

INDEX

TO THE

PRINCIPAL MATTERS CONTAINED IN THIS VOLUME.

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was discharged by the negligence of the holders.....*Id.*

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CHANCERY.

1. Where an equity cause may be finally decided as between the parties litigant, without bringing others before the court, who would, generally speaking, be necessary parties, such parties may be dispensed with, in the circuit court, if its process cannot reach them, or if they are citizens of another state. *Mallow v. Hinde*.....*193
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3. But the court may, in its discretion, where the purposes of justice require it, retain jurisdiction of the cause, on an injunction bill, as between the parties regularly before it, until the plaintiffs have had an opportunity of litigating their controversy with the other parties, in a competent tribunal; and if it finally appear by the judgment of such tribunal, that the plaintiffs are equitably entitled to the interest claimed by the other parties, may proceed to a final decree upon the merits.*Id.*
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CONSTITUTIONAL LAW.

1. The authority to decide whether the exigencies contemplated in the constitution of the United States, and the act of congress of 1795, ch. 101, in which the president has

- authority to call forth the militia, "to execute the laws of the Union, suppress insurrections, and repel invasions," have arisen, is exclusively invested in the president, and his decision is conclusive upon all other persons. *Martin v. Mott*. *19
2. Although a militia-man, who refused to obey the orders of the president, calling him into the public service, under the act of 1795, is not, in the sense of the act, "employed in the service of the United States," so as to be subject to the rules and articles of war; yet he is liable to be tried for the offence, under the 5th section of the same act, by a court-martial called under the authority of the United States. *Id*.
3. Where, in an action of replevin, the defendant, being a deputy-marshal of the United States, avowed and justified the taking the plaintiff's goods, by virtue of a warrant issued to the marshal of the district, to collect a fine imposed on him by the judgment of a court-martial, described as a general court-martial composed of officers of the militia of the state of New York, in the service of the United States (*six* in number, and naming them), duly organized and convened, by general orders, issued pursuant to the act of congress of February 28th, 1795, ch. 101, for the trial of those of the militia of the state of New York, ordered into the service of the United States in the third military district, who had refused to rendezvous and enter into the service of the United States, in obedience to the orders of the commander in chief of the state of New York, of the 4th and 29th of August, 1814, issued in compliance with the requisition of the president, made in pursuance of the same act of congress, and alleging that the plaintiff, being a private in the militia, neglected and refused to rendezvous, &c., and was regularly tried by the said general court-martial, and duly convicted of the said delinquency: *Held*, that the avowry was good. *Id*.
4. It is not necessary, in such a case, that it should appear, in point of fact, that the particular exigency actually existed; it is sufficient, that the president has determined it, and all other persons are bound by his decision. *Id*. *32
5. It is unnecessary to set out the orders of the president; it is sufficient to show, that the governor of the state called out the militia upon the requisition of the president. . . . *Id*. *33
6. It is not necessary, that the court-martial for the trial of delinquent, under the act of 1795, should be composed of the precise number of officers required by the rules and articles of war for the composition of general courts-martial in the army. *Id*. *35
7. A court-martial, regularly organized under the act of 1795, ch. 101, does not expire with the termination of a war then existing. *Id*. *37
8. Under the 25th section of the judiciary act of 1789, ch. 20, where the construction of any clause in the constitution, or any statute of the United States, is drawn in question, in any suit in a state court, the decision must be against the title or right set up by the party, under such clause of the constitution or statute, or this court has no appellate jurisdiction in the case; it is not sufficient, that the construction of the statute was drawn in question, and that the decision was against the title of the party; it must appear that his title depended upon the statute. *Williams v. Norris*. *117
9. Where, in such a case, the validity of a statute of any state is drawn in question, upon the ground of its being repugnant to the constitution of the United States, and the decision has been in favor of its validity, it is necessary to the exercise of the appellate jurisdiction of this court, that it should distinctly appear, that the title or right of the party depended upon the statute. *Id*.
10. Under the 25th section of the judiciary act of 1789, ch. 20, this court has no appellate jurisdiction from the final judgment of the highest court of a state, in a suit where is drawn in question the construction of a statute of, or a commission held under, the United States, unless some title, right, privilege, or exemption, under such statute, &c., be specially set up by the party, and the decision be against the claim so made by him. *Montgomery v. Hernandez*. *129
11. Where a suit was brought in a state court, upon a marshal's bond, under the act of April 10th, 1806, ch. 21, by a person injured by a breach of the condition of the bond, and the defendants set up as a defence to the action, that the suit ought to have been brought in the name of the United States, and the court decided, that it was well brought by the party injured in his own name: *Held*, that the exemption here set up being merely as to the form of the action, and no question arising as to the legal liability of the defendants, under the act of congress, this court has no authority to re-examine the judgment, so far as respected the construction of that part of the act, which provides, that suits on marshals' bonds "shall be commenced and prosecuted within six years after the said right of action shall have accrued, and not afterwards." *Id*.
12. The circuit courts of the Union have jurisdiction, under the constitution, and the acts of April 30th, 1810, ch. 262, § 29, and of

- March 3d, 1815, ch. 783, § 4, of suits brought in the name of "the postmaster-general of the United States" on bonds given to the postmaster-general, by a deputy-postmaster, conditioned "to pay all moneys that shall come to his hands for the postage of whatever is by law chargeable with postage, to the postmaster-general of the United States for the time being, deducting only the commission and allowances made by the law for his care, trouble and charges in managing the said office," &c. *Postmaster-General v. Early*. *136
13. The postmaster-general has authority to take such a bond, under the different acts establishing and regulating the post-office department, and particularly under the act of April 30th, 1810, ch. 262, § 29, 42. . . . *Id.*
14. The power of congress "to establish uniform laws on the subject of bankruptcies throughout the United States," does not exclude the right of the states to legislate on the same subject, except when the power is actually exercised by congress, and the state laws conflict with those of congress. *Ogden v. Saunders*. . . . *213
15. A bankrupt or insolvent law of any state, which discharges both the person of the debtor, and his future acquisitions of property, is not a law "impairing the obligation of contracts," so far as respects debts contracted subsequent to the passage of such law. . . . *Id.*
16. But a certificate of discharge, under such a law, cannot be pleaded in bar of an action brought by a citizen of another state, in the courts of the United States, or of any other state than that where the discharge was obtained. . . . *Id.*
17. The states have a right to regulate, or abolish, imprisonment for debt, as a part of the remedy for enforcing the performance of contracts. *Mason v. Haile*. . . . *370
18. Where the condition of a bond for the jail-limits, in Rhode Island, required the party to remain a true prisoner, in the custody of the keeper of the prison, and within the limits of the prison, "until he shall be lawfully discharged, without committing any manner of escape or escapes, during the time of restraint, then this obligation to be void, or else to remain in full force and virtue;" *Held*, that a discharge under the insolvent laws of the state, obtained from the proper court, in pursuance of a resolution of the legislature, and discharging the party from all his debts, &c., "and from all imprisonment, arrest and restraint of his person therefor," was a lawful discharge, and his going at large under it, was no breach of the condition of the bond. . . . *Id.*
19. An act of a state legislature, requiring all importers of foreign goods by the bale or package, &c., and other persons selling the same by wholesale, bale, or package, &c., to take out a license, for which they shall pay \$50, and in case of neglect or refusal to take out such license, subjecting them to certain forfeitures and penalties, is repugnant to that provision of the constitution of the United States, which declares that "no state shall, without the consent of congress, lay any impost, or duty on imports or exports, except what may be absolutely necessary for executing its inspection laws;" and to that which declares that congress shall have power "to regulate commerce with foreign nations, among the several states, and with the Indian tribes." *Brown v. State of Maryland*. . . . *419

CONSTRUCTION OF STATUTES.

1. Upon an indictment, under the slave-trade act of the 20th of April 1818, ch. 373, against the owner of the ship, testimony of the declarations of the master, being a part of the *res gestæ*, connected with acts in furtherance of the voyage, and within the scope of his authority, as agent of the owner, in the conduct of the guilty enterprise, is admissible against the owner. *United States v. Gooding*. . . . *460
2. Upon such an indictment against the owner, charging him with fitting out the ship, with intent to employ her in the illegal voyage, evidence is admissible, that he commanded, authorized, and superintended the fitment, through the instrumentality of his agents, without being personally present. . . . *Id.*
3. It is not essential to constitute a fitting out under the acts of congress, that every equipment necessary for a slave-voyage, or any equipment peculiarly adapted to such a voyage, should be taken on board; it is sufficient, if the vessel is actually fitted out, with intent to be employed in the illegal voyage. *Id.*
4. In such an indictment, it is not necessary to specify the particulars of the fitting out; it is sufficient, to allege the offence in the words of the statute. . . . *Id.*
5. Nor is it necessary that there should be any principal offender to whom the defendant might be aiding and abetting. These terms in the statute do not refer to the relation of principal and accessory in cases of felony; both the actor, and he who aids and abets the act are considered as principals. . . . *Id.*
6. It is necessary, that the indictment should aver, that the vessel was built, fitted out, &c., or caused to sail, or be sent away, within the jurisdiction of the United States. . . . *Id.*
7. An averment that the ship was fitted out,

&c., "with intent that the said vessel should be employed" in the slave-trade, is fatally defective, the words of the statute being, "with intent to employ" the vessel in the slave-trade, and exclusively referring to the intent of the party causing the act.....*Id.*

8. The term "concealed," as used in the 68th section of the duty act of the 2d of March 1799, ch. 128, applies only to articles intended to be secreted and withdrawn from public view, on account of the duties not having been paid, or secured to be paid, or from some other fraudulent motive. The forfeiture inflicted by that section, does not extend to a case where, the duties not having been paid or secured, in any other manner than by giving the general bond, and storing the goods, according to the 62d section of the act, the goods were fraudulently removed from the storehouse agreed upon by the collector and the importer, by some person other than the claimants, who were *bond fide* purchasers of the goods, and without their knowledge and consent, to another port, where the goods were found stowed on board the vessel in which they were transported, in the usual manner of stowing such goods, when shipped for transportation. *United States v. 350 Chests of Tea*.....*486
9. Under the 62d section of the act, in the case of teas, the duties are "secured to be paid," in the sense of the law, by the single bond of the importer, accompanied by a deposit of the teas imported, to be kept under the lock and key of the inspector, and subject to the control of the collector and naval officer, until the duties are actually paid, or otherwise secured; and no forfeiture is incurred, under the 68th section, by the removal and concealment of goods on which the duties have been thus "secured to be paid.".....*Id.*
10. To authorize the seizure and bringing to adjudication of teas, under the 43d section of the act, it is necessary, not only that the chests should be unaccompanied by the proper certificates, but also by the marks required to be placed upon them by the 39th section.....*Id.*
11. The lien of the government, for duties, attaches upon the articles, from the moment of their importation, and is not discharged by the unauthorized and illegal removal of the goods from the custody of the custom-house officers.....*Id.*
12. *Quære?* Whether such lien can be enforced against a *bond fide* purchaser, without notice that the duties were not paid or secured.....*Id.*

See ADMIRALTY, 3: CONSTITUTIONAL LAW, 1-13:
CORPORATIONS, 1-5; LIMITATION.

CORPORATIONS.

1. Municipal corporations, acting within the limits of the powers conferred upon them by the legislature, in the exercise of a special franchise granted to them, and the performance of a special duty imposed upon them, are responsible for the acts and contracts of their agents, duly appointed and authorized, within the scope of the authority of such agents, in the same manner as other corporations and private individuals are responsible on their promises, express and implied. *Clark v. Corporation of Washington*.....*40
2. Where, by the charter granted by congress to the city of Washington, the corporation was empowered "authorize the drawing of lotteries," for effecting certain improvements in the city, and upon certain terms and conditions: *Held*, that the corporation was liable to the holder of a ticket in such a lottery, for a prize drawn against its number, although the managers appointed by the corporation to superintend such lottery were empowered to sell, and had sold, the entire lottery, to a lottery-dealer, for a gross sum, who was, by his agreement with them, to execute the details of the scheme as to the sale of the tickets, the drawings, and the payment of the prizes.....*Id.*
3. It seems, that the power granted in the charter "to authorize the drawing of lotteries," cannot be exercised so as to discharge the corporation from its liability, either by granting the lottery, or selling the privilege to others, or in any other manner; but the lotteries to be authorized by the corporation must be drawn under its superintendence, for its own account, and on its own responsibility.....*Id.*
4. In a suit brought by the president, directors and company of the Bank of the United States, upon a bond given to the bank to secure the faithful performance of the official duties of one of its cashiers, evidence of the execution of the bond, and of its approval by the board of directors (according to the rules and regulations contained in the charter of the bank), is admissible, notwithstanding there was no record of such approval; and the plaintiff may prove the fact of such approval by the board, by presumptive evidence, in the same manner as such fact might be proved in the case of private persons, not acting as a corporation, or as the agents of a corporation. *Bank of the United States v. Dandridge*.....*64
5. Where, in such a case, the cashier is duly appointed, and permitted to act in his office, for a long time, under the sanction of the directors, it is not necessary that his official

bond should be accepted by the board of directors as satisfactory, according to the terms of the charter, in order to enable him to enter legally on the duties of his office, or make his sureties responsible for the non-performance of those duties. The charter and the by-laws are to be considered, in this respect, as directory to the board, and not as conditions precedent. *Id*

CONTRACT.

See CONSTITUTIONAL LAW, 14-18: GUARANTEE:
INSURANCE: SALE: SURETY.

DEVISE.

1. E. being seised of lands in the state of New York, devised the same, by his last will and testament, to his son Joseph, in fee, and other lands to his son Medcef, in fee, and added: "It is my will and I do order and appoint, that if either of my said sons should depart this life, without lawful issue, his share or part shall go to the survivor; and in case of both their deaths without lawful issue, then I give all the property to my brother, John E., and my sister, Hannah J., and their heirs." Joseph, one of the sons, died without lawful issue, in 1812, leaving his brother Medcef surviving, who afterwards died without issue: *Held*, that Joseph took an estate in fee, defeasible in the event of his dying without issue in the lifetime of his brother; that the limitation over was good as an executory devise; and on the death of Joseph, vested in his surviving brother Medcef. *Jackson v. Chew*. *153
2. This court adopts the local law of real property, as ascertained by the decisions of the state courts, whether those decisions are grounded on the construction of the statutes of the state, or form a part of the unwritten law of the state. *Id*.
3. The court, therefore, considered it unnecessary to examine the question arising upon the above devise, as a question of general law; or to review, and attempt to reconcile, the cases in the English courts, upon similar clauses in wills, the construction of this clause having been long settled by a uniform series of adjudications in New York, and having become a fixed rule of property in that state. *Id*.
4. A devise in the following words: "I give and devise to my beloved son, E. W. G., two third parts of that my Ferry farm, so called," &c., "to him, the said E. W. G., and to his heirs and assigns for ever, he, my said son E. W. G., paying all my just debts out of said estate; and I do hereby order, and it is my will, that my son E. W. G. shall pay all my just debts, out of the estate herein given to him as aforesaid," creates a charge upon the estate in the hands of the devisee. *Potter v. Gardner*. *498
5. A *bond fide* purchaser, who pays the purchase-money to a person authorized to sell, is not bound to look to its application, whether in the case of lands charged in the hands of an heir or devisee with the payment of debts, or lands devised to a trustee for the payment of debts. *Id*.
6. But if the money be misapplied by the devisee or trustee, with the co-operation of the purchaser, he remains liable to the creditors for the sum so misapplied. *Id*.
7. On a bill filed by an executor against a devisee of lands charged with the payment of debts, for an account of the trust fund, &c., the creditors are not indispensable parties to the suit. The fund may be brought into court, and distributed under its direction, according to the rights of those who may apply for it. *Id*.
8. An absolute bequest of certain slaves to P. H., is qualified by a subsequent limitation over, that if either of the testator's grandchildren, P. H., or J. D. A., should die without a lawful heir of their bodies, that the other should heir his estate, which converted the previous estate into an estate-tail; and there being no words in the will which restrained the dying without issue to the time of the death of the legatee, the limitation over was held to be a contingency too remote. *Williamson v. Daniel*. *568
9. The rule of *partus sequitur ventrem* is universally followed, unless there be something in the terms of the instrument which disposes of the mother, separating the issue from her. *Id*.

DUTIES.

See CONSTRUCTION OF STATUTES, 8-12.

EVIDENCE.

1. Where the testimony of the seizing officer, in a proceeding *in rem* in the admiralty, is admitted in the court below, without objection, it cannot be objected to in this court, on appeal. *The Palmyra*. *1
2. The rules of evidence as to presumptions in the case of private individuals, are applicable to the acts of corporate bodies. *Bank of United States v. Dandridge*. *64
3. Cases where corporate acts have been the subject of presumptions. *Id*. *71
4. Distinction, as to evidence between an act prescribed by law to be done, as a condition

- precedent, as a record, or only directory to the officers who are to make the record. *Id.* *81
5. The exclusive jurisdiction over wills of personality belongs to the appropriate court having the peculiar cognisance of testamentary matters; and before any testamentary paper, foreign or domestic, can be admitted in evidence, it must receive probate in such court. *Armstrong v. Lear*. *169
6. Upon an indictment under the slave-trade act, of the 20th of April 1818, ch. 373, against the owner of the ship, testimony of the declarations of the master, being a part of the *res gestæ*, connected with acts in furtherance of the voyage, and within the scope of his authority, as agent of the owner, in the conduct of the guilty enterprise, is admissible against the owner. *United States v. Gooding*. *460
7. Upon such an indictment against the owner, charging him with fitting out the ship, with intent to employ her in the illegal voyage, evidence is admissible, that he commanded, authorized and superintended the fitment, through the instrumentality of his agents, without being personally present. *Id.*
8. The *onus probandi*, in criminal cases, lies upon the prosecution, unless there be some positive provision by statute to the contrary. *Id.*

See GUARANTEE, 2.

GUARANTEE.

1. The following letter of guaranty, "Baltimore, 17th Nov. 1803. Capt. Charles Drummond, Dear Sir—My son William having mentioned to me, that, in consequence of your esteem and friendship for him, you had caused and placed property of yours, and your brother's, in his hands for sale, and that it is probable, from time to time, you may have considerable transactions together; on my part, I think proper to guaranty to you the conduct of my son, and shall hold myself liable, and do hold myself liable for the faithful discharge of all his engagements to you, both now and in future. (Signed) Geo. Prestman," will extend to a partnership debt incurred by William P. to Charles Drummond and Richard his brother, it being proved that the transactions to which the letter related were with them as partners, and that no other brother of the said Charles was interested therein. *Drummond v. Prestman*. *515
2. In such a case, the record of a judgment confessed by the principal, William P., to Richard D., as surviving partner of Charles and Richard D., for the amount of the debt

due by William P. to the partnership firm, was held to be admissible in evidence, *inter alia*, to charge the guarantor, George P., under his letter of guaranty. *Id.*

See SURETY.

INSURANCE.

1. A policy for \$10,000, upon a voyage "at and from Alexandria to St. Thomas, and two other ports in the West Indies, and back to her port of discharge in the United States, upon all lawful goods and merchandise, laden or to be laden on board the ship, &c., beginning the adventure upon the said goods and merchandise, from the lading at Alexandria, and continuing the same until the said goods and merchandise shall be safely landed at St. Thomas, &c., and the United States aforesaid," is an insurance upon every successive cargo taken on board, in the course of the voyage out and home, so as to cover the risk of a return-cargo, the proceeds of the sales of the outward cargo. *Columbian Ins. Co. v. Catlett*. *882
2. Such a policy covers an insurance of \$10,000, during the whole voyage out and home, so long as the assured has that amount of property on board, without regard to the fact of a portion of the original cargo having been safely landed at an intermediate port, before the loss. *Id.*
3. Where the cargo, in the course of the outward voyage, and before its termination, was permanently separated from the ship, by the total wreck of the latter; and the cargo being perishable in its nature, though not injured to one-half its value, it became necessary to sell it, the further prosecution of the voyage with the same ship or cargo became impracticable; *Held*, that this was a technical total loss, on account of the breaking up of the voyage. *Id.*
4. Whether a delay at a particular port constitutes a deviation, depends upon the usage of trade with reference to the object of selling the cargo. Where different ports are to be visited for this purpose, the owner has a right to limit the price at which the master may sell, to a reasonable extent; and a delay at a particular port, if *bond fide* made for that purpose, does not constitute a deviation, though occasioned by this restriction. . . . *Id.*
5. Freight is not a charge upon the salvage of the cargo, in the hands of the underwriters, whether the assured is owner of the ship or not. *Id.*
6. Where an insurance was effected, after a loss had happened, though unknown to the assured, the master having omitted to com-

municate information to the owner, and having expressed his intention not to write to the owner, and taken measures to prevent the fact of the loss being known, for the avowed purpose of enabling the owner to effect insurance, in consequence of which, information of the loss had not reached the parties, at the time the policy was underwritten: *Held*, that the owner having acted with good faith, was not precluded from a recovery upon the policy, on account of the fraudulent misconduct of the master. *General Interest Ins. Co. v. Ruggles*.....*408

INDICTMENT.

See CONSTRUCTION OF STATUTES, 1-7: PRACTICE, 11-13.

JURISDICTION.

1. Cases in which the appellate jurisdiction of this court may be exercised upon the final judgments or decrees of the highest court of law or equity of a state, under the 25th section of the judiciary act of 1789, ch. 20. *Williams v. Norris*, *117; *Montgomery v. Hernandez*.....*129
2. Jurisdiction of the circuit courts of suits brought in the name of the postmaster-general of the United States, on bonds given to that officer by his deputies. *Postmaster-General v. Early*.....*136
3. Manner in which the jurisdiction of the circuit courts, in equity cases, is to be exercised, where, from the constitution of the court, persons who ought regularly to be made parties, cannot sue or be sued in those courts. *Mallow v. Hinde*.....*193
4. Jurisdiction of a court of equity over legacies cannot be exercised, until the will has received probate in the proper court having the peculiar jurisdiction over testamentary matters. *Armstrong v. Lear*.....*169
6. The lien for duties, under the impost laws, cannot, in any case, be enforced by a libel of information in the admiralty; the revenue jurisdiction of the district courts, proceeding *in rem*, only extending to cases of seizures for forfeitures under laws of impost, navigation or trade of the United States. *United States v. 350 Chests of Tea*.....*486
6. But a suit at common law may be instituted in the district or circuit courts, in the name of the United States, founded upon their legal right to recover the possession of goods upon which they have a lien for duties, or to recover damages for the illegal taking or detaining the same.....*Id.*
7. Jurisdiction of the admiralty, in suits *in personam*. *Ramsay v. Allegre*.....*Id.*

See LEX LOCI.

LEX LOCI.

1. A testamentary paper, executed in a foreign country, even if executed so as to give it the effect of a last will and testament by the foreign law, cannot be made the foundation of a suit for a legacy, in the courts of this country, until it has received probate here, in the court having the peculiar jurisdiction of the probate of wills and other testamentary matters. *Armstrong v. Lear*.....*169

LIEN.

1. The lien of a judgment on the lands of the debtor, created by statute, and limited to a certain period of time, is unaffected by the circumstance of the plaintiff not proceeding upon it (during that period), until a subsequent lien has been obtained and carried into execution. *Rankin v. Scott*.....*177
2. Universal principle, that a prior lien is entitled to prior satisfaction out of the thing it binds, unless the lien be intrinsically defective, or is displaced by some act of the party holding it, which shall postpone him at law or in equity.....*Id.*
3. Mere delay in proceeding to execution is not such an act.....*Id.*
4. Distinction created by statute, as to executions against personal chattels, and reasons on which it is founded.....*Id.*

See CONSTRUCTION OF STATUTES, 11, 12.

LIMITATION.

1. Under the fourth section of the act of April 10th, 1806, ch. 21, although the condition of a marshal's bond is broken, by his neglecting to bring money into court, directed to be so brought in or to pay it over to the party, yet, if the proceedings be suspended by appeal, so that the party injured has no right to demand the money, or to sue for the recovery of it, his right of action has not accrued, so as to bar it, if not commenced within six years. *Montgomery v. Hernandez*.....*129
2. An acknowledgment of the debt, by the personal representatives of the original debtor, deceased, will not take the case out of the statute of limitations. *Thompson v. Peter*.....*565

LOCAL LAW.

1. Under the act of North Carolina of 1782, for the relief of the officers and soldiers in the

continental line, &c., the commissioners having determined, that the French lick was within the reservations of the statute, as public property, and having surveyed the said reservation in 1784, the same was protected from individual survey and location, although it exceeded the quantity of 640 acres. *Edwards's Lessee v. Darby*. . . . *206

2. The French lick reservation has not been since subjected to appropriation, by entry and survey, as vacant land, by any subsequent statute of North Carolina or Tennessee. . . *Id.*
3. This court adopts the local law of real property, as ascertained by the decisions of the state courts; whether those decisions are grounded on the interpretation of statutes, or on unwritten law which has become a fixed rule of property in the state. *Jackson v. Chew*. *153
4. Cases reviewed, in which this court has recognised the state decisions as conclusive of questions of local law. *Id.* *168
5. A question in equity as to the title to a lot of land, in the town of Lexington, Kentucky, reserved as public property, and claimed as having been appropriated by the plaintiff's ancestor. Bill dismissed, under the circumstances of the case. *McConnell v. Town of Lexington*. *582
6. The act of May 8th, 1820, ch. 595, "for the relief of the legal representatives of Henry Willis," did not authorize them to enter lands within the tract surveyed and laid off for the town of Claiborne, in the state of Alabama. *Chotard v. Pope*. *587
7. On the construction of the statute of Virginia, emancipating slaves brought into that state in 1792, unless the owner removing with them should take a certain oath, within sixty days after such removal, the fact of the oath having been taken, may be presumed, by the lapse of twenty years, accompanied with possession. *Mason v. Matilda*. *590
8. Under the statute of Virginia, giving to debts due on protested bills of exchange, the rank of judgment-debts, a joint indorser, who has paid more than his proportion of the debt, has a right to satisfaction out of the assets of his co-indorser, with the priority of a judgment-creditor. *Lidderdale v. Robinson*. *595
9. A concession of lands, made by the Spanish authorities at Mobile, in the year 1806, cannot be given in evidence, to support an ejectment, in the courts of the United States, the same not having been recorded, or passed upon by the board of commissioners, or register of the land-office, established by the acts of congress, relating to land titles in that country. *De la Croix v. Chamberlain*. *599

See LIEN: TREATY, 1-3

PAYMENT.

1. Application of payments. *McGill v. Bank of the United States*. *611

POWER.

See DEVISE, 4-6

PRACTICE.

1. A stipulation taken in an admiralty suit, is a substitute for the thing itself, and the stipulators are amenable to the exercise of all those powers which the court could enforce, if the thing itself were still in its custody. *The Palmyra*. *1, 10
2. In every case of a proceeding for condemnation, upon captures made by the public ships of war of the United States, whether as of prize strictly *jure belli*, or under statutes of congress in the nature of prize ordinances, the proceedings are in the name of the United States, who prosecute for themselves as well as the captors, and the latter cannot control the proceedings. *Id.* *11
3. The strictness of technical common law forms is not indispensable in proceedings *in rem* in the admiralty. In general, in a libel for a forfeiture, it is sufficient to allege the offence in the words of the statute. *Id.* *13
4. A previous prosecution *in personam* against the offenders, is not necessary, under the piracy act, to found the proceeding *in rem* against the captured property. *Id.* *14
5. Where an objection to the testimony of the seizing officer is waived, in the court below, an objection to it, on the ground of interest, cannot be made on appeal. *Id.* *18
6. Where the burden of proof of certain specific defences set up by the defendant is on him, and the evidence presents contested facts, an absolute direction from the court, that the matters produced and read in evidence on the part of the defendant, were sufficient in law to maintain the issue on his part, and that the jury ought the render their verdict in favor of the defendant, is erroneous; and a judgment rendered upon a verdict purporting to have been given under such a charge, will be reversed, although the record was made up, as upon a bill of exceptions, taken at a trial before the jury, upon the matters in issue, no such trial ever having taken place, and the case having assumed that shape, by the agreement of the parties, in order to take the opinion of the court upon certain questions of law. *United States v. Tillotson*. *170
7. This court cannot take jurisdiction of a question, on which the opinions of the judges

- of the circuit court are opposed, where the division of opinion arises upon some proceeding subsequent to the decision of the cause in that court. *Devereaux v. Marr*.....*212
8. The opinion of the court, or the reasons given for its judgment (unless in the case of instructions to the jury, spread upon the record by a bill of exceptions), form no part of the record, within the meaning of the above 25th section. Nor are they made a part of the record, by the local law of a state, requiring the judges to file their opinions in writing, among the papers in the cause. *Williams v. Norris*.....*117
9. No orders in the state court, after the removal of the record into this court (not made by way of amendment, but introducing new matter), can be brought into the record here. The cause must be heard and determined upon the record, as it stood when removed.....*Id.*
10. The judgment of the highest court of law of a state, deciding in favor of the validity of a statute of a state, drawn in question on the ground of its being repugnant to the constitution of the United States, is not a final judgment, within the 25th section of the judiciary act of 1789, ch. 20, if the suit has been remanded to the inferior state court where it originated, for further proceedings according to law. *Winn v. Jackson*....*135
11. Objections to the form and sufficiency of an indictment may, in the discretion of the court, be discussed and decided, during the trial before the jury; but, generally speaking, they ought regularly to be considered only upon a motion to quash the indictment, or in arrest of judgment, or on demurrer. *United States v. Gooding*.....*460
12. In criminal proceedings, the *onus probandi* rests upon the prosecutor, unless a different provision is expressly made by statute....*Id.*
13. Where two or more persons are jointly charged, in the same indictment, with a capital offence, they have not a right, by law, to be tried separately, without the consent of the prosecutor; but such separate trial is a matter to be allowed in the discretion of the court. *United States v. Marchant*....*480
14. No judgment or decree can be rendered directly against the United States, for costs and expenses. *The Antelope*.....*546
15. The fees and compensation of the marshal, where the government is a party to the suit, and his fees or compensation are chargeable to the United States, are to be paid out of the treasury, upon a certificate of the amount, to be made by the court, or one of the judges.....*Id.*
- 16 An injunction out of the circuit court, to stay proceedings on a judgment at law in that court, may issue, notwithstanding the pendency of a writ of error on the judgment in this court. *Parker v. Judges of the Circuit Court of Maryland*.....*561
17. An injunction issued by order of the district judge, expires at the next term of the court, unless continued by the court; but the denial of several successive motions to dissolve the injunction, may, under circumstances, be considered as equivalent to an order for renewing it.....*Id.*
18. The bail is fixed by the death of the principal after the return of the *ca. sa.*, and before the return of the *scire facias*; and the bail is not entitled to an *exoneretur* in such a case. *Davidson v. Taylor*.....*604

See ADMIRALTY: DEVISE, 7.

SALE.

1. Upon a sale, with a warranty of soundness, or where, by the special terms of the contract, the vendee is at liberty to return the article sold, an offer to return it, is equivalent to an offer accepted by the vendor, and the contract being thereby rescinded, it is a defence to an action for the purchase-money, brought by the vendor, and will entitle the vendee to recover it back, if it has been paid. *Thornton v. Wynn*.....*183
2. So, if the sale be absolute, and the vendor afterwards consent, unconditionally, to take back the article, the consequences are the same.....*Id.*
3. But if the sale be absolute, and there be no subsequent consent to take back the article, the contract remains open, and the vendee must resort to his action upon the warranty, unless it be proved, that the vendor knew of the unsoundness of the article, and the vendee tendered a return of it, within a reasonable time.....*Id.*
4. Question as to the sufficiency of a notice of sale of real property, under a deed of trust. *Newman v. Jackson*.....*571
5. No particular form of such a notice is prescribed by law; it is sufficient, if the description of the land is reasonably certain, so as to inform the public of the property to be sold.....*Id.*

STATUTES OF MISSOURI.

See LIEN.

STATUTES OF NEW YORK.

See LOCAL LAW, 3, 4: DEVISE, 1-8.

STATUTES OF NORTH CAROLINA.

See LOCAL LAW, 1, 2.

STATUTES OF VIRGINIA.

See LOCAL LAW, 8, 9.

SURETY.

1. The act of May 15th, 1820, ch. 625, § 2, which requires new sureties to be given by certain public officers, on or before the 30th of September 1820, does not expressly, or by implication, discharge the former sureties from their liability. *United States v. Nicholl* *505
2. The sureties are not responsible for moneys placed by the government in the hands of the principal, after the legal termination of his office; but they are responsible for moneys which came into his hands, while in office, and which he subsequently failed to account for, and pay over. *Id.*
3. In general, *laches* is not imputable to the government: But *quære?* whether, in case there is an express agreement between the government and the principal, giving time to the latter, and suspending the right of the former to sue, the sureties are not discharged, as in a similar case between private individuals? *Id.*
4. A mere proposition to give time, and suspend the right to sue, upon certain conditions and contingencies, which are not proved to have been complied with, or to have happened, will not discharge the sureties. *Id.*
5. The cases of *United States v. Kirkpatrick*, 9 Wheat. 920, and *United States v. Vanzandt*, 11 *Id.* 184, applied to the determination of the above case. *Id.*
6. A. W. McG. gave a bond to the Bank of the United States, with sureties, conditioned for the faithful performance the duties of the office of cashier of one of the offices of discount and deposit, during the term he should hold that office; the president and directors of the bank having discovered that he had been guilty of a gross breach of trust, passed a resolution, at Philadelphia, on the 27th of October 1820, "that A. W. McG., cashier, &c., be and he is hereby suspended from office, till the further pleasure of the board be known;" and another resolution, "that the president of the office at Middletown, be authorized and requested to receive into his care, from A. W. McG., the cashier, the cash, bills discounted, books, papers and other property in said office, and to take such measures for having the duties of cashier discharged, as he

may deem expedient;" these resolutions were immediately transmitted by mail to the president of the office, at Middletown, who received them on the morning of Sunday, the 29th of the same month, but did not communicate them to the cashier, nor carry them into effect, until the afternoon of the 30th, between four and five o'clock: *Held*, that the sureties continued liable for his defaults, until that time. *McGill v. Bank of United States*. *511

7. On such a bond, the recovery against the sureties is limited to the penalty. *Id.*
8. Partial payments having been made by the sureties (subject to all questions), the application of these payments was made by deducting them from the penalty of the bond, and allowing interest on the balance thus resulting, from the commencement of the suit, there having been no previous demand of the penalty, nor acknowledgment that the whole was due. *Id.*
9. But interest was refused to the sureties on the payments. *Id.*
10. An agreement between the creditor and principal debtor for delay, or otherwise changing the nature of the contract, to the prejudice of the surety, in order to discharge the latter, must be an agreement having a sufficient consideration, and binding in law upon the parties. *McLemore v. Powell* *555

See GUARANTEE.

TREATY.

1. A grant made by the British governor of Florida, after the declaration of independence, within the territory lying between the Mississippi and the Chatahouchee rivers, and between the 31st degree of north latitude, and a line drawn from the mouth of the Yazoo river, due east, to the Chatahouchee, is invalid, as the foundation of title, in the courts of the United States. *Harcourt v. Gaillard*. *523
2. Spanish grants, made after the treaty of peace of 1782 between the United States and Great Britain, within the territory east of the river Mississippi, and north of a line drawn from that river at the 31st degree of north latitude, east, to the middle of the river Apalachicola, have no intrinsic validity, and the holders must depend for their titles exclusively on the laws of the United States. *Henderson v. Poindexter's Lessee*. *531
3. No Spanish grant, made while the country was wrongfully occupied by Spain, can be valid, unless it was confirmed by the compact between the United States and the state of Georgia, of the 24th of April 1802, or has been laid before the board of commissioners

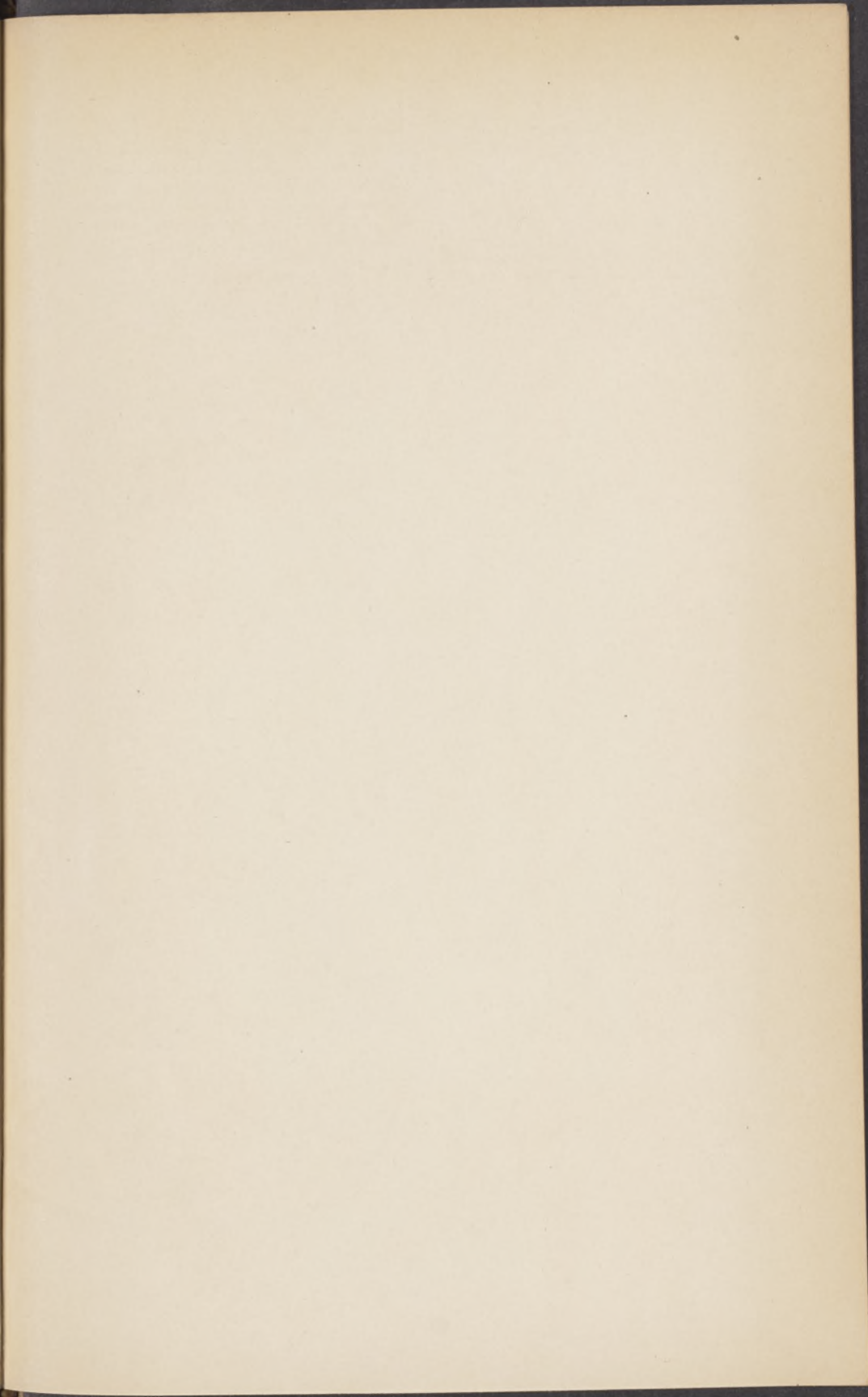
constituted by the act of congress of the 3d of March, 1803, ch. 340, and of March, 27th, 1804, ch. 414.....*Id.*

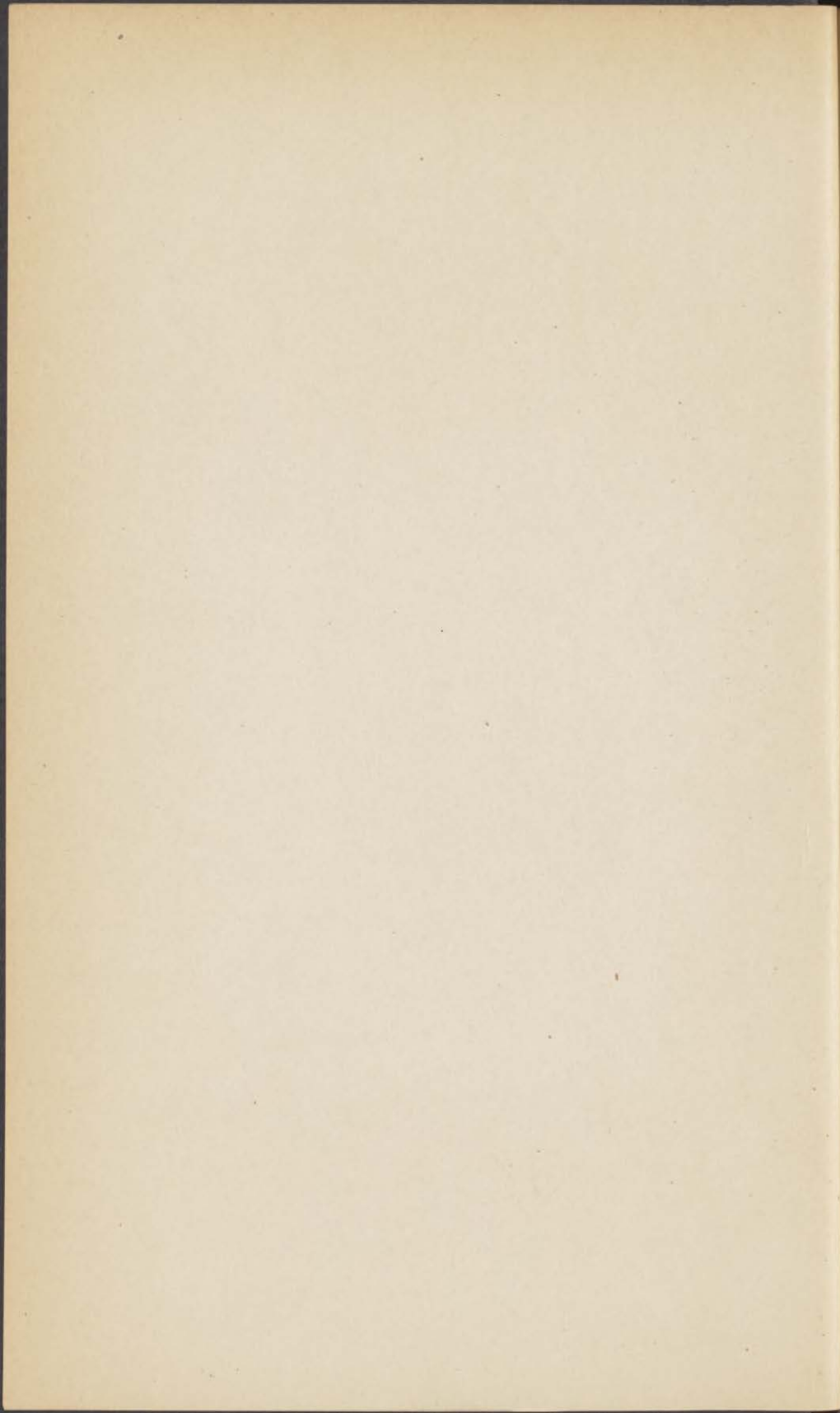
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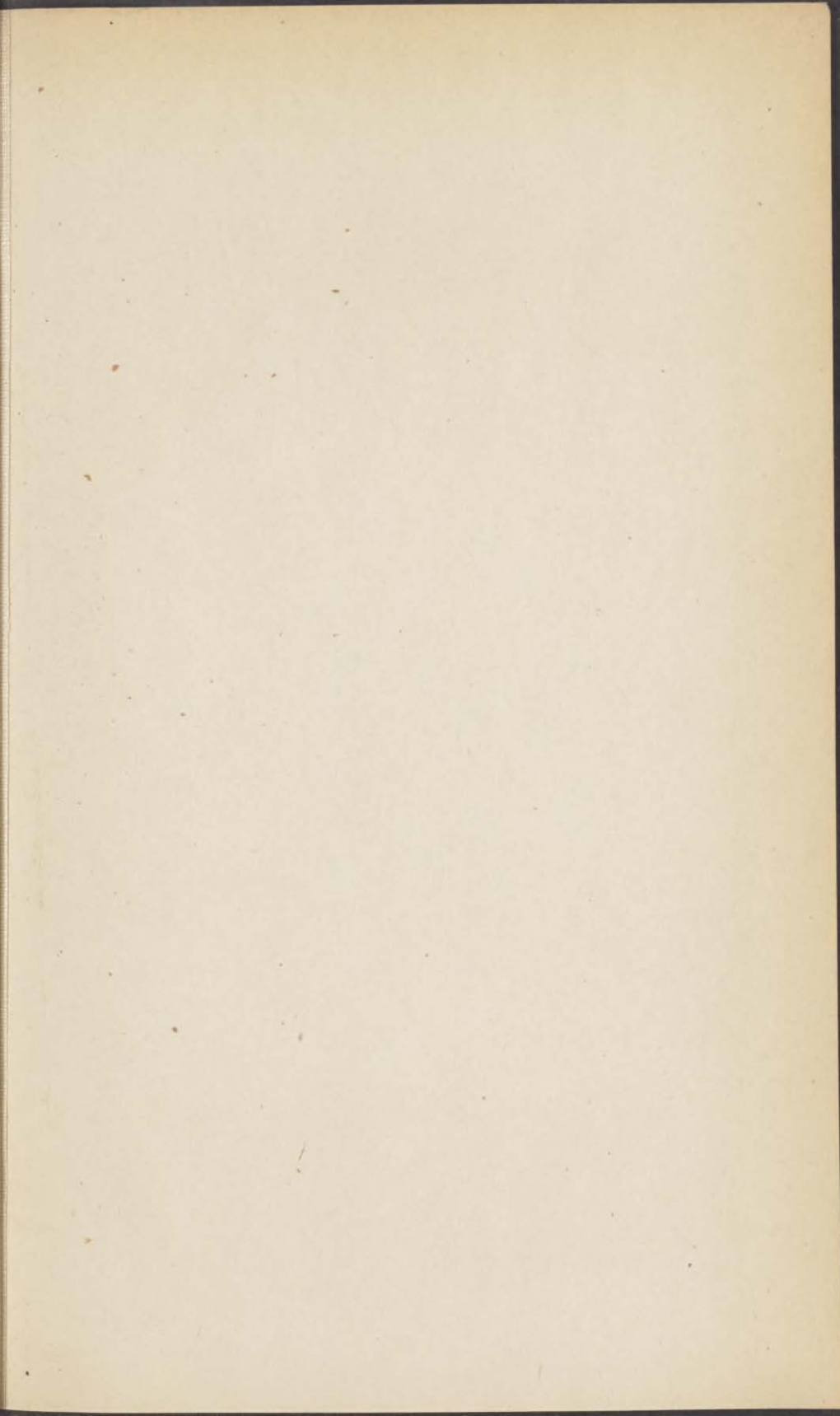
1. A testamentary paper, executed in a foreign country, so as to give it the effect of a last
418

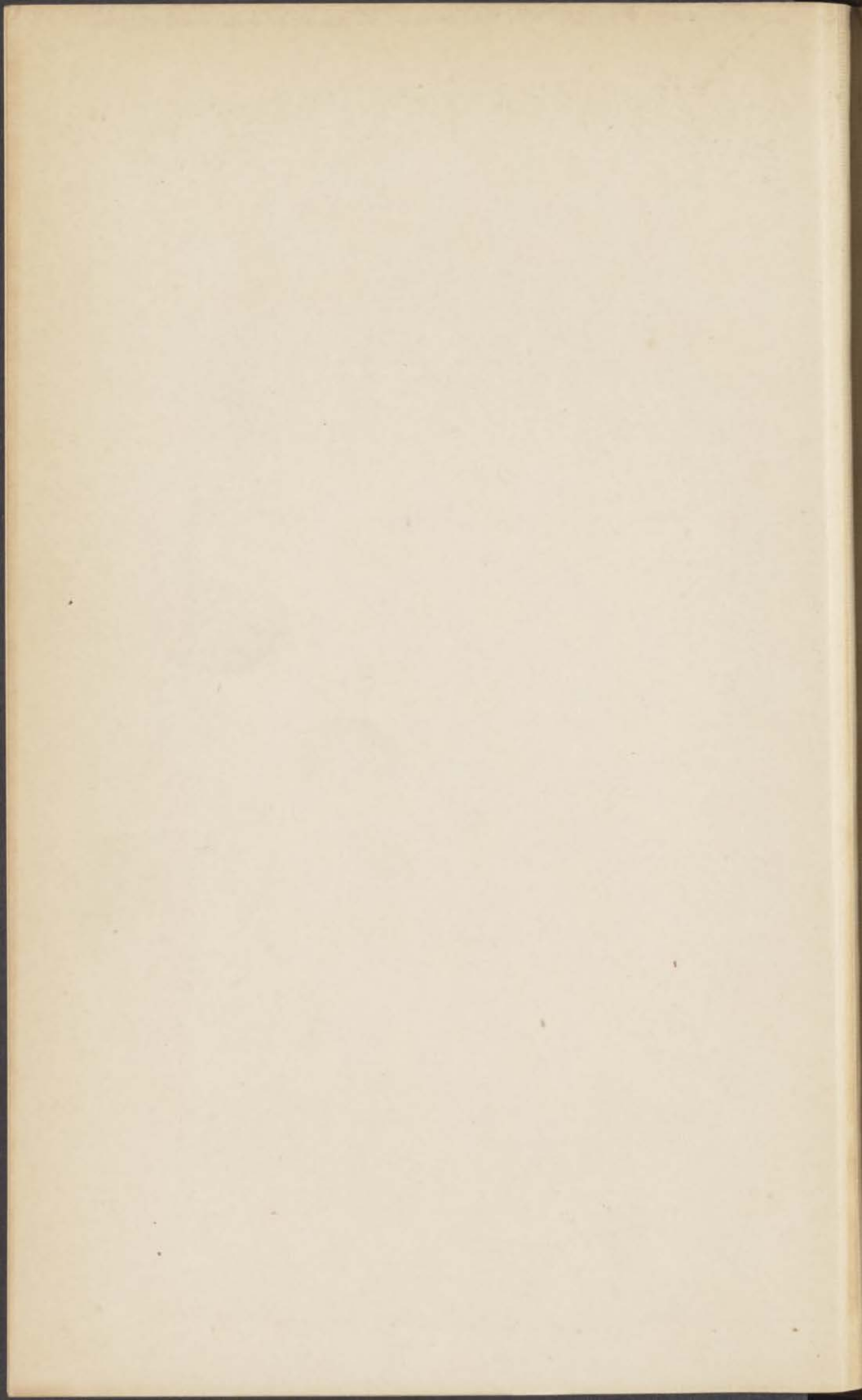
will and testament, by the foreign law, cannot be made the foundation of a suit for a legacy, in a court of equity in this country, until it has received probate here, in the proper court having the peculiar jurisdiction of the probate of wills, and other testamentary matters.
Armstrong v. Lear.....*169

See DEVISE.









25 U. S.

Set 1

