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TO THE

MATTERS CONTAINED IN THIS VOLUME.

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ACCEPTANCE OF BILLS.

1. Courts have latterly leaned very much against extending the doctrine of implied acceptances, so as to sustain an action upon a bill; for all practical purposes, in commercial transactions in bills of exchange, such collateral acceptances are extremely inconvenient, and injurious to the credit of bills; and this has led judges frequently to express their dissatisfaction that the rule has been carried so far as it has; and their regret that any other act, than a written acceptance on the bill, had ever been deemed an acceptance. *Boyce* v. *Edwards* *111
2. As it respects the rights and the remedy of the immediate parties to the promise to accept, and all others who may take bills upon the credit of such promise; they are equally secure, and equally attainable, by an action for the breach of the promise to accept, as they would be by an action on the bill itself .....*Id.*

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1. Everything which disaffirms the contract; everything which shows it to be void; may be given in evidence on the general issue, in an action of *assumpsit*. *Craig* v. *State of Missouri* *410

BILLS OF CREDIT.

1. In its enlarged, and perhaps, literal sense, the term "bill of credit," may comprehend any instrument by which a state engages to pay money at a future day; thus, including a certificate given for money borrowed; but the language of the constitution itself, and the mischief to be prevented, equally limit the interpretation of the terms; the word "emit" is never employed in describing those contracts by which a state binds itself to pay money at a future day, for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language, denominated "bills of credit." "To emit bills of credit," conveys to the mind the idea of issuing paper intended to circulate through the community, for its ordinary purposes, as money; which paper is redeemable at a future day. This is the sense in which the terms have always been understood. *Craig* v. *State of Missouri*.....*410
2. The constitution considers the emission of bills of credit, and the enactment of tender laws, as distinct operations, independent of each other; which may be separately performed; both are forbidden. To sustain the one, because it is not also the other; to say that bills of credit may be emitted, if they be not made a tender in payment of debts; is, in effect to expunge that distinct, inde-

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pendent prohibition, and to read the clause as if it had been entirely omitted..... *Id.*

3. On the 27th day of June 1821, the legislature of the state of Missouri passed an act entitled "an act for the establishment of loan-offices;" by the third section of which, the officers of the treasury of the state, under the direction of the governor, were required to issue certificates to the amount of $200,000, of denominations not exceeding ten dollars, nor less than fifty cents, in the following form: "This certificate shall be receivable at the treasury of any of the loan-offices in the state of Missouri, in discharge of taxes or debts due to the state, for the sum of ——— dollars, with interest for the same, at the rate of two per centum per annum from this date." These certificates were to be receivable at the treasury, and by tax-gatherers and other public officers, in payment of taxes, or moneys due or to become due to the state, or to any town or county therein, and by all officers, civil and military, in the state, in discharge of salaries and fees of office; and in payment for salt made at the salt springs owned by the state, and to be afterwards leased by the authority of the legislature. The 23d section of the act pledged certain property of the state for the redemption of these certificates; and the law authorized the governor to negotiate a loan of silver or gold for the same purpose; a provision was made in the law for the gradual withdrawal of the certificates from circulation; and all the certificates had since been redeemed. The commissioners of the loan-offices were authorized to make loans of the certificates to citizens of the state, assigning to each district a proportion of the amount of the certificates, to be secured by mortgage or personal security; the loans to bear interest, not exceeding six per cent. per annum, and the loans on personal property to be for less than $200: *Held*, that the certificates issued under the authority of the law of Missouri, were "bills of credit;" and that their emission was prohibited by the constitution of the United States, which declares that no state shall "emit bills of credit." ..... *Id.*

BILLS OF EXCEPTION.

1. On the trial of a cause in the district court of the United States for the northern district of New York, exceptions were taken to opinions of the court delivered in the course of the trial; and some time after the trial was over, a bill of exceptions was tendered to the district judge, which he refused to sign, objecting to some of the matters stated in the same, and at the same time, altering the bill then tendered, so as to conform to his recollection of the facts of the case, and inserting in the bill all that he deemed proper to be contained in the same; which bill of exceptions, thus altered, was signed by the judge. On the motion of the party who had tendered the bill of exceptions, a rule was granted on the district judge, to show cause why he did not sign the bill of exceptions as first tendered him; to this rule the judge returned his reasons for refusing to sign the bill so tendered, and stating that he had signed such a bill of exceptions as he considered correct. This is not a case in which the judge has refused to sign a bill of exceptions; the judge has signed such a bill as he thinks correct; the object of the rule is to oblige the judge to sign a particular bill of exceptions which has been offered to him; the court granted the rule to show cause; and the judge has shown cause, by saying he has done all that can be required from him, and that the bill offered is not such a bill as he can sign; the court cannot order him to sign such a bill. *Ex parte Bradstreet*..... *102
2. The law requires that a bill of exceptions should be tendered at the trial; if a party intends to take a bill of exceptions, he should give notice to the judge at the trial; and if he does not file it at the trial, he should move the judge to assign a reasonable time within which he may file it; a practice to sign it after the term, must be understood to be matter of consent betwen the parties; unless the judge has made an express order in the term, allowing such a period to prepare it..... *Id.*

BILLS OF EXCHANGE.

1. Action on two bills of exchange drawn by Hutchinson, on B. & H., in favor of E., which the drawees, B. & H., refused to accept, and with the amount of which bills E. sought to charge the defendants as acceptors, by virtue of an alleged promise before the bills were drawn. The rule on this subject is laid down with great precision by this court in the case of Coolidge *v.* Payson, 2 Wheat. 75, after much consideration and a careful review of the authorities; that a letter written within a reasonable time before or after the date of a bill of exchange, describing it in terms not to be mistaken, and promising to accept it, is, if shown to the person who afterwards takes the bill on the credit of the letter, a virtual acceptance, binding on the person who makes the promise. *Boyce* v. *Edwards*..... *111
2. Whenever the holder of a bill seeks to

charge the drawee as acceptor, upon some occasional or implied undertaking, he must bring himself within the spirit of the rule laid down in Coolidge *v.* Payson ..... *Id.*

3. The rule laid down in Coolidge *v.* Payson requires the authority to be pointed at the specific bill or bills to which it is intended to to be applied, in order that the party who takes the bill upon the credit of such authority, may not be mistaken in its application ..... *Id.*

4. The distinction between an action on a bill, as an accepted bill, and one founded on a breach of promise to accept, seems not to have been attended to; but the evidence necessary to support the one or the other is materially different. To maintain the former, the promise must be applied to the particular bill alleged in the declaration to have been accepted; in the latter, the evidence may be of a more general character; and the authority to draw may be collected from circumstances, and extended to all bills coming fairly within the scope of promise..... *Id.*

5. Courts have latterly leaned very much against extending the doctrine of implied acceptances, so as to sustain an action upon a bill; for all practical purposes, in commercial transactions in bills of exchange, such collateral acceptances are extremely inconvenient and injurious to the credit of bills; and this has led judges frequently to express their dissatisfaction that the rule has been carried so far as it has; and their regret that any other act than a written acceptance on a bill, has ever been deemed an acceptance ..... *Id.*

6. As it respects the rights and the remedy of the immediate parties to the promise to accept, and all others who may take bills upon the credit of such promise, they are equally secure and equally attainable by an action for the breach of the promise to accept, as they would be by an action on the bill itself..... *Id.*

7. The contract to accept the bills, if made at all, was made in Charleston, South Carolina; the bills were drawn in Georgia, on B. & H., in Charleston, and with a view to the state of South Carolina for the execution of the contract; the interest is to be charged at the rate of interest in South Carolina.... *Id.*

BRITISH TREATY.

See Carver *v.* Astor, *101: Construction of Statutes, 1.

CHANCERY AND CHANCERY PRACTICE.

1. Where a bill was filed to compel the execution of securities for money loaned, which securities, it was alleged in the bill, were promised to be given upon particular real estate purchased by the money loaned, and the complainants had omitted to make the prior mortgagees of the premises on which the securities were required to be given, parties to the bill, the court said; it has been urged in reply to those grounds of reversal for want of parties, or for want of due maturation for a final hearing, that nothing is ordered to be mortgaged or sold, besides the interest of the party who is ordered to execute the mortgage, or whose interest is to be sold, whatever that may be; but this we conceive to be an insufficient answer. It is not enough, that a court of equity causes nothing but the interest of the proper party to change owners; its decree should terminate and not instigate litigation; its sales should tempt men to sober investment, and not to wild speculation; its process should act upon known and definite interests, and not upon such as admit of no medium of estimation; it has means of reducing every right to certainty and precision; and is, therefore, bound to employ these means in the exercise of its jurisdiction. *Caldwell* v. *Taggart*.....*190

2. The general rule is, that however numerous the persons interested in the subject of a suit, they must all be made parties, plaintiff or defendant, in order that a complete decree may be made; it being the constant aim of a court of equity to do complete justice, by embracing the whole subject; deciding upon and settling the rights of all persons interested in the subject of the suits; to make the performance of the order perfectly safe to those who have to obey it, and to prevent future litigation..... *Id.*

3. Where, in the course of proceedings in a suit in chancery, in the circuit court, it is apparent, that a father has not presented the interests of his children for protection, the court said, although there is no appeal taken in behalf of the children, the court, while interfering to prevent the breach of a trust in behalf of the father, can hardly be expected to pass over, without noticing, an omission in the father, amounting to a breach of trust, to the prejudice of his infant children... *Id.*

4. The complainants, in the circuit court of Ohio, filed a bill to enforce the specific performance of a contract; the bill stated that there was a surplus of several hundred acres, and by actual measurement it was found to be 876 acres; the patent having been granted for 1533 1-3 acres beyond the quantity mentioned in the contract. The powers of a court of chancery to enforce a specific execution of contracts, are very valuable and important; for in many cases,

where the remedy at law for damages is not lost, complete justice cannot be done, without a specific execution; and it has been almost as much a matter of course, for a court of equity to decree a specific execution of a contract for the purchase of lands, where, in its nature and circumstances, it is unobjectionable, as it is, to give damages at law, where an action will lie for a breach of the contract; but this power is to be exercised under the sound discretion of the court, with an eye to the substantial justice of the case. *King* v. *Hamilton* *311

5. When a party comes into a court of chancery seeking equity, he is bound to do justice, and not ask the court to become the instrument of iniquity; when a contract is hard and destitute of all equity, the court will leave parties to their remedy at law; and if that has been lost by negligence, they must abide by it ..... *Id.*

6. It is a settled rule, in a bill for specific performance of a contract, to allow a defendant to show that it is unreasonable or unconscientious, or founded in mistake, or other circumstances leading satisfactorily to the to the conclusion, that the granting of the prayer of the bill would be inequitable and unjust. Gross negligence on the part of the complainant has great weight in cases of this kind; a party, to entitle himself to the aid of a court of chancery for a specific execution of a contract, should show himself ready and desirous to perform his part... *Id.*

CITIZENSHIP.

See NATURALIZATION.

CITY OF WASHINGTON.

1. In 1822, congress passed an act authorizing the corporation of Washington to drain the ground in and near certain public reservations, and to improve and ornament certain parts of the public reservations; the corporation were empowered to make an agreement, by which parts of the location of the canal should be changed, for the purpose of draining and drying the low grounds near the Pennsylvania avenue, &c. To effect these objects, the corporation was authorized to lay off in building lots, certain parts of the public reservations, Nos. 10, 11 and 12, and of other squares, and also a part of B street, as laid out and designed in the original plan of the city, which lots they might sell at auction, and apply the proceeds to those objects, and afterwards to inclosing, planting and improving other reservations, and building bridges, &c., the surplus, if any, to be paid into the treasury of the United States. The act authorized the heirs, &c., of the former proprietors of the land on which the city was laid out, who might consider themselves injured by the purposes of the act, to institute in the circuit court, a bill in equity, in the nature of a petition of right, against the United States, setting forth the grounds of any claim they might consider themselves entitled to make, to be conducted according to the rules of a court of equity; the court to hear and determine upon the claim of the plaintiffs, and what portion, if any, of the money arising from the sale of the lots they might be entitled to, with a right of appeal to this court. The plaintiffs, Van Ness and wife, filed their bill against the United States and the corporation of Washington, claiming title to the lots which had been thus sold, under David Burns, the original proprietor of that part of the city, and father of one of the plaintiffs, on the ground, that by the agreement between the United States and the original proprietors, upon laying out the city, those reservations and streets were for ever to remain for public use, and without the consent of the proprietors, could not be otherwise appropriated, or sold for private use; that the act of congress was a violation of that contract; that by such sale and appropriation for private use, the right of the United States thereto was determined, or that the original proprietors re-acquired a right to have the reservations, &c., laid out in building lots, for their joint and equal benefit with the United States, or that they were in equity entitled to the whole or a moiety of the proceeds of the sales of the lots: *Held*, that no rights or claims existed in the former proprietors or their heirs, and that the proceedings of the corporation of Washington, under and in conformity with the provisions of the act, were valid and effectual for the purposes of the act. *Van Ness* v. *City of Washington* *232

See Ronkerdorff *v.* Taylor's Lessee, *349.

CONSIDERATION.

1. It has been long settled, that a promise made in consideration of an act which is forbidden by the law, is void; it will not be questioned, that an act forbidden by the constitution of the United States, which is the supreme law, is against law. *Craig* v. *State of Missouri* *410

2. A promissory note given for certificates issued at the loan-office of Chariton, in Missouri, payable to the state of Missouri, under the act of the legislature "establishing loan-offices," is void ..... *Id.*

3. A contract was made for rebuilding Fort Washington, by M., a public agent, and a deputy quartermaster-general, with B., in the profits of which M. was to participate; false measures of the work were attempted to be imposed on the government, the success of which was prevented by the vigilance of the accounting officers of the treasury; a bill was filed, to compel an alleged partner in the contract to account for and pay to one of the partners in the transaction, one-half of the loss sustained in the execution of the contract: *Held*, that to state such a case is to decide it; public morals, public justice, and the well-established principles of all judicial tribunals, alike forbid the interposition of courts of justice to lend their aid to purposes like this. To enforce a contract which began with the corruption of a public officer, and progressed in the practice of known, wilful deception in its execution, can never be approved or sanctioned by any court. *Bartle* v. *Coleman* *184
4. The law leaves the parties to such a contract as it found them; if either has sustained a loss by the bad faith of a *particeps criminis*, it is but a just infliction for premeditated and deeply practised fraud; he must not expect that a judicial tribunal will degrade itself, by an exertion of its powers, to shift the loss from one to the other, or to equalize the benefits or burdens which may have resulted from the violation of every principle of morals and of law.....*Id.*

CONSTITUTIONAL LAW.

1. In its enlarged, and perhaps, literal sense, the term "bill of credit" may comprehend any instrument by which a state engages to pay money at a future day; thus, including a certificate given for money borrowed; but the language of the constitution itself, and the mischief to be prevented, equally limit the interpretation of the terms; the word "emit" is never employed in describing those contracts by which a state binds itself to pay money at a future day, for services actually received, or for money borrowed for present use; nor are instruments executed for such purposes, in common language, denominated "bills of credit." "To emit bills of credit," conveys to the mind the idea of issuing paper intended to circulate through the community, for its ordinary purposes, as money; which paper is redeemable at a future day; this is the sense in which the terms have always been understood. *Craig* v. *State of Missouri*.....*410
2. The constitution considers the emission of bills of credit, and the enactment of tender laws, as distinct operations; independent of each other; which may be separately performed; both are forbidden. To sustain the one, because it is not also the other; to say that bills of credit may be emitted, if they be not made a tender in payment of debts; is, in effect, to expunge that distinct independent prohibition, and to read the clause as if it had been entirely omitted.....*Id.*
3. On the 27th day of June 1821, the legislature of the state of Missouri passed an act, entitled "an act for the establishment of loan-offices," by the third section of which, the officers of the treasury of the state, under the direction of the governor, were required to issue certificates to the amount of $200,000, of denominations not exceeding ten dollars, nor less than fifty cents, in the following form: "This certificate shall be receivable at the treasury of any of the loan-offices in the state of Missouri, in discharge of taxes or debts due to the state, for the sum of ——— dollars, with interest for the same, at the rate of two per centum per annum from this date." These certificates were to be receivable at the treasury, and by tax-gatherers and other public officers, in payment of taxes, or moneys due, or to become due, to the state, or to any town or county therein, and by all officers, civil or military, in the state in discharge of salaries and fees of office; and in payment for salt made at the salt-springs owned by the state, and to be afterwards leased by the authority of the legislature. The 23d section of the act pledged certain property of the state for the redemption of these certificates; and the law authorized the governor to negotiate a loan of silver or gold for the same purpose; a provision was made in the law for the gradual withdrawal of the certificates from circulation; and all the certificates had since been redeemed. The commissioners of the loan-offices were authorized to make loans of the certificates to citizens of the state, assigning to each district a proportion of the amount of the certificates, to be secured by mortgage or personal security; the loans to bear interest, not exceeding six per cent. per annum, and the loans on personal property to be for less than $200: *Held*, that the certificates issued under the authority of the law of Missouri were "bills of credit;" and that their emission was prohibited by the constitution of the United States, which declares that no state shall "emit bills of credit."..... *Id.*
4. A promissory note given for certificates issued at the loan-office of Chariton, in Missouri, payable to the state of Missouri, under

the act of the legislature "establishing loan-offices," is void .... *Id.*

5. The action was *assumpsit* on a promissory note, and the record stated, "that neither party having required a jury, the cause was submitted to the court; and the court, having seen and heard the evidence, found that the defendants did assume as the plaintiff had declared; that the consideration for the note and the *assumpsit* was for loan-office certificates, loaned by the state of Missouri, at her loan office in Chariton, which certificates were issued under "an act for establishing loan-offices, &c.:" *Held*, that it could not be doubted, that the declaration was on a note given in pursuance of the act of Missouri; and that under the plea of *non assumpsit*, the defendants were at liberty to question the validity of the consideration which was the foundation of the contract, and the constitutionality of the law in which it originated. The record thus exhibiting the case, gives jurisdiction to this court over the case, on a writ of error prosecuted by the defendants to this court, from the supreme court of Missouri, under the provisions of the 25th section of the judiciary act of 1789.. *Id.*
6. Everything which disaffirms the contract; everything which shows it to be void, may be given in evidence on the general issue, in an action of *assumpsit*. ..... *Id.*
7. In 1791, the legislature of Rhode Island granted a charter of incorporation to certain individuals who had associated for the purpose of banking; they were incorporated by the name of the president, directors and company of the Providence Bank, with the ordinary powers of such associations; in 1822, the legislature passed an act imposing a tax on every bank in the state, except the Bank of the United States; the Providence Bank refused the payment of the tax, alleging that the act which imposed it was repugnant to the constitution of the United States, as it impaired the obligation of the contract created by the charter of incorporation: *Held*, that the act of the legislature of Rhode Island, imposing a tax, which, under the law, was assessed on the Providence Bank, did not impair the obligation of the contract created by the charter granted to the bank. *Providence Bank* v. *Billings* *514
8. It has been settled, that a contract entered into between a state and an individual is as fully protected by the prohibitions contained in the tenth section, first article, of the constitution, as a contract between two individuals; and it is not denied, that a charter incorporating a bank is a contract..... *Id.*
9. The power of taxing moneyed corporations has been frequently exercised; and has never before, so far as is known, been resisted; its novelty, however, furnishes no conclusive argument against him..... *Id.*
10. That the taxing power is of vital importance; that it is essential to the existence of government; are truths which it cannot be necessary to re-affirm; they are acknowledged and asserted by all. It would seem, that the relinquishment of such a power is never to be assumed; we will not say, that a state may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it, may not exist; but as the whole community is interested in retaining it undiminished, that commmunity has a right to insist, that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the state to abandon it does not appear..... .. *Id.*
11. The power of legislation, and consequently, of taxation, operate on all the persons and property belonging to the body politic; this is an original principle, which has its foundation in society itself; it is granted by all, for the benefit of all; it resides in government as a part of itself; and need not be reserved, where property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies ..... *Id.*
12. However absolute the right of an individual may be, it is still in the nature of that right, that it must bear a portion of the public burdens, and that portion must be determined by the legislature; this vital power may be abused; but the constitution of the United States was not intended to furnish the correction of every abuse of power which may be committed to the state governments. The intrinsic wisdom and justice of the representative body, and its relations with its constituents, furnish the only security, where there is no express contract, against unjust and excessive taxation, as well as against unwise legislation generally..... *Id.*

CONSTRUCTION OF STATE LAWS.

1. The act of the legislature of New York of May 1st, 1786, gave to the purchasers of forfeited estates the like remedy, in case of eviction, for obtaining compensation for the value of their improvements, as is directed in the act of the 12th of May 1784; the latter act declares, that the person or persons having obtained judgment against such purchasers, shall not have any writ of possession, nor obtain possession of such lands, &c., until he shall have paid to the purchaser of such lands, or person holding title under him, the value of all improvements made thereon, after the passing of the act;

Held, that claims of compensation for improvements made under the authority of these acts of the legislature of New York, were inconsistent with the provisions of the treaty of peace with Great Britain of 1783, and should be rejected. *Carver* v. *Astor*. *1

2. That in all cases, a party is bound by natural justice to pay for improvements on land, made against his will or without his consent, is a proposition which the court are not prepared to admit..... *Id.*

3. There is no statute in Virginia, which expressly makes a judgment a lien upon the lands of the debtor; as in England, the lien is the consequence of a right to take out an *elegit;* during the existence of this, the lien is universally acknowledged; different opinions seem, at different times, to have been entertained of the effect of any suspension of this right. *United States* v. *Morrison*. . *124

4. Soon after this case was decided in the circuit court for the district of East Virginia, a case was decided in the court of appeals of that state, in which this question on the execution law of the state of Virginia was elaborately argued, and deliberately decided; that decision is, that the right to take out an *elegit* is not suspended, by suing out a writ of *fieri facias*, and, consequently, that the lien of the judgment continues, pending the proceeding on that writ. The court, according to its uniform course, adopts the construction of the act which is made by the highest court of the state..... *Id.*

See Lands and Land Titles.

CONSTRUCTION OF STATUTES OF THE UNITED STATES.

See Priority of the United States: Statutes of the United States: Taxes: Ronkendorf *v.* Taylor's Lessee, *349.

CONTEMPT OF COURT.

1. That a counsellor practising in the highest court of the state of New York, in which he resides, had been stricken from the roll of counsellors of the district court of the United States for the northern district of New York, by the order of the judge of that court, for a contempt, does not authorize this court to refuse his admission as a counsellor of this court. *Ex parte Tillinghast*... *108

2. This court does not consider the circumstances upon which the order of the district judge was given within its cognisance; or that it is authorized to punish for a contempt which may have been committed in the district court of the northern district of New York..... *Id.*

CONTINGENT REMAINDER.

See Remainder.

CONTRACT.

1. A contract was made for rebuilding Fort Washington, by M., a public agent, and a deputy quartermaster-general, with B.; in the profits of which M. was to participate; false measures of the work were attempted to be imposed on the government, the success of which was prevented by the vigilance of the accounting officers of the treasury. A bill was filed to compel an alleged partner in the contract to account for and pay to one of the partners in the transaction one-half of the loss sustained in the execution of the contract; *Held*, that to state such a case was to decide it; public morals, public justice, and the well-established principles of all judicial tribunals, alike forbid the interposition of courts of justice to lend their aid to purposes like this; to enforce a contract which began with the corruption of a public officer, and progressed in its execution, can never be approved or sanctioned by any court. *Bartle* v. *Coleman*..... *184

2. The law leaves the parties to such a contract as it found them; if either has sustained a loss by the bad faith of a *particeps criminis*, it is but a just infliction for premeditated and deeply practised fraud; he must not expect that a judicial tribunal will degrade itself, by an exertion of its powers, to shift the loss from one to the other, or to equalize the benefits or burdens which may have resulted from the violation of every principle of morals and of law..... *Id.*

3. It has been long settled, that a promise made in consideration of an act which is forbidden by the law, is void; it will not be questioned, that an act forbidden by the constitution of the United States, which is the supreme law, is against law. *Craig* v. *State of Missouri*..... *410

CORPORATION.

1. The defendant claimed land in controversy under a tax sale which was made by a company incorporated by the legislature of Connecticut, in 1796, called "the proprietors of the half million of acres of land lying south of lake Erie," and incorporated by an act of the legislature of Ohio, passed on the

15th of April 1803, by the name of "the proprietors of the half million of acres of land lying south of lake Erie, called the sufferers' land." In 1806, the legislature of Ohio imposed a land-tax, and authorized the sale of the lands in the state for unpaid taxes, giving to minors the right to redeem within one year after the determination of their minority; this act was in force in 1808. In 1808, the directors of the company, incorporated by the legislatures of Connecticut and Ohio, assessed two cents per acre on the lands of the company, for the payment of the tax laid by the state of Ohio, and authorized the sale of those lands on which the assessments were not paid; the lands purchased by the defendant were the property of minors, at the time of the sale; they having been sold to pay the said assessments under the authority of the directors of the company: *Held*, that the sale of the land under which the defendant claimed was void. *Beaty* v. *Lessee of Knowler*. *152

2. That a corporation is strictly limited to the exercise of those powers which are specifically conferred on it, will not be denied; the exercise of the corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation..... *Id.*

3. From a careful inspection of the whole act, it clearly appears, that the incorporation of the company was designed to enable the proprietors to accomplish specific objects, and that no more power was given than was considered necessary to attain those objects ..... *Id.*

4. The words, "all necessary expenses of the company," cannot be construed to enlarge the power to tax, which is given for specific purposes; a tax by the state is not a necessary expense of the company, within the meaning of the act; such an expense can only result from the action of the company in the exercise of its corporate powers... *Id.*

5. The provision in the tenth section, "that the directors shall have power to do whatever shall appear to them to be necessary and proper to be done for the well-ordering of the interests of the proprietors, not contrary to the laws of the state," was not intended to give unlimited power, but the exercise of a discretion within the scope of the authority conferred..... *Id.*

6. The great object of an incorporation is to bestow the character and properties of individuality on a collected and changing body of men; any privileges which may exempt it from the burdens common to individuals, do not flow necessarily from the charter, but must be expressed in it, or they do not exist. *Providence Bank* v. *Billings*..... *514

ESCAPE.

1. After judgment obtained in a circuit court of the United States against the maker of a note, a *capias ad satisfaciendum* was issued against him by the holder, and he was put in prison; two justices of the peace ordered his discharge, claiming to proceed according to the law of Kentucky in the case of insolvent debtors, and the jailer permitted him to leave the prison. The jailer made himself and his securities liable for an escape, by permitting the prisoner to leave the prison. *Bank of United States* v. *Tyler*..... *336

ESTATES IN REMAINDER.

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ESTOPPEL.

See EVIDENCE.

EVIDENCE.

1. The plaintiff claimed under a marriage-settlement purporting to be executed the 13th of January 1758, by an indenture of release, between Mary Philipse, of the first part, Roger Morris, of the second part, and Johanna Philipse and Beverly Robinson, of the third part; whereby, in consideration of a marriage intended to be solemnized between Roger Morris and Mary Philipse, &c., R. M., and M. P. granted, &c., to J. P., and B. R., "in their actual possession now being, by virtue of a bargain and sale to them thereof made, for one whole year, by indenture bearing date the day next before the date of these presents, and by force of statute for transferring uses into possession, and to their heirs, all those," &c., upon certain trusts therein mentioned. This indenture, signed and sealed by the parties, and attested by the subscribing witnesses to the sealing and delivery thereof, with a certificate of William Livingston, one of the witnesses, and the execution thereof before a judge of the supreme court of the state of New York, dated the 5th of April 1787, and of the recording thereof in the secretary's office of New York, was offered in evidence by the plaintiff, and objected to, on the ground, that the certificate of the execution was not legal and competent evidence, and did not entitle the plaintiff to read the deed, without proof of its execution; a witness was sworn, who proved the handwriting of William Liv-

ingston, and of the other subscribing witness, both of whom were dead; the certificate of the judge of the supreme court of New York stated, that William Livingston had sworn before him, that he saw the parties to the deed "sign and seal the indenture, and deliver it as their, and each of their, voluntary acts and deeds," &c. According to the laws of New York, there was sufficient *primâ facie* evidence of the due execution of the indenture—not merely of the signing and sealing—but of the delivery, to justify the court in admitting the deed to be read to the jury; and in the absence of all controlling evidence, the jury would have been bound to find that the deed was duly executed. *Carver* v. *Astor*.....*1

2. The plaintiff in the ejectment derived title under the deed of marriage-settlement of the 15th of January 1758, executed by Mary Philipse, who afterwards intermarried with Roger Morris, and by Roger Morris and certain trustees named in the same; the premises, before the execution of the deed of marriage-settlement, were the property of Mary Philipse in fee-simple; the defendant claimed title to the same premises, under a sale made thereof, as the property of Roger Morris and wife, by certain commissioners acting under the authority of an act of the legislature of New York, passed the 22d of October 1779, by which the premises were directed to be sold, as the property of Roger Morris and wife, as forfeited—Roger Morris and wife having been declared to be convicted and attainted of adhering to the enemies of the United States. Not only is the recital of the lease, in the deed of marriage settlement, evidence between the original parties to the same, of the existence of the lease, but between the parties to this case, the recital is conclusive evidence of the same, and supersedes the necessity of introducing any other evidence to establish it.....*Id.*
3. The recital of a lease, in a deed of release, is conclusive evidence upon all persons claiming under the parties in privity of estate; independently of authority, the court would have arrived at the same conclusion, upon principle.....*Id.*
4. Leases, like other deeds and grants, may be presumed from long possession, which cannot otherwise be explained; and under such circumstances, a recital in an old deed, of the fact of such a lease having been executed, is certainly presumptive proof, or stronger, in favor of such possession under title, than the naked presumption arising from a mere unexplained possession.....*Id.*
5. The legislature incorporated a company, and declared, that the act of incorporation should be considered a public act: *Held*, the provision in the act, that it should be considered a public act, must be regarded in courts; and its enactments noticed, without being specially pleaded, as would be necessary if the act were private. *Beaty* v. *Lessee of Knowler*.....*152
6. As the records of the land-office are of great importance to the country, and are kept under the official sanction of the government, their contents must always be considered, and they are always received in courts of justice as evidence of the facts stated. *Galt* v. *Galloway*.....*332
7. After an assessor of taxes has made the returns of his assessments, according to the law under which he acted, and the books for the collection of the taxes have been made up according to the returns, and delivered to a collector, it is not necessary to prove the appointment of the assessor; the highest evidence of his appointment is the sanction given to the returns of the assessor. *Ronkendorf* v. *Taylor's Lessee*.....*349

INSURANCE.

1. Action on a policy of insurance on the brig Hope, from Alexandria to Barbadoes, and back to the United States; on the outward voyage, the Hope put into Hampton Roads for a harbor, during an approaching storm, and was driven on shore above high-water mark; a survey was held, and she was recommended to be sold, for the benefit of all concerned; the assured abandoned, and there was no pretence but that the injury which the vessel had sustained justified the abandonment. The question in the case was, whether, by the acts of the assured, the abandonment had not been revoked? There can be no doubt, but that the revocation of an abandonment, before acceptance by the underwriters, may be inferred, from the conduct of the assured; if his acts and interference with the use and management of the subject insured be such as satisfactorily to show that he intended to act as owner, and not for the benefit of the underwriters; but this is always a question of intention, to be collected from the circumstances of the case, and belongs to the jury as matter of fact; and is not to be decided by the court as matter of law. *Columbian Insurance Co.* v. *Ashby*.....*139
2. In the case of the Chesapeake Insurance Co. *v.* Stark, 6 Cranch 272, this court lays down the general rule, that if an abandonment be legally made, it puts the underwriter completely in the place of the assured, and the agent of the latter becomes the

agent of the former; and that the acts of the agent interfering with the subject insured will not affect the abandonment; but the court takes a distinction between the acts of an agent and the acts of the assured; that in the latter case, any acts of ownership by the owner himself might be construed into a relinquishment of the abandonment, which had not been accepted. But the court in that case did not say, and we think did not mean to be considered as intimating, that every such act of ownership must, necessarily, and under all possible circumstances, be construed into a relinquishment of an abandonment; the practical operation of so broad a rule would be extremely injurious. *Id.*

INTEREST.

1. The contract to accept the bills of exchange on which the action was brought, was made in Charleston, South Carolina; the bills were drawn in Georgia, on B. & H., in Charleston, with a view to their payment in Charleston, where the contract was to be executed. The interest on the bill which was so drawn, and is unpaid, is to be charged at the rate of interest in South Carolina. *Boyce* v. *Edwards*.....*111

JUDGMENT.

1. A judgment does not bind lands in the state of Kentucky; the lien attaches only from the delivery of the execution to the sheriff; it then binds real and personal property, held by legal title. *Bank of United States* v. *Tyler*.....*366

JURISDICTION.

1. The action was *assumpsit* on a promissory note, and the record stated, "that neither party having required a jury, the cause was submitted to the court; and the court having seen and heard the evidence, the court found, that the defendants did assume, as the plaintiff had declared; that the consideration for the note and the *assumpsit* was for loan-office certificates, loaned by the state of Missouri, at her loan-office in Chariton, which certificates were issued under an act for establishing loan-offices," &c.: *Held*, that it could not be doubted, that the declaration was on a note given in pursuance of the act of Missouri; and that under the plea of *non assumpsit*, the defendants were at liberty to question the validity of the consideration which was the foundation of the contract; and the constitutionality of the law in which it originated; the record, thus exhibiting the case, gave jurisdiction to this court over the case, in a writ of error prosecuted by the defendants to this court from the supreme court of Missouri, under the provisions of the 25th section of the judiciary act of 1789. *Craig* v. *State of Missouri*.....*410

KENTUCKY.

1. The law of Kentucky, as to promissory notes, and the liability of parties to such instruments. *Bank of United States* v. *Tyler*.....*366

LANDS AND LAND TITLES.

1. The defendant claimed the land in controversy, under a tax-sale, which was made by a company incorporated by the legislature of Connecticut, in 1796, called "the proprietors of the half million of acres of land lying south of Lake Erie," and incorporated by an act of the legislature of Ohio, passed on the 15th of April 1803, by the name of "the proprietors of the half million of acres of land lying south of lake Erie, called the sufferers' land;" in 1806, the legislature of Ohio imposed a land-tax, and authorized the sale of the lands in the state for unpaid taxes, giving to minors the right to redeem within one year after the determination of their minority; this act was in force in 1808. In 1808, the directors of the company incorporated by the legislatures of Connecticut and Ohio, assessed two cents per acre on the lands of the company, for the payment of the tax laid by the state of Ohio, and authorized the sale of those lands on which the assessments were not paid; the lands purchased by the defendant were the property of minors, at the time of the sale; they having been sold to pay the said assessments under the authority of the directors of the company: *Held*, that the sale of the land under which the defendant claimed was void; that a corporation is strictly limited to the exercise of those powers which are specifically conferred on it, will not be denied; the exercise of the corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation. From a careful inspection of the whole act, it clearly appears, that the incorporation of the company was designed to enable the proprietors to accomplish specific objects, and that no more power was given than was considered necessary to attain these objects. The words, "all necessary expenses of the company," cannot be so construed to enlarge the power

to tax, which is given for specific purposes; a tax by the state is not a necessary expense of the company, within the meaning of the act; such an expense can only result from the action of the company in the exercise of its corporate powers. The provision in the tenth section, "that the directors shall have power to do whatever shall appear to them to be necessary and proper to be done for the well ordering of the interests of the proprietors, not contrary to the laws of the state," was not intended to give unlimited power, but the exercise of a discretion within the scope of the authority conferred. *Beaty* v. *Lessee of Knowler*.....*152

2. It is a fact of general notoriety, that the surveys and patents for lands within the Virginia military district, contain a greater quantity of land than is specified in the grants; parties, when entering a contract for the purchase of a tract of land in that district, and referring to the patent for a description, of course, expect that the quantity would exceed the specific number of acres. But so large an excess as in the present case, can hardly be presumed to have been within the expectation of either party; and admitting that a strict legal interpretation of a contract would entitle the purchaser to the surplus, whatever it might be; it by no means follows, that a court of chancery will, in all cases, lend its aid to enforce a specific performance of such a contract. *King* v. *Hamilton*.....*311

3. If this large surplus of 876 acres in a patent for 1533 1–3 acres should be taken as included in the original purchase, it might well be considered as a case of gross inadequacy of price..... *Id.*

4. When there is so great a surplus of land in the patent, beyond that which it called for nominally, as that it could hardly be presumed to have been within the view of either of the parties to the contract of sale; the court decreed a conveyance of the surplus, the vendee to pay for the same at the average rate per acre, with interest, which the consideration-money mentioned in the contract, bore to the quantity of land named in the same.....*Id.*

5. The possession of a warrant has always been considered at the land-office in Ohio sufficient authority to make locations under it; letters of authority were seldom, if ever, given to locators; because they were deemed unnecessary. *Galt* v. *Galloway*..... *332

6. An entry could only be made in the name of the person to whom the warrant was issued or assigned; so that the locator could acquire no title in his own name, except by a regular assignment.....*Id.*

7. When an entry is surveyed, its boundaries are designated, and nothing can be more reasonable and just than that these shall limit the claim of the locator; to permit him to vary his lines, so as to affect injuriously the right of others subsequently acquired, would be manifestly in opposition to every principle of justice..... *Id.*

8. Since locations were made in the Virginia military district in Ohio, it has been the practice of locators, at pleasure, to withdraw their warrants, both before and after surveys were executed; this practice is shown by the records of the land-office, and is known to all who are conversant with these titles; the withdrawal is always entered on the margin of the original entry, as a notice to subsequent locators; and no reason is necessary to be alleged as a justification of the act. If the first entry be defective in its calls, or if a more advantageous location can be made, the entry is generally withdrawn; this change cannot be made to the injury of the rights of others; and the public interest is not affected by it; the land from which the warrant is withdrawn, is left vacant for subsequent locators; and the warrant is laid elsewhere, on the same number of unimproved lands..... *Id.*

9. As the records of the land-office are of great importance to the country, and are kept under the official sanction of the government; their contents must always be considered, and they are always received in courts of justice as evidence of the facts stated..... *Id.*

10. Under the peculiar system of the Virginia land law, as it has been settled in Kentucky, and in the Virginia military district in Ohio, by usages adapted to the circumstances of the country; many principles have been established which are unknown to the common law; a long course of adjudications has fixed these principles, and they are considered as the settled rules by which these military titles are to be governed.....*Id.*

11. An entry, or the withdrawal of an entry, is, in fact, made by the principal surveyor, at the instance of the person who controls the warrant; it is not to be presumed, that this officer would place upon his records any statement which affected the rights of others, at the instance of an individual who had no authority to act in the case; the facts, therefore, proved by the records, must be received as *prima facie* evidence of the right of the person at whose instance they were recorded; and as conclusive, in regard to such things as the law requires to be recorded..... *Id.*

12. A location made in the name of a deceased

person is void; as every other act done in the name of a deceased person must be considered..... *Id.*

13. The withdrawal of an entry is liable to objection, subject to the rights which others may have acquired subsequent to its withdrawal having been entered in the land-office; this is required by principles of justice as well as of law..... *Id.*

14. Where by a royal charter of a town in Vermont, lands were given to the Society for the Propagation of the Gospel in Foreign Parts; the society being named as grantees of one share in the town, the court held, that this was a plain recognition by the crown of the existence of the corporation and of its capacity to take lands; such a recognition would confer the power to take land, if it had not previously existed. *Society for the Propagation of the Gospel* v. *Town of Pawlet*..... .....*480

15. H. entered, with the proper surveyor for the district of Kentucky, 45,000 acres of land, in the county of Washington, in that state, by virtue of treasury warrants; a survey was made thereon in 1786, and a patent for the land issued to H. in 1797; the warrants were purchased by the ancestor of the complainant, by a parol agreement with H. previous to their entry; before this agreement, H., in connection with a person who owned other warrants, had made an agreement with S., to locate their respective warrants, which agreement was ratified by the complainant, who paid a sum of money to S., for fees of patenting, and agreed to make S. a liberal compensation for his services; and S. located and surveyed under the warrants 45,000 acres, returned the surveys to the office, and paid the fees of office; the locating and surveying of the warrants, and all the necessary steps for completing the title, were done by S., who was employed first by H., and afterwards by the complainant, who paid in money for the same. H. being deceased, and having made no conveyance of the legal title to the lands, the complainant filed a bill in the county of Washington, "against the unknown heirs of H.," and in 1815, a decree was made by that court, for a conveyance of the lands by the unknown heirs, or in their default, by a commissioner, appointed in the decree to make the same: *Held*, that the conveyance was not authorized by the laws of Kentucky, in force at the time of the decree. *Hollingsworth* v. *Barbour*..... *466

16. The claim of "a locator" is peculiar to Kentucky, and has been universally understood by the people of the country to signify that compensation of a portion of the land located, agreed to be given by the owner of the warrant, to the locator of it for his services..... *Id.*

17. The term "property," when applied to lands, comprehends every species of title inchoate or complete; it is supposed to embrace those rights which lie in contract; those which are executory, as well as those which are executed. *Soulard* v. *United States*. *511

JUDGMENTS AND DECREES.

1. By the general law of the land, no court is authorized to render a judgment or decree against any one, or his estate; until after due notice by service of process to appear and defend. *Hollingsworth* v. *Barbour*. *466

KENTUCKY.

1. The acts of the assembly of Kentucky, authorizing proceedings against absent defendants, referred to and examined. *Hollingsworth* v. *Barbour* *466

2. The claim of a "locator" is peculiar to Kentucky, and has been universally understood by the people of the country to signify that compensation of a portion of the land located, agreed to be given by the owner of the warrant to the locator of it for his services..... *Id.*

3. The record of proceedings against "unknown heirs" is no evidence that any such heirs existed; and the decree and deed made in pursuance of it, cannot avail to pass any title without some evidence that there were some heirs..... *Id.*

LEX LOCI.

1. Vol. III. 535.

2. A contract to accept certain bills was made in Charleston, South Carolina. The bills were drawn in Georgia, on B. and H. in Charleston, and with a view to the state of South Carolina for the execution of the contract. The interest is to be charged at the rate of interest in South Carolina. *Boyce and Henry* v. *Edwards*. Vol. IV. 111.

LIEN.

See CONSTRUCTION OF STATE LAWS, 3, 4.

1. Lien of judgments and executions in Kentucky. *Bank of United States* v. *Tyler*. .*366

LIMITATION OF ACTIONS.

1. A promissory note was, by the plaintiff, placed in the hands of P. for collection; he instituted a suit in the state court thereon

against the maker, on the 7th of May 1820, but neglected to do so against the indorser; the maker proved insolvent. On the 8th of February 1821, he sued the indorser, but committed a fatal mistake, by a misnomer of the plaintiffs; upon which, after passing through the successive courts of the state, a judgment of nonsuit was finally rendered against the plaintiffs; before that time, the action against the indorser was barred by the statute of limitations, to wit, on the 9th of November 1822; this suit was instituted on the 27th of January 1825; the statute of limitations of North Carolina interposes a bar to actions of *assumpsit* after three years. *Wilcox* v. *Executors of Plummer*..... *172

2. The questions in the case were, whether the statute of limitations commenced running, when the error was committed in the commencement of the action against the indorser? or whether it commenced from the time the actual damage was sustained by the plaintiffs by the judgment of nonsuit? whether the statute runs from the time the action accrued, or from the time that the damage was developed, or became definite? *Held*, that the statute began to run from the time of committing the error, by the misnomer in the action against the indorser..... *Id.*

3. The ground of action in the case is a contract to act diligently and skilfully; and both the contract and the breach of it admit of a definite assignment of date; when might this action have been brought? is the question; for from that time the statute must run..... *Id.*

4. When the attorney was chargeable with negligence or unskilfulness, his contract was violated; and the action might have been sustained immediately; perhaps, in that event, no more than nominal damages may be proved, and no more recovered; but on the other hand, it is perfectly clear, that the proof of actual damage may extend to facts that occur and grow out of the injury, even up to the day of the verdict; if so, it is clear, that the damage is not the cause of the action..... *Id.*

5. The statutes of limitation of Vermont interpose no bar to the institution by the Society for the Propagation of the Gospel, &c., of an action for the recovery of land granted by the town of Pawlet. *Society for the Propagation of the Gospel* v. *Town of Pawlet*. *480

6. The act of the legislature of Vermont, which prohibits the recovery of mesne profits in certain cases, applies to the claim to such profits, by the plaintiffs in this suit; and the provisions of the treaty of peace of 1783, and those of the treaty with Great Britain in 1794, do not interfere with the provisions of that act; the law has prescribed the restrictions under which mesne profits shall be recovered; and these restrictions are obligatory on the citizens of the state; the plaintiffs take the benefit of the statute remedy to recover their right to the land; and they must take the remedy with all the statute restrictions..... *Id.*

LOUISIANA.

1. By the treaty by which Louisiana was acquired, the United States stipulated, that the inhabitants of the ceded territories should be protected in the free enjoyment of their property; the United States, as a just nation, regard this stipulation as the avowal of a principle which would have been held equally sacred, although it had not been inserted in the treaty. *Soulard* v. *United States*..*511

2. The term property, as applied to lands, comprehends every species of title, inchoate or complete; it is supposed to embrace those rights which lie in contract; those which are executory, as well as those which are executed; in this respect, the relation of the inhabitants of Louisiana to their government is not changed; the new government takes the place of that which has passed away..... *Id.*

MESNE PROFITS.

1. The act of the legislature of New York of May 1st, 1786, gave to the purchasers of forfeited estates the like remedy, in case of eviction, for obtaining compensation for the value of their improvements, as is directed in the act of the 12th of May 1784; the latter act declared, that the person or persons having obtained judgment against such purchasers, should not have any writ of possession, nor obtain possession of such lands, &c., until he should have paid to the purchaser of such lands, or person holding title under him, the value of all improvements made thereon, after the passing of the act: *Held*, that claims of compensation for improvements made under the authority of these acts of the legislature of New York, were inconsistent with the provisions of the treaty of peace with Great Britain of 1783, and should be rejected. *Carver* v. *Astor*. *1

2. That in all cases a party is bound by natural justice to pay for improvements on land, made against his will, or without his consent, is a proposition which the court are not prepared to admit..... *Id.*

3. The act of the legislature of Vermont, which prohibits the recovery of mesne profits in certain cases applies to the claim to such

profits by the plaintiffs in this suit; and the provisions of the treaty of peace of 1783, and those of the treaty with Great Britian in 1794, do not interfere with the provisions of that act. The law has prescribed the restrictions under which mesne profits shall be recovered; and these restrictions are obligatory on the citizens of the state; the plaintiffs take the benefit of the statute remedy to recover their right to the land; and they must take the remedy, with all the statute restrictions. *The Society for the Propagation of the Gospel* v. *Town of Pawlet*.....*480

NATURALIZATION.

1. The second section of the act of congress "to establish an uniform system of naturalization," passed in 1802, requires, that every person desirous of being naturalized, shall make report of himself to the clerk of the district court of the district where he shall arrive, or some other court of record in the United States; which report is to be recorded, and a certificate of the same given to such alien; and "which certificate shall be exhibited to the court by every alien who may arrive in the United States, after the passing of the act, on his application to be naturalized, as evidence of the time of his arrival within the United States." James Spratt arrived in the United States, after the passing of this act, and was under the obligation to report himself according to its provisions. The law does not require that the report shall have been made five years before the application for naturalization; the third condition of the first section of the law, which declares that the court admitting an alien to become a citizen, "shall be satisfied that he has resided five years in the United States," &c., does not prescribe the evidence which shall be satisfactory; the report is required by the law to be exhibited on the application for naturalization, as evidence of the time of arrival in the United States; the law does not say the report shall be the sole evidence; nor does it require that the alien shall report himself within any limited time after arrival; five years may intervene between the time of arrival and the report, and yet the report be valid. The report is undoubtedly conclusive evidence of the arrival; but it is not made by the law the only evidence of the fact. *Spratt* v. *Spratt*..*393
2. James Spratt was admitted a citizen of the United States, by the circuit court for the county of Washington, in the district of Columbia, and obtained a certificate of the same in the usual form. The act of the court admitting James Spratt as a citizen was a judgment of the circuit court; and this court cannot look behind it, and inquire on what testimony it was pronounced.....*Id.*
3. The various acts on the subject of naturalization, submit the decision upon the right of aliens to courts of record; they are to receive testimony, to compare it with the law, and to judge on both law and fact; if their judgment is entered on record in legal form, it closes all inquiry; and like any other judgment, is complete evidence of its own validity.....*Id.*

PLEAS AND PLEADINGS.

1. A case came before the court on a judgment in the circuit court, for the defendant, the avowant in replevin, he having demurred to the pleas of the plaintiff in an action of replevin; the court having reversed the judgment of the circuit court, remanded the cause, with instructions to the circuit court to overrule the demurrer, and permit the defendant, the avowant, to plead. *Lloyd* v. *Scott*.....*205
2. In an ejectment to recover a lot of land, being the first division lot laid out to the right of the society in the town of Pawlet, the plaintiffs are described in the writ as "The Society for the Propagation of the Gospel in Foreign Parts, a corporation duly established in England, within the dominions of the king of the United Kingdom of Great Britain and Ireland, the members of which society are aliens, and subjects of the said king;" the defendants pleaded the general issue of not guilty. The general issue admits the competency of the plaintiffs to sue, in the corporate capacity in which they have sued; the plaintiffs are a foreign corporation, the members of which are averred to be aliens, and British subjects; and the natural presumption is, that they are residents abroad. *Society for Propagating the Gospel* v. *Town of Pawlet*.....*480
3. If the defendants meant to insist on the want of a corporate capacity in the plaintiffs to sue, it should have been insisted upon, by a special plea in abatement or bar; pleading to the merits has been held by this court to be an admission of the capacity of the plaintiffs to sue; the general issue admits, not only the competency of the plaintiffs to sue, but to sue in the particular action which they bring.....*Id.*

PRACTICE.

1. The practice of bringing the whole of the charge of the court delivered to the jury in

the court below, for review before this court, is unauthorized, and extremely inconvenient both to the inferior and to the appellate court; with the charge of the court to the jury upon mere matters of fact, and with its commentaries upon the weight of evidence, this court has nothing to do; observations of that nature are understood to be addressed to the jury, merely for their consideration as the ultimate judges of the matters of fact; and are entitled to no more weight or importance, than the jury, in the exercise of their own judgment, chose to give them; they neither are, nor are understood to be, binding on them, as the true and conclusive exposition of the evidence. If, in summing up the evidence to the jury, the court should misstate the law, that would justly furnish a ground for an exception; but the exception should be strictly confined to that misstatement; and by being made known at the moment, would often enable the court to correct an erroneous expression, so as to explain or qualify it in such manner as to make it wholly unexceptionable, or perfectly distinct. *Carver* v. *Astor*.....*1

2. A rule had been granted on the district judge of the northern district of New York, to show cause why he did not sign a bill of exceptions, in a case tried before him: the court said, that on the day of the return of the rule, the district judge has a right to show cause, whether the person who obtained the rule moves, or not; he has a right to have the rule disposed of. *Ex parte Bradstreet*.....*102
3. A return by the district judge to a rule to show cause, need not be sworn to by him.....*Id.*
4. A case came before the court on a judgment in the circuit court, for the defendant, the avowant in replevin—he having demurred to the pleas of the plaintiff in an action of replevin. The court having reversed the judgment of the circuit court, remanded the cause, with instructions to the circuit court to overrule the demurrer, and permit the defendant, the avowant, to plead. *Lloyd* v. *Scott*.....*205
5. Where the whole cause, and not a point or points in the cause, has been adjourned from the circuit court to this court, the case will be remanded to the circuit court. *Saunders* v. *Gould*.....*392
6. In an ejectment to recover a lot of land, being the first division lot laid out to the right of the society in the town of Pawlet, the plaintiffs were described in the writ as "the Society for the Propagation of the Gospel in Foreign parts, a corporation duly established in England within the dominions of the king of the United Kingdom of Great Britain and Ireland, the members of which society are aliens, and subjects of the said king;" the defendants pleaded the general issue of not guilty. The general issue admits the competency of the plaintiffs to sue, in the corporate capacity in which they have sued. *Society for the Propagation of the Gospel in Foreign parts* v. *Town of Pawlet*.....*480
7. If the defendants meant to insist on the want of a corporate capacity in the plaintiffs to sue, it should have been insisted upon by a special plea in abatement or bar; pleading to the merits has been held by this court to be an admission of the capacity of the plaintiffs to sue; the general issue admits, not only the competency of the plaintiffs to sue, but to sue in the particular action which they bring.....*Id.*

PRIORITY OF THE UNITED STATES.

1. The plaintiff in replevin, James De Wolf, claimed merchandise under an assignment executed by George De Wolf and John Smith to him, in consideration of a large sum of money due by them to James De Wolf, and in consideration of advances to be made to them by him; the assignment transferred four vessels and their cargoes, three of which vessels were then at sea, and one in New York, ready to sail, the property of the assignors; the assignment was to be void on the payment to James De Wolf of the money due to him; and if it should not be paid, the assignee to enforce the pledge by process and arrest, in all countries or places whatsoever, and to sell the same for the payment of the amount due by them, the assignors, to George De Wolf. The merchandise for which this action of replevin was instituted was part of the return-cargo of one of the vessels; the defendant, Harris, pleaded, that the merchandise was not the property of the plaintiff, but of George De Wolf and John Smith; and justified the taking of the goods of the plaintiff, as marshal of the district of Massachusetts, by virtue of a writ of attachment sued out in the district court of the United States for the district of Massachusetts, in which suit judgment was obtained against George De Wolf. On the trial, the plaintiff in the replevin proved the assignment; that large sums of money were due to him by George De Wolf and John Smith; that the goods were part of the property assigned; that he had used all proper means to take possession of the goods, but was prevented by the attachment issued by the United States; the

defendant proved that the goods were imported into the United States by De Wolf and Smith; and that at the time of the importation, they were indebted to the United States for duties which were due and unpaid, to an amount exceeding the value of the merchandise attached; and that the Octavia, one of the vessels assigned, with a cargo on board, ready for sea, was at new York, at the time of the assignment, which ship was not delivered to James De Wolf, the assignee, nor were the bills of lading assigned; the cargoes on board the vessels being consigned to the masters for the sales and returns. In the case of Conard *v.* Atlantic Insurance Co., 1 Pet. 306, it was decided, that the non-delivery of a vessel assigned to secure or pay a *bonâ fide* debt, did not make the assignment absolutely void. This court is well satisfied with that opinion. *Harris* v. *De Wolf*.....*147

2. The deed of assignment conveyed to the assignee a right to the proceeds of the outward-bound cargoes on board the vessels assigned to James De Wolf; the failure of George De Wolf to deliver to the assignee the copies of the bill of lading which were in his possession, did not leave the property subject to the attachment of creditors, who had no notice of the deed. It was held, in the case of Conard *v.* Atlantic Insurance Co., that such a transfer gives the assignee a right to take and hold those proceeds against any person but the consignee of the cargo, or purchaser from the consignee, without notice.....*Id.*

3. That the consignees of the merchandise were indebted to the United States on duty bonds remaining due and unpaid at the time of the importation, did not, under the 62d section of the act of March 2d, 1799, make the merchandise, as to the United States, the property of the consignees, notwithstanding the assignment; and make the attachment of the United States for the debt due to them sufficient to bar the action of replevin brought by the assignee.....*Id.*

See Conard *v.* Nicoll, *291.

PROMISSORY NOTES.

1. Action by the indorsees against the indorser of a promissory note, made and indorsed in the state of Kentucky; the statute of Kentucky, authorizing the assignment of notes, is silent as to the duties of the assignee, or the nature of the contract created by the assignment; it only declares such assignments valid, and the assignee capable of suing in his own name. But the courts of that state have clearly defined his rights, duties and obligations resulting from the assignment; the assignee cannot maintain an action on the mere non-payment of the note and notice thereof, until the holder of the note has made use of all due and legal diligence to recover the money from the maker; whose engagement is held to be, that he will pay the amount, if after due and diligent pursuit the maker is found insolvent. *Bank of United States* v. *Tyler*.....*366

2. The principles of the law of Kentucky relative to the liability of indorsers of promissory notes, and proceedings to establish the same, as settled by the decisions of the courts of Kentucky .....*Id.*

3. After judgment obtained in the circuit court of the United States, against the maker of a note, a *capias ad satisfaciendum* was issued against him by the holder, and he was put in prison; two justices of the peace ordered his discharge, claiming to proceed according to the law of Kentucky in the case of insolvent debtors; and the jailer permitted him to leave the prison. The jailer made himself and his sureties liable for an escape, by permitting the prisoner to leave the prison; the neglect of the holder of the note to proceed against the jailer and his sureties, prevents his making the indorser liable for the amount of the note.....*Id.*

4. The general principle of all the cases is, that a plaintiff must pursue with legal diligence all his means and remedies, direct, immediate or collateral, to recover the amount of his debt from the maker of the note, or any one else who has put himself, or has by operation of law been put, in his place..*Id.*

5. The decision of this court in the case of the Bank of the United States *v.* Weisiger, examined and confirmed.....*Id.*

RECORDS.

1. The record of proceedings against "unknown heirs," is no evidence that any such heirs existed; and the decree and deed made in pursuance of it, cannot avail to pass any title, without some evidence that there were such heirs. *Hollingsworth* v. *Barbour*..*466

REMAINDER.

1. The uses declared in a deed of marriage-settlement were: to and for the use of "Johanna Philipse and Beverly Robinson (the releasees) and their heirs, until the solemnization of the said intended marriage; and from and immediately after the solemnization of the said intended marriage, then to the use and behoof of the said Mary Philipse and Roger Morris, and the survivor of them,

for and during the time of their natural lives, without impeachment of waste; and from and after the determination of that estate, then to the use and behoof of such child or children, as shall or may be procreated between them, and to his, her or their heirs and assigns for ever; but in case the said Roger Morris and Mary Philipse shall have no child or children begotten between them, or that such child or children shall happen to die during the lifetime of the said Roger and Mary, and the said Mary should survive the said Roger, without issue, then to the use and behoof of her, the said Mary Philipse, and her heirs and assigns for ever; and in case the said Roger should survive the said Mary Philipse, without any issue by her, or that such issue is then dead, without leaving issue; then, after the decease of the said Roger Morris, to the only use and behoof of such person or persons, and in such manner and form, as the said Mary Philipse shall, at any time during the said intended marriage, desire the same, by her last will and testament," &c. The marriage took effect; children were born, all before the attainder of their parents in 1779; Mary Morris survived her husband; and died in 1825, leaving her children surviving her. This is a clear remainder in fee to the children of Roger Morris and wife; which ceased to be contingent, on the birth of the first child, and opened to let in after-born children. *Carver* v. *Astor*.....*1

2. It is perfectly consistent with this limitation, that the estate in fee might be defeasible and determinable upon a subsequent contingency; and upon the happening of such contingency, might pass, by way of shifting executory use, to other persons in fee, thus making a fee upon a fee.....*Id.*
3. The general rule of law, founded on public policy, is, that limitations of this nature shall be construed to be vested when, and as soon as they may vest; the present limitation in its terms purports to be contingent only until the birth of a child, and may then vest; the estate of the children was contingent only until their birth; and when the confiscation act of New York passed, they being all born; it was a vested remainder in them and their heirs, and not liable to be defeated by any transfer or destruction of the life-estate.

STATUTES OF LIMITATION.

See LIMITATION OF ACTIONS.

STATUTES OF STATES.

1. A case was admitted to be essentially the same with that of Gardner *v.* Collins, 2 Pet. 58; but the counsel for the plaintiff relied on evidence adduced to show a settled judicial construction of the act of the legislature of Rhode Island, relative to descents, different from that which had been made in this court. "The court is not convinced that the construction of the act which prevails in Rhode Island is opposed to that which was made by this court." *Saunders* v. *Gould*.....*392
2. Construction of the act of the legislature of Maryland of 1791, which authorizes the descent to alien heirs, of lands held by aliens under "deed or will," in that part of the district of Columbia which was ceded to the United States by the state of Maryland. *Spratt* v. *Spratt*.....*393

See CONSTRUCTION OF STATE LAWS.

STATUTES OF THE UNITED STATES.

See CITY OF WASHINGTON: PRIORITY OF THE UNITED STATES

TAXES AND TAXATION.

1. The official tax-books of the corporation of Washington, made up by the register, from the original returns or lists of the assessors laid before the court of appeals, he being empowered by the ordinances of the corporation to correct the valuations made by the assessors, are evidence; and it is not required, that the assessors' original lists shall be produced in evidence, to prove the assessment of the taxes on real estate in the city of Washington. *Ronkendorff* v. *Taylor's Lessee*.....*349
2. In an *ex parte* proceeding, as a sale of land for taxes under a special authority, great strictness is required; to divest an individual of his property, against his consent, every substantial requisite of the law must be complied with; no presumption can be raised in behalf of a collector who sells real estate for taxes, to cure any radical defect in his proceedings; and the proof of regularity devolves upon the person who claims under the collector's sale.....*Id.*
3. Proof of the regular appointment of the assessors is not necessary; they acted under the authority of the corporation, and the highest evidence of this fact is the sanction given to their returns.....*Id.*
4. The act of congress, under which the lot in the city of Washington, in controversy, was sold, required, that public notice of the time and place of sale of lots, the property of non-residents, should be given, by advertising "once a week," in some newspaper in the city, for three months; notice of the sale of

the lot in controversy was published for three months; but in the course of that period, eleven days at one time, at another ten days, and at another eight days, transpired in succeeding weeks, between the insertions of the advertisement in the newspapers. "A week" is a definite period of time, commencing on Sunday and ending on Saturday; the notice was published, Monday, January 6th, and was omitted until Saturday, January 18th, leaving an interval of eleven days; still the publication on Saturday was within the week preceding the notice of the 6th, and this was sufficient. It would be a most rigid construction of the act of congress, justified neither by its spirit nor its language, to say, that this notice must be published on any particular day of a week; if published once a week for three months, the law is complied with, and its object effectuated..... *Id.*

5. No doubt can exist, that a part of a lot may be sold for taxes, where they have accrued on such part..... *Id.*

6. The lot on which the taxes were assessed, belonged to two persons as tenants in common; the assessment was made by a valuation of each half of the lot; to make a sale of the interest of one tenant in common for unpaid taxes valid, it need not extend to the interest of both claimants; one having paid his tax, the interest of the other may well be sold for the balance..... *Id.*

7. The advertisement purported to sell "half of lot No. 4, in square No. 491;" and the other half was advertised in the same manner, as belonging to the other tenant in common: This was not a sufficient advertisement; and a sale made under the same was void..... *Id.*

8. It is not sufficient, that in an advertisement of land for sale for unpaid taxes, such a description be given as would enable the person desirous of purchasing to ascertain the situation of the property by inquiry; nor if the purchaser at the sale had been informed of every fact necessary to enable him to fix a value upon the property, would the sale be valid, unless the same information had been communicated to the public in the notice.. *Id.*

9. The 10th section of the act of congress provides, that real property in Washington, on which two or more years' taxes shall be due and unpaid, may be sold, &c.; in this section a distinction is made between a general and a special tax; property may be sold to pay the former, as soon as two years' taxes shall be due; but to pay the latter, property cannot be sold, until the expiration of two years after the second year's tax becomes due. The taxes for which the property in controversy was sold, became due, by the ordinance of the corporation, on the 1st day of January 1821 and 1822; the special tax for paving was charged against the lot in 1820, and became due on the 1st of January 1821; but the ground on which it was assessed was not liable to be sold for the tax until the 1st of January 1823. The first notice of the sale was given on the 6th of December 1822, nearly a month before the lot was liable to be sold for the special tax of 1820: *Held*, that the whole period should have elapsed which was necessary to render the lot liable to be sold for the special tax, before the advertisement was published. *Id.*

10. The power of taxing moneyed corporations has been frequently exercised; and has never before, so far as is known, been resisted; its novelty, however, furnishes no conclusive argument against it. *Providence Bank* v. *Billings*..... ...*514

11. That the taxing power is of vital importance; that it is essential to the existence of government; are truths which it cannot be necessary to re-affirm; they are acknowledged and asserted by all. It would seem, that the relinquishment of such a power is never to be assumed; we will not say, that a state may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it, may not exist; but as the whole community is interested in retaining it undiminished, that community has a right to insist, that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the state to abandon it does not appear..... *Id.*

12. The power of legislation, and consequently, of taxation, operates on all the persons and property belonging to the body politic; this is an oringinal principle, which has its foundation in society itself; it is granted by all, for the benefit of all; it resides in government as a part of itself; and need not be reserved, where property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies..... *Id.*

13. However absolute the right of an individual may be, it is still in the nature of that right, that it must bear a portion of the public burdens, and that portion must be determined by the legislature. This vital power, may be abused; but the constitution of the United States was not intended to furnish the correction of every abuse of power, which may be committed to the state governments; the intrinsic wisdom and justice of the representative body, and its relations with its constitutents, furnish the only security, where there is no express contract, against unjust and excessive taxa-

tion, as well as against unwise legislation generally.....*Id.*

See CITY OF WASHINGTON: PRIORITY OF THE UNITED STATES.

TIME.

1. "A week" is a definite period of time, commencing on Sunday and ending on Saturday. *Ronkendorff* v. *Taylor's Lessee*.....*349

TREATY.

See LOUISIANA.

USURY.

1. S. being seised in fee of four brick tenements and lots of ground, in Alexandria, in consideration of $5000, granted to M. an annuity or yearly rent-charge of $500, to be issuing out of and charged upon the houses and ground, and covenanted that the same should be paid to M., his heirs and assigns for ever thereafter, with the right to distrain in case of non-payment of the same. In the deed granting the rent-charge, M., the grantee, covenanted, that at any time after five years, on the payment of $5000, with all arrears of rent, he, M., would release the said rent-charge, and the same should cease; S. covenanted to keep the buildings in repair, and that he would have them fully insured against fire, and assign the policy of insurance, for the protection of M., the money from the insurance to be applied to the rebuilding or repairing the houses, if destroyed or injured by fire. Afterwards, S., by deed of bargain and sale, conveyed to L., the plaintiff in error, the houses and lots of ground, subject to the payment of the rent to M., who, since the same conveyance, had been seised of the same. The rent being unpaid, M. levied a distress for the same, and L. brought replevin; and the defence to the claim for rent set up to the avowry was, that the transaction was usurious, and the deed granting the rent-charge was, by the laws of Virginia, absolutely void. The statute of Virginia, of 1793, provides, that no person shall take, directly or indirectly, more than six per cent. per annum on loans of money or for forbearance for one year; and it declares that all bonds and other instruments for a greater amount of interest shall be utterly void. *Lloyd* v. *Scott*.....*205
2. The requisites to form an usurious transaction are: 1. A loan, either express or implied. 2. An understanding that the money lent shall or may be returned. 3. That a greater rate of interest than is allowed by the statute shall be paid. The intent with which the act is done, is an important ingredient to constitute this offence.....*Id.*
3. Ignorance of the law will not protect a party from the penalties of usury, where it is committed; but where there was no intention to evade the law, and the facts which amount to usury, whether they appear upon the face of the contract or by other proof, can be shown to have been the result of mistake or accident, no penalty attaches.....*Id.*
4. The act of usury has long since lost that deep moral stain which was formerly attached to it; and is now generally considered only as an illegal or immoral act, because it is prohibited by law.....*Id.*
5. If the court were, in this case, limited, by the pleas, to the words of the contract, and it purported to be a purchase of an annuity, and no evidence was adduced giving a different character to the transaction; the argument, that, though the annuity may produce a higher rate of interest than six per cent. upon the consideration paid for it, as it was a purchase, it was legal, would be unanswerable; an annuity may be purchased, like a tract of land or other property; and the inequality of price will not, of itself, make the contract usurious. If the inadequacy of consideration be great, in any purchase, it may lead to suspicion; and connected with other circumstances, may induce a court of chancery to relieve against the contract..*Id.*
6. In this case, $5000 were paid for a ground-rent of $500 per annum; this circumstance, although ten per cent. be received on the money paid, does not make the contract unlawful; if it were a *bonâ fide* purchase of an annuity, there is an end of the question; and the condition which gives the option to the vendor to repurchase the rent, by paying the $5000, after the lapse of five years, would not invalidate the contract. The right to repurchase, as also the inadequacy of price, would be circumstances for the consideration of a jury.....*Id.*
7. The purchase of an annuity, or any other device, used to cover an usurious transaction, will be unavailing; if the contract be infected with usury, it cannot be enforced..*Id.*
8. If a party agree to pay a specific sum, exceeding the lawful interest, provided he do not pay the principal by a day certain, it is not usury; by a punctual payment of the principal, he may avoid the payment of the sum stated, which is considered as a penalty. Where a loan is made, to be returned at a fixed day, with more than the legal rate of interest, depending on a casualty which hazards both principal and interest, the con-

tract is not usurious; but where the interest only is hazarded, it is usury..... *Id.*

9. All the material facts to constitute usury are found in the second plea; it states a corrupt agreement to loan the money, at a higher rate of interest than the law allows; that the money was advanced, and the contract executed, according to such agreement; that on the return of the principal, with the full payment of the rent, after the lapse of five years, the annuity was to be released; the amount agreed to be paid above the legal interest for the forbearance, is not expressly averred, but the facts are so stated in the plea, as to show the amount with certainty; $500, under cover of the annuity, were to be paid annually, for the forbearance of the $5000; making an annual interest of ten per cent: these facts, uncontradicted as they are, amount to usury. It is evident, from this statement of the case, that the annuity was created as a means for paying the interest, until the principal should be returned, and as a disguise for the transaction; such is the legitimate inference which arises from the facts stated in the plea..... *Id.*

10. The principle seems to be settled, that usurious securities are not only void, as between the original parties, but the illegality of their inception affects them even in the hands of third persons, who are entire strangers to the transactions; a stranger must "take heed to his assurance at his peril;" and cannot insist on his ignorance of the corrupt contract, in support of his claim to recover upon a security which originated in usury..... *Id.*

11. In the case of De Wolf *v.* Johnson, 10 Wheat. 367, the first mortgage being executed in Rhode Island, in 1815, was not usurious by the laws of that state; and the second mortgage, executed in Kentucky, in 1817, being a new contract, was not tainted with usury; the question, therefore, whether the purchaser of an equity of redemption can show usury in the mortgage, to defeat foreclosure, was not involved in that case... *Id.*

12. The law of Virginia having declared that a contract infected by usury is void; and by the deed from S. to M., a right to enter on the premises and distrain for the rent, being claimed under a deed, which, upon the admissions in the pleadings, is usurious; and the premises upon which the distress was made, being held by L., under a conveyance from S.; L. may may set up the defence of usury in the deed, against the summary remedy asserted by M. under the deed..... *Id.*

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Set 1