INDEX

TO THE

PRINCIPAL MATTERS CONTAINED IN THIS VOLUME.

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

ACTION.

1. In England, any instrument or claim, though not negotiable, may be assigned to the king, who can sue upon it in his own name; no valid objection is perceived against giving the same effect to an assignment to the government of this country. *United States* v. *Buford*..... ...*30

ADMIRALTY.

1. In admiralty cases, a decree is not final, while an appeal from the same is depending in this court, and any statute which governs the case must be an existing valid statute, at the time of affirming the decree below. *United States* v. *Preston*..... *65

AGENT AND PRINCIPAL.

1. C. & Co., merchants of Boston, owners of a ship, proceeding on freight, from Havana, to the consignment of B. & Co., at Leghorn, and to return to Havana, instructed B. & Co. to invest the freight, estimated at 4600 petsos; 2200 in marble tiles, and the residue, after paying disbursements, in wrapping paper; B. & Co. undertook to execute these orders; instead, however, of investing 2200 petsos in marble, they invested all the funds which came into their hands in wrapping paper, which was received by the master of the ship, and was carried to Havana, and there sold on account of C. & Co., and produced a loss, instead of the profit, which would have resulted had the investment been made in marble tiles. As soon as information of the breach of orders was received, C. & Co. addressed a letter to B. & Co., expressing in strong terms their disapprobation of the departure from their orders, but did not signify their determination to disavow the transaction entirely, and consider the paper as sold on account of B. & Co.: *Held*, that C. & Co. were entitled to recover damages for the breach of their orders; that their not having given notice to B. & Co., that the paper would be considered as sold on their account, did not prejudice their claim; and that the amount of the damages might be determined by the positive and direct loss arising plainly and immediately from the breach of the orders. *Bell* v. *Cunningham*..... *69
2. If a principal, after knowledge that his orders have been violated by his agent, receive merchandise purchased for him contrary to orders, and sell the same, without signifying any intention of disavowing the acts of the agent, an inference in favor of the ratification of the acts of the agent may fairly be drawn by the jury; but if the merchandise was received by the principal, under a just confidence that his orders to his agent had been faithfully executed, such an inference would be in a high degree unreasonable..... *Id.*
3. The faithful execution of orders which an agent or correspondent has contracted to execute, is of vital importance in commercial transactions, and may often affect the injured party far beyond the actual sum misapplied; a failure in this respect may entirely break up a voyage and defeat the whole enterprise. Speculative damages, dependent on possible successive schemes, ought not to be given in

such cases; but positive and direct loss, resulting plainly and immediately from the breach of orders, may be taken into the estimate..... *Id.*

4. The jury, in an action for damages for breach of orders, may compensate the plaintiffs for actual loss, but not give vindictive damages; the profits which would have been obtained on the sale of the article directed to be purchased, may be properly allowed as damages..... *Id.*
5. The general rule is, that the principal is bound by the act of his agent no further than he authorizes that agent to bind him; but the extent of the power given to an agent is decided as well from facts as from express delegation; in the estimate or application of such facts, the law has regard to public security, and often applies the rule "that he who trusts must pay;" so also, collusion with an agent, to get a debt paid through the intervention of one in failing circumstances, has been held to make the principal liable, on the ground of immoral dealing. *Parsons* v. *Armor*..... ..... *428

ALEXANDRIA, DISTRICT OF COLUMBIA.

See case of Fowle *v.* Common Council of Alexandria, p. *398, as to the powers of the Corporation of Alexandria.

ALIEN AND ALIENAGE.

See the cases of Inglis *v.* Trustees of the Sailor's Snug Harbour, p. *99; and Shanks *v.* Dupont, p. *242.

ALLEGIANCE.

1. What are the rights of the individuals composing a society, and living under the protection of the government, when a revolution occurs, a dismemberment takes place, and when new governments are formed, and new relations between the government and the people are established. A person born in New York, before the 4th of July 1776, and who remained, an infant, with his father, in the city of New York, during the period it was occupied by the British troops, his father being a royalist, and having adhered to the British government, and left New York with the British troops, taking his son with him, who never returned to the United States, but afterwards became a bishop of the Episcopal church in Nova Scotia; such a person was born a British subject, and continued an alien, and is disabled from taking land by inheritance, in the state of New York. *Inglis* v. *Trustees of the Sailor's Snug Harbour*..... *199
2. If such a person had been born after the 4th of July 1776, and before the 15th of September 1776, when the British troops took possession of the city of New York and the adjacent places, his infancy incapacitated him from taking an election for himself, and his election and character followed that of his father; subject to the right of disaffirmance, in a reasonable time after the termination of his minority; which never having been done, he remained a British subject, and disabled from inheriting land, in the state of New York..... *Id.*
3. The rule as to the point of time at which the American *ante-nati* ceased to be British subjects, differs in this country and in England, as established by the courts of justice in the respective countries; the English rule is, to take the treaty of peace in 1783; our rule is, to take the date of the declaration of independence..... ..... *Id.*
4. The settled doctrine in this country is, that a person born here, but who left the country before the declaration of independence, and never returned here, became an alien, and incapable of taking lands subsequently by descent; the right to inherit depends upon the existing state of allegiance, at the time of the descent cast ..... *Id.*
5. The doctrine of perpetual allegiance is not applied by the British courts to the American *ante-nati;* and this court, in the case of Blight's Lessee *v.* Rochester, 7 Wheat. 544, adopted the same rule with respect to the right of British subjects here—That although born before the revolution, they are equally incapable with those born subsequent to that event, of inheriting or transmitting the inheritance of lands in this country..... *Id.*
6. The British doctrine, therefore, is, that the American *ante-nati*, by remaining in America, after the peace, lost their character of British subjects; and our doctrine is, that by withdrawing from this country, and adhering to the British government, they lost, or, perhaps, more properly speaking, never acquired the character of American citizens ..... *Id.*
7. The right of election must necessarily exist, in all revolutions like ours, and is well established by adjudged cases..... *Id.*
8. This court, in the case of McIlvaine's Lessee *v.* Coxe, 4 Cranch 111, fully recognised the right of election; but they considered that Mr. Coxe had lost that right, by remaining in the state of New Jersey, not only after she had declared herself a sovereign state, but after she had passed laws by which she declared him to be a member of, and in allegiance to, the new government..... *Id.*

9. Allegiance may be dissolved by the mutual consent of the government and citizens or subjects; the government may release the governed from their allegiance; this is even the British doctrine..... *Id.*
10. Thomas Scott, a native of South Carolina, died in 1782, intestate, seised of land on James Island, having two daughters, Ann and Sarah, both born in South Carolina, before the declaration of independence; Sarah married D. P., a citizen of South Carolina, and died in 1802, entitled to one-half the estate; the British took possession of James Island and Charleston, in February and May 1780; and in 1781, Ann Scott married Joseph Shanks, a British officer, and at the evacuation of Charleston, in 1782, she went to England, with her husband, where she remained until her death, in 1801; she left five children, born in England; they claimed the other moiety of the real estate of Thomas Scott, in right of their mother, under the ninth article of the treaty of peace between this country and Great Britain, of the 19th of November 1794: *Held*, that they were entitled to recover and hold the same. *Shanks* v. *Dupont*..... *242
11. If Ann Scott was of age, before December 1782, as she remained in South Carolina until that time, her birth and residence must be deemed to constitute her, by election, a citizen of South Carolina, while she remained in that state; if she was not of age then, under the circumstance of this case, she might well be deemed to hold the citizenship of her father; for children born in a country, continuing, while under age, in the family of the father, partake of his natural character as a citizen of that country..... *Id.*
12. All British born subjects, whose allegiance Great Britain has never renounced, ought, upon general principles of interpretation, to be held within the intent, as they certainly are within the words, of the treaty of 1794..... *Id.*
13. The capture and possession of James Island, in February 1780, and of Charleston, on the 11th of May, in the same year, by the British troops, was not an absolute change of the allegiance of the captured inhabitants; they owed allegiance to the conquerors, during the occupation; but it was a temporary allegiance, which did not destroy, but only suspended, their former allegiance..... *Id.*
14. The marriage of Ann Scott with Shanks, a British officer, did not change or destroy her allegiance to the state of South Carolina, because marriage with an alien, whether friend or enemy, produces no dissolution of the native allegiance of the wife..... *Id.*
15. The general doctrine is, that no persons can, by any act of their own, without the consent of the government, put off their allegiance and become aliens..... *Id.*
16. The subsquent removal of Ann Shanks to England, with her husband, operated as a virtual dissolution of her allegiance, and fixed her future allegiance to the British crown, by the treaty of peace in 1783..... *Id.*
17. The treaty of 1783 acted upon the state of things, as it existed at that period; it took the actual state of things as its basis; all those, whether natives or otherwise, who then adhered to the American states, were virtually absolved from all allegiance to the British crown; all those who then adhered to the British crown, were deemed and held subjects of that crown; the treaty of peace was a treaty operating between states, and the inhabitants thereof..... *Id.*

AMENDMENT.

1. This court has repeatedly decided, that the exercise of the discretion of the court below, in refusing or granting amendments of pleadings, or motions for new trials, affords no ground for a writ of error; in overruling a motion for leave to withdraw a replication and file a new one, the court exercised its discretion, and the reason assigned, as influencing that discretion, cannot affect the decision. *United States* v. *Buford*..... *31

AMERICAN REVOLUTION.

For the effect of the American revolution, on the right of persons born in the British colonies in America, before the revolution, and born in the United States during the revolution, and before the treaty of peace, see the cases of Inglis *v.* Trustees of The Sailor's Snug Harbour, p. *99, and Shanks *v.* Dupont, p. *242.

APPEAL.

1. In admiralty cases, a decree is not final, while an appeal from the same is depending in this court, and any statute which governs the case must be an existing valid statute, at the time of affirming the decree below. *United States* v. *Preston*..... *65
2. The Josefa Segunda, having persons of color on board of her, was, on the 11th of February 1818, found hovering on the coast of the United States, and was seized and brought into New Orleans, and the vessel and the persons on board were libelled in the district court of the United States of Louisiana, under the act of congress of the 2d of March

1807; after the decree of condemnation below, but pending the appeal to this court, the sheriff of New Orleans went on, with the consent of all the parties to the proceedings, to sell the persons of color as slaves, and $65,000, the proceeds, were deposited in the registry of the court, to await the final disposal of the case. By the 10th section of the act of the 30th of April 1818, the first six sections of the act were repealed, and no provision was made, by which the condition of the persons of color, found on board a vessel hovering on the coast of the United States, was altered from that in which they were placed under the act of 1807, no power having been given to dispose of them, otherwise than to appoint some one to receive them; the 7th section of the act of 1818, confirmed no other sales previously or subsequently made under the state laws, but those of illegal importation, and did not comprise the case of a condemnation under the 7th section. The final condemnation of the persons on board the Josefa Segunda took place in this court, on the 13th of March 1820, after congress had passed the act of the 3d of March 1819, entitled "an act in addition to an act prohibiting the slave-trade," by the provisions of which, persons of color brought in under any of the acts prohibiting traffic in slaves, were to be delivered to the President of the United States to be sent to Africa; the condemnation could not affect them.. *Id.*

3. Where an appeal has been dismissed, the appellant having omitted to file a transcript of the record, within the time required by the rule of court, an official certificate of the dismissal of the appeal may not be given by the clerk, during the term; the appellant may file the transcript with the clerk, during the term, and move to have the appeal reinstated; to allow such a certificate, would be to prejudge such a motion. *Bank of United States* v. *Swann* *68

4. It is of great importance to the due administration of justice, and in furtherance of the manifest intention of the legislature, in giving appellate jurisdiction to this court upon final decrees only, that causes should not come up here in fragments or successive appeals; it would occasion very great delays, and oppressive expenses. *Canter* v. *American and Ocean Insurance Companies*...*307

ASSUMPSIT.

1. When money of the United States has been received by one public agent, from another public agent, whether it was received in an official or private capacity, there can be no doubt, but that it was received to the use of the United States; and they may maintain an action of *assumpsit* against the receiver for the same. *United States* v. *Buford*.... *28

BARRATRY.

1. What is barratry: its definition. *Patapsco Insurance Company* v. *Coulter*..... *222

2. The British courts have adopted the safe and legal rule, in deciding, that where the policy covers the risk of barratry, and fire is the proximate cause of the loss, they will not sustain the defence, that negligence was the remote cause, and will hold the insurers liable for the loss... .... *Id.*

3. The rule that a loss, the proximate cause of which is a peril insured against, is a loss within the policy, although the remote cause may be negligence of the master or mariners, has been affirmed in several successive cases in the English courts..... *Id.*

BILLS OF EXCHANGE.

1. F., at New Orleans, was the correspondent of P., at Boston, received goods from him on consignment, and was, from time to time, directed to purchase produce, and ship the same to P., and was instructed to draw on P. for the funds to pay for the same; when he made purchases, "the bills of parcels were made out in the name of F., and the accounts entered in the books of the different merchants, in his name; the general course of the business was, that P. sent out, in his own vessels, merchandise to F., which was sold by F., and F., at the request of P., purchased from merchants in New Orleans, produce, and shipped the same as ordered by P.; and to put himself in funds for the same, when necessary, drew bills of exchange on P., who had always, until the presentation of the bills on which this suit was brought, accepted and paid the same; but he did not, in his purchases, act under the idea, that he was restricted in his purchases to the drawing of bills for the payment of the articles purchased for P. F. purchased a quantity of tobacco to be shipped to P.; and payment for the same in bills on P., made a particular part of the contract for the purchase; at the time of the purchase, F. showed to the vendor of the tobacco the letters from P., ordering the purchase and shipment of the same; some of the bills drawn by F. on P., and which were delivered to the vendor of the tobacco, in payment for the same, were refused acceptance and payment, and this suit was instituted for the recovery of the amount of the bills from P.: *Held*, that P.

was not liable to pay the bills. *Parsons* v. *Armor*..... *413

2. A bill of exchange in the substitute for the actual transmission of money by sea or land; power, therefore, to draw on a house in good credit, and to throw the bills upon the market, is equivalent to a deposit of cash in the vaults of the agent. There is not the least tittle of evidence in this cause, to show that P. meant to use the credit of the drawer of the bills on which this suit is brought, or to authorize him to pledge his credit in anything but the negotiation of the bills; this depended on the confidence which merchants of New Orleans, who wished to remit, would place in the solvency and integrity of the drawer and drawee; and had no connection whatever with the application of the money thus raised, to the purchases ordered by the principal; as to those purchases, the agent was authorized to go no further than to apply the funds deposited with him .... *Id*
3. Of the general power to protest the bills of one who has overdrawn, there can be no question; for it is the only security which one who gives a power to draw bills, and throw them on the market, has against the bad faith of his correspondent; he takes the risk of paying the damages, if in fault; of throwing them on the other, if he has actually abused his trust: it is a question between him and his correspondent..... *Id.*
4. The currency which a merchant may give to bills drawn on him by a correspondent, by payment of such bills, does not deprive him of the security he has a right to, by refusing his acceptance of other bills so drawn.. *Id.*

BRITISH TREATY.

1. For the effect of British treaties of 1783 and 1794, on the claims of British subjects born in America before the treaty of peace, see the case of Inglis *v.* Trustees of the Sailor's Snug Harbour, p. 99, and Shanks *v.* Dupont. p. *242.
2. Thomas Scott, a native of South Carolina, died in 1782, intestate, seised of land on James Island, having two daughters, Ann and Sarah, both born in South Carolina before the declaration of independence; Sarah married D. P., a citizen of South Carolina, and died in 1802, entitled to one-half of the estate; the British took possession of James Island and Charleston, in February and May 1780; and in 1781, Ann Scott married Joseph Shanks, a British officer, and at the evacuation of Charleston, in 1782, she went to England, with her husband, where she remained until her death, in 1801; she left five children, born in England; they claimed the other moiety of the real estate of Thomas Scott, in right of their mother, under the ninth article of the treaty of peace between this country and Great Britian, of the 19th of November 1794: *Held*, that they were entitled to recover and hold the same. *Shanks* v. *Dupont*..... *242
3. All British born subjects, whose allegiance Great Britain has never renounced, ought, upon general principles of interpretation, to be held within the intent, as they certainly are within the words, of the treaty of 1794..... *Id.*
4. The treaty of 1783 acted upon the state of things as it existed at that period; it took the actual state of things as its basis; all those, whether natives or otherwise, who then adhered to the American states, were virtually absolved from all allegiance to the British crown; all those who then adhered to the British crown were deemed and held subjects of that crown; the treaty of peace was a treaty operating between states, and the inhabitants thereof..... *Id.*

CHANCERY.

1. The courts of the United States have equity jurisdiction to rescind a contract on the ground of fraud, after one of the parties to it has been proceeded against on the law side of the court, and a judgment has been obtained against him for a part of the money stipulated to be paid by the contract. *Boyce's Executors* v. *Grundy*.....*210
2. It is not enough, that there is a remedy at law: it must be plain and adequate, or, in other words, as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity..... *Id.*
3. It cannot be doubted, that reducing an agreement to writing is, in most cases, an argument against fraud; but it is very far from a conclusive argument: the doctrine will not be contended for, that a written agreement cannot be relieved against, on the ground of false suggestions .....*Id.*
4. It is not an answer to an application to a court of chancery for relief in rescinding a contract, to say, that the fraud alleged is partial, and might be the subject of compensation by a jury; the law, which abhors fraud, does not permit it to purchase indulgence, dispensation or absolution..... *Id.*

CHARITABLE USES.

See the case of Inglis *v.* Trustees of the Sailors' Snug Harbour, p. 99.

CHOSES IN ACTION, ASSIGNMENT OF.

See ACTION.

CIRCUIT COURTS.

See Ex parte Tobias Watkins, p. *193, for the jurisdiction of the Circuit Court of the District of Columbia in criminal cases.

CLERICAL ERROR.

1. A commission was issued in the name of Richard M. Meade, the name of the party being Richard W. Meade; this is a clerical error, and does not affect the execution of the commission. *Keene* v. *Meade*.....*1

COLUMBIA, DISTRICT OF.

For the jurisdiction of the Circuit Court of the District of Columbia in criminal cases, see Ex parte Tobias Watkins, p. *193.

COMMISSION.

1. A commission was issued in the name of Richard M. Meade, the name of the party being Richard W. Meade; this is a clerical error, in making out the commission, and does not affect the execution of the commission. *Keene* v. *Meade*..... *1
2. It is not known, that there is any practice in the execution or return of a commission requiring a certificate in whose handwriting the depositions returned with the commission were set down; all that the commission requires is, that the commissioners, having reduced the depositions taken by them to writing, should send them, with the commission, under their hands and seals, to the judges of the court out of which the commission issued; but it is immaterial, in whose handwriting the depositions are; and it cannot be required that they should certify any immaterial fact..... *Id.*
3. A certificate by the commissioners, that A. B., whom they were going to employ as a clerk, had been sworn, admits of no other reasonable interpretation, than that A. B. was the person appointed by them as clerk ..... *Id.*
4. It is not necessary to return with the commission, the form of the oath administered by the commissioners to the witnesses; when the commissioners certify, the witnesses were sworn, and the interrogatories annexed to the commission were all put to them, it is presumed, that they were sworn and examined as to all their knowledge of the facts.. *Id.*

COMMON LAW.

1. By "common law," the framers of the constitution of the United States, meant, what the constitution denominated in the third article "law;" not merely suits which the common law recognised among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined in contradistinction to those where equitable rights alone were regarded, and equitable remedies were administered, or, where, as in the admiralty, a mixture of public law and of maritime law and equity was often found in the same suit. *Parsons* v. *Bedford*...*434

CONDITION.

1. The testator was seised of a very large real and personal estate, in the states of Virginia, Kentucky, Ohio and Tennessee; after making by his will, in addition to her dower, a very liberal provision for his wife, for her life, out of part of his real estate, and devising, in case of his having a child or children, the whole of his estate to such child or children, with the exception of the provision for his wife and certain other bequests his will declared: "in case of having no children, I then leave and bequeath all my real estate, at the death of my wife, to William King, son of brother James King, on condition of his marrying a daughter of William Trigg's, and my niece, Rachel, his wife, lately Rachel Finlay, in trust for the eldest son, or issue of said marriage; and in case such marriage should not take place, I leave and bequeath said estate to any child, giving preference to age, of said William and Rachel Trigg, that will marry a child of my brother, James King's or of sister Elizabeth's, wife to John Mitchell, and to their issue." The testator died without issue; he survived his father, and had brothers and sisters of the whole and half blood, who survived him, and also a sister of the whole blood, Elizabeth, the wife of John Mitchell, who died before him; William and Rachel Trigg never had a daughter, but had four sons; James King, the father of William King, the devisee, had only one daughter, who intermarried with Alexander McCall; Elizabeth, the wife of John Mitchell, had two daughters, both of whom were married, one to William Heiskill, the other to Abraham B. Trigg. We have found no case in which a general devise in words importing a present interest, in a will making no other disposition of the property, on a condition which may be performed at any time, has been construed, from the mere circumstance that the estate is

given on condition, to require that the condition must be performed before the estate can vest; there are many cases in which the contrary principle has been decided; the condition on which the devise to William King pended, is a condition subsequent. *Finlay* v. *King's Lessee* *346

2. It is certainly well settled, that there are no technical appropriate words which always determine whether a devise be on a condition, precedent or subsequent; the same words have been determined differently, and the question is always a question of intention; if the language of the particular clause, or of the whole will, shows that the act upon which the estate depends must be performed before the estate can vest, the condition, of course, is precedent; and unless it be performed, the devisee can take nothing; if, on the contrary, the act do not necessarily precede the vesting of the estate, but may accompany or follow it, and this is to be collected from the whole will, the condition is subsequent.....*Id.*
3. It is a general rule, that a devise in words of the present time, as, "I give to A. my lands in B.," imports, if no contrary intent appears, an immediate interest, which vests in the devisee, on the death of the testator; it is also a general rule, that if an estate be given on a condition, for the performance of which no time is limited, the devisee has his life for performance; the result of these two principles seems to be, that a devise to A., on condition that he shall marry B., if uncontrolled by other words, takes effect immediately, and the devisee performs the condition, if he marry B., at any time, during his life; the condition is subsequent..... *Id.*
4. As the devise in the will to William King, was on a condition subsequent, it may be construed, so far as respects the time of taking the possession, as if it had been unconditional; the condition opposes no obstacle to his immediate possession, if the intent of the testator shall require that construction.....*Id.*
5. The introductory clause in the will states, "I William King, have thought proper to make and ordain this to be my last will and testament, leaving and bequeathing my worldly estate in the manner following." These words are entitled to considerable influence in a question of doubtful intent, in a case where the whole property is given, and the question arises between the heir and devisee, respecting the interest devised; the words of the particular clause also carry the whole estate from the heir, but they fix the death of testator's wife as the time when the devisee shall be entitled to possession; they are, "in case of having no children, I then leave and bequeath all my real estate, at the death of my wife, to William King, son of brother James King: the whole estate is devised to William King, but the possession of that part of it, which is given to the wife or others for life, is postponed until her death.....*Id.*

CONSTITUTIONAL LAW.

1. The plaintiff in error claimed to recover the land in controversy, having derived his title under a patent granted by the state of New York to John Cornelius; he insisted, that the patent created a contract between the state and the patentee, his heirs and assigns, that they should enjoy the land, free from any legislative regulations to be made in violation of the constitution of the state, and that an act passed by the legislature of New York, subsequent to the patent, did violate that contract. Under that act, commissioners were appointed to investigate the contending titles to all lands held under such patents as that granted to John Cornelius, and by their proceedings, without the aid of a jury, the title of the defendants in error was established against, and defeating the title under a deed made by John Cornelius, the patentee, and which deed was executed under the patent. This is not a case within the clause of the constitution of the United States, which prohibits a state from passing laws which shall impair the obligation of contracts; the only contract made by the state is a grant to John Cornelius, his heirs, and assigns, of the land; the patent contains no covenant to do, or not to do, any further act in relation to the land; and the court are not inclined to create a contract by implication. The act of the legislature of New York does not attempt to take the land from the patentee, the grant remains in full effect; and the proceedings of the commissioners, under the law, operated upon titles derived under, and not adversely to the patent. *Hart* v. *Lamphire* *280
2. It is within the undoubted powers of state legislatures, to pass recording acts, by which the elder grantee shall be postponed to a younger, if the prior deed is not recorded within a limited time, and the power is the same, whether the deed be dated before or after the recording act; though the effect of such a deed is to render the prior deed fraudulent and void against a subsequent purchaser, it is not a law violating the obligation of contracts. So too, is the power to pass limitation laws; reasons of sound policy have led to the general adoption of laws of this description and their validity cannot be ques-

tioned ; the time and manner of their operation, the exceptions to them and the acts from which the time limited shall begin to run, will generally depend on the sound discretion of the legislature, according to the nature of the titles, the situation of the country, and the emergency which leads to their enactment. Cases may occur where the provisions of a law on these subjects may be so unreasonable as to amount to a denial of a right, and to call for the interposition of this court. . *Id.*

CONSTRUCTION OF STATE STATUTES.

1. It is the uniform rule of this court, with respect to the title to real property, to apply the same rule which is applied in state tribunals in like cases. *Inglis* v. *Trustees of the Sailor's Snug Harbour* *101
2. The right of an absent and absconding debtor to real estate held adversely, passed to and became vested in, the trustees, by the act of the legislature of New York, passed April 4th, 1786, entitled " an act for relief against absconding and absent debtors ".....*Id.*
3. Construction of the statute of limitations of Ohio. *McCluny* v. *Silliman* *270

CONSTRUCTION OF STATUTES OF THE UNITED STATES.

1. The offence against the law of the United States, under the 7th section of the act of congress, passed the 2d day of March 1807, entitled " an act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the 1st of January 1808," is not that of importing or bringing into the United States, persons of color, with intent to hold or sell such persons as slaves, but that of hovering on the coast of the United States with such intent ; and although it forfeits the vessel, and any goods or effects found on board, it is silent as to disposing of the colored persons found on board, any further than to impose a duty upon the officers of armed vessels who make the capture, to keep them safely, to be delivered to the overseers of the poor, the governor of the state, or persons appointed by the respective states to receive the same. *United States* v. *Preston*.....*57
2. The Josefa Segunda, having persons of color on board of her, was, on the 11th of February 1818, found hovering on the coast of the United States, and was seized and brought into New Orleans, and the vessel and the persons on board were libelled in the district court of the United States of Louisana, under the act of congress on the 2d of March 1807 ; after the decree of condemnation below, but pending the appeal to this court, the sheriff of New Orleans went on, with the consent of all the parties to the proceedings, to sell the persons of color as slaves, and $65,000, the proceeds, were deposited in the registry of the court, to await the final deposal of the case. By the 10th section of the act of the 30th of April 1818, the first six sections of the act are repealed, and no provision is made by which the condition of the persons of color, found on board a vessel hovering on the coast of the United States, is altered from that in which they were placed under the act of 1807 ; no power having been given to dispose of them, otherwise than to appoint some one to receive them. The 7th section of the act of 1818, confirms no other sales previously or subsequently made under the state laws, but those for illegal importation, and does not comprise the case of a condemnation under the 7th section. The final condemnation of the persons on board the Josefa Segunda took place in this court, on the 13th of March 1820, after congress had passed the act of the 3d of March 1819, entitled, " an act in addition to an act prohibiting the slave trade," by the provisions of which, persons of color brought in under any of the acts prohibiting the traffic in slaves, were to be delivered to the President of the United States to be sent to Africa : It could not affect such persons of color.....*Id.*
3. In admiralty cases, a decree is not final, while an appeal from the same is depending in this court, and any statute which governs the case must be an existing valid statute, at the time of affirming the decree below ; if therefore, the persons of color who were on board the Josefa Segunda, when captured, had been specifically before the court, on the 13th of March 1820, they must have been delivered up to the President of the United States to be sent to Africa, under the provisions of the act of the 3d of March 1819, and therefore, there is no claim to the proceeds of their sale, under the law of Louisiana, which appropriated the same. The court do not mean to intimate, that the United States are entitled to the money, for there was no power to sell the persons of color..... *Id.*
4. Under the 34th section of the judiciary act of 1789, the acts of limitations of the several states, where no special provision has been made by congress, form a rule of decision in the courts of the United States, and the same effect is given to them as is given in the state courts. *McCluny* v. *Silliman*.....*270

CONTRACT.

See FRAUD, 1.

COPIES.

1. Certified copies of the opinion of the court, delivered in cases decided by the court, are to be given by the reporter, and not by the clerk of the court. *Anon*.....*397

CORPORATION.

1. The plaintiff placed goods in the hands of an auctioneer, in the city of Alexandria, who sold the same and became insolvent, having neglected to pay over the proceeds of the sales to the plaintiff; the auctioneer was licensed by the corporation of Alexandria, and the corporation had omitted to take from him a bond with surety for the faithful performance of his duties as auctioneer; this suit was instituted to recover from the corporation of Alexandria, the amount of the sales of the plaintiff's goods, lost by the insolvency of the auctioneer, on an alleged liability in consequence of the corporation having omitted to take a bond from the auctioneer. The power to license auctioneers, and to take bonds for their good behavior, not being one of the incidents to a corporation, must be conferred by an act of the legislature; and in executing it, the corporate body must conform to the act. The legislature of Virginia conferred this power on the mayor, aldermen and commonalty of the several corporate towns within that commonwealth, of which Alexandria was then one; "provided that no such license should be granted, until the person or persons requesting the same, should enter into bond, with one or more sufficient sureties, payable to the mayor, aldermen and commonalty of such corporation:" This was a limitation of the power. *Fowle* v. *Corporation of Alexandria*.....*398
2. Though the corporate name of Alexandria was "the mayor and commonalty," it is not doubted, that a bond taken in pursuance of the act would have been valid.....*Id.*
3. The act of congress of 1804, "an act to amend the charter of Alexandria," does not transfer generally to the common council, the powers of the mayor and commonalty; but the powers given to them are specially enumerated; there is no enumeration of the power to grant licenses to auctioneers. The act amending the charter, changed the corporate body so entirely as to require a new provision to enable it to execute the powers conferred by the law of Virginia; an enabling clause, empowering the common council to act in a particular case, or some general clause which might embrace the particular case, is necessary under the new organization of the corporate body.....*Id.*
4. The common council granted a license to carry on the trade of an auctioneer, which the law did not empower that body to grant. Is the town responsible for losses sustained by individuals from the fraudulent conduct of the auctioneer? He is not the officer or agent of the corporation, but is understood to act for himself, as entirely as a tavern-keeper or any other person who may carry on any business under a license from the corporate body.....*Id.*
5. Is a municipal corporation, established for the general purchases of government, with limited legislative powers, liable for losses consequent on its having misconstrued the extent of its powers, in granting a license which it had no authority to grant, without taking that security for the conduct of the person obtaining that license, which its own ordinances had been supposed to require, and which might protect those who transact business with the persons acting under the clause? The court finds no case in which this principle has been affirmed.....*Id.*
6. That corporations are bound by their contracts, is admitted; that moneyed corporations, or those carrying on business for themselves, are liable for torts, is well settled; but that a legislative corporation, established as a part of the government of the country, is liable for losses sustained by a nonfeasance, by an omission of the corporate body to observe a law of its own, in which no penalty is provided, is a principle for which we can find no precedent.....*Id.*

COSTS.

1. Costs and expenses are not matters positively limited by law, but are allowed in the exercise of a sound discretion of the court; and no appeal lies from a mere decree respecting costs and expenses. *Canter* v. *American and Ocean Insurance Companies*.....*307

COURTS OF THE UNITED STATES.

1. This action was instituted in the district court of the United States for the eastern district of Louisiana, according to the forms of proceedings adopted and practised in the courts of that state; the cause was tried by a special jury, and a verdict was rendered for the plaintiff; on the trial, the counsel for the defendant moved the court to direct the clerk of the court to take down in writing the testimony of the witnesses examined in the cause, that the same might appear on record; such being the practice of the state courts of Louisiana; and which practice the counsel for the defendant insisted was to prevail in the

courts of the United States, according to the act of congress of the 26th of May 1824, which provides, that the mode of proceeding in civil causes in the courts of the United States established in Louisiana, shall be conformable to the laws directing the practice in the district court of the state, subject to such alterations as the judges of the courts of the United States should establish by rules; the court refused to make the order, or to permit the testimony to be put down in writing; the judge expressing the opinion, that the courts of the United States are not governed by the practice of the courts of the state of Louisiana; the defendant moved for a new trial, and the motion being overruled, and judgment entered for the plaintiff on the verdict, the defendant brought a writ of error to this court. Under the laws of Louisiana, on the trial of a cause before a jury, if either party desires it, the verbal evidence is to be taken down in writing by the clerk, to be sent to the supreme court to serve as a statement of facts, in case of appeal, and the written evidence produced on the trial is to be filed with the proceedings; this is done to enable the appellate court to exercise the power of granting a new trial and of revising the judgment of the inferior court: *Held*, that the refusal of the judge of the district court of the United States to permit the evidence to be put in writing, could not be assigned for error in this court, the cause having been tried in the court below, and a verdict given on the facts by a jury; if the same had been put in writing, and been sent up to this court with the record, this court, proceeding under the constitution of the United States, and of the amendment thereto, which declares, "no fact once tried by a jury shall be otherwise re-examinable in any court of the United States, than according to the rules of the common law," is not competent to redress any error by granting a new trial. The proviso in the act of congress of the 26th of May 1824, ch. 181, demonstrates that it was not the intention of congress to give an absolute and imperative force to the state modes of proceeding in civil causes in Louisiana, in the courts of the United States; for it authorizes the judge to modify them so as to adapt them to the organization of his own courts; and it further demonstrates, that no absolute repeal was intended to the antecedent modes of proceeding authorized in the United States courts, under former act of congress; for it leaves the judge at liberty to make rules, by which discrepancy between the state laws and the laws of the United States may be avoided. *Parsons* v. *Bedford*..*433

2. The act of congress having made the practice of the state courts, the rule for the courts of the United States in Louisiana, the district court of the United States in that district is bound to follow the practice of the state; unless that court has adopted a rule superseding the practice ..... *Id.*
3. It was not the intention of congress, by the general language of the act of 1824, to alter the appellate jurisdiction of this court and to confer on it the power of granting a new trial, by a re-examination of the acts tried by a jury; and to enable it, after trial by jury, to do that in respect to the courts of the United States sitting in Louisiana, which is denied to such courts sitting in all the other states of the Union..... *Id.*
4. No court ought, unless the terms of an act of congress render it unavoidable, to give a construction to the act which should, however unintentional, involve a violation of the constitution. The terms of the act of 1824 may well be satisfied by limiting its operation to modes of practice and proceeding in the courts below, without changing the effect or conclusiveness of the verdict of a jury upon the facts litigated on the trial; the party may bring the facts into review before the appellate courts, so far as they bear upon questions of law, by a bill of exceptions; if there be any mistake of the facts, the court below is competent to redress it, by granting a new trial... ..... *Id.*

COVERTURE.

See FEMES COVERT.

DAMAGES.

1. The faithful execution of orders which an agent or correspondent has contracted to execute, is of vital importance in commercial transactions, and may often affect the injured party far beyond the actual sum misapplied; a failure in this respect may entirely break up a voyage and defeat the whole enterprise; speculative damages, dependent on possible successive schemes, ought not to be given in such cases; but positive and direct loss, resulting plainly and immediately from the breach of orders, may be taken into the estimate. *Bell* v. *Cunningham* *69
2. The jury in an action for damages for breach of orders, may compensate the plaintiff for actual loss, but not give vindictive damages; the profits which would have been obtained on the sale of the articles directed to be purchased may be properly allowed as damages ..... *Id.*

3. The libellants, in their original libel in the district court of the United States for the district of South Carolina, prayed that certain bales of cotton might be decreed to them, with damages and costs; Canter, who also claimed the cotton, prayed the court for restitution, with damages and costs; the district court decreed restitution of part of the cotton to the libellants, and dismissed the libel, without any award of damages on either side; both parties appealed from this decree to the circuit court, where the decree of the district court was reversed, and restitution of all the cotton was decreed to Canter, with costs; without any award of damages or any express reservation of that question in the decree; from this decree, the libellants in the district court appealed to this court. The decree of restitution, without any allowance of damages, was a virtual denial of them, and a final decree upon Canter's claim of damages; it was his duty, at that time, to have filed a cross-appeal, if he meant to rely on a claim to damages; and not having done so, it was a submission to the decree of restitution and costs only. This is not a proper case for the award of damages; the proceedings of the libellants were in the ordinary course, to vindicate a supposed legal title; there is no pretence to say, that the suit was instituted without probable cause, or was conducted in a malicious or oppressive manner; the libellants had a right to submit their title to the decision of a judicial tribunal, in any legal mode which promised them an effectual and speedy redress. Where parties litigate in the admiralty, and there was a probable ground for the suit or defence, the court considers the only compensation which the successful party is entitled to, is a compensation in costs and expenses; if the party has suffered any loss any loss beyond these, it is *damnum absque injuria*. *Canter* v. *American and Ocean Insurance Companies* *307

4. The settled practice of this court is, that whenever damages are claimed by the libellant, or the claimant, in the original proceedings, if a decree of restitution and costs only passes, it is a virtual denial of damages; and the party will be deemed to have waived the claim for damages, unless he then interposes an appeal or cross-appeal, to sustain that claim..... *Id.*

5. Counsel fees in defending and prosecuting successfully a case of admiralty jurisdiction, allowed as damages..... *Id.*

DEMURRER.

1. The party who demurs to evidence, seeks thereby to withdraw the consideration of the facts from the jury; and is, therefore, bound to admit not only the truth of the evidence, but every fact which that evidence may legally conduce to prove in favor of the other party; and if, upon any view of the facts, the jury might have given a verdict against the parties demurring, the court is also at liberty to give judgment against him. *Thornton* v. *Bank of Washington*..... *36

2. The defendant in the court below having withdrawn his cause from the jury, by a demurrer to evidence, or having submitted to a verdict for the plaintiff, subject to the demurrer, cannot hope for a judgment in his favor, if, by any fair construction of the evidence, the verdict can be sustained. *Chinoweth* v. *Lessee of Haskell*..... *92

DEVISE.

1. The testator gave all the rest and residue and remainder of his estate, real and personal, comprehending a large real estate in the city of New York, to the chancellor of the state of New York, and recorder of the city of New York, &c. (naming several other persons by their official description), to have and to hold the same, unto them and their respective successors in office, to the uses and trusts, subject to the conditions and appointments, declared in the will; which were, out of the rents, issues and profits thereof, to erect and build upon the land upon which he resided, which was given by the will, an asylum or marine hospital, to be called "the Sailor's Snug Harbour," for the purpose of maintaining and supporting aged, decrepid and worn-out sailors, &c. And after giving directions as to the management of the fund by his trustees, and declaring, that the institution created by his will should be perpetual, and that those officers, and their successors, should for ever continue the governors thereof, &c., he added, "It is my will and desire, that if it cannot legally be done, according to my above intention, by them, without an act of the legislature, it is my will and desire, that they will, as soon as possible, apply for an act of the legislature, to incorporate them for the purpose above specified; and I do further declare it to be my will and intention, that the said rest, residue, &c., of my estate should be, at all events, applied for the uses and purposes above set forth; and that it is my desire, all courts of law and equity will so construe this my said last will, as to have the said estate appropriated to the above uses, and that the same should, in no case, for want of legal form or otherwise, be so construed as that my relations, or any other persons, should heir, pos-

sess or enjoy my property, except in the manner and for the uses herein above specified." Within five years after the death of the testator, the legislature of the state of New York, on the application of the trustees, also named as executors of the will, passed a law, constituting the persons holding the offices designated in the will, and their successors, a body corporate, by the name of the "Trustees of the Sailor's Snug Harbour," and enabling them to execute the trusts declared in the will. This is a valid devise, to divest the heir of his legal estate, or, at all events, to affect the land in his hands with the trust declared in the will; if, after such a plain and unequivocal declaration of the testator, with respect to the disposition of his property, so cautiously guarding against, and providing for, every supposed difficulty that might arise, any technical objection shall now be interposed to defeat his purpose; it will form an exception to what we find so universally laid down in all our books, as a cardinal rule in the construction of wills, that the intention of the testator is to be sought after and carried into effect; if this intention cannot be carried into effect, precisely in the mode at first contemplated by him, consistently with the rules of law, he has provided an alternative which, with the aid of the act of the legislature, must remove every difficulty. *Inglis* v. *Trustees of the Sailor's Snug Harbour*.....*99

2. In the case of the Baptist Association *v.* Hart's Executors, 4 Wheat. 27, the court considered the bequest void, for uncertainty as to the devisees, and the property vested in the next of kin, or was disposed of by some other provisions of the will; if the testator, in that case, had bequeathed the property to the Baptist Association, on its becoming thereafter, and within a reasonable time, incorporated, could there be a doubt but the subsequent incorporation would have conferred on the association the capacity of taking and managing the fund?.....*Id.*

3. C. B., by her last will and testament, devised, "all her estate, wheresoever and whatsoever, in law or equity, in possession, reversion, remainder or expectancy, unto her executors, and to the survivor of them, his heirs and assigns for ever," upon certain designated trusts; under the statute of wills of the state of New York (1 N. Y. Revised Laws 364), all the rights of the testator to real estate, held adversely at the time of the decease of the testator, passed to the devisees by this will.....*Id.*

4. The testator was seised of a very large real and personal estate, in the states of Virginia, Kentucky, Ohio and Tennessee; after making, by his will, in addition to her dower, a very liberal provision for his wife, for her life, out of part of his real estate, and devising, in case of his having a child or children, the whole of his estate to such child or children, with the exception of the provision for his wife, and certain other bequests, his will declared: "in case of having no children, I then leave and bequeath all my real estate, at the death of my wife, to William King, son of brother James King, on condition of his marrying a daughter of William Trigg's, and my niece, Rachel, his wife, lately Rachel Finlay, in trust for the eldest son, or issue of said marriage; and in case such marriage should not take place, I leave and bequeath said estate to any child, giving preference to age, of said William and Rachel Trigg, that will marry a child of my brother, James King's or of my sister Elizabeth's, wife to John Mitchell, and to their issue." The testator died without issue; he survived his father, and had brothers and sisters of the whole and half blood, who survived him, and also a sister of the whole blood, Elizabeth, the wife of John Mitchell, who died before him; William and Rachel Trigg never had a daughter, but had four sons; James King, the father of William King, the devisee, had only one daughter, who intermarried with Alexander McCall; Elizabeth, the wife of John Mitchell, had two daughters, both of whom were married, one to William Heiskill, the other to Abraham B. Trigg. We have found no case in which a general devise, in words importing a present interest, in a will making no other disposition of the property, on a condition which may be performed at any time, has been construed, from the mere circumstance that the estate is given on condition, to require that the condition must be performed before the estate can vest; there are many cases in which the contrary principle has been decided. The condition on which the devise to William King depended, is a condition subsequent. *Finlay* v. *King's Lessee*.....*346

5. It is certainly well settled, that there are no technical appropriate words which always determine whether a devise be on a condition precedent or subsequent; the same words have been determined differently, and the question is always a question of intention; if the language of the particular clause, or of the whole will, show that the act upon which the estate depends must be performed, before the estate can vest, the condition, of course, is precedent, and unless it is performed, the devisee can take nothing; if on the contrary, the act do not necessarily precede the vesting of the estate, but

may accompany or follow it, if this is to be collected from the whole will, the condition is subsequent.....*Id.*

6. It is a general rule, that a devise in words of the present time, as, "I give to A. my lands in B.," imports, if no contrary intent appears, an immediate interest, which vests in the devisee, on the death of the testator; it is also a general rule, that if an estate be given on a condition, for the performance of which no time is limited, the devisee has his life for performance; the result of these two principles seems to be, that a devise to A., on condition that he shall marry B., if uncontrolled by other words, takes effect immediately, and the devisee performs the condition, if he marry B., at any time during his life; the condition is subsequent.....*Id.*
7. As the devise in the will to William King was on a condition subsequent, it may be construed, so far as respects the time of taking the possession, as if it had been unconditional; the condition opposes no obstacle to his immediate possession, if the intent of the testator shall require that construction.....*Id.*
8. The introductory clause in the will, stated, "I, William King, have thought proper to make and ordain this to be my last will and testament, leaving and bequeathing my worldly estate in the manner following:" These words are entitled to considerable influence in a question of doubtful intent, in a case where the whole property is given, and the question arises between the heir and devisee, respecting the interest devised; the words of the particular clause also carry the whole estate from the heir, but they fix the death of the testator's wife as the time when the devisee shall be entitled to possession; they are, "in case of having no children, I then leave and bequeath all my real estate, at the death of my wife, to William King, son of brother James King." The whole estate is devised to William King, but the possession of that part of it which is given to the wife or others for life, is postponed until her death.....*Id.*
9. *Quære?* Did William King take an estate which, in the events that have happened, inures to his own benefit; or is he, in the existing state of things, to considered a trustee for the heirs of the testator? This question cannot be decided in this cause; it belongs to a court of chancery, and will be determined, when the heir shall bring a bill to enforce the execution of the trust.....*Id.*

DISCOUNT.

See INTEREST, 1–3.

DUTIES ON MERCHANDISE.

See LIEN OF THE UNITED STATES FOR DUTIES: PRIORITY OF THE UNITED STATES.

EJECTMENT.

1. When a tenant disclaims to hold under his lease, he becomes a trespasser, his possession is adverse, and is open to the action of his landlord, as possession acquired originally by wrong. The act is conclusive on the tenant; he cannot revoke his disclaimer and adverse claim, so as to protect himself, during the unexpired time of the lease; he is a trespasser on him who has the legal title; the relation of landlord and tenant is dissolved, and each party must stand upon his right. *Willison* v. *Watkins*.....*43
2. If the tenant disclaim the tenure, claim the fee adversely, in right of a third person, or in his own right, or attorn to another, his possession then becomes a tortious one, by the forfeiture of his right; the landlord's right of entry is complete, and he may sue at any time within the period of limitation; but he must lay his demise of a day subsequent to the termination of the tenancy, for before that, he has no right of entry. By bringing his ejectment, he disclaims the tenancy, and goes for the forfeiture; it shall not be permitted to the landlord to thus admit that there is no tenure subsisting between him and the tenant, which can protect his possession from this adversary suit; and at the same time, recover, on the ground of there being a tenure so strong as that he cannot set up his adversary possession.....*Id.*
3. A mortgagee, or direct purchaser from the tenant, or one who buys his right at a sheriff's sale, assumes his relation to the landlord, with all its legal consequences, and is as much estopped from denying the tenancy. *Id.*
4. It is an undoubted principle of law, fully recognised in this court, that a tenant cannot dispute the title of his landlord, either by setting up a title in himself, or a third person, during the existence of the lease or tenancy; the principle of estoppel applies to the relation between them, and operates with full force to prevent the tenant from violating that contract, by which he claimed and held the possession; he cannot change the character of the tenure, by his own act merely, so as to enable himself to hold against his landlord; who reposes under the security of the tenancy, believing the possession of the tenant to be his own, held under his title, and ready to be surrendered, on its termination by the lapse of time, or demand of possession.. *Id.*
5. The same principle applies to a mortgagor

and mortgagee, trustee and *cestui que trust*, and generally, to all cases where one man obtains possession of real estate belonging to another, by a recognition of his title. . . *Id.*

ERROR.

1. Generally speaking, matters of practice in the inferior courts do not constitute subjects upon which errors can be assigned in the appellate courts. *Parsons* v. *Bedford*. *434

ESTATES ON CONDITION.

See CONDITION.

EVIDENCE.

1. A witness, the clerk of the plaintiff, examined under a commission, stated the payment of a sum of money to have been made by him to the defendant, and that the defendant, at his request, made an entry in the plaintiff's rough cash-book, writing his name at full length, and stating the sum paid to him, not so much for the sake of the receipt, as in order for him, the witness, to become acquainted with the signature, and the way of spelling his name. It is not necessary to produce the book in which the entry was made; and parol evidence of the payment of the money is legal; it cannot be laid down as a universal rule, that where written evidence of a fact exists, all parol evidence of the same fact is excluded. *Keene* v. *Meade*. *1
2. An account stated at the treasury department, which does not arise in the ordinary mode of doing business in that department, can derive no additional validity from being certified under the act of congress; a treasury statement can only be regarding as establishing items for moneys disbursed through the ordinary channels of the department, where the transactions are shown by its books; in these cases, the officers may well certify, for they must have official knowledge of the facts stated. *United States* v. *Buford*. . *12
3. But when moneys come into the hands of an individual, not though the officers of the treasury or in the regular course of official duty, the books of the treasury do not exhibit the facts, nor can they be known to the officers of the department; in such a case, the claim of the United States for money thus in hands of a third person must be established, not by a treasury statement, but by the evidence on which that statement was made . . . . . *Id.*
4. On a trial in ejectment, the plaintiffs offered in evidence, a number of entries of recent date, made by the defendants, within the bounds of the tract of land in dispute, designated as "Young's four thousand acres;" and attempted to prove by a witness, that Young, when he made the entries, had heard of the plaintiffs' claim to the land; the defendants then offered to introduce as evidence, official copies of entries made by other and third persons, since the date of the plaintiffs' grant, for the purpose of proving a general opinion, that the lands contained in the plaintiffs' survey, made under the order of the court, after the commencement of the suit, were vacant, at the date of such entries; and to disprove notice to him of the identity of the plaintiff's claim, when he made the entries under which he claimed: This evidence was unquestionably irrelevant. *Stringer* v. *Young's Lessee*. *220
5. Entries made subsequently to the plaintiffs' claim, whatever might have been the impression under which they were made, could not possibly affect a title held under a prior entry. . . . . *Id.*
6. The admission of evidence which was irrelevant, but which was not objected to, will not authorize the admission of other irrelevant evidence, offered to rebut the same, when the same is objected to. . . . . *Id.*
7. Certified copies of the opinions of the court are to be given by the reporter, and not by the clerk of the court. *Anon*. *397

See COMMISSION, 1–4.

FACTOR.

See AGENT AND PRINCIPAL.

FEES.

1. The counsel fees allowed as expenses attending the prosecution of an appeal to the circuit court and to the supreme court, in an admiralty case. *Canter* v. *American and Ocean Insurance Companies*. *307

FEMES COVERT.

1. The incapacities of *femes covert*, provided by the common law, apply to their civil rights, and for their protection and interest; but they do not reach their political rights, nor prevent their acquiring or losing a national character; these political rights do not stand upon the mere doctrines of municipal law, applicable to ordinary transactions, but stand upon the more general principles of the law of nations. *Shanks* v. *Dupont*. *242

FRAUD.

1. It cannot be doubted, that reducing an agreement to writing is, in most cases, an

argument against fraud; but it is very far from a conclusive argument; the doctrine will not be contended for, that a written agreement cannot be relieved against, on the ground of false suggestions. *Boyce's Executors* v. *Grundy*..... ..... *210

2. It is not an answer to an application to a court of chancery for relief in rescinding a contract, to say, that the fraud alleged is partial, and might be the subject of compensation by a jury; the law, which abhors fraud, does not permit it to purchase indulgence, dispensation or absolution..... *Id.*

HABEAS CORPUS.

1. A petition was presented by Tobias Watkins for a *habeas corpus*, for the purpose of inquiring into the legality of his confinement in the jail of the county of Washington, by virtue of a judgment of the circuit court of the United States of the district of Columbia, rendered in a criminal prosecution instituted against him in that court; the petitioner alleged, that the indictments under which he was convicted and sentenced to imprisonment, charged no offence for which the prisoner was punishable in that court, or of which that court could take cognisance; and, consequently, that the proceedings were *coram non judice*. The supreme court has no jurisdiction in criminal cases which could reverse or affirm a judgment rendered in the circuit court, in such a case, where the record is brought up directly by writ of error. *Ex parte Watkins*..... *193
2. The power of this court to award writs of *habeas corpus*, is conferred expressly on the court, by the 14th section of the judiciary act, and has been repeatedly exercised; no doubt exists respecting the power. No law of the United States prescribes the cases in which this great writ shall be issued, nor the power of the court over the party brought up by it; the term used in the constitution is one which is well understood, and the judiciary act authorizes the court, and all the courts of the United States, and the judges thereof, to issue the writ "for the purpose inquiring into the cause of commitment." *Id.*
3. The nature and powers of the writ of *habeas corpus*..... *Id.*
4. The cases of the United States *v.* Hamilton, 3 Dall. 17; Ex parte Buford, 3 Cranch 447; Ex parte Bollman, 4 Cranch 75; and Ex parte Kearney, 7 Wheat. 39; examined..... *Id.*

INSOLVENT LAWS.

1. The plaintiff below, a citizen of the state of Kentucky, instituted a suit against the defendant, a citizen of Louisiana, for the recovery of a debt incurred in 1808, and the defendant pleaded his discharge by the bankrupt law of Louisiana, in 1811; under which, according to the provisions of the law, "as well his person as his future effects" were for ever discharged "from all the claims of his creditors;" under this law, the plaintiff, whose debt was specified in the list of the defendant's creditors, received a dividend of ten per cent. on his debt, declared by the assignees of the defendant: *Held*, that the plaintiff, by voluntarily making himself a party to those proceedings, abandoned his extra-territorial immunity from the operation of the bankrupt law of Louisiana; and was bound by that law to the same extent to which the citizens of Louisiana were bound. *Clay* v. *Smith*..... *411

INSURANCE.

1. Insurance on profits on board the ship Mary, "at and from Philadelphia to Gibraltar and a port in the Mediterranean, not higher up than Marseilles, and from thence to Sonsonate, in Guatemala, Pacific Ocean, with liberty of Guayaquil; the insurance to begin from the loading of the goods at Philadelphia, and to continue until the goods were safely landed at the said ports; the insurance, $5000, declared to be on profits, warranted to be American property, to be proved at Philadelphia only, valued at $20,000." The vessel proceeded, with a cargo of flour, to Gibraltar, where the same was to be sold, and the proceeds invested at Marseilles in dry-goods, to be sent from thence to Sonsonate or Guayaquil; while the vessel lay at Gibraltar, before the discharge of her cargo, she and her cargo were totally lost by fire. The evidence on the trial went to show, that with proper diligence on the part of the master and crew, the fire might have been extinguished, and the vessel and cargo saved; soon after the fire commenced, the master called upon the crew to leave the ship, under an apprehension from a small quantity of gunpowder on board; and after they left her, she was boarded by other persons, who endeavored, without success, to extinguish the flames, having, as was alleged, arrived too late; evidence was given tending to show that the fire originated through the carelessness of the master. The circuit court refused to instruct the jury, that if the fire proceeded from the carelessness or negligence of the master, the insured could not recover; the court also refused to instruct the jury, that if the fire originated from accident, or without any want of due care on the part of

the master and crew, and if the jury should find, that, by reasonable and proper exertions, the vessel and cargo might have been preserved by them, which they omitted, the assured could not recover; that court also refused to instruct the jury, that the assured, having offered no evidence that the sales of the flour at Gibraltar would have yielded a profit, they were not entitled to recover: *Held*, that there was no error in these instructions. *Patapsco Insurance Company* v. *Coulter*..... *220

2. What is barratry: its definition..... *Id.*
3. The British courts have adopted the safe and legal rule, in deciding, that where the policy covers the risk of barratry, and fire is the proximate cause of the loss, they will not sustain the defence, that negligence was the remote cause, and will hold the insurers liable for the loss..... *Id.*
4. The rule that a loss, the proximate cause of which is a peril insured against, is a loss within the policy, although the remote cause may be negligence of the master or mariners, has been affirmed in several successive cases in the English courts..... *Id.*
5. It seems difficult to perceive, if profit be a mere excrescence of the principal, as some judges have said; or identified with it, as has been said by others; why the loss of the cargo should not carry with it the loss of the profits. Proof that profits would have arisen on the voyage, in order to recover on a policy on profits, is not required, if the cargo has been lost..... *Id.*

INTEREST.

1. The taking of interest in advance, upon the discount of a note, in the usual course of business, by a banker, is not usury; this has long been settled, and is not now open for controversy. *Thornton* v. *Bank of Washington*..... *36
2. The taking of interest for sixty-four days, on a note, is not usury, if the note, given for sixty days, according to the custom and usage in the banks at Washington, was not due and payable until the sixty-fourth day. In the case of Renner *v.* Bank of Columbia, 9 Wheat. 581, it was expressly held, that under that custom, the note was not due and payable before the sixty-fourth day, for until that time, the maker could not be in default..... *Id.*
3. Where it was the practice of the party, who had a sixty-day note discounted at the bank of Washington, to renew the note, by the discount of another note, on the sixty-third day, the maker not being in fact bound to pay the note, according to the custom prevailing in the district of Columbia; such a transaction on the part of the banker is not usurious, although on each note, the discount of sixty-four days was deducted. Each note is considered as a distinct and a substantive transaction; if no more than legal interest is taken upon the time the new note has to run, the actual application of the proceeds of the new note to the payment of the former note, before it becomes due, does not of itself make the transaction usurious; something more must occur; there must be a contract between the bank and the party, at the time of such discount, that the party shall not have the use and benefit of the proceeds, until the former note becomes due, or that the bank shall have the use and benefit of them in the meantime..... *Id.*

JURISDICTION.

1. The plaintiff below claimed more than $2000 in his declaration, but obtained a judgment for a less sum: the jurisdiction of this court depends on the sum or value in dispute between the parties, as the case stands upon the writ of error in this court; not on that which was in dispute in the circuit court. *Gordon* v. *Ogden*..... *33
2. If the writ of error be brought by the plaintiff below, then the sum which the declaration shows to be due may be still recovered, should the judgment for a smaller sum be reversed; and consequently, the whole sum claimed is still in dispute..... *Id.*
3. But if the writ of error be brought by the defendant in the original action, the judgment of this court can only affirm that of the circuit court, and consequently, the matter in dispute cannot exceed the amount of that judgment; nothing but that judgment is in dispute between the parties..... *Id.*
4. A judgment, in its nature, concludes the subject on which it is rendered, and pronounces the law of the case; the judgment of a court of record, whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be; it is as conclusive on this court, as on other courts; it puts an end to inquiry concerning the fact, by deciding it. *Ex parte Watkins*.... *193
5. With what propriety can this court look into an indictment found in the circuit court, and which has passed into judgment before that court? We have no power to examine the proceedings, on a writ of error, and it would be strange, if, under color of a writ to liberate an individual from an unlawful imprisonment, the court substantially reverse a judgment which the law has placed beyond its control. An imprisonment under a judgment

cannot be unlawful, unless that judgment be an absolute nullity; and it is not a nullity, if the court has general jurisdiction of the subject, although it should be erroneous. . *Id.*

6. The circuit court for the district of Columbia is a court of record, having general jurisdiction, over criminal cases; an offence cognisable in any court, is cognisable in that court. . . . . *Id.*

7. If the offense be punishable by law, that court is competent to inflict the punishment; the judgment of such a tribunal has all the obligation which the judgment of any tribunal can have; to determine whether the offence charged in the indictment be legally punishable or not, is among the most unquestionable of its powers and duties; the decision of this question is the exercise of its jurisdiction, whether its judgment be for or against the prisoner; the judgment is equally binding in one case and in the other, and must remain in full force, unless reversed regularly by a superior court capable of reversing it; if this judgment be obligatory, no court can ever look behind it . . . . . *Id.*

8. Had any offence against the laws of the United States been in fact committed, the circuit court for the district of Columbia could take cognisance of it; the question whether any offence was committed, or was not committed, that is, whether the indictment did or did not show that an offence had been committed, was a question which this court was competent to decide; if its judgment was erroneous, a point which this court does not determine, still it is a judgment; and, until reversed, cannot be disregarded. *Id.*

9. It is universally understood, that the judgments of the courts of the United States, although their jurisdiction be not shown on the pleadings, are yet binding on all the world, and that this apparent want of jurisdiction can avail the party only on a writ of error; the judgment of the circuit court in a criminal case is of itself evidence of its own legality, and requires for its support no inspection of the indictment on which it is founded; the law trusts that court with the whole subject, and has not confided to this court the power of revising its decisions; this court cannot usurp that power, by the instrumentality of a writ of *habeas corpus;* the judgment informs us that the commitment is legal, and with that information it is our duty to be satisfied . . . . . *Id.*

10. This court has been often called upon to consider the 16th section of the judiciary act of 1789, and as often, either expressly, or by the course of its decisions, has held, that it is merely declaratory, making no alteration whatever in the rules of equity on the subject of legal remedy. *Boyce's Executors* v. *Grundy*. *210

11. The courts of the United States have equity jurisdiction to rescind a contract, on the ground of fraud, after one of the parties to it has been proceeded against on the law side of the court, and a judgment has been obtained against him for a part of the money stipulated to be paid by the contract . . . . *Id.*

12. It is not enough, that there is a remedy at law; it must be plain and adequate, or, in other words, as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity. . . . . *Id.*

13. Where the point in which the judges of the circuit court differed in opinion was not certified, but the point of difference was to be ascertained from the whole record, the court refused to take jurisdiction of the case. *De Wolf* v. *Usher* *269

14. This court has no authority, on a writ of error from a state court, to declare a state law void, on account of its collision with a state constitution: it not being a case embraced in the judiciary act, which gives the power of a writ of error to the highest judicial tribunal of the state. *Jackson* v. *Lamphire*. *280

15. The plaintiff in error claimed to recover the land in controversy, having derived his title under a patent granted by the state of New York to John Cornelius; he insisted, that the patent created a contract betweeen the state and the patentee, his heirs and assigns, that they should enjoy the land free from any legislative regulations to be made in violation of the constitution of the state, and that an act passed by the legislature of New York, subsequent to the patent, did violate that contract. Under that act, commissioners were appointed to investigate the contending titles to all the lands held under such patents as that granted to John Cornelius, and by their proceedings, without the aid of a jury, the title of the defendants in error was established against, and defeating the title under, a deed made by John Cornelius, the patentee, and which deed was executed under the patent. This is not a case within the clause of the constitution of the United States, which prohibits a state from passing laws which shall impair the obligation of contracts; the only contract made by the state is a grant to John Cornelius, his heirs and assigns, of the land; the patent contains no covenant to do, or not to do, any further act in relation to the land; and the court are not inclined to create a contract by implication; the act of the legislature of New York does not attempt to take the land from the patentee; the grant remains in full effect;

and the proceedings of the commissioners under the law, operated upon titles derived under, and not adversely to, the patent.. *Id.*

16. It is within the undoubted power of state legislatures, to pass recording acts, by which the elder grantee shall be postponed to a younger, if the prior deed is not recorded within a limited time; and the power is the same, whether the deed is dated before or after the recording act; though the effect of such a deed is to render the prior deed fraudulent and void against a subsequent purchaser, it is not a law violating the obligation of contracts. So too, is the power to pass limitation laws; reasons of sound policy have led to the general adoption of laws of this description, and their validity cannot be questioned; the time and manner of their operation, the exceptions to them, and the acts from which the time limited shall begin to run, will generally depend on the sound discretion of the legislature, according to the nature of the titles, the situation of the country, and the emergency which leads to their enactment. Cases may occur, where the provisions of a law on these subjects may be so unreasonable as to amount to a denial of a right, and to call for the interposition of this court..... *Id.*

17. It has often been decided in this court, that it is not necessary, that it shall appear, in terms, upon the record, that the question was presented in the state court, whether the case was within the purview of the 25th section of the judiciary act of 1789, to give jurisdiction to this court in a case removed from a state court; it is sufficient if, from the facts stated, such a question must have arisen, and the judgment of the state court would not have been what it is, if there had not been a misconstruction of some act of congress, &c., or a decision against the validity of the right, title, privilege or exemption set up under it. *Harris* v. *Dennie*, *292

18. Where the verdict for the plaintiff in the circuit court is for a less amount than $2000, and the defendant prosecutes the writ of error, this court has not jurisdiction; although the demand of the plaintiff in the suit exceeded $2000. *Smith* v. *Honey*, *469

LANDLORD AND TENANT.

1. It is an undoubted principle of law, fully recognised by this court, that a tenant cannot dispute the title of his landlord, either by setting up a title in himself or a third person, during the existence of the lease or tenancy; the principle of estoppel applies to the relation between them, and operates with full force, to prevent the tenant from violating that contract by which he claimed and held the possession; he cannot change the character of the tenure by his own act merely, so as to enable himself to hold against his landlord; who reposes under the security of the tenancy, believing the possession of the tenant to be his own, held under his title, and ready to be surrendered on its termination, by the lapse of time, or demand of possession. *Willison* v. *Watkins* ...*43

2. The same principle applies to a mortgagor and mortgagee, trustee and *cestui que trust*, and generally, to all cases where one man obtains possession of real estate belonging to another, by a recognition of his title.... *Id.*

3. In no instance, has the principle of law which protects the relations between landlord and tenant, been carried so far as in this case, which presents a disclaimer by a tenant, with the knowledge of his landlord, and an unbroken possession afterwards, for such a length of time, that the act of limitations has run out four times, before he has done any act to assert his right to the land.... *Id.*

4. If no length of time would protect a possession originally acquired under a lease, it would be productive of evils truly alarming, and we must be convinced beyond a doubt, that the law is so settled, before we would give our sanction to such a doctrine; and this is not the case upon authority ..... *Id.*

5. When a tenant disclaims to hold under his lease, he becomes a trespasser, and his possession is adverse, and as such, open to the action of his landlord as possession acquired originally by wrong. The act is conclusive on the tenant; he cannot revoke his disclaimer and adverse claim, so as to protect himself during the unexpired time of the lease; he is a trespasser on him who has the legal title; the relation of landlord and tenant is dissolved, and each party must stand upon his right.... *Id.*

6. If the tenant disclaim the tenure, claim the fee adversely, in right of a third person, or in his own right, or attorn to another, his possession then becomes a tortious one, by the forfeiture of his right; and the landlord's right of entry is complete, and he may sue at any time within the period of limitation; but he must lay his demise of a day subsequent to the termination of the tenancy, for before that, he had no right of entry. By bringing his ejectment, he disclaims the tenancy and goes for the forfeiture; it will not be permitted to the landlord to thus admit that there is no tenure subsisting between him and the tenant, which can protect his possession from this adversary suit, and at the same time, recover, on the ground of their being a tenure so strong as that he cannot set up his adversary possession..... *Id.*

7. A mortgagee, or direct purchaser from the tenant, or one who buys his right at a sheriff's sale, assumes his relation to the landlord, with all its legal consequences, and is as much estopped from denying the tenancy..... *Id.*

LANDS AND LAND TITLES.

1. It is an obvious principle, that a grant must describe the land to be conveyed, and that the subject granted must be identified by the description given of it in the instrument itself; the description of the land consists of the courses and distances run by the surveyor, and of the marked trees at the lines and corners, or other natural objects which ascertain the very land which was actually surveyed. *Chinoweth* v. *Haskell's Lessee.**92
2. If a grant be made which describes the land granted by course and distance only, or by natural objects not distinguishable from others of the same kind; course and distance, though not safe guides, are the only guides given, and must be used..... *Id.*
3. The line which formed the western boundary of the land intended to be granted was never run or marked; in his office, the surveyor assumed a course and distance, and terminated the line at two small chestnut oaks. But where are we to look for those two small chestnut oaks, in a wilderness in which one man takes up 50,000 acres, and another 100,000? or how are we to distinguish them from other chestnut oaks? The guide, and the only guide given us by the surveyor or the grant, is the course and distance..... *Id.*
4. It is admitted, that the course and distance called for in a grant may be controlled and corrected by other objects of description, which show that the survey actually covered other ground than the lines of the grant would comprehend..... *Id.*
5. On a trial in ejectment for lands in Virginia, the plaintiffs offered in evidence a number of entries, of recent date, made by the defendants within the bounds of the tract of land in dispute, designated as "Young's four thousand acres;" and attempted to prove, by a witness, that Young, when he made the entries, had heard of the plaintiff's claim to the land; the defendants then offered to introduce in evidence, official copies of entries made by other and third persons, since the date of the plaintiff's grant, for the purpose of proving a general opinion, that the lands, contained in the plaintiff's survey, made under the order of the court, after the commencement of the suit, were vacant at the date of such entries; and to disprove notice to him of the identity of plaintiff's claim, when he made the entries under which he claimed: This evidence was unquestionably irrelevant. *Stringer* v. *Young's Lessee*..... .....*320
6. Entries made subsequent to the plaintiff's claim, whatever might have been the impression under which they were made, could not possibly affect the title held under a prior entry..... *Id.*
7. The land law of Virginia directs, that, within three months after a survey is made, the surveyor shall enter the plat and certificate thereof in a book, well bound, to be provided by the court of his county, at the county charge; after prescribing this, among other duties, the law proceeds to enact, that any surveyor failing in the duties aforesaid, shall be liable to be indicted; the law, however, does not declare that the validity of such survey shall depend in any degree on its being recorded..... *Id.*
8. The chief surveyor appoints deputies at his will; and no mode of appointment is prescribed; the survey made by his deputy is examined and adopted by himself, and is certified by himself to the register of the land-office; he recognises the actual surveyor as his deputy in that particular transaction, and this, if it be unusual or irregular, cannot affect the grant..... *Id.*
9. Objections, which are properly overruled, when urged against a legal title, in support of an equity, dependent entirely on a survey of land for which a patent has been issued; can have no weight, when urged against a patent regularly issued in all the forms of law..... .....*Id.*
10. In Virginia, the patent is the completion of the title, and establishes the performance of every pre-requisite; no inquiry into the regularity of these preliminary measures, which ought to precede it, is made, in a trial at law; no case is shown, that it may be impeached at law; unless it be for fraud—not legal and technical, but actual and positive fraud, in fact, committed by the person who obtained it; and even this is questioned..... *Id.*
11. It is admitted to have been indispensably necessary to the plaintiff's action, to show a valid title to the land in controversy; and that the defendants were at liberty to rebut the testimony, by any evidence tending in any degree to disprove this identity; but the defendants were not at liberty to offer evidence having no such tendency, but which might either effect a different purpose, or be wholly irrelevant; the question of its relevancy must be decided by the court; and any error in its judgment would be corrected by an appellate tribunal. The court cannot perceive, that the omission of the surveyor to record the survey, or the fact that the survey was

made by a person not a regular deputy, had any tendency to prove that the land described in the patent was not the land for which the suit was instituted..... ..... *Id.*

12. The warrant for the land in controversy was entered with the surveyor of Monongalia county, on the 7th of April 1784; at the May session of that year, the general assembly of Virginia divided the county of Monongalia, and erected a new county, to take effect in July, by the name of Harrison; the land on which the plaintiff's warrant was entered lay in the new county; the certificate of survey was dated in December 1784, and in accordance with the entry, stated the land to be in Monongalia. The land law of Virginia enacts, that warrants shall be lodged with the surveyor of the county in which the lands lie, and that the party shall direct the location, specially and precisely; it also directs dispatch in the survey of all lands entered in the office; no provision is made for the division of a county, between the entry and the survey; the act establishing the county of Harrison, does not direct that the surveyor of Monongalia county shall furnish the surveyor of Harrison with copies of the entries of lands which lie in the new county, and with the warrants on which they were made. In this state of things, the survey of the land in controversy was made by the surveyor of Monongailia; the plat and certificate on which the patent was afterwards issued, were transmitted to the land-office, and the patent described the land as in Monongalia county; no change was made in the law until 1788. This will not annul the patent, or deprive the unoffending patentee of his property..... *Id.*

13. The misnomer of a county, in a patent for land, will not vacate the patent; it will admit of explanation, and if explanation can be received, the patent in which the misnomer is found, is not absolutely void..... *Id.*

LEX LOCI.

1. It is a well-settled principle, that a statute of limitations is the law of the *forum*, and operates upon all who submit themselves to its jurisdiction. *McCluny* v. *Silliman*..*270

LIEN OF THE UNITED STATES FOR DUTIES.

1. The United States have no general lien on merchandise, the property of the importer, for duties due by him upon other importations; the only effect of the first provision in the 62d section of the act of 1799, ch. 128, is, that the delinquent debtor is denied at the custom-house any further credit for duties, until his unsatisfied bonds are paid; he is compellable to pay the duties in cash, and upon such payment, he is entitled to the delivery of the goods imported. The manifest intention of the remaining clause in the section is, to compel the original consignee to enter the goods imported by him. *Harris* v. *Dennie*....292

2. No person but the owner or original consignee, or, in his absence or sickness, his agent or factor, is entitled to enter the goods at the custom-house, or give bond for the duties, or to pay the duties. Upon the entry, the original invoices are to be produced and sworn to; and the whole objects of the act would be defeated, by allowing a mere stranger to make the entry, or to take the oath prescribed on the entry.....*Id.*

3. The United States having a lien on goods imported, for the payment of the duties accruing on them, and which have not been secured by bond, and being entitled to the custody of them, from the time of their arrival in port, until the duties are paid or secured; any attachment by a state officer is an interference with such alien and right to custody; and being repugnant to the laws of the United States, is void .....*Id.*

4. An acknowledgment by the custom-house storekeeper, that he holds goods, upon which the duties have not been secured or paid, subject to an attachment issued out of a state court, at the suit of a creditor of the importer, is a plain departure from his duty, not authorized by the law of the United States, and cannot be admitted to vary the rights of the parties ....*Id.*

LIMITATION OF ACTIONS.

1. B., a deputy commissary-general of the United States, received from M., a deputy quartermaster-general of the United States, the sum of $10,000, and acknowledged the same by a receipt signed by him with his official description: The United States had a right to treat M. as their agent in the transaction, by making B. their debtor, and to an action brought against him for money had and received, the statute of limitations is no bar. *United States* v. *Buford* *12

2. Where, before a transfer to the United States of an instrument which was the evidence of debt, the term of five years had elapsed, the period after which the statute of limitations was a bar, it can require no argument to show, that the transfer of such claim to the United States cannot give it greater validity than it possessed before the transfer .....*Id.*

3. If no length of time would protect a possession originally acquired under a lease, it

would be productive of evils truly alarming, and we must be convinced beyond a doubt, that the law is so settled, before we would give our sanction to such a doctrine; and this is not the case upon authority. *Willison* v. *Watkins*.....*43

4. In no instance, has the principle of law which protects the relation between landlord and tenant, been carried so far as in this case, which presents a disclaimer by a tenant, with the knowledge of his landlord, and an unbroken possession afterwards for such a length of time, that the act of limitations has run out four times, before he has done any act to assert his right to the land.....*Id.*
5. The plaintiff sued the defendant as register of the United States land-office in Ohio, for damages, for having refused to note on his books, applications made by him for the purchase of lands within his district; the declaration charged the register with this refusal; the lands had never been applied for nor sold, and were, at the time of the application, liable to be so applied for and sold: The statute of limitations is a good plea to the suit. *McCluny* v. *Silliman*.....*270
6. It is a well-settled principle, that a statute of limitations is the law of the *forum*, and operates upon all who submit themselves to its jurisdiction.....*Id.*
7. Under the 34th section of the judiciary act of 1789, the acts of limitation of the several states, where no special provision has been made by congress, form a rule of decision in the courts of the United States, and the same effect is given to them as is given in the state courts.....*Id.*
8. Construction of the statute of limitations of the state of Ohio.....*Id.*
9. Where the statute of limitations is not restricted to particular causes of action, but provides that the action, by its technical denomination, shall be barred, if not brought within a limited time, every cause for which such action may be prosecuted, is within the statute.....*Id.*
10. In giving a construction to the statute of limitations of Ohio, the action being barred by its denomination, the court cannot look into the cause of action; they may do this in those cases where actions are barred for causes specified in the statute; for the statute only operates against such actions, when prosecuted on the grounds stated.....*Id.*
11. Of late years, the courts in England and in this country, have considered statutes of limitation more favorably than formerly; they rest upon sound policy, and tend to the peace and welfare of society; the courts do not now, unless compelled by the force of former decisions, give a strained construction, to evade the effect of those statutes; by requiring those who complain of injuries to seek redress by action at law within a reasonable time, a salutary vigilance is imposed, and an end is put to litigation.....*Id.*

MISNOMER

1. A commission issued in the name of Richard M. Meade, the name of the plaintiff being Richard W. Meade: This is a clerical error in making out the commission, and does not affect its execution. *Keene* v. *Meade*.....*1
2. It may well be questioned, whether the middle letter of a name forms any part of the Christian name of a party; it is said, the law knows only of one Christian name, and there are adjudged cases strongly countenancing, if not fully establishing, that the entire omission of a middle letter is not a misnomor or variance.....*Id.*
3. The misnomer of a county, in a patent for land, will not vacate the patent; it will admit of explanation, and if explanation can be received, the patent in which the misnomer is found, is not absolutely void. *Stringer* v. *Young's Lessee*.....*320

PATENT FOR LANDS.

1. Objections which are properly overruled, when urged against a legal title, in support of an equity, dependent entirely on a survey of land for which a patent has been issued, can have no weight, when urged against a patent regularly issued in all the forms of law. *Stringer* v. *Young's Lessee*.....*320
2. In Virginia, the patent is the completion of the title, and establishes the performance of every pre-requisite; no inquiry into the regularity of those preliminary measures which ought to precede it, is made, in a trial at law; no case has shown, that it may be impeached at law; unless it be for fraud; not legal and technical, but actual and positive fraud, in fact, committed by the person who obtained it; and even this is questioned.....*Id.*

PLEAS AND PLEADING.

1. In the correct order of pleading, it is necessary, that the facts of the plea should be traversed by the replication, unless matter in avoidance be set up; it is not sufficient, that the facts alleged in the replication be inconsistent with those stated in the plea; an issue must be taken on the material allegations of the plea. *United States* v. *Buford*.*12
2. The act of Virginia, passed in 1792, authorizes a defendant to plead and demur in the same case. *Fowle* v. *Common Council of Alexandria*.....*398

3. The party who demurs to evidence, seeks thereby to withdraw the consideration of the facts from the jury; and is, therefore, bound to admit, not only the truth of the evidence, but every fact which that evidence may legally conduce to prove in favor of the other party; and if, upon any view of the facts, the jury might have given a verdict against the party demurring, the court is also at liberty to give judgment against him. *Thornton* v. *Bank of Washington*.....*36

PRACTICE.

1. Where an appeal has been dismissed, the appellant having omitted to file a transcript of the record, within the time required by the rule of court, an official certificate of the dismissal of the appeal may not be given by the clerk, during the term; the appellant may file the transcript with the clerk, during the term, and move to have the appeal reinstated; to allow such certificate, would be to prejudge such a motion. *United States* v. *Swan*.....*68

2. In a writ of right, the tenant may, on the *mise* joined, set up a title out of himself and in a third person; if anything which fell from this court in the case of Greene *v.* Liter, 8 Cranch 229, can be supposed to give countenance to the opposite doctrine, it is done away by the explanation given by the court in Greene *v.* Watkins, 7 Wheat. 21; it is there laid down, that the tenant may give in evidence the title in a third person, for the purpose of disproving the demandant's seisin; that a writ of right does bring into controversy the mere right of the parties to the suit; and if so, it, by consequence, authorizes either party to establish by evidence, that the other has no right whatever in the demanded premises; or that his mere right is inferior to that set up against him. *Inglis* v. *Trustees of the Sailor's Snug Harbour*.....*101

3. In a writ of right, on the *mise* joined on the mere right, under a count for the entire right, a demandant may recover a less quantity than the entirety .....*Id.*

4. Where the point on which the judges of the circuit court divided in opinion was not certified, but the point of difference was to be ascertained from the whole record, the court refused to take jurisdiction of the case. *De Wolf* v. *Usher* *269

5. The plaintiff in error having died, while the cause was held under advisement, the judgment was entered *nunc pro tunc*, as of the first day of the term. *Clay* v. *Smith* ..*411

6. The practice has uniformly been, since the seat of government was removed to Washington, for the clerk of the court to enter, at the first term to which any writ of error or appeal is returnable, in cases in which the United Sates are parties, the appearance of the attorney-general of the United States; this practice has never been objected to. The practice would not be conclusive against the attorney-general, if he should, at the first term, withdraw his appearance, or move to strike it off; but if he lets it pass for one term, it is conclusive upon him, as to an appearance; the decisions of this court have uniformly been, that an appearance cures any defects in the forms of process. *Farrar* v. *United States*.....*459

7. The *subpœna* issued on the filing of a bill in which the state of New Jersey were complainants, and the state of New York were defendants, was served upon the governor and attorney-general of New York, sixty days before the return-day, the day of the service and return inclusive; this being irregular, a second *subpœna* issued, which was served on the governor of New York only, the attorney-general being absent; there was no appearance by the state of New York. This is not like the case of several defendants, where a service on one might be good, though not on another; here the service prescribed by the rule is to be on the governor, and on the attorney-general a service on one is not sufficient to entitle the court to proceed. *State of New Jersey* v. *State of New York*.....*461

8. Upon an application by the counsel for the state of New Jersey, that a day might be assigned to argue the question of the jurisdiction of this court to proceed in the case, the court said, they had no difficulty in assigning a day; it might be as well to give notice to the state of New York, as they might employ counsel in the *interim*; if, indeed, the argument should be merely *ex parte*, the court would not feel bound by its decision, if the state of New York desired to have the question again argued .....*Id.*

9. A notice was given by the solicitors for the state of New Jersey, to the governor of the state of New York, dated the 12th of January 1830, stating that a bill had been filed on the equity side of the supreme court, by the state of New Jersey against the people of the state of New York, and that on the 13th of February following, the court would be moved in the case for such order as the court might deem proper, &c.; afterwards, on the day appointed, no counsel having appeared for the state of New York, on the motion of the counsel for the state of New Jersey, for a *subpœna* to be served on the governor and attorney-general of the state of New York,

the court said, as no counsel appears to argue the motion on the part of the state of New York, and the precedent for granting it has been established upon very grave and solemn argument, the court do not require an *ex parte* argument in favor of their authority to grant the *subpœna*, but will follow the precedent heretofore established; the state of New York will be at liberty to contest the proceeding at a future time, in the course of the cause, if they shall choose so to do... *Id.*

PRINCIPAL AND AGENT.

See AGENT AND PRINCIPAL.

PRIORITY OF THE UNITED STATES.

1. Twenty-three cases of silk were imported from Canton, in the ship Rob Roy, into the port of Boston, consigned to George De Wolf and John Smith; after the arrival of the vessel, with the merchandise on board, the collector caused an inspector of the customs to be placed on board; soon afterwards, and prior to the entry of the merchandise, and prior to the payment, or any security for the payment, of the duties thereon, the merchandise was attached by the deputy-sheriff of the county, in due form of law, as the property of George De Wolf and J. Smith, by virtue of several writs of attachment, issued from the court of common pleas for the county of Suffolk, at the suit of creditors of G. De Wolf and John Smith; these attachments were so made, prior to the inspector's being sent on board the vessel. At the time of the attachment, the sheriff offered to give security for the payment of the duties on the merchandise, which the collector declined accepting; the merchandise was sent to the custom-house stores, by the inspector, and several days after, the custom-house storekeeper gave to the deputy-sheriff an agreement, signed by him, reciting the receipt of the merchandise from the inspector; and stating, "I hold the said merchandise to the order of James Dennie, deputy-sheriff." The marshal of the United States afterwards attached, took and sold the merchandise, under writs and process in favor of the United States, against George De Wolf; which writs were founded on duty bonds, due and unpaid, for a larger amount than the value of the merchandise, given before by De Wolf and Smith; who, before the importation of the merchandise, were indebted to the United States on various bonds for duties, besides those on which the suits were instituted: *Held*, that the attachments issued out of the court of common pleas of the county of Suffolk, did not affect the rights of the United States to hold the merchandise, until the payment of the duties upon them; and that the merchandise was not liable to any attachment by an officer of the state of Massachusetts, for debts due to other creditors of George De Wolf and John Smith. *Harris v. Dennie* *292
2. The United States have no general lien on merchandise, the property of the importer, for duties due by him upon other importations; the only effect of the first provision in the 62d section in the act of 1799, ch. 128, is, that the delinquent debtor is denied at the custom-house, any further credit for duties, until his unsatisfied bonds are paid; he is compellable to pay the duties in cash, and upon such payment, he is entitled to the delivery of the goods imported. The manifest intention of the remaining clause in the section is, to compel the original consignee to enter the goods imported by him..... *Id.*
3. No person but the owner or original consignee, or, in his absence or sickness, his agent or factor, is entitled to enter the goods at the custom-house, or give bond for the duties, or to pay the duties: §§ 36, 62. Upon the entry, the original invoices are to be produced and sworn to; and the whole objects of the act would be defeated, by allowing a mere stranger to make the entry, or to take the oath prescribed on the entry ..... *Id.*
4. The United States having a lien on goods imported, for the payment of the duties accruing on them, and which have not been secured by bond, and being entitled to the custody of them, from the time of their arrival in port, until the duties are paid or secured, any attachment by a state officer is an interference with such lien and right to custody; and being repugnant to the laws of the United States, is void..... *Id.*
5. An acknowledgment of the custom-house storekeeper, that he holds goods, upon which the duties have not been secured or paid, subject to an attachment issued out of a state court, at the suit of a creditor of the importer, is a plain departure from his duty, not authorized by the law of the United States, and cannot be admitted to vary the rights of the parties..... *Id.*

PROMISSORY NOTES.

1. An action was brought by the Union Bank of Georgetown against George B. Magruder, as indorser of a promissory note made by George Magruder; the maker of the note died before it became payable, and letters of administration to his estate were taken out by the indorser; no notice of the non-payment of the note was given to the indorser, nor any

demand of payment made, until the institution of the suit: *Held*, that the indorser was discharged, and his having become the administrator of the maker did not relieve the holder from the obligation to demand payment of the note, and to give notice thereof to the indorser. The general rule, that payment must be demanded from the maker of a note, and notice of non-payment forwarded to the indorser, within due time, in order to render him liable, is so firmly settled, that no authority need be cited to support it; due diligence to obtain payment from the maker is a condition precedent, on which the liability of the indorser depends. *Magruder* v. *Bank of Georgetown*.....*87

2. A note was discounted at the office of discount and deposit of the Bank of the United States, in the city of Washington, for the accommodation of the maker, indorsed by Magruder and McDonald; neither of the indorsers receiving any value for his indorsement, but indorsing the note at the request of the maker, without any communication with each other; the note was renewed, from time to time, under the same circumstances, and was at length protested for non-payment; and separate suits having been brought by the bank against the indorsers, the maker being insolvent, judgments in favor of the bank were obtained against both the indorsers; the bank issued an execution against Magruder, the first indorser, and he, having paid the whole debt and costs, instituted this suit against McDonald, the second indorser, for contribution, claiming one-half of the sum so paid by him, in satisfaction of the judgment obtained by the bank: *Held*, that he was not entitled to recover. *McDonald* v. *Magruder*.....*470

3. That a prior indorser is, in the regular course of business, liable to his indorsee, although that indorsee may have afterwards indorsed the note, is unquestionable; when he takes up the note, he becomes the holder, as entirely as if he had never parted with it, and may sue the indorser for the amount; the first indorser undertakes that the maker shall pay the note, or that he, if due diligence be used, will pay it for him; this undertaking makes him responsible to every holder, and to every person whose name is on the note subsequent to his own, and who has been compelled to pay its amount.....*Id.*

4. The indorser of a promissory note, who receives no value for his indorsement from a subsequent indorser, or from the maker, cannot set up the want of consideration received by himself; he is not permitted to say that the promise is made without consideration; because money paid by the promisee to another is as valid a consideration as if paid to the promisor himself.....*Id.*

PUBLIC AGENTS.

1. When money of the United States has been received by one public agent from another public agent, whether it was received in an official or private capacity, there can be no doubt, but that it was received to the use of the United States; and they may maintain an action against the receiver for the same. *United States* v. *Buford*.....*12

2. B., a deputy commissary-general of the United States, received from M., a deputy quartermaster-general of the United States, the sum of $10,000, and acknowledged the same, by a receipt signed by him with his official description; the United States had a right to treat M. as their agent in the transaction, by making B. their debtor, and to an action brought against him formoney had and received, the statute of limitations is no bar. *Id.*

REPORTER OF THE SUPREME COURT.

1. Certified copies of the opinions of the court, delivered in cases decided by the court, are to be given by the reporter, and not by the clerk of the court. *Anon*.....*397

SLAVE-TRADE.

1. The offence against the law of the United States, under the 7th section of the act of congress, passed the second of March 1807, entitled, "an act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the 1st of January 1808," is not that of importing or bringing into the United States persons of color, with intent to hold or sell such persons as slaves, but that of hovering on the coast of the United States with such intent; and although it forfeits the vessel, and any goods or effects found on board, it is silent as to disposing of the colored persons found on board, any further than to impose a duty upon the officers of armed vessels who make the capture, to keep them safely, to be delivered to the overseers of the poor, the governor of the state, or persons appointed by the respective states to receive the same. *United States* v. *Preston*.....*57

2. Persons of color held as slaves under an order of the district court of Louisiana, in a case in which the decree was afterwards reversed, were illegally sold, and they are free.....*Id.*

See CONSTRUCTION OF THE STATUTES OF THE UNITED STATES.

STATUTE OF CHARITABLE USES.

See Inglis *v.* Trustees of the Sailor's Snug Harbour, p. *99, on the construction and application of this statute to devises and gifts to charitable uses in the United States.

STATUTE OF LIMITATIONS.

See Limitation of Actions.

STATUTES OF THE UNITED STATES.

1. This court has been often called upon to consider the 16th section of the judiciary act of 1789, and as often, either expressly, or by the course of its decisions, has held, that it is merely declaratory, making no alteration whatever in the rules of equity on the subject of legal remedy. *Boyce's Executors* v. *Grundy* *210

See Construction of Statutes, 1–6.

SUABILITY OF STATES.

1. The *subpœna* issued on the filing of a bill, in which the state of New Jersey were complainants, and the state of New York were defendants, was served upon the governor and attorney-general of New York, sixty days before the return-day, the day of the service and return inclusive; a second *subpœna* issued, which was served on the governor of New York only, the attorney-general being absent; there was no appearance by the state of New York. This is not like the case of several defendants, where a service on one might be good, though not on another; here, the service prescribed by the rule is to be on the governor, and on the attorney-general; a service on one is not sufficient to entitle the court to proceed. *State of New Jersey* v. *State of New York*..... *461
2. Upon an application by the counsel for the state of New Jersey, that a day might be assigned to argue the question of the jurisdiction of this court to proceed in the case, the court said, they had no difficulty in assigning a day; it might be as well to give notice to the state of New York, as they might employ counsel in the *interim;* if, indeed, the argument should be merely *ex parte*, the court would not feel bound by its decision, if the state of New York desired to have the question again argued .....*Id.*
3. A notice was given by the solicitors for the state of New Jersey to the governor of the state of New York, dated the 12th of January 1830, stating that a bill had been filed on the equity side of the supreme court, by the state of New Jersey, against the people of the state of New York, and that on the 13th of February following, the court would be moved in the case, for such order as the court might deem proper, etc. Afterwards, on the day appointed, no counsel having appeared for the state of New York, on the motion of the counsel for the state of New Jersey, for a *subpœna* to be served on the governor and attorney-general of the state of New York, the court said, as no counsel appears to argue the motion, on the part of the state of New York, and the precedent for granting it has been established upon very grave and solemn argument, the court do not require an *ex parte* argument in favor of their authority to grant the *subpœna*, but will follow the precedent heretofore established; the state of New York will be at liberty to contest the proceeding, at a future time, in the course of the cause, if they shall choose so to do .....*Id.*

SUPREME COURT.

1. The supreme court of the United States has not jurisdiction, by *habeas corpus* or otherwise, in a case of a criminal prosecution instituted in a circuit court of the United States, for the purpose of examining the judgment and proceedings of that court in such cases. *Ex parte Watkins* *193

See Habeas Corpus: Jurisdiction.

TREASURY STATEMENTS.

1. An account stated at the treasury department, which does not arise in the ordinary mode of doing business in that department, can derive no additional validity from being certified under the act of congress; a treasury statement can only be regarded as establishing items for moneys disbursed through the ordinary channels of the department, where the transactions are shown by its books; in these cases, the officers may well certify, for they must have official knowledge of the facts stated. *United States* v. *Buford*..... *12
3. But when moneys come into the hands of an individual, not through the officers of the treasury, nor in the regular course of official duty, the books of the treasury do not exhibit the facts, nor can they be known to the officers of the department; in such a case, the claim of the United States for money thus in the hands of a third person, must be established, not by a treasury statement, but by the evidence on which that statement was made..... *Id.*

TRIAL BY JURY.

1. The amendment to the constitution of the United States by which the trial by jury was secured, may, in a just sense, be well construed to embrace all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights. *Parsons* v. *Bedford*..... *433
2. The trial by jury is justly dear to the American people; it has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy; the right to such a trial is, it is believed, incorporated into, and secured in every state constitution in the Union.. *Id.*

TRUST AND TRUSTEE.

1. Whenever any person, by will, gives property, and points out the object, the property, and the way in which it shall go, a trust is created, unless he shows clearly that his desire expressed is to be controlled by the trustee, and that he shall have an option to defeat it. *Inglis* v. *Trustees of the Sailor's Snug Harbour* *100

USURY.

1. The taking of interest in advance, upon the discount of a note, in the usual course of business, by a banker, is not usury; this has been long settled, and is not now open for controversy. *Thornton* v. *Bank of Washington*..... *36
2. The taking of interest for sixty-four days on a note, is not usury, if the note, given for sixty-days, according to the custom and usage in the banks at Washington, was not due and payable until the sixty-fourth day; in the case of Renner *v.* Bank of Columbia, 9 Wheat. 581, it was expressly held, that under that custom, the note was not due and payable before the sixty-fourth day, for until that time, the maker could not be in default.. *Id.*
3. Where it was the practice of the party, who had a sixty-day note discounted at the Bank of Washington, to renew the note, by the discount of another note, on the sixty-third day, the maker not being in fact bound to pay the note, according to the custom prevailing in the District of Columbia; such a transaction on the part of the banker is not usurious, although on each note the discount for sixty-four days was deducted. Each note is considered as a distinct and substantive transaction; if no more than legal interest is taken upon the time the new note has to run, the actual application of the proceeds of the new note to the payment of the former note, before it becomes due, does not of itself make the transaction usurious. Something more must occur; there must be a contract between the bank and the party, at the time of such discount, that the party shall not have the use and benefit of the proceeds, until the former note becomes due, or that the bank shall have the use and benefit of them in the meantime..... *Id.*

VENDOR AND VENDEE.

See Parsons *v.* Armor. *413

VIRGINIA LAND TITLES.

See Land and Land Titles, 1–4.

WILLS AND TESTAMENTS.

1. The intent of the testator is the cardinal rule in the construction of wills; and if that intent can be clearly perceived, and is not contrary to some positive rule of law, it must prevail; although in giving effect to it, some words should be rejected, or so restrained in their application, as to change their literal meaning in the particular instance. *Finlay* v. *King* *347

WRIT OF ERROR.

1. If the writ of error be brought by the plaintiff below, then the sum which the declaration shows to be due, may still be recovered, should the judgment for a smaller sum be reversed; and consequently, the whole sum claimed is still in dispute. *Gordon* v. *Ogden*.....*33
2. But if the writ of error be brought by the defendant in the original action, the judgment of this court can only affirm that of the circuit court, and consequently, the matter in dispute cannot exceed the amount of that judgment; nothing but that judgment is in dispute between the parties.....*Id.*
3. The court has no authority, on a writ of error from a state court, to declare a state law void, on account of its collision with a state constitution; it not being a case embraced in the judiciary act, which gives the power to issue a writ of error to the highest judicial tribunal of the state. *Jackson* v. *Lamphire*.....*280
4. The record consisted of the petition, the answer, the whole testimony, as well depositions as documents, introduced by either party, and the *fiat* of the judge, that Armor, the plaintiff below, recover the debt as demanded. The difficulty is, to decide under

what character we shall consider this reference to the revising power of this court; if treated strictly as a writ of error, it is certainly not an attribute of that writ, according to the common-law doctrine, to submit the testimony as well as the law of the case to the revision of this court; and then there is no mode in which the court can treat this case, but in the nature of a bill of exceptions; the court is not at liberty to treat this case as an appeal in a court of equity jurisdiction, under the act of 1803; because the party has not brought up his cause by appeal, but by writ of error. *Parsons* v. *Armor* . .*413

See AMENDMENT, 1.

WRIT OF RIGHT.

1. In a writ of right, the tenant may, on the *mise* joined, set up a title out of himself and in a third person; if anything which fell from the court in this case of Greene *v.* Liter, 8 Cranch 229, can be supposed to give countenance to the opposite doctrine, it is done away by the explanation given by the court in Greene *v.* Watkins, 7 Wheat. 31; it is there laid down, that the tenant may give in evidence the title in a third person, for the purpose of disproving the demandant's seisin; that a writ of right does bring into controversy the mere right of the parties to the suit; and if so, it, by consequence, authorizes either party to establish, by evidence, that the other has no right whatever in the demanded premises; or that his mere right is inferior to that set up against him. *Inglis* v. *Trustees of the Sailor's Snug Harbour*.....*101

2. In a writ of right, on the *mise* joined on the mere right, under a count for the entire right, a demandant may recover a less quantity than the entirety ..... *Id.*

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