

INDEX

TO THE

PRINCIPAL MATTERS CONTAINED IN THIS VOLUME.

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

ABATEMENT.

See PLEADING, 2, 5.

ADMIRALTY.

1. In admiralty proceedings, amendments are made in the appellate court, not only as to form, but as to matter of substance, as by the filing a new count to the libel; the parties being permitted, whenever public justice, and the substantial merits require it, to introduce new allegations and new proofs; *non allegata allegare, et non probata probare. The Marianna Flora**1
2. If the amendment be made in the circuit court, the cause is heard and adjudicated by that court, and (upon appeal) by this court on the new allegation; but if the amendment be allowed by this court, the cause is remanded to the circuit court, with directions to permit the amendment to be made. . . .*Id.*
3. An attack made upon a vessel of the United States, by an armed vessel, with the avowed intention of repelling the approach of the former, or of crippling or destroying her, upon a mistaken supposition that she was a piratical cruiser, and without a piratical or felonious intent, or for the purpose of wanton plunder, or malicious destruction of property, is not a piratical aggression, under the act of the 3d of March 1819.*Id.*
4. Nor is an armed vessel, captured under such circumstances, liable to confiscation as for a hostile aggression, under the general law of nations.*Id.*
5. The act of the 3d of March 1819, c. 75, extends to foreign vessels committing a piratical aggression; and whatever responsibility the nation may incur towards foreign states,

- by executing its provisions, the tribunals of the United States are bound to carry them into effect.*Id.*
6. Pirates may be lawfully captured by the public or private ships of any nation, in peace or in war; for they are *hostes humani generis**Id.*
 7. American ships offending against our own laws, may be seized upon the ocean; and foreign ships thus offending within our territorial jurisdiction, may be pursued and seized upon the ocean, and brought into our ports for adjudication.*Id.*
 8. But in such cases, the party seizes at his peril, and is liable to costs and damages, if he fail to establish the forfeiture*Id.*
 9. Ships of war, sailing under the authority of their government, in time of peace, have a right to approach other vessels at sea, for the purpose of ascertaining their real characters, so far as the same can be done without the exercise of the right of visitation and search, which does not exist in time of peace.*Id.*
 10. No vessel is bound to await the approach of armed ships, under such circumstances; but such vessel cannot lawfully prevent their approach, by the use of force, upon the mere suspicion of danger.*Id.*
 11. Where an aggression was committed by a foreign armed merchant vessel, on a public armed ship of the United States, under these circumstances, and a combat ensued, upon mutual misapprehension and mistake, the commander of the public ship was held exempt from costs and damages, for subduing, seizing and bringing into a port of this country for adjudication, the offending vessel*Id.*

See CONSTRUCTION OF STATUTE, 1, 2, 10-14.

ALIEN.

1. An alien may take real property, by grant, whether from the state or an individual, and may hold the same, until his title is divested by an inquest of office, or some equivalent proceeding. *Gouverneur's Heirs v. Robertson**832
2. Examination of the authorities upon the question, whether a grant of lands to an alien, by the state, is absolutely void. *Id.**351

AMENDMENTS.

See ADMIRALTY, 1, 2: PRACTICE, 13.

ASSIGNMENT.

1. A debtor has a right to prefer one creditor to another in payment; and it is no objection to the validity of an assignment for that purpose, that it was made by the grantor, and received by the grantee, as trustee, in the hope and expectation, and with a view of preventing a prosecution for a felony, connected with his transactions with his creditors; if the preferred creditors have done nothing to excite that hope, and the assignment was made without their knowledge or concurrence, at the time of its execution, and without a knowledge of the motives which influenced the assignor; or was not afterwards assented to by them, under some engagement, express or implied, to suppress or forbear the prosecution. *Brooks v. Marbury**78
2. An assignment for the benefit of preferred creditors is valid, although their assent be not given at the time of its execution, if they subsequently assent in terms, or by actually receiving the benefit of it. *Id.*
3. It is no objection to such an assignment, that it defeats all other creditors of their legal remedies, even if amounting to a majority in number and value, unless there be some express provision of a bankrupt law to invalidate the deed. *Id.*
4. *Quere?* How far, and under what circumstances, the possession of the property assigned to trustees for the benefit of creditors, continuing in the grantor, will invalidate the assignment. *Id.*
5. Note, collecting the cases upon the subject of voluntary assignments for the benefit of creditors *Id.* *99
6. *Quere?* How far contingent and reversionary interests of the wife may be assigned by the husband. *Cassel v. Carroll*..... *131
7. It seems, that an assignment, by the husband, of a debt actually and presently due and pay-

able to the wife, divested, in equity, the title to the wife. *Id.*

AWARD.

1. An award must decide the whole matter submitted to the arbitrators; it must not extend to any matter not comprehended in the submission; and it must be certain, final and conclusive of the whole matter referred. *Carnochan v. Christie*.....*446
2. Where the arbitrators had determined that the plaintiffs should be entitled to a credit of a certain sum on account of sales of land to the defendant, provided "they shall grant, or cause to be granted, to the said W. C. (the defendant) a clear, unincumbered and satisfactory title" to the lands, without limiting any time within which the title should be made: *Held*, that the award was void, as not being final and conclusive. *Id.*
3. A court of equity either enforces an award as it is made, or sets it aside, if in any respect defective; but it is contrary to its practice, to confirm the award so far as it extends, and to supply omissions by decree of the court *Id.*

See PLEADING, 8, 9.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. It seems, that, as against the maker of a promissory note, or against the acceptor of a bill of exchange, payable at a particular place, no averment in the declaration, or proof at the trial, of a demand of payment at the place designated, is necessary. *United States Bank v. Smith*.....*171
2. But, as against the indorser of a bill or note, such an averment and proof, is, in general, necessary. *Id.*
3. Where the bill or note is made payable at a particular bank, and the bank itself is the holder, such averment and proof may be dispensed with; and all that is necessary is, for the bank to examine the account of the maker with them, in order to ascertain whether he has any funds in their hands. *Id.*
4. Proof necessary to support an action against the indorser of a bill or note. *Id.*
5. No precise form of notice to the indorser of a promissory note is necessary; and it is not necessary to state, in the notice, who is the holder; nor will a mistake as to the date of the note, vitiate the notice, if it conveys to the party a sufficient knowledge of the particular note which has been dishonored. *Mills v. Bank of United States*.....*431
6. It is not necessary, that the notice should

- contain a formal allegation, that it was demanded at the place where payable; it is sufficient that it states the fact of non-payment of the note, and that the holder looks to the indorser for indemnity.*Id.*
7. By the general law, demand of payment of a bill or note must be made on the third day of grace: but where a note is made for the purpose of being negotiated at a bank, whose custom is to demand payment, and give notice on the fourth day, that custom forms a part of the law of the contract; and it is not necessary, that a personal knowledge of the usage should be brought home to the indorser for that purpose.*Id.*
8. The general rule of law, requiring proof of the title of the holders of a note, may be modified by a rule of court, dispensing with proof of the execution of the note, unless the party shall annex to his plea an affidavit that the note was not executed by him.*Id.*

CASES COMMENTED ON, AND CONFIRMED OR OVERRULED.

1. Bagot's case, 7 Edw. IV. 29. Grant to an alien. *Gouverneur's Heirs v. Robertson*. *352
2. Brent v. Chapman, 5 Cranch 358. Statute of limitations of Virginia as to servile property. *Shelby v. Guy*. *371
3. Clementson v. Williams, 8 Cranch 72. *Wetzell v. Buzzard*. 314
4. Coltman v. Marsh, 3 Taunt. 380. *Wetzell v. Buzzard*. *313
5. Cort v. Birkbeck, 1 Doug. 208. Demurrer to evidence. *United States Bank v. Smith*. *173
6. Faikney v. Reynous, 4 Burr. 2069; Petrie v. Hannay, 3 T. R. 418; Farmer v. Russell, 1 Bos. & Pul. 295; Steers v. Laishley, 6 T. R. 61. Illegality of contract. *Armstrong v. Toler*. *272-5
7. Gibson v. Hunter, 2 H. Bl. 187. Demurrer to evidence. *Fowle v. Common Council of Alexandria*. *322
8. Hamilton v. Russell, 1 Cranch 310. Possession accompanying a deed of conveyance. *Brooks v. Marbury*. *81
9. Henriquez v. The Dutch W. I. Company, 2 Ld. Raym. 1535. Evidence of the existence of a corporation. *United States v. Amedy*. *409
10. Hildreth v. Sands, 2 Johns. Ch. 35. Fraudulent deed. *Brooks v. Marbury*. *90
11. Huguenin v. Basely, 14 Ves. 273. Deed obtained by imposition and fraud. *Brooks v. Marbury*. *92
12. Hunter v. Britts, 3 Camp. 455. Action for mesne profits. *Chirac v. Reinicker*. *298
13. King v. Gillson, 1 Taunt. 95, 2 Leach 1007. Proof of insurance, on an indictment for setting fire to a house, with intent to defraud the underwriters. *United States v. Amedy*. *411
14. King v. Harrison, 1 Leach 180; 2 East Pl. Cr. 927-8. Word person, whether it extends to corporations.*Id.* *412
15. Lamb v. Milnes, 5 Ves. 517; Mitford v. Mitford, 9 Id. 87; Hornby v. Lee, 2 Madd. 16. Assignment by the husband of *chose in action* belonging to the wife. *Cassell v. Carroll*. *152
16. Leaper v. Tatton, 16 East 420. Acknowledgment of a debt, when sufficient to take a case out of the statute of limitations. *Wetzell v. Buzzard*. *311
17. Murray v. Baker, 3 Wheat. 541. Effect of the terms "beyond seas," in the saving clause of a statute of limitations. *Shelby v. Guy*. *566
18. Polk's Lessee v. Wendell, 9 Cranch 87; 5 Wheat. 293. Validity of a grant, how far it may be contested at law. *Patterson v. Winn*. *382
19. Renner v. Bank of Columbia, 9 Wheat. 582. Usage as to demanding payment of note, and giving notice, on fourth day of grace. *Mills v. Bank of United States*. *439
20. Rowe v. Young, 2 Brod. & Bing. 165. Averment of demand of payment of a bill or note at the place designated. *United States Bank v. Smith*. *174
21. Saunderson v. Judge, 2 H. Bl. 509. Averment and proof of demand of payment at the place designated, dispensed with, where a bill or note is made payable at a bank, and the bank is the holder. *United States Bank v. Smith*. *176
22. Sexton v. Wheaton, 8 Wheat. 242. A voluntary deed fraudulent as to antecedent creditors. *Hinde v. Longworth*. *211
23. Smith v. Bank of Scotland, 1 Dow P. C. 294. Fraud and concealment in contracts. *Etting v. Bank of United States*. *68
24. Swan v. Sowell, 3 B. & Ald. 759. *Wetzell v. Buzzard*. *312
25. The Louis, 1 Dods. 210. Right of search in time of peace: Damages for illegal seizure. *The Marianna Flora*. *55
26. United States v. Kirkpatrick, 9 Wheat. 720. Discharge of surety by laches. *United States v. Vanzandt*. *187

CHANCERY.

1. The general rule, that notice to a trustee, or an agent, is notice to the *cestui que trust*, or to the principal, does not extend to the case of an assignee in a deed of trust for the benefit of creditors, made without their knowl-

- edge or assent at the time of its execution. In such a case, the assignee is the trustee of the assignor, and not of the creditors; and notice to the assignee of the intent of the assignor to avoid, by the conveyance, a prosecution for felony, or any other intent contrary to the general policy of the law, will not avoid the deed as to the creditors. *Brooks v. Marbury*.....*78
2. There must be sufficient equity, apparent on the face of the bill, to warrant the court in granting the relief prayed; and the material facts on which the plaintiff relies must be so distinctly alleged as to put them in issue. *Harding v. Handy*.....*108
3. A court of equity has jurisdiction of a suit brought by heirs-at-law to set aside a conveyance of lands, obtained from their ancestor, by undue influence, he being so infirm, in body and mind, from old age, and other circumstances, as to be liable to imposition, although his weakness does not amount to insanity.....*Id.*
4. The same jurisdiction may be exercised, where one of the heirs-at-law has, with the consent of the others, taken such a deed, upon an agreement to consider it as a trust for the maintenance of the grantor, and, after his death, for the benefit of his heirs, and the grantee refuses to perform the trust.....*Id.*
5. Under what circumstances, such a conveyance may be allowed to stand as security for actual advances and charges, and set aside for all other purposes.....*Id.*
6. In such a case, not depending on the absolute insanity of the grantor at the time of executing the conveyance, the court may determine the question of capacity, without directing an issue.....*Id.*
7. The verdict of a jury as to the sanity of the grantor, at the time of executing such a conveyance, would not be conclusive, the court being competent to determine for itself the degree of weakness, or of imposition, which will induce it to set aside the instrument. *Id.*
8. Exceptions to the report of a master are to be regarded by the court, only so far as they are supported by the special statements of the master, or by a distinct reference to the particular portions of testimony on which the party excepting relies. The court does not investigate the items of an account, nor review the whole mass of testimony taken before the master.....*Id.**349
9. Rule of practice, on exceptions to the master's report.....*Id.*
10. Testimony of the parties, how far admissible in accounting before the master.....*Id.*
11. In a suit in equity, brought by heirs-at law to set aside a conveyance obtained from their ancestor, by fraud and imposition, a final decree for the sale of the property cannot be pronounced, until all the heirs are brought before the court as parties, if they are within the jurisdiction.....*Id.*
12. If all the heirs cannot be brought before the court, the undivided interest of those who are made parties may be sold.....*Id.*
13. In general, all incumbrancers must be made parties to a bill of foreclosure; yet, where a decree of foreclosure and sale was made and executed, at the suit of a subsequent mortgagee, and with the consent of the mortgagor, it not appearing to the court, that there was any prior incumbrance, the proceedings will not be set aside, upon the application of the mortgagor, in order to let in the prior mortgagee, who ought regularly to have been made a party, unless it be necessary to prevent irremediable mischief. *Finley v. Bank of United States*.....*304
14. *Quære?* Whether such a practice be admissible in any case.....*Id.*
15. But in such a case, the prior incumbrancers are not bound by the decree in a suit to which they are not parties, and the purchasers under the sale take subject to the prior liens.....*Id.*
16. In general, the validity of patent of lands can only be impeached, for causes anterior to its being issued, in a court of equity; but where the grant is absolutely void, as being issued without authority, or against the positive prohibitions of statute, its validity may be contested at law. *Patterson v. Winn*.....*380
17. Practice of a court of equity as to an award. The court either enforces the award as made, or sets it aside, if in any respect defective; it is not its practice, to confirm the award so far as it extends, and to supply omissions by decree of the court. *Carnochan v. Christie*.....*466
18. Where a bill is filed to set aside an agreement or conveyance, the conveyance cannot be established, without a cross-bill filed by the defendant.....*Id.*

COLLECTOR.

See CONSTRUCTION OF STATUTE.

CONSTITUTIONAL LAW.

1. The title and claim of Charles, Lord Baltimore, his heirs and representatives, to the quit-rents reserved by the proprietary of the late province (now state) of Maryland (even supposing them not affected by the American revolution, and the confiscation act of Maryland, passed in 1780), were extinguished by the agreement between the heirs, devisees

- and personal representatives of the said Lord Baltimore, made in 1780, and confirmed by an act of the British parliament, in 1781. *Cassell v. Carroll*. *134
2. Report of an argument in the English court of K. B. in 1775, upon the nature of the dominion and the proprietary interest of Lord Baltimore, in the late province of Maryland. *Id.* *153
 3. An indictment under the crimes act of 1790, § 37, for infracting the law of nations, by offering violence to the person of a foreign minister, is not a case "affecting ambassadors, other public ministers and consuls," within the 2d section of the 3d article of the constitution of the United States. *United States v. Ortega*. *467
 4. The circuit courts have jurisdiction of such an offence, under the 11th section of the judiciary act of 1789. *Id.*
 5. *Quære?* Whether the jurisdiction of the supreme court is not only original, but exclusive of the circuit court, in "cases affecting ambassadors, other public ministers and consuls," within the true construction of the 2d section of the 3d article of the constitution. *Id.*
 6. Note, on the jurisdiction of the courts of the United States over foreign ministers and consuls. *Id.* *469
 6. Under the act of the 26th of May 1790, c. 38, copies of the legislative acts of the several states, authenticated by having the seal of the state affixed thereto, are conclusive evidence of such acts, in the courts of other states, and of the Union. No other formality is required than the annexation of the seal; and in the absence of all contrary proof, it must be presumed to have been done by an officer having the custody thereof, and competent authority to do the act. *United States v. Amedy*. *392
 7. Under the crimes act of the 26th of March 1804, c. 393, § 2, on an indictment for destroying a vessel, with intent to prejudice the underwriters, it is sufficient to show the existence of an association actually carrying on the business of insurance, by whose known officers *de facto* the policy was executed, and to prejudice whom, the vessel insured was destroyed; without proving the existence of a legal corporation authorized to insure, or a compliance on the part of such corporation with the terms of its charter, or the validity of the policy of insurance. *Id.*
 8. The terms "any person or persons," in the above act, extend to corporations, and bodies politic, as well as natural persons. *Id.*
 9. Error in the phraseology of the second section of the crimes act of the 26th of March 1804, c. 393. *Id.* *393 n.
 10. Although the crimes act of 1790, c. 36, § 12, does not define the offence of endeavoring to make a revolt, it is competent for the court to give a judicial definition of it. *United States v. Kelly*. *417
 11. The offence consists in the endeavor of the crew of a vessel, or any one or more of them, to overthrow the legitimate authority of the commander, with intent to remove him from his command, or against his will to take possession of the vessel, by assuming the government and navigation of her, or by transferring their obedience from the lawful commander to some other person. *Id.*
 12. The words "true value," in the 11th section of the duty act of the 20th of April 1818, c. 361, mean the actual cost of the goods to the importer, at the place from which they were imported, and not the current market value of the goods at such place. *United States v. Tappan*. *419
 13. If the collector, in fact, suspects that the goods are invoiced below the current market value thereof, at the place from which they were imported, but does not suspect that they were invoiced below the true and actual cost thereof to the importer, he has no right to direct an appraisement. *Id.*
 14. But whenever, in the opinion of the collector, there is just ground to suspect that

CONSTRUCTION OF STATUTE.

1. Under the embargo act of the 25th of April 1808, c. 170, § 11, the collector is protected in the honest exercise of his discretion in detaining the vessel, and securing both vessel and cargo, until an actual termination of the voyage. *Otis v. Walter*. *192
2. Whether the voyage has terminated, is a question of fact; and if the voyage be colorably, but not really, terminated, the collector may detain the vessel, if he has honest suspicions. *Id.*
3. An omission of the proper officer to recall a delinquent paymaster, under the injunctions of the 4th section of the act of the 24th of April 1816, c. 69, does not discharge his surety. *United States v. Vanzandt*. . . . *184
4. The provisions in the above act, requiring the delinquent paymaster to be recalled, and a new appointment to be made in his place, are merely directory, and intended for the security of the government; but form no part of the contract with the surety. *Id.*
5. The statute not removing the delinquent postmaster, *ipso facto*, but only making it the duty of the proper officer to remove him, the circumstance of new funds being placed in his hands, after his delinquency, does not discharge the surety. *Id.*

the invoice does not truly state the actual cost of the goods, he may direct the appraisal, and is not bound to disclose the grounds upon which he forms that opinion, whether it is formed from his knowledge or information of the current market price of the goods, or other circumstances affording grounds to suspect the invoice to be fraudulent.*Id.*

See ADMIRALTY, 3-5.

CONSUL.

See CONSTITUTIONAL LAW, 3-6.

CONTRACT.

1. *Quære?* As to what concealment or suppression of material facts in a contract, where both parties have not equal access to the means of information, will avoid the contract? *Elting v. Bank of the United States*.*59
2. Cases cited upon concealment of material facts in contracts of suretyship.*Id.* *68 n.
3. Where there is a special agreement, open and subsisting, at the time the cause of action arises, a general *indebitatus assumpsit* cannot be maintained. *Perkins v. Hart*.*237
4. But if the agreement has been wholly performed; or, if its execution has been prevented by the act of the defendant, or by the consent of both parties; or, if the contract has been fully performed in respect to any distinct subject included in it: the plaintiff may recover upon a general *indebitatus assumpsit*.*Id.*
5. Where a contract grows immediately out of, and is connected with, an illegal or immoral act, a court of justice will not lend its aid to enforce it. *Armstrong v. Toler*.*258
6. So, if the contract be in part only connected with the illegal consideration, and growing immediately out of it, though it be, in fact, a new contract, it is equally tainted by it.*Id.*
7. But if the promise be entirely disconnected with the illegal act, and is founded on a new consideration, it is not affected by the act, although it was known to the party to whom the promise was made, and although he was the contriver and conductor of the illegal act.*Id.*
8. Thus, where A., during a war, contrived a plan for importing goods on his own account from the enemy's country, and goods were sent to B., by the same vessel; A., at the request of B., became surety for the payment of the duties on B.'s goods, and became responsible for the expenses on a prosecution for the illegal importation of the goods, and was compelled to pay them: *Held*, that A.

might maintain an action on the promise of B. to refund the money.*Id.*

9. But if the importation is the result of a scheme between the plaintiff and defendant, or if the plaintiff has any interest in the goods, or if they are consigned to him, with his privity, in order that he may protect them for the owner, a promise to repay any advances, made under such understanding or agreement, is utterly void.*Id.*
10. It is a settled principle, both in England and in this country, that no action can be maintained on a contract, the consideration of which is either *malum in se*, or *malum prohibitum*.*Id.**271-2
11. Examination of the authorities upon the question how far this principle affects subsequent or collateral contracts, the direct and immediate consideration of which is not illegal or immoral.*Id.**272
12. The act of defending a prosecution for an unlawful importation, and contracts growing out of the defence, independent of the unlawful importation itself, are legal and valid.*Id.**273

COSTS AND DAMAGES.

See PRIZE, 6, 11, 12, 16, 17.

CRIMES.

See CONSTRUCTION OF STATUTE, 6-8.

DAMAGES, COSTS AND.

See PRIZE, 6, 11, 12, 16, 17.

DEBTOR AND CREDITOR.

See ASSIGNMENT, 1-5.

DECLARATION.

See PLEADING, 2-4, 8-10.

DEED.

See ASSIGNMENT: EVIDENCE: FRAUD, 1-4.

DEMURRER TO EVIDENCE.

1. No judgment can be rendered upon a demurrer to evidence, until there is a joinder in demurrer; and issue cannot be joined upon the demurrer, so long as there is any matter of fact in controversy between the parties. *Fowle v. Common Council of Alexandria*.*320
2. The demurrer to evidence must state facts, and not merely the evidence conducing to prove them.*Id.*

3. One party cannot insist upon the other party joining in demurrer, without distinctly admitting, upon the record, every fact, and every conclusion, which the evidence given for his adversary conducted to prove. *Id.*
4. Where the demurrer to evidence is defective in these respects, and judgment has, notwithstanding, been rendered upon it for the party demurring, by the court below, the judgment will be reversed in this court, and a new trial awarded. *Id.*
5. On a demurrer to evidence, the judgment of the court stands in the place of the verdict of a jury; and the defendant may take advantage of any defects in the declaration, by motion in arrest of judgment, or by writ of error. *United States Bank v. Smith*. . . *171
6. On a demurrer to evidence, the court is substituted in the place of the jury as judges of the facts, and everything which the jury might reasonably infer from the evidence, is to be considered as admitted. *Id.*
7. The practice of demurring to evidence is to be discouraged, and courts will be extremely liberal in their inferences, where the party takes the question of fact from the appropriate tribunal. *Id.*

DEVISE.

1. Devise of the testator's estate, "One-fourth part to be given to the families of G. Holloway, W. B. Blackburn and A. Bartlett, to those of their children that my wife shall think proper, but in a greater proportion to F. P. Holloway than to any other of G. Holloway's children; to E. P. Bartlett, in a greater proportion than any of A. Bartlett's children; the balance to be given to the families of C. and J. T. Griffin's children, in equal proportion." *Held*, that the children of C. and J. T. Griffin took *per stirpes*, and not *per capita*, and that the property devised to them was to be divided into two equal parts, one moiety to be assigned to each family. *Walker v. Griffin's Heirs*. *375

DUTIES.

See CONSTRUCTION OF STATUTE, 12-14.

EJECTMENT.

See PRACTICE, 10.

EMBARGO.

See CONSTRUCTION OF STATUTE, 1, 2.

ERROR.

See PRACTICE, 1, 2, 11-18.

EVIDENCE.

1. Although it is the province of the court to construe written instruments, yet, where the effect of such instruments depends not merely on the construction and meaning of the instrument, but upon collateral facts *in pais*, and extrinsic circumstances, the inferences of fact to be drawn from them are to be left to the jury. *Etting v. Bank of the United States*. *59
2. A certified copy of a registered deed cannot be given in evidence, if within the power of the party claiming under it, to produce the original, unless there be some express provision by statute, making an authenticated copy evidence. *Brooks v. Marbury*. . . *78
3. Where a voluntary deed is impeached as fraudulent, evidence of judgments against the grantor is admissible as proof (among other facts) that he was indebted at the time of executing the deed, although the grantee was not a party to the suits on which the judgments were obtained. *Hinde v. Longworth*. *199
4. Evidence is admissible, to show another consideration than that expressed in the deed, if not inconsistent with the consideration expressed. *Id.* *214
5. A settled account is only *prima facie* evidence of its correctness, at law or in equity; it may be impeached, by proof of fraud, or omission or mistake; and if it be confined to particular items of account, concludes nothing as to other items not stated in it. *Perkins v. Hart*. *237
6. A counsel or attorney is not a competent witness to testify as to facts communicated to him by his client, in the course of the relation subsisting between them, but may be examined as to the mere fact of the existence of that relation. *Chirac v. Reinicker*. *280
7. A recovery in ejectment is conclusive evidence, in an action for mesne profits, against the tenant in possession, but not in relation to third persons; but where the action is brought against the landlord in fact, who received the rents and profits, and resisted the recovery, in the ejectment suit, although he was not a party to that suit, and did not take upon himself the defence thereof upon the record, but another did, as landlord; the record in the ejectment suit is admissible to show the possession of the plaintiff, connected with his title, although it is not conclusive upon the defendant, in the same manner as if he had been a party upon the record. *Id.*
8. Under the act of the 26th of May 1790, c. 38, copies of the legislative acts of the sev-

eral states, authenticated by having the seal of the state affixed thereto, are conclusive evidence of such acts, in the courts of other states, and of the Union. No other formality is required than the annexation of the seal; and in the absence of all contrary proof, it must be presumed to have been done by an officer having the custody thereof, and competent authority to do the act. *United States v. Amedy*.....*392

See DEMURRER TO EVIDENCE.

FRAUD.

1. Deeds which are absolutely void, cannot be the foundation of title; and a *cestui que trust* cannot claim under a deed fraudulently obtained by his trustee or agent, acting by his authority. *Brooks v. Marbury*.....*78
2. But a deed of assignment to a trustee for the benefit of creditors, is valid as respects the creditors, although the grantor and grantee executed the deed with the hope and expectation, and with the view of preventing a prosecution for a felony, connected with the grantor's transactions with his creditors, if the preferred creditors have done nothing to excite that hope, and the assignment was made without their knowledge and concurrence, at the time of its execution, and without a knowledge of the motives which influenced the grantor, and was not subsequently assented to by them, under some engagement, express or implied, to suppress the prosecution.....*Id.*
3. The case of *Hildreth v. Sands*, 2 Johns. Ch. 35, reviewed.....*Id.*
4. Cases where deeds have been set aside upon the ground of fraud in the grantor, although the *cestui que trust* was innocent of the fraud, are all cases where the third person affected by the fraud claimed as a volunteer, and was in some measure connected with the party on the fraud.....*Id.**93
5. Distinction as to the effect of possession, not accompanying the deed, between the case where it conveys the property for the direct use of the grantee, and where it is a mere deed of trust, or assignment for the benefit of creditors.....*Id.* *81-2
6. Where a voluntary deed is impeached as fraudulent, evidence of judgments against the grantor is admissible, as proof (among other facts) that he was indebted at the time of the making the deed, although the grantee was not a party to the suits on which the judgments were obtained. *Hinde v. Longworth*.....*199
7. A voluntary deed is void as to antecedent, but not as to subsequent, creditors.....*Id.*

HUSBAND AND WIFE.

1. *Quære?* How far contingent or reversionary interests of the wife may be assigned by the husband. *Cassell v. Carroll*.....*134
2. It seems, that an assignment by the husband, of a debt actually due and payable to the wife, divests, in equity, the title of the wife.....*Id.*

INSURANCE.

See CONSTRUCTION OF STATUTE, 7, 8.

JURISDICTION.

1. In cases of seizure, in time of peace, for an alleged hostile or piratical aggression in time of peace, the courts of the country of the captors and of the captured have concurrent jurisdiction; and where the *res capta* is brought into a port of the captor's country for adjudication, its courts may exercise jurisdiction. *The Marianna Flora*.....*1, 56
2. In general, the validity of a patent of lands can be impeached, for causes anterior to its being issued, in a court of equity only; but where the grant is absolutely void, as being issued without authority, or against the positive prohibitions of the statute, its validity may be contested at law. *Patterson v. Winn*.....*380

See ADMIRALTY, 7: CONSTITUTIONAL LAW, 3-6.

LEX LOCI.

1. Five years' *bond fide* possession of a slave constituting a title by the laws of Virginia, under which a plaintiff may recover in detinue, such a possession is a legal defence to a purchaser under such possessor, in the courts of Tennessee. Although the rule of limitation applicable to this species of property is, strictly speaking, a part of the *lex fori* of Virginia, yet as it constitutes the title of the vendor to the property, it is a bar to an action against the vendee in the courts of another state. *Shelby v. Guy*.....*361

LIBEL.

See ADMIRALTY, 1, 2.

LIMITATION.

1. An acknowledgment of a debt which will take a case out of the statute of limitations, must be unqualified and unconditional. *Wetzel v. Bussard*.....*309
2. If it be connected with circumstances which, in any manner, affect the claim, or if it be

- conditional, it may amount to a new *assumpsit*, for which the old debt is a sufficient consideration; or, if it be construed to revive the original debt, that revival is conditional, and the performance of the condition, or a readiness to perform it, must be shown.*Id.*
3. Thus, where an action was brought, on a promise in writing to deliver a quantity of powder, and the original *assumpsit* being satisfactorily proved, the defendant relied upon the statute of limitations; and one witness deposed, that the defendant told him, that the plaintiff need not have sued him; for if he had come forward and settled certain claims which defendant had against him, the defendant would have given him his power; to another witness defendant said, that he should be ready to deliver the powder, whenever the plaintiff settled a suit, which Dr. E. had brought against him, &c.: *Held*, that those declarations did not amount to an unqualified and unconditional acknowledgment of the debt, but that the plaintiff ought to have proved a performance, or a readiness to perform the condition on which the new promise was made.*Id.*
4. Note, upon the current of authorities as to the interpretation of the statute of limitations.*Id.**316
5. The terms "beyond seas," in the saving clause of a statute of limitations, are to be construed as equivalent to without the limits of the state where the statute is enacted. *Shelby v. Guy*.*361
6. The former decision of this court, upon the construction of the saving clause of the statute of limitations, relating to persons without the limits of the state, in *Murray v. Baker*, 3 Wheat. 541, revised and confirmed.*Id.**366
7. *Quære?* How far the principle of the above decision has been received in the local courts of Tennessee.*Id.**367

See LOCAL LAW, 9, 13.

LOCAL LAW.

1. *Quære?* Under the act of the assembly of Maryland of 1729, c. 8, how far the fact of possession not having accompanied a deed of assignment for the benefit of creditors, would invalidate it. *Brooks v. Marbury*.*78
2. Under the same act of assembly, a copy of the deed is inadmissible in evidence, where the original is in the power of the party offering the copy.*Id.*
3. The title and claim of Charles, Lord Baltimore, his heirs and representatives, to the quit-rents reserved by the proprietary of the late province (now state) of Maryland, was

- extinguished by the agreement between the heirs, devisees and personal representatives of the said Lord Baltimore, and of his son and heir, Frederick, Lord Baltimore, made in 1780, and confirmed by an act of the British parliament, in 1781. *Cassell v. Carroll*.*134
4. It seems, that a *bond fide* assignment, for a valuable consideration, made by a husband, of a debt actually and presently due to his wife, divests, in equity, the title of the wife.*Id.*
5. But however this may be, in general, the agreement made in 1780, including the quit-rents then actually due (if at all) to Louisa Browning, the daughter of Charles, Lord Baltimore, and assigning them to Henry Harford, the devisee of Frederick, Lord Baltimore, having been entered into in England, by the husband of Louisa Browning and her committee (she being a lunatic), and the consideration having actually gone beneficially for her use; and the whole transaction having been between British subjects, under the direction of the high court of chancery, and confirmed by an act of parliament, transferred a complete legal and equitable title to the assignee.*Id.*
6. Question as to the sufficiency of the acknowledgment of a deed of lands in Ohio. *Hinde's Lessee v. Longworth*.*199
7. The following entry is invalid, for want of that certainty and precision which the local laws and decisions require: "January 27th, 1783: J. C. L. enters 20,000 acres of land, on twenty treasury-warrants, No. 8859, &c., beginning at the mouth of a creek, falling into the main fork of Licking, on the north side, below some cedar cliffs, and about 35 miles above the Upper Blue Licks, and running from said beginning, up the north side of Licking, and bounding with the same as far as will amount to 10 miles, when reduced to a straight line, thence extending from each end of said reduced line, a northerly course, at right angles to the same, for quantity." *Littlepage v. Fowler*.*215
8. An entry calling for the land to lie on the east side of of Slate creek, a south-west branch of the main fork of Licking, beginning where a buffalo road crosseth said creek, at the mouth of a branch emptying into said creek at the north-east side, it being the place of beginning for S. M.'s entry of 20,000 acres," is defective in certainty and precision; and its defects are not aided by the reference to S. M.'s entry for "20,000 acres, lying on the west side of Slate creek, south-west branch of Licking creek, beginning where the buffalo road crosses Slate creek, at the mouth of a branch, emptying in on the east side thereof; there are several cabins," &c.,

- "to include a quantity of fallen timber," &c. *Taylor's Devisee v. Owing*.....*226
9. Under the statute of limitations of Tennessee of 1797, c. 43, § 4, peaceable and uninterrupted possession, claiming to hold the land adverse to the claims of all other persons, for seven years, under a grant, or deed of conveyance founded upon a grant, gives a complete title to the person who has the possession. *Piles v. Bouldin*.....*325
10. The act of assembly of Virginia of 1779, c. 13, § 3, secured from escheat all the interest acquired by aliens in real property, previous to the issuing of the patent, and left the rights acquired by them under the patent, to be determined by the general principles of the common law. *Gouverneur's Heirs v. Robertson*.....*332
11. The title of an alien thus acquired by patent, in 1784, under the laws of Virginia, and subsequently confirmed to him by a legislative act of Kentucky, in 1796, and to his heirs and their grantees, by an act of the state, in 1799, will overreach a grant made by Virginia to a citizen, in 1785, and defeat the claims of all persons holding under such grant....*Id.*
12. These legislative acts of Kentucky were valid, under the compact of 1789, between the states of Virginia and Kentucky.....*Id.*
13. Five years' *bonâ fide* possession of a slave constitutes a title, by the laws of Virginia, upon which the possessor may recover in detinue; and this title may be set up by the vendee of such possessor, in the courts of Tennessee, as a defence to a suit brought by a third party in these courts. *Shelby v. Guy*.....*361
14. *Quære?* Whether a parol gift of slaves was valid by the laws of Virginia, previous to the act of assembly of 1787?.....*Id.* *370
15. *Quære?* Whether the doctrine of this court as to the effect of the terms "beyond seas," in the saving clause of a statute of limitations, being equivalent to without the limits of the state where the statute is enacted, has been received in the local courts of Tennessee?.....*Id.* *367
16. General principle as to the construction of local statutes in this court.....*Id.*
17. In general, the validity of a patent for lands can only be impeached for causes anterior to its being issued, in a court of equity; but where the grant is absolutely void, as, where the state has no title, or the officer has no authority to issue the grant, the validity of the grant may be contested at law. *Patterson v. Winn*.....*380
18. The laws of Georgia, in the year 1787, did not prohibit the issuing of a patent to any one person for more than 1000 acres of land;

- the proviso in the act of assembly of the 17th of February 1783, limiting the quantity to that number, is exclusively confined to head-rights.....*Id.*
19. *Quære?* Whether the compact of 1789, between Virginia and Kentucky, restrained the legislature of Kentucky from prolonging the time for surveying one entry, to the prejudice of another? *Miller v. McIntire*.....*441
20. By the construction of the act of Kentucky of 1797, granting further time for making surveys, with a proviso, allowing to infants, &c., three years after their several disabilities are removed, to complete surveys on their entries; if any one or more of the joint-owners be under the disability of infancy, &c., it brings the entry within the saving of the proviso, as to all of the other owners....*Id.*

MESNE PROFITS.

See PRACTICE, 10.

PIRACY.

See ADMIRALTY.

PLEADING.

1. There must be sufficient equity, apparent on the face of a bill in chancery, to warrant the court in granting the relief prayed; and the material facts on which the plaintiff relies must be so distinctly alleged, as to put them in issue. *Harding v. Handy*.....*103
2. Variances between the writ and declaration are, in general, matters proper for pleas in abatement. *Chirac v. Reinicker*.....*280
3. Whether by the modern practice of the courts variances between the writ and declaration can be taken advantage of by the defendant?.....*Id.*
4. Such variances cannot be taken advantage of, except upon *oyer* of the original writ, granted in some proper stage of the cause.....*Id.* *302
5. Marriage of the plaintiff, *pendente lite*, does not, of itself, abate the suit; the objection can only be made available by plea in abatement.....*Id.* *303
6. Where there is a special agreement, open and subsisting, at the time the cause of action arises, a general *indebitatus assumpsit* cannot be maintained. *Perkins v. Hart*.....*237
7. But if the agreement has been wholly performed, or if its further execution has been prevented by the act of the defendant, or by the consent of both parties; or, if the contract has been fully performed in respect to

- any one distinct subject included in it; the plaintiff may recover upon a general *indebitatus assumpsit*. *Id.*
8. It seems, that as against the maker of a promissory note, or against the acceptor of a bill of exchange, payable at a particular place, no averment in the declaration of a demand of payment at the place designated is necessary. *United States Bank v. Smith*. 171
9. But as against the indorser of a bill or note, such an averment is, in general necessary. *Id.*
10. Circumstances distinguishing a count in detinue from a count in trover. *Shelby v. Guy*. *361
11. In suits for an indivisible thing, a right of action survives to a tenant in common. . . . *Id.*

PRACTICE.

1. Although the judge may refuse to declare the law to the jury on a mere hypothetical question propounded by the counsel, and not warranted by the evidence in the cause, yet, if he proceed to state the law upon such question, and states it erroneously, his opinion may be revised in the court above; and if it be such as may have had an influence on the jury, their verdict will be set aside. *Etting v. Bank of United States*. *59
2. Where the court is equally divided in opinion upon a writ of error, the judgment of the court below is to be affirmed. *Id.*
3. Amendments of the pleadings in admiralty causes may be allowed, in the appellate court. *The Marianna Flora*. *1
4. If the amendment be made in the circuit court, the cause is heard, and adjudged by that court, and by this court (upon appeal), on the new allegation; but if the amendment be allowed by this court, the cause is remanded to the circuit court, to permit the amendment to be made. *Id.*
5. The decree in equity must be according to the *allegata* as well as the *probata*; there must be sufficient equity apparent on the face of the bill to warrant the court in granting the relief prayed; and the material facts on which the plaintiff relies must be so distinctly alleged, as to put them distinctly in issue. *Harding v. Handy*. *103
6. Rules of practice, on exceptions to the master's report. *Id.*
7. In a suit in equity, brought by the heirs-at-law to set aside a conveyance obtained from their ancestor by fraud and imposition, a final decree for the sale of the property cannot be pronounced, until all the heirs are brought before the court as parties, if they are within the jurisdiction. *Id.*
8. If all the heirs cannot be brought before the

- court, the undivided interest of those who are made parties may be sold. *Id.*
9. Where a case is certified to this court upon a division of opinion of the judges below, and the points reserved upon which they were divided, are too imperfectly stated to enable this court to pronounce any opinion upon them, this court will neither award a *venire facias de novo*, nor certify any opinion to the court below upon the points reserved, but will merely certify that they are too imperfectly stated. *Perkins v. Hart*. *237
10. An action for mense profits may be maintained by the landlord in fact, who is in possession of the lands, by means of his tenants, and by his acts, commands or co-operation, aids in withholding the possession from the plaintiff. *Chirac v. Reinicker*. *280
11. Inconvenient practice of bringing the whole evidence, instead of the facts proved by the evidence, for review, before this court, by bill of exceptions or otherwise. The party cannot, by such a practice, take advantage of any omission in the judge's charge, under a general exception to it; if he wishes the instruction of the court to the jury on any point omitted in the charge, he must suggest it, and request the judge's opinion on it. *Armstrong v. Toler*. *258
12. In examining the admissibility of testimony in the court above, the party excepting is to be confined to the specific objection taken at the trial. *Hinde v. Longworth*. *199
13. Amendments to the pleadings are matters in the discretion of the court below; error will not lie to this court, on the allowance or refusal of such amendments. *Chirac v. Reinicker*. *280
14. Variances between the writ and declaration are, in general, matters proper for pleas in abatement. *Id.*
15. *Quere?* Whether, by the modern practice of the courts, variances between the writ and declaration can be taken advantage of by the defendant? *Id.*
16. Such variances cannot be taken advantage of, except upon *oyer* of the original writ, granted in some proper stage of the cause. *Id.* *302
17. Marriage of the plaintiff, pending the suit, does not, of itself, abate the suit; the objection can only be made available by plea in abatement. *Id.* *303
18. On a libel *in personam* for damages, if the court decrees that damages be recovered, and that commissioners be appointed to ascertain the amount thereof, no appeal will lie from such a decree, until the commissioners have made their report; this not being a final decree. *Chace v. Vasquez*. *429
19. It is not the practice of a court of equity, to

- confirm an award, so far as it extends, and to supply omissions, by decree of the court; it either enforces the award as it is made, or sets it aside, if in any respect defective. *Carnochan v. Christie*..... *466
20. Where a bill is filed to set aside an agreement or conveyance, the conveyance cannot be established, without a cross-bill filed by the defendant..... *Id.*
21. Explanation of former decree of this court. 10 Wheat. 66. *The Antelope*..... *412
22. Where there is a joint judgment against several defendants, and one only sues out the writ of error, without joining the others, it is irregular; but if the others refuse to join in it, *quære?* whether the plaintiff may not have summons and severance? *Williams v. Bank of United States*..... *414
23. Where, in a special verdict, the essential facts are not distinctly found by the jury, although there is sufficient evidence to establish them, this court will not render a judgment upon such an imperfect special verdict, but will remand the cause to the court below, with directions to award a *venire facias de novo*. *Barnes v. Williams*..... *415
24. The general rule of law, requiring proof of the title of the holders of a note, may be modified by a rule of court, dispensing with proof of the execution of the note, unless the party shall annex to his plea an affidavit that the note was not executed by him. *Mills v. Bank of United States*..... *439

PRIZE.

1. In prize proceedings, amendments are made in the appellate court, either as to the form or substance, as by filing a new article to the libel; the parties being permitted, whenever public justice and the merits require it, to introduce new allegations and new proofs. *The Marianna Flora*..... *1
2. If the amendment is made in the circuit court, the cause is heard and adjudicated by that court, and by this court (upon appeal), on the new allegation; but if the amendment is allowed by this court, the cause is remanded to the circuit court, with directions to permit the amendment to be made..... *Id.*
3. Pirates may be lawfully captured by the public or private ships of any nation, in peace or in war; for they are the common enemies of mankind, and, as such, are liable to the extreme rights of war..... *Id.*
4. The right of visitation and search does not exist in time of peace; but ships of war, sailing under the authority of their government, in time of peace, have a right to approach other vessels at sea, for the purpose of ascertaining their real characters, so far as the same can be done, without the exercise of the right of visitation and search..... *Id.*
5. No vessel is bound to await the approach of armed ships, under such circumstances; but such vessel cannot lawfully prevent their approach, by the use of force, upon the mere suspicion of danger.... *Id.*
6. Where an aggression was committed by a foreign armed merchant vessel, on a public ship of the United States, under the above circumstances, and a combat ensued, upon mutual misapprehension and mistake, the commander of the public ship was held exempt from costs and damages, for subduing, seizing and bringing in for adjudication, into a port of this country, the offending vessel. *Id.*
7. Under the act of the 3d of March 1819, c. 75, an attack made upon a vessel of the United States, by an armed vessel, with the avowed intention of repelling the approach of the former, or of crippling or destroying her, upon a mistaken supposition that she was a piratical cruiser, and without a piratical or felonious intent, or the purpose of wanton plunder, is not a piratical aggression.... *Id.*
8. Nor is an armed ship, captured under such circumstances, liable to confiscation, as for a hostile aggression, under the general law of nations..... *Id.*
9. Although the general rule of law subjects property taken *in delicto* to the penalty of confiscation, for gross violations of the law of nations, on the high seas, yet it cannot be applied indiscriminately to every offence of this nature, without regard to the circumstances of mitigation of excuse.... *Id.* *40
10. How far the practice of affirming the flag with a gun, is a part of the universal law of nations..... *Id.* *48
11. Rule as to damages for illegal detention, on captures *jure belli*..... *Id.* *54
12. Application of the rule in the case of *The Louis*, 2 Dods. 210..... *Id.* *55
13. Concurrent jurisdiction of the country of the captors, and of the captured, in cases of seizure in time of peace, as for a hostile or piratical aggression..... *Id.* *56
14. The general rule, that the act of the master does not bind the innocent owner of the cargo, is liable to exceptions..... *Id.* *57
15. Thus, where the master is also agent of the cargo or the ship and cargo belong to the same person, it seems, a distinction arises... *Id.*
16. Question of damages for personal injuries to captured crew, not before this court upon appeal, as an incident to the principle cause, the decision being against their claim, and no appeal taken by them..... *Id.* *58
17. Passage from Albericus Gentilis (*Hispanicæ Advocationis*), translation of, containing the case of an English ship captured by a Tus-

- can, and condemned for an alleged hostile aggression..... *Id.* *15 n.
 18. Cases respecting damages for illegal capture and detention collected and classified..... *Id.* *21 n.

SALE.

See CONTRACT, 1, 2, 5-10 : LOCAL LAW, 13.

SHIPPING.

See PRIZE, 14.

SURETY.

1. The case of the United States *v.* Kirkpatrick (9 Wheat. 730) revised, its authority confirmed, and applied to the present case. *United States v. Vanzandt.* *184
2. An omission of the proper officer to recall a delinquent paymaster, under the injunctions of the 4th section of the act of the 24th of April 1816, c. 69, does not discharge his surety..... *Id.*
3. The provisions requiring the delinquent paymaster to be recalled, and a new appointment to be made in his place, are merely directory, and intended for the security of the government; but form no part of the contract with the surety..... *Id.*
4. The statute not removing from office the delinquent paymaster, *ipso facto*, but only making it the duty of the proper officer to remove him, the circumstance of new funds

being placed in his hands after his delinquency, does not discharge the surety.... *Id.*

STATUTES OF GEORGIA.

See LOCAL LAW, 17, 18.

STATUTES OF KENTUCKY.

See LOCAL LAW, 10-12, 19, 20.

STATUTES OF MARYLAND.

See LOCAL LAW, 1-5.

STATUTES OF OHIO.

See LOCAL LAW, 6.

STATUTES OF TENNESSEE.

See LOCAL LAW, 9, 13-16.

STATUTES OF VIRGINIA.

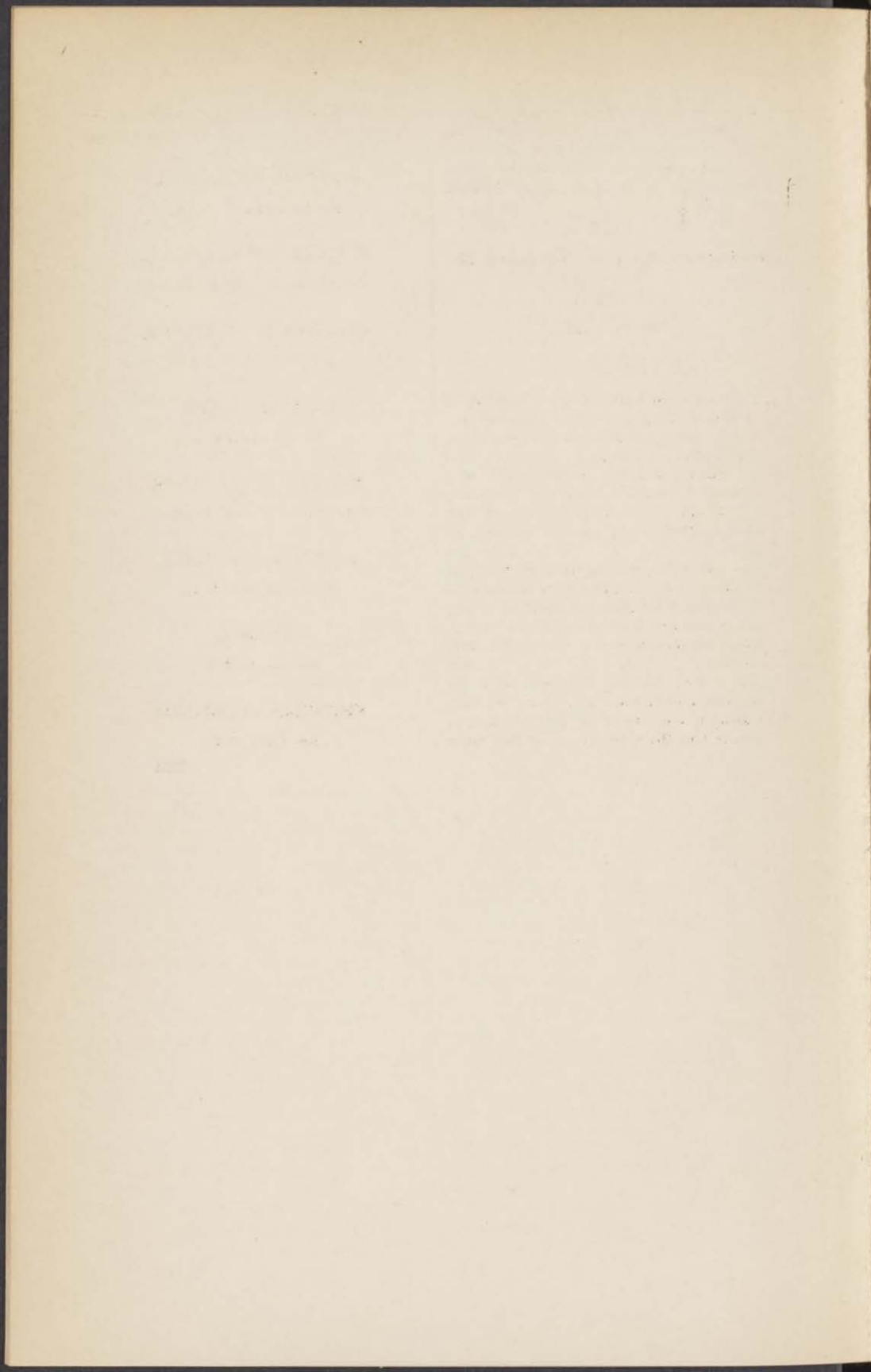
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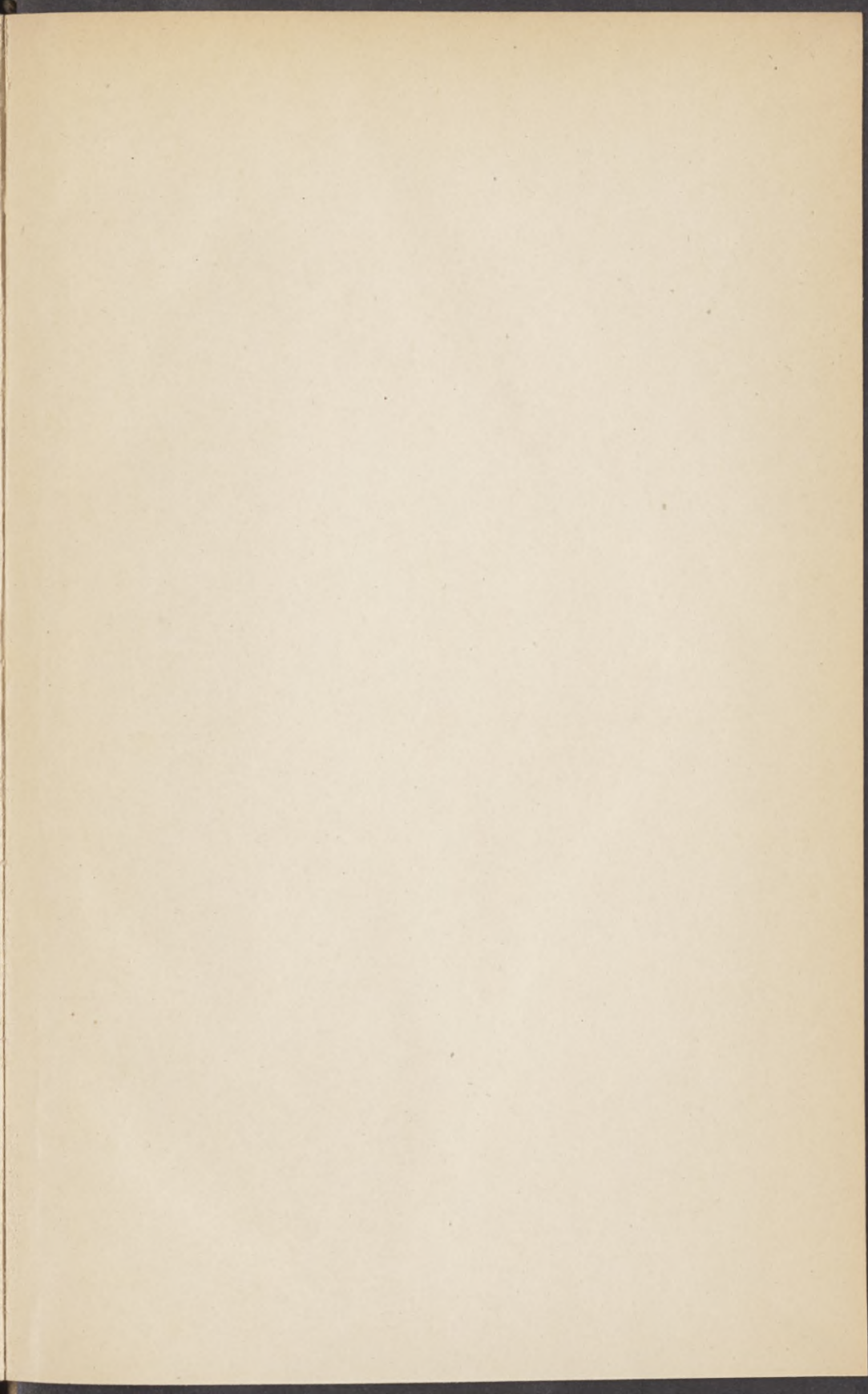
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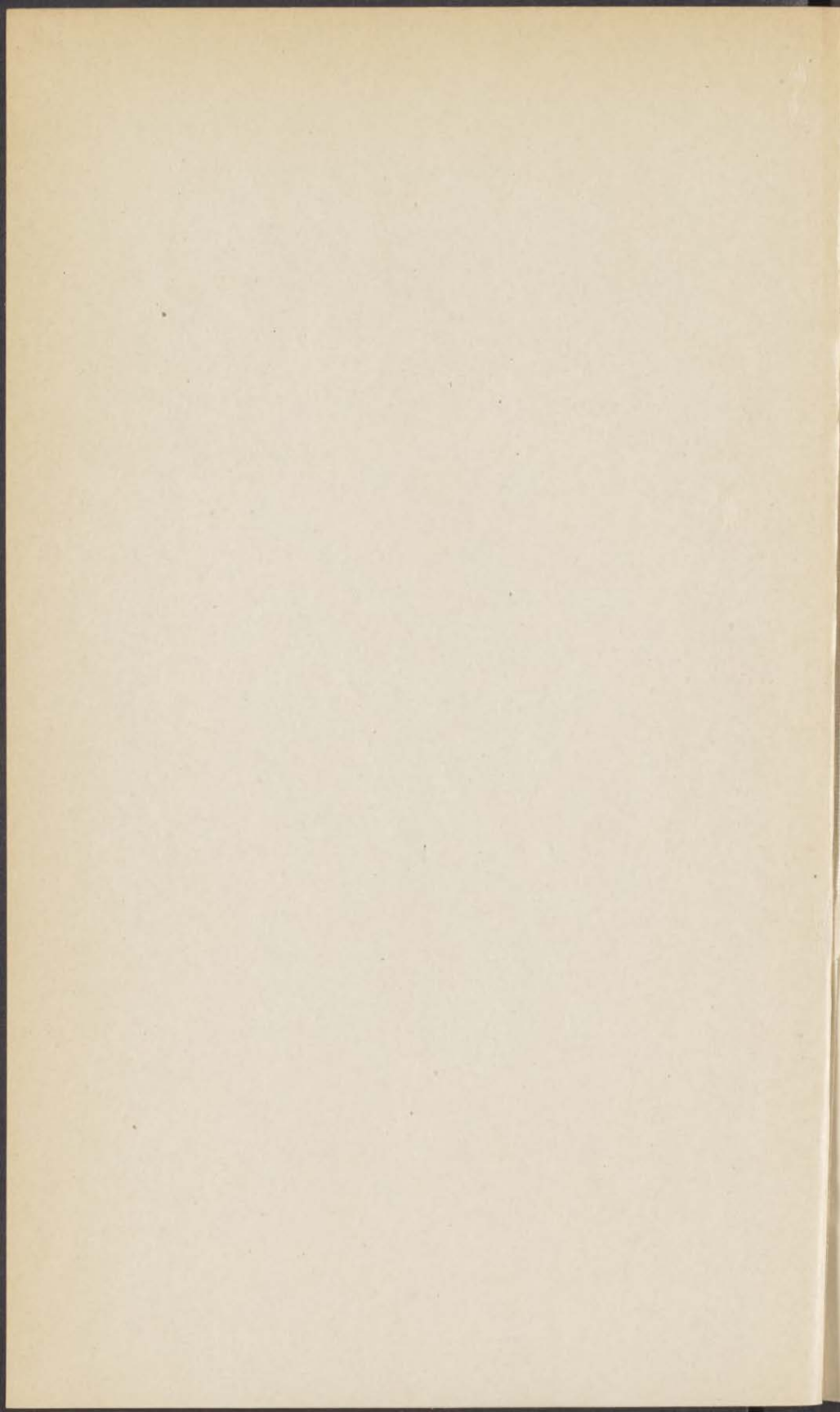
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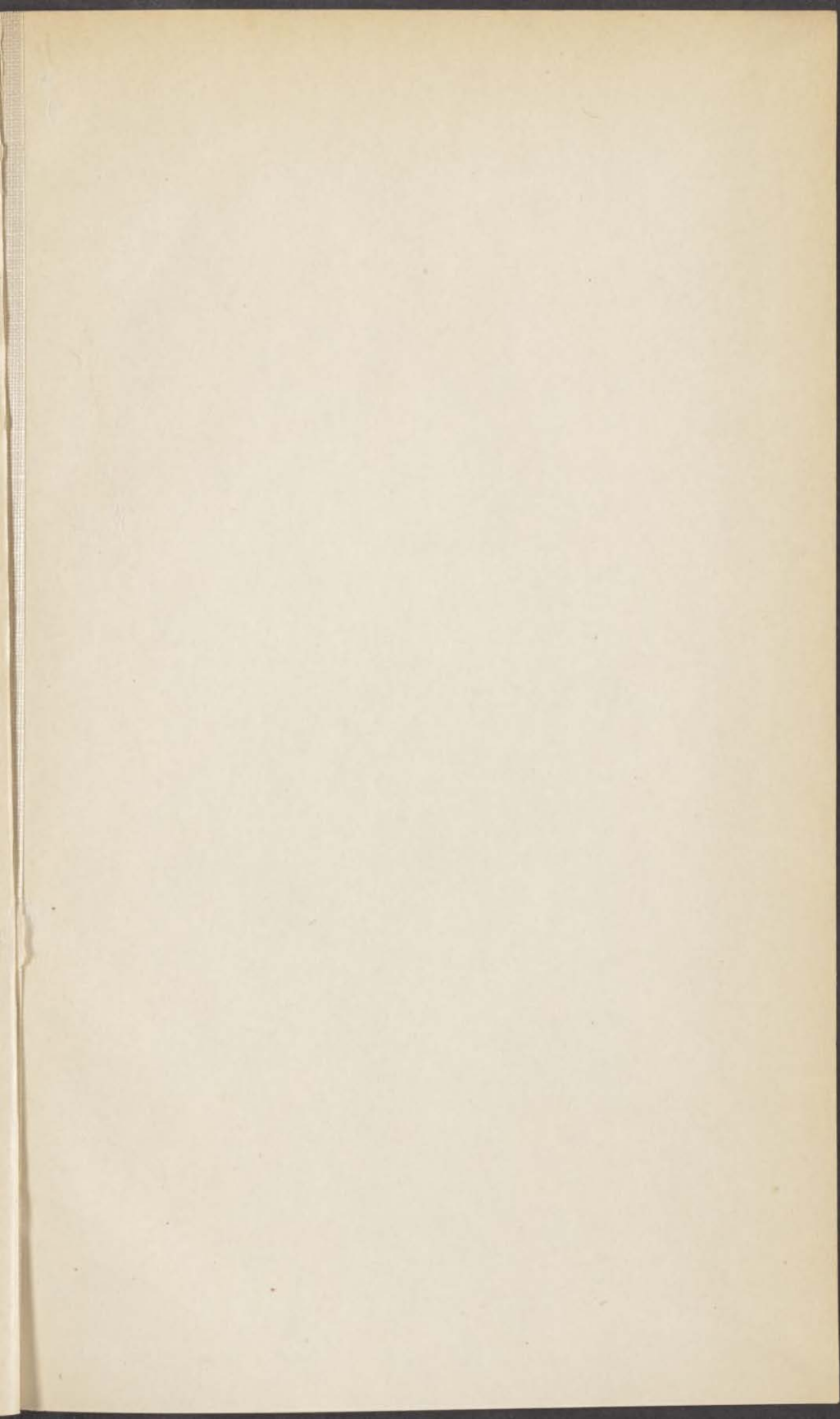
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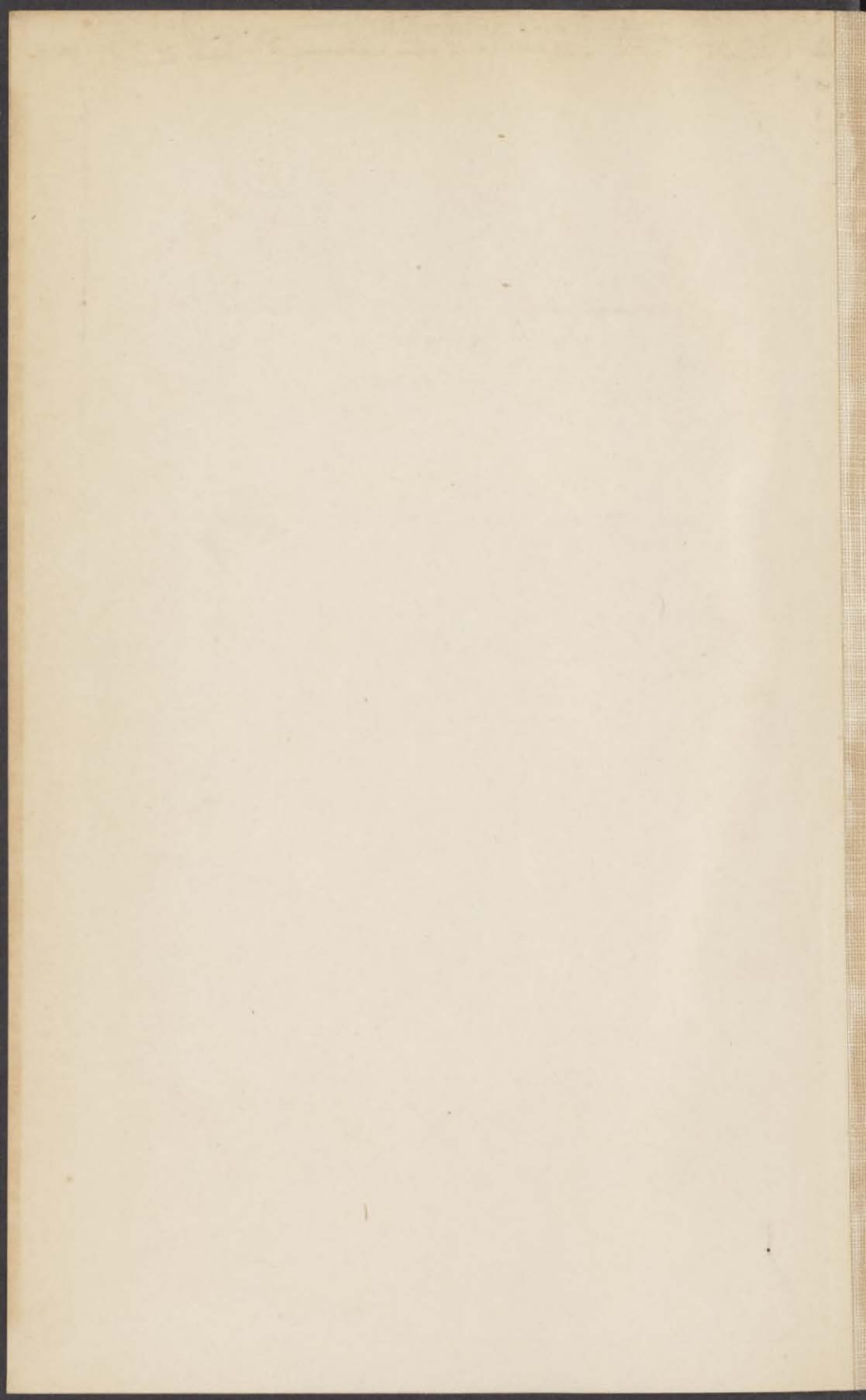
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