certificated bankrupt or insolvent, against whom no relief can be had, is not a necessary party; but he cannot be examined as a witness in the cause, until an order has been obtained upon motion for that purpose. *De Wolf* v. *Johnson*.....*384

CONSTRUCTION OF STATUTE.

See ADMIRALTY, 11–15, 20, 21. 23, 28, 38: CONSTITUTIONAL LAW, 4, 7, 9, 10: PATENT: USURY.

COLLECTOR.

See ADMIRALTY, 14, 15.

CONSULS.

See ADMIRALTY, 9.

CONSTITUTIONAL LAW.

1. Congress has, by the constitution, exclusive authority to regulate the proceedings in the courts of the United States; and the states have no authority to control those proceedings, except so far as the state process acts are adopted by congress, or by the courts of the United States, under the authority of congress. *Wayman* v. *Southard*.....*1

2. The proceedings on executions, and other process, in the courts of the United States, in suits at common law, are to be the same in each state, respectively, as were used in the supreme court of the state, in September 1789, subject to such alterations and additions as the same courts of the United States may make, or as the supreme court of the United States shall prescribe by rule to the other courts..... *Id.*

3. A state law regulating executions, enacted subsequent to September 1789, is not applicable to executions issuing on judgments rendered by the courts of the United States, unless expressly adopted by the regulations and rules of these courts..... *Id.*

4. The 24th section of the judiciary act of 1789, c. 20, which provides, "that the laws of the several states," &c., "shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply," does not apply to the process and practice of the courts: it is a mere legislative recognition of the principles of universal jurisprudence, as to the operation of the *lex loci*..... *Id.*

5. The statutes of Kentucky concerning executions, which require the plaintiff to indorse on the execution that bank-notes of the Bank of Kentucky, or notes of the Bank of the Commonwealth of Kentucky, will be received in payment, and, on his refusal, authorize the defendant to give a replevin-bond for the debt, payable in two years, are not applicable to executions, issuing on judgments rendered by the courts of the United States..... *Id.*

6. The case of Palmer *v.* Allen (7 Cranch 550) reviewed, and reconciled with the present decision..... *Id.*

7. The provision in the process act of 1792, c. 137, authorizing the courts of the United States to make alterations in the regulations concerning executions and other process issuing from those courts, is not a delegation of legislative authority, and is conformable to the constitution..... *Id.*

8. The act of assembly of Kentucky, of the 21st of December 1821, which prohibits the sale of property taken under execution, for less than three-fourths of its appraised value, without the consent of the owner, does not apply to a *venditioni exponas* issued out of the circuit court for the district of Kentucky. *Bank of United States* v. *Halstead*..... *25

9. The laws of the United States authorize the courts of the Union so to alter the form of the process of execution used in the supreme courts of the state, in 1789, as to subject to execution lands and other property, not thus subject by the state laws in force at that time..... *Id.*

10. The process acts of 1789 and 1792, expressly extending to a *capias*, held, that congress must be understood as having adopted that process as one that was to issue permanently from the courts of the United States, whenever it was in use in September 1789, as a state process. *Bank of United States* v *January*, note *a* *68

11. *Quære?* How far a will of lands, duly proved and recorded in one state, so as to be evidence in the courts of that state, is thereby rendered evidence in the courts of another state (provided the record on its face, shows that it possesses all the solemnities required by the laws of the state where the land lies), under the 4th art. § 1, of the constitution of the United States. *Darby's Lessee* v. *Mayer*.*465

COVENANT.

See PLEADING, 3–6.

DEVISE.

1. J. P., by his last will, after certain pecuniary legacies, devised as follows: "Item. I give and bequeath unto my loving wife M., all the rest of my land and tenements whatsoever, whereof I shall die seised, in possession, reversion or remainder, provided she has no lawful issue: Item. I give and bequeath unto M., my beloved wife, whom I likewise constitute, make and ordain my sole executrix of this my last will and testament, all and singular my lands, messuages and tenements, by her freely to be possessed and enjoyed," &c., "and I make my loving friend, H. J., executor of this my will, to take care, and see the same performed, according to my true intent and meaning," &c.: The testator died seised, without issue, and, after the death of the testator, his wife married one G. W., by whom she had lawful issue: *Held*, that she took an estate for life only, under the will of her husband, J. P. *Wright* v. *Page*..... *204
2. Where there are no words of limitation in a devise, the general rule of law is, that the devisee takes an estate for life only, unless from the language there used, or from other parts of the will, there is a plain intention to give a larger estate..... *Id.*
3. To make a pecuniary legacy a charge upon lands devised, there must be express words, or a plain implication from the words of the will..... *Id.*
4. Where words are used by a testator, which are insensible in the place where they occur, or their ordinary meaning is deserted, and no other is furnished by the will, they must be entirely disregarded..... *Id.*
5. An introductory clause, showing an intention to dispose of the whole of the testator's estate, will not attach itself to a subsequent devising clause, so as to enlarge the latter to a fee..... *Id.*
6. The word "tenements" does not carry a fee, independent of other circumstances..... *Id.*

DUTIES.

See ADMIRALTY, 23.

EVIDENCE.

See ADMIRALTY, 5: CHANCERY, 8: INSURANCE: LEX LOCI, 6: USURY, 6.

FORFEITURE.

See ADMIRALTY, 11–15, 20, 21, 23.

INSURANCE.

1. Under a policy containing the following clause, "It is declared and understood, that if the above-mentioned brig, after a regular survey, should be condemned for being unsound or rotten, the insurers shall not be bound to pay the sum hereby insured, nor any part thereof," a survey by the master and wardens of the port of New Orleans, which was obtained at the instance of the master, who was also a part-owner, and was transmitted by him to the other part-owner, and by the latter laid before the underwriters as proof of the loss, stated that the wardens "ordered one streak of plank, fore and aft, to be taken out, about three feet below the bends, on the starboard side; and found the timber and bottom plank so much decayed, that we were unanimously of opinion, her repairs would cost more than she would be worth afterwards, and that it would be for the interest of all concerned, she should be condemned as unworthy of repair on that ground; we did, therefore, condemn her as not seaworthy, and as unworthy of repair; and therefore, according to the powers vested by law in the master and wardens of this port, we do hereby order and direct the aforesaid damaged brig to be sold at public auction, for the account of the insurers thereof, or whomsoever the same may concern:" it was *held*, that the survey was conclusive evidence, under the clause, to discharge the insurers from their liability for the loss. *Janney* v. *Columbian Ins. Co*.....*411
2. *Quære?* How far the state legislatures may authorize the condemnation of vessels, as unseaworthy, by tribunals or boards constituted under state authority, in the absence of any general regulation made by congress, under its power of regulating commerce, or as a branch of the admiralty jurisdiction?.. *Id.*
3. However this may be, the above condemnation not being specially authorized by any law of the state of Louisiana, it would not have been considered as conclusive evidence, within the clause, had not the condemnation been obtained by the master, as the agent of the owners, and afterwards adopted by them as proof of the facts stated therein..... *Id.*

JURISDICTION.

1. The courts of the United States are courts of limited, but not of inferior jurisdiction. If the jurisdiction be not alleged in the proceedings, their judgments and decrees may be reversed for that cause, on a writ of error or appeal; but, until reversed, they are conclu-

sive evidence between parties and privies. *McCormick* v. *Sullivant*.....*192

See ADMIRALTY, 16, 24–28, 36: CHANCERY, 6, 7: INSURANCE, 2.

LEGACY.

See DEVISE, 3.

LEX LOCI.

1. The courts of every government or state, have the exclusive authority of construing its local statutes, and their construction will be respected in other countries or states. *Elmendorf* v. *Taylor*..... ..... *153
2. This court respects the decisions of the state courts upon their local statutes, in the same manner as the state courts are bound by the decisions of this court in construing the constitution, laws and treaties of the Union. *Id.*
3. The title and disposition of real property is governed by the *lex loci rœi sitæ*. *McCormick* v. *Sullivant*.....*192
4. The title to lands can only pass by devise, according to the laws of the state or country where the lands lie. The probate in one state or country, is of no validity as affecting the title to lands in another. *Id.; Darby* v. *Mayer*.....*469
5. *Quære?* How far this general principle is modified by the provisions of the constitution and laws of the United States, in respect to the faith and credit, &c., to be given to the public acts, records and judicial proceedings of each state in every other state? *Darby* v. *Mayer*.....*469
6. A duly certified copy of a will of lands, and the probate thereof, in the orphans' court of Maryland, is not evidence, in an action of ejectment, of a devise of lands in Tennessee..... ..... *Id.*

See USURY, 1, 2.

LIMITATION OF ACTIONS.

1. Although the statutes of limitation do not apply, in terms, to courts of equity, yet the period of limitation which takes away a right of entry, or an action of ejectment, has been held, by analogy, to bar relief in equity, even where the period of limitation for a writ of right, or other real action, had not expired. *Elmendorf* v. *Taylor*..... *152
2. Where an adverse possession has continued for twenty years, it constitutes a complete bar in equity, wherever an ejectment would be barred, if the plaintiff possessed a legal title..... *Id.*
3. Note, collecting cases as to the effect of a lapse of time..... *Id.*

LOCAL LAW.

1. In Kentucky, a survey must be presumed to to be recorded, at the expiration of three months from its date, and an entry depending on it, is entitled to all the notority of a survey, as a matter of record. *Elmendorf* v. *Taylor*..... *152.
2. An entry in the following words, "W. D. enters 8000 acres, beginning at the most south-westwardly corner of D. R.'s survey of 8000 acres, between Floyd's Fork and Bull Skin; thence along the westwardly line to to the corner; thence, the same course with J. K.'s line, north 2 degrees west, 964 poles, to a survey of J. L. for 22,000 acres; thence, with Lewis' line, and from the beginning, south 6 degrees west, till a line parallel with with the first line will include the quantity," is a valid entry..... *Id.*
3. Such an entry is aided by the notoriety of the surveys, which it calls to adjoin, where those surveys had been made three months anterior to its date..... *Id.*
4. The following entry, "I. T. enters 10,000 acres of land, on part of a treasury-warrant, No. 9739, to be laid off in one or more surveys, lying between Stoner's fork and Hingston's fork, about six or seven miles nearly north-east of Harrod's lick, at two white-ash saplings from one root, with the letter K marked on each of them, standing at the forks of a west branch of Hingston's fork, on the east side of the branch, then running a line from said ash saplings, south 45 degrees east, 1600 poles, thence extending from each end of this line, north 45 degrees east, down the branch, until a line nearly parallel to the beginning line shall include the quantity of vacant land, exclusive of prior claims," is not a valid entry, there being no proof that the "two white-ash saplings from one root, with the letter K marked on each of them, standing at the forks of a west branch of Hingston's fork," had acquired sufficient notoriety to constitute a valid call for the beginning of an entry. without further aid than is afforded by the information that the land lies between those forks. *McDowell* v. *Peyton*.....*454
5. The local law of Maryland, as to the effect of evidence of the probate of a will of lands, in an action of ejectment, is the same with the common law. *Darby's Lessee* v. *Mayer*.*465
6. The act of assembly of Maryland of 1798, § 4, ch. 2, art. 3, does not extend to a will of lands, so as to make the probate conclusive evidence in an action of ejectment..... *Id.*
7. By the laws of Tennessee, a will of lands in

another state is not made evidence in an action of ejectment for lands in Tennessee. *Id.*

See USURY.

LOTTERY.

1. The scheme of a lottery, contained a stationary prize for the first drawn number, on each of twelve days, during which the drawing was to continue; and the first drawn number on the tenth day was to be entitled to $30,000, payable in part by three hundred tickets, from Nos. 501 to 800, inclusive; No. 623, one of the 300 tickets to be given in part payment of the said prize, was drawn first on that day, and decided to be entitled to the prize of $30,000; after the drawing for the day was concluded, the managers reversed this decision, and awarded the prize to No. 4760, which was drawn next to No. 623, and had drawn a prize of $25, which they decreed to No. 623. *Brent* v. *Davis*.....*395
2. In drawing the same lottery, it was discovered, on the last day, that the wheel of blanks and prizes, contained one blank less than ought to have been put into it; and to remedy this mistake, an additional blank was thrown in..... *Id.*
3. In an action brought by the managers against a person who had purchased the whole lottery, for the purchase-money, it was held, that these irregularities did not vitiate the drawing of the lottery, the conduct of the managers having been *bonâ fide*, and the affirmance of their acts not furnishing any inducement to the repetition of the same mistake, nor any motive for misconduct of any description..... *Id.*
4. *Quære?* Whether the ticket No. 623, or No. 4760, was entitled to the prize of $30,000. *Id.*

See PRACTICE, 8.

MANDATE.

See ADMIRALTY, 29, 30, 34, 35.

PATENT.

1. A., having obtained a patent for a new and useful improvement, to wit, a machine for making watch-chains, brought an action, under the 3d section of the patent act of 1800, c. 179, for a violation of his patent-right, against B.; and on the trial, an agreement was proved, made by the defendant with C., to purchase of him all the watch-chains, not exceeding five gross a week, which he might be able to manufacture, within six months, and an agreement on the part of C., to devote his whole time and attention to the manufacture of the watch-chains, and not to sell or dispose of any of them, so as to interfere with the exclusive privilege secured to the defendant of purchasing the whole quantity which it might be practicable for C. to make: And it was proved that the machine used by C., with the knowledge and consent of the defendant, in the manufacture, was the same with that invented by the plaintiff, and that all the watch-chains, thus made by C., were delivered to the defendant according to the contract: *Held*, that if the contract was real, and not colorable, and if the defendant had no other connection with C. than that which grew out of the contract, it did not amount to a breach by the defendant of the plaintiff's patent-right. *Keplinger* v. *De Young*. *358
2. Such a contract, connected with evidence from which the jury might legally infer, either that the machine which was to be employed in the manufacture of the patented article was owned wholly or in part by the defendant, or that it was hired to the defendant for six months, under color of a sale of the articles to be manufactured with it, and with intent to invade the plaintiff's patent-right, would amount to a breach of his right..... *Id.*

PAYMENT.

1. In general, a payment received in forged paper, or in any base coin, is not good; and if there be no negligence in the party, he may recover back the consideration paid for them, or sue upon his original demand. *United States Bank* v. *Bank of Georgia*.*333
2. But this principle does not apply to a payment made *bonâ fide* to a bank, in its own notes, which are received as cash, and afterwards discovered to be forged..... *Id.*
3. In case of such a payment upon general account, an action may be maintained by the party paying the notes, if there be a balance due him from the bank upon their general account, either upon an *insimul computasset*, or as for money had and received..... *Id.*
4. Bank-notes are a part of the currency of the country; they pass as money, and are a good tender, unless specially objected to.. *Id.*

PLEADING.

1. In a plea of justification by the marshal, for not levying an execution, setting forth a remission, by the secretary of the treasury, of the forfeiture or penalty, on which the judgment was obtained, it is not necessary to set forth the statement of facts upon which the

remission was found. *United States* v. *Morris*..... *246
2. A defective declaration may be aided by the plea, and a defective plea by the replication..... *Id.* *286.
3. In a declaration upon a covenant of warranty, it is necessary to allege substantially an eviction by title paramount; but no formal terms are prescribed in which the averment is to be made. *Day* v. *Chism*.....*449
4. Where it was averred in such a declaration, "that the said O. had not a good and sufficient title to the said tract of land, and by reason thereof, the said plaintiffs were ousted and dispossessed of the said premises, by due course of law," it was held sufficient, as a substantial averment of an eviction by title paramount..... *Id.*
5. Where the plantiffs declared in covenant, both as heirs and devisees, without showing in particular how they were heirs, it was held not to be fatal, on general demurrer. ... *Id.*
6. Such a defect may be amended, under the 32d section of the judiciary act of 1789, c. 20..... *Id.*

PRACTICE

1. Congress has power to regulate the process in the courts of the Union, in all cases, independent of state laws, and state practice. *Wayman* v. *Southard*.....*1, 21
2. The 14th section of the judiciary act of 1789, c. 20, authorizes the courts of the United States to issue writs of execution, as well as other writs..... *Id.* *22
3. The 34th section of the judiciary act of 1789, c. 20, does not apply to the process and practice of the courts. It merely furnishes a rule of decision, and is not intended to regulate the remedy..... *Id.* *24
4. The process act of 1792, c. 137, is the law which regulates executions issuing from the courts of the United States; and it adopts the practice of the supreme court of the state in 1789, as the rule for governing proceedings on such executions, subject to such alterations as the courts of the United States may make, but not subject to the alterations which have since taken place in the state laws and practice..... *Id.* *31
5. The statutes of Kentucky concerning executions, which require the plaintiff to indorse on the execution, that bank-notes of the Bank of Kentucky, or notes of the Bank of the Commonwealth of Kentucky, will be received in payment, and on his refusal, authorize the defendant to give a replevin-bond for the debt, payable in two years, are not applicable to executions issuing on judgments rendered by the courts of the United States. *Id.*
6. The act of assembly of Kentucky of the 21st of December 1821, which prohibits the sale of property taken under execution, for less than three-fourths of its appraised value, without the consent of the owner, does not apply to a *venditioni exponas* issued out of the circuit court for the district of Kentucky. *Bank of United States* v. *Halstead*.....*51
7. The laws of the United States authorize the courts of the Union so to alter the form of the process of execution used in the supreme courts of the states in 1789, as to subject to execution issuing out of the federal courts, lands and other property not thus subject by the state laws in force at that time..... *Id.*
8. Where the manager of a lottery, drawn in pursuance of an ordinance of the corporation of the city of Washington, gave a bond to the corporation, conditioned "truly and impartially to execute the duty and authority vested in him by the ordinance;" *held*, that the person entitled to a prize-ticket had no right to bring a suit for the price, against the manager, upon his bond, in the name of the corporation, without their consent. *Corporation of Washington* v. *Young*.....*406
9. An appeal, under the judiciary act of 1789, c. 20, § 22, and of 1803, c. 353, prayed for, and allowed, within five years, is valid, although the security was not given, until after the lapse of five years. *The Dos Hermanos*.*306
10. The mode of taking the security, and the time for perfecting it, are within the discretion of the court below, and this court will not interfere with the exercise of that discretion..... *Id.*
11. Although a consul may claim for "subjects unknown" of his nation, yet actual restitution cannot be decreed, without specific proof of the proprietary interest. *The Antelope*. *66

See ADMIRALTY, 29, 35, 37, 45: CHANCERY, 1–4, 6–9, 11.

PIRACY.

See ADMIRALTY, 42.

PRIZE.

1. Seizures made *jure belli*, by non-commissioned captors, are made for the government, and no title of prize can be derived but from the prize acts. *The Dos Hermanos*.....*306
2. A non-commissioned captor can only proceed in the prize court as for salvage, the amount of which is discretionary..... *Id.*
3. The appellate court will not interfere in the exercise of this discretion, as to the amount

of salvage allowed, unless in a very clear case of mistake.....*Id.*

See ADMIRALTY, 1–9, 29, 35.

REMISSION.

See ADMIRALTY, 14, 15.

SALVAGE.

See PRIZE, 3.

SEAMEN.

See ADMIRALTY, 24–28.

SLAVE-TRADE.

Cases concerning, collected in Appendix . . *40

STATUTES OF KENTUCKY.

See LOCAL LAW, 1, 2: PRACTICE, 5, 6: USURY, 3, 4.

STATUTES OF LOUISIANA.

See ADMIRALTY, 21: INSURANCE, 3.

STATUTES OF MARYLAND.

See LOCAL LAW, 6.

STATUTES OF RHODE ISLAND.

See USURY.

STATUTES OF TENNESSEE.

See LOCAL LAW, 7.

TREATY.

See ALIEN.

USURY.

1. In a contract for the loan of money, the law of the place where the contract is made is to govern; and it is immaterial, that the loan was to be secured by a mortgage on lands in another state. *De Wolf* v. *Johnson*...*367
2. In such a case, the statutes of usury of the state where the contract was made, and not those of the state where it is secured by mortgage, are to govern it, unless there be some other circumstance to show, that the parties had in view the law of the latter state. .....*Id.*
3. Although a contract be usurious in its inception, a subsequent agreement to free it from the taint of usury, will render it valid.....*Id.*
4. The purchaser of an equity of redemption cannot set up usury as a defence, to a bill brought by the mortgagee for a foreclosure, especially, if the mortgagor has himself waived the defence.....*Id.*
5. Under a usury law, which does not avoid the securities, but only forbids the taking a greater interest than six per centum per annum, a court of equity will not refuse its aid to recover the principal.....*Id.*

WARRANTY.

See INSURANCE.

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