INDEX

TO THE

PRINCIPAL MATTERS CONTAINED IN THIS VOLUME.

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ACTION.

1. Where money is wrongfully and illegally exacted, it is received without any legal right or authority to receive it; and the law, at the very time of payment, creates the obligation to refund it. A notice to recover back the money does not, even in such cases, create the right to recover it back; that results from the illegal exaction of it; and the notice may serve to rebut the inference that it was a voluntary payment, or made through mistake. *Bank of United States* v. *Bank of Washington*..... *8
2. Under the act of the legislature of North Carolina, in force in Tennessee, the indorsee of a promissory note may bring an action of debt on such note. *Kirkman* v. *Hamilton*..... .....*20
3. The payees of a promissory note, made in Tennessee, having, before the note became due, removed to Alabama, could have prosecuted a suit on the note in the circuit court of the United States for the district of Tennessee; and the indorsees of the note were entitled to sustain a suit in that court, under the 11th section of the judiciary act of 1789..... *Id.*

AGENT.

1. Where an agent received the amount of a debt due on a judgment on which an execution had issued, and immediately paid it over to his principal, although a verbal notice was given to him by the defendants, when the money was paid, that it was intended to sue out a writ of error to reverse the judgment, which was afterwards done, and the judgment reversed; the agent was not held liable to refund the money. *Bank of United States Bank of Washington*.....*8

AGREEMENT.

1. An agreement by the president and cashier of the Bank of the United States, that the indorser of a promissory note should not be liable on his indorsement, does not bind the bank; it is not the duty of the cashier and president to make such contracts; nor have they the power to bind the bank, except in the discharge of their ordinary duties; all discounts are made under the authority of the directors, and it is for them to fix any conditions which may be proper in loaning money. *Bank of United States* v. *Dunn*.*51
2. After a suit was instituted in the circuit court of the United States of Maryland, by citizens of Louisiana, against a citizen of Maryland, the defendant obtained the benefit of the insolvent laws of the state; a judgment was afterwards confessed by the defendant, in favor of the plaintiff, for a sum certain, and by consent of the parties, a memorandum was entered of record, "this judgment is subject to the legal operation of the defendant's discharge under the insolvent laws of Maryland." The sole effect of this agreement was, to save to the party whatever rights he might claim from the legal operation of the insolvent laws of the state of Maryland; it neither admitted their validity, nor varied any rights of the plaintiffs, if they were entitled to them. *Boyle* v. *Zacharie*..... *635

ALIEN AND ALIENAGE.

1. Under the laws of New York, one citizen of the state cannot inherit, in the collateral line, to the other, when he must make his pedigree or title through a deceased alien ancestor. *Lessee of Levy* v. *McCartee*.....*120
2. That an alien has no inheritable blood, and can neither take land himself by descent, nor transmit land from himself to others by descent, is common learning.....*Id.*
3. The case of Collingwood *v.* Pace, 1 Vent. 413, furnishes conclusive evidence, that, by the common law, in all cases of mediate descents, if any mediate ancestor through whom the party makes his pedigree as heir, is an alien, that is a bar to his title as heir....*Id.*

APPEARANCE.

1. At January term 1831, an order was made giving the state of New York leave to appear on the second day of this term and answer the complainant's bill; and if there should be no appearance, that the court would proceed to hear the cause on the part of the complainants, and to decree on the matter of the bill; on the first day of the term, a demurrer to the complainant's bill was filed, which was signed "Greene C. Bronson, attorney-general of New York;" no other appearance was entered on the part of the defendants. The demurrer filed in the case by the attorney-general of New York, he being a practitioner in this court, is considered as an appearance for the state; if the attorney-general did not so mean it, it is not a paper which can be considered as in the cause, or be placed on the files of the court; the demurrer being admitted as containing an appearance by the state of New York, it amounts to a compliance with the order of the court. *State of New Jersey* v. *People of the State of New York*.....*323

APPEAL.

1. The United States cannot appeal to the circuit court from the decree of the district judge of the United States, ordering a perpetual injunction in proceedings instituted by the agent of the treasury, under the provisions of the act of congress, passed on the 15th of May 1820, entitled, "An act for the better organization of the treasury department:" nor does an appeal lie, in such a case, from the district to the circuit court. *United States* v. *Nourse*.....*470
2. The special jurisdiction created by the act of congress must be strictly exercised within its provisions; a particular mode is pointed out, by which an appeal from the decision of the district judge may be taken by the person against whom proceedings have issued; consequently, it can be taken in no other way. No provision is made for an appeal by the government; of course, none was intended to be given to it.....*Id.*
3. It appears, that no provision is made in the general act organizing the courts of the United States, to authorize an appeal from the judgment or decree of the district court to the circuit court, except in cases of admiralty and maritime jurisdiction; on the principle of the case of the United States *v.* Goodwin, the appeal in this case cannot be maintained; if it be a case in chancery, no provision is made in the general law to appeal such a case from the district to the circuit court. *Id.*
4. Appeal dismissed, the appellees having failed to lodge a transcript of the record of the cause with the clerk of the court, agreeable to the rules of the court, and the appeal bond and security not having been given. *Veitch* v. *Farmers' Bank of Alexandria*.....*777
5. The transcript of the record showed, that no appeal-bond was taken or approved by the judge who signed the citation in the cause: the appeal was dismissed. *Boyce* v. *Grundy*.....*777

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. The liability of parties to bill of exchange or promissory note has been fixed on certain principles, which are essential to the credit and circulation of such paper; these principles originated in the convenience of commercial transactions, and cannot now be departed from. *Bank of the United States* v. *Dunn*.....*51
2. It is a well-settled principle, that no man who is a party to a negotiable instrument, shall be permitted, by his own testimony, to invalidate it; having given it the sanction of his name, and thereby added to the value of the instrument, by giving it currency, he shall not be permitted to testify, that the note was given for a gambling consideration, which would destroy its validity.....*Id.*
3. A suit was instituted by the bank against Pearson, the drawer of a bill of exchange, indorsed by Hatch, which suit stood for trial, at an approaching term; the attorney and agent of the bank agreed with Pearson, that the suit against him should be continued, without judgment, until the term after that at which judgment would have been entered, if Pearson would permit a person in confinement under an execution, at his suit, to attend

a distant court, as a witness for the bank, in a suit in which the bank was plaintiff; the witness was permitted to attend the court, and the suit against Pearson was continued agreeable to the agreement. This was an agreement for a valuable consideration, and not a mere voluntary and discretionary exercise of authority on the part of the agent of the bank; it was a virtual discharge of the indorser of the bill. *Bank of United States* v. *Hatch*.....*250

4. Where a notary-public called at the boarding-house where the indorser lodged, and inquired of a fellow-boarder for him, and being informed he was not within, left with the fellow-boarder, a notice, directed to him, of the non-payment of a note of which he was indorser, requesting him to deliver it; it was *held*, that the notice was sufficient to make the indorser liable for the payment of the bill.....*Id.*

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2. Conard *v.* Nicoll, 4 Pet. 291, affirmed....*Id.*
3. Crane *v.* Astor, 4 Pet. 1, affirmed. *Crane* v. *Morris*.....*598
4. Galt *v.* Galloway, 4 Pet. 332, affirmed. *McDonald* v. *Smalley*.....*261
5. Harris *v.* Dennie, 3 Pet. 292, affirmed. *Conard* v. *Pacific Ins. Co*.....*262
6. McLemore *v.* Powell, 12 Wheat. 584, affirmed. *Bank of United States* v. *Hatch*.....*250
7. Ogden *v.* Saunders, 12 Wheat. 213, affirmed. *Boyle* v. *Zacharie*.....*348
8. Patton *v.* Easton, 1 Wheat. 276, overruled. *Green* v. *Neal*.....*291
9. Powell *v.* Green, 2 Pet. 240, overruled...*Id.*
10. Raborg *v.* Peyton, 2 Wheat. 385, affirmed. *Kirkman* v. *Hamilton*.....*20
11. Renner *v.* Bank of Columbia, 9 Wheat. 587, affirmed. *Bank of United States* v. *Dunn*. *51

CHANCERY AND CHANCERY PRACTICE.

1. The principle has been well established and generally sanctioned in courts of equity, that, by analogy, the statute of limitations is a bar to an equitable right, when at law it would have operated against a grant. *Miller* v. *McIntyre*.....*61
2. At law, the statute operates, where conflicting titles are adverse in their origin; and no reason is perceived against giving the statute the same effect in equity.....*Id.*
3. Where the defectiveness of a deed of conveyance at law, was not apparent on its face, the deed, in a suit between the parties, having been declared void; it would be a proper case for a decree, that the deed should be delivered up, on a bill filed for that purpose; not so, when the defectiveness was apparent on the face of the deed. *Peirsoll* v. *Elliott*.....*95
4. The court will so modify their decree, dismissing a bill filed for a perpetual injunction and to have a defective deed delivered up, as to express the principles upon which the bill is dismissed, so as not to prejudice the complainants.....*Id.*
5. As to the allowance of costs, on a bill filed for an injunction.....*Id.*
6. A decree of specific performance of a contract to purchase a tract of land refused, in consequence of delay and a defect of title. *Watts* v. *Waddle*.....*389
7. The aid of a court of chancery will be given to either party who claims specific performance of a contract, if it appear, that in good faith, and within the proper time, he has performed the obligations which devolved upon him.....*Id.*
8. In the argument before the court, a new ground of relief was assumed, which had not been made in the circuit court; that if the court should not decree a specific performance of the contract to purchase the land, yet, as the purchaser had been in possession thereof, the complainants were entitled to a decree for the rents and profits of the land while he was in possession. There is no rule of court or principle of law which prevents the complainants from assuming a ground in this court, which was not suggested in the court below; but such a course may be productive of much inconvenience and some expense.....*Id.*
9. Although there was no specific prayer in the bill, to be paid the rents and profits, yet the court think, that under the general prayer, this relief may be granted; under this prayer, only relief may be given for which a basis is laid in the bill. In this case, the possession of the land by the defendants is alleged, and the demand for rents and profits would result from this fact—there is no pretence that this demand was taken into view in the action at law; as it consisted of unliquidated damages, it was not a proper subject for a set-off..*Id.*
10. The acts of Maryland regulating the proceedings on injunctions and other chancery proceedings, and giving certain effects to them in courts of law, are of no force in relation to the courts of the United States; the chancery jurisdiction given by the constitution and laws of the United States is the same in all the states of the Union, and the rule of decision is the same in all; in the exercise of that jurisdiction, the courts of the United States are not governed by the state

practice, but the act of congress of 1792, ch. 36, has provided that the modes of proceeding in equity suits shall be according to the principles, rules and usages which belong to courts of equity, as contradistinguished from courts of law; and the settled doctrine of this court is, that the remedies in equity are to be administered, not according to the state practice, but according to the practice of courts of equity in the parent country, as contradistinguished from courts of law; subject, of course, to the provisions of the acts of congress, and to such alterations and rules as in the exercise of the powers delegated by those acts, the courts of the United States may from time to time prescribe. *Boyle* v. *Zacharie*..... *648

CHEROKEE INDIANS.

1. The act of the legislature of Georgia, passed 22d of December 1830, entitled "an act to prevent the exercise of assumed and arbitrary power by all persons under pretext of authority from the Cherokee Indians," &c., is void. *Worcester* v. *State of Georgia*..... *515
2. The act of 22d December 1830, and the act passed by the legislature of Georgia, on the 19th December 1829, entitled "an act to add the territory lying within the chartered limits of Georgia, and now in the occupancy of the Cherokee Indians, to the counties of Carroll, De Kalb, Gwinnett, Hall and Habersham, and to extend the laws of this state over the same, and to annul all laws and ordinances made by the Cherokee nation of Indians, and to provide for the compensation of officers serving legal process in the said territory, and to regulate the testimony of Indians, and to repeal the ninth section of the act of 1828 upon this subject," interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our constitution, is committed exclusively to the government of the Union. They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognise the pre-existing power of the nation to govern itself; they are in equal hostility with the acts of congress for regulating this intercourse and giving effect to the treaties..... *Id.*
3. The forcible seizure and abduction of the plaintiff in error, who was residing in the Cherokee nation, with its permission, and by authority of the president of the United States, is a violation of the acts which authorize the chief magistrate to exercise this authority..... *Id.*
4. The Cherokee nation is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress; the whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States.. *Id.*

COLLECTORS OF THE CUSTOMS.

See PENALTIES AND FORFEITURES.

CONSTITUTIONALITY OF STATE LAWS.

1. The plaintiff in error was seized and forcibly carried away, while under guardianship of treaties guarantying the country in which he resided, and taking it under the protection of the United States; he was seized, while performing, under the sanction of the chief magistrate of the Union, those duties which the humane policy adopted by congress had recommended; he was apprehended, tried and condemned, under color of a law repugnant to the constitution, laws and treaties of the United States: had a judgment, liable to the same objections, been rendered for property, none would question the jurisdiction of this court; it cannot be less clear, when the judgment affects personal liberty, and inflicts disgraceful punishment—if punishment could disgrace, when inflicted on innocence. The plaintiff in error is not less interested in the operation of this unconstitutional law, than if it affected his property; he is not less entitled to the protection of the constitution, laws and treaties of his country. *Worcester* v. *State of Georgia*..... *515
2. The effect of a discharge under an insolvent law of a state, is at rest, so far as it depends on the antecedent decisions made by this court. The ultimate opinion delivered by Mr. Justice Johnson, in the case of Ogden *v.* Saunders, 12 Wheat. 213, 252, was concurred in and adopted by the three judges who were in the minority on the general question of the constitutionality of state insolvent laws. So far, then, as decisions upon the subject of state insolvent laws have been made by this court, they are to be deemed final and conclusive. *Boyle* v. *Zacharie*..... *348

See CHEROKEE INDIANS.

CONSTRUCTION OF STATE LAWS.

1. Construction of the act of the legislature of Kentucky, passed in 1796, respecting conveyances. *Sicard* v. *Davis*..... *124
2. Construction of the statute of limitations of Kentucky, relative to adverse possession of land..... *Id.*
3. Construction of the statute of limitations of Maine. *Spring* v. *Gray's Executors*....*151
4. Construction of the act of the legislature of North Carolina, concerning the registration of deeds, passed in 1715. *Ross* v. *McLung*..... *283
5. The questions which grow out of the language of this act, so far as they have been settled by judicial decisions, cannot be disturbed by this court; whatever might have been their opinion in this case, had it remained open for consideration, the peace of society, and the security of titles, require, that the court should conform to the construction which has been made in the courts of the state, if it can discover what that construction is..... *Id.*
6. Construction of the statute of limitations of Tennessee, respecting land-titles. *Green* v. *Neal*..... *291
7. Construction of the act of the legislature of Virginia, entitled, "an act for the locating and surveying the 150,000 acres of land granted by a resolution of the assembly to George Rogers Clark, and the officers and soldiers who assisted in the reduction of the British post, in the Illinois," passed on the 18th of October 1790; of the act of 1783, entitled "an act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the grant;" and also of the act entitled, "an act to amend an act entitled an act for surveying and apportioning the lands granted to the Illinois regiment, and establishing a town within the grant," passed in 1790. *Hughes* v. *Trustees of Clarksville*.....*369
8. Construction of the act of the legislature of Virginia, passed in December 1783, ceding the territory north-west of the river Ohio to the United States; and of the deed of cession of the same territory, executed on the 1st of March 1784..... *Id.*

CONSTRUCTION OF STATUTES.

1. The legislature must be presumed to use words in their known and ordinary signification, unless that sense be repelled by the context; "the common law" is constantly used in contradistinction to the statute law. *Lessee of Levy* v. *McCartee*.... .....*102
2. This court have uniformly adopted the decisions of the state tribunals, respectively, in the construction of their statutes; this has been done as a matter of principle, in all cases where the decision of a state court has become a rule of property. *Green* v. *Neal*.....*291
3. In a great majority of the causes brought before the federal tribunals, they are called on to enforce the laws of the states: the rights of parties are determined under these laws; and it would be strange perversion of principle, if the judicial exposition of these laws by the state tribunals should be disregarded. These expositions constitute the law and fix the rule of property; rights are acquired under this rule; and it regulates all the transactions which come within its scope. *Id.*
4. On all questions arising under the constitution and laws of the Union, this court may exercise a revising power, and its decisions are final and obligatory on all other judicial tribunals, state as well as federal; a state tribunal has a right to examine any such questions, and to determine thereon, but its decision must conform to that of the supreme court, or the corrective power may be exercised. But the case is very different when the question arises under a local law; the decision of this question by the highest tribunal of a state, should be considered as final by this court; not because the state tribunal in such a case has any power to bind this court; but because, in the language of the court in the case of Shelby *v.* Guy, 11 Wheat. 361, "a fixed and received construction by a state, in its own courts, makes a part of the statute law"..... *Id.*
5. If the construction of the highest judicial tribunal of a state forms a part of the statute law, as much as an enactment by the legislature, how can this court make a distinction between them? There could be no hesitation in so modifying our decisions as to conform to any legislative alteration in the statute; and why should not the same rule apply, where the judicial branch of the state government, in the exercise of its acknowledged functions, should, by construction, give a different effect to a statute from what had at first been given to it? The charge of inconsistency might be made, with more force and propriety, against the federal tribunals, for a disregard of this rule, than by conforming to it; they profess to be bound by the local law, and yet they reject the exposition of that law which forms a part of it. It is no answer to this objection, that a different exposition was formerly given to the act, which was adopted by the federal court; the inquiry is, what is the settled law of the state, at the time the decision is made? this constitutes the rule of

property within the state, by which the rights of litigant parties must be determined. . . *Id.*
6. As the federal tribunals profess to be governed by this rule, they cannot act inconsistently by enforcing it; if they change their decision, it because the rule on which the decision was founded, has been changed. . . . *Id.*

CONSTRUCTION OF STATUTES OF THE UNITED STATES.

4. Construction of the third section of the act of congress, entitled, "an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," passed March 3d, 1825. *United States* v. *Paul*. *141
2. Construction of the third section of the act passed April 20th, 1818, to prohibit violations of the neutrality of the United States. *United States* v. *Quincy*. *445
3. Indictment under third section of the act for the punishment of certain crimes against the United States, &c., passed April 20th, 1818; the indictment charged the defendant with being knowingly concerned in the fitting out, in the port of Baltimore, a vessel, with intent to employ her in the service of a foreign "people," the United Provinces of Buenos Ayres, against the subjects of the Emperor of Brazil, with whom the United States were at peace. The vessel went from Baltimore to St. Thomas, and was there fully armed; she afterwards cruised under the Buenos Ayrean flag. To bring the defendant within the words of the act, it is not necessary to charge him with being concerned in fitting out "and" arming the vessel; the words of the act are "fitting out *or* arming;" either will constitute the offence; it is sufficient, if the indictment charges the offence in the words of the act . . . . . *Id.*
4. It is true, that with respect to those who have been denominated at the bar the chief actors, the law would seem to make it necessary that they should be charged with fitting out "and" arming; the words may require that both shall concur; and the vessel be put in a condition to commit hostilities, in order to bring her within the law. But an attempt to fit out "and" arm is made an offence; this is certainly doing something short of a complete fitting out and arming. *Id.*
5. To attempt to do an act, does not, either in law or in common parlance, imply a completion of the act, or any definite progress towards it; any effort or endeavor to effect it, will satisfy the terms of the law. It is not necessary that the vessel, when she left Baltimore for St. Thomas, and during the voyage from Baltimore to St. Thomas, was armed, or in a condition to commit hostilities, in order to find the defendant guilty of the offence charged in the indictment. . . . . *Id.*
6. The offence consists, principally, in the intention with which the preparations to commit hostilities were made; these preparations, according to the very terms of the act, must be made within the limits of the United States; and it is equally necessary, that the intention with respect to the employment of the vessel should be formed, before she leaves the United States; and this must be a fixed intention; not conditional or contingent, depending on some future arrangements. This intention is a question belonging exclusively to the jury to decide; it is the material point, on which the legality or criminality of the act must turn; and decides whether the adventure is of a commercial or warlike character . . . . . *Id.*
7. The law does not prohibit armed vessels, belonging to citizens of the United States, from sailing out of our ports; it only requires the owners to give security that such vessels shall not be employed by them to commit hostilities against foreign powers at peace with the United States. . . . . *Id.*
8. The collectors are not authorized to detain vessels, although manifestly built for warlike purposes, and about to depart from the United States, unless circumstances shall render it probable, that such vessels are intended to be employed by the owners, to commit hostilities against some foreign power at peace with the United States; all the latitude, therefore, necessary for commercial purposes is given to our citizens, and they are restrained only from such acts as are calculated to involve the country in war. . . . . *Id.*
9. If the defendant was knowingly concerned in fitting out the vessel, within the United States, with intent that she should be employed to commit hostilities against a state, or prince or people, at peace with the United States; that intention being defeated by what might afterwards take place in the West Indies, would not purge the offence, which was previously consummated; it is not necessary that the design or intention should be carried into execution, in order to constitute the offence. . . . . *Id.*
10. The indictment charged that the defendant was concerned in fitting out the Bolivar, with intent that she should be employed in the service of a foreign "people," that is to say, in the service of the United Provinces of Rio de la Plata; it was in evidence, that the United Provinces of Rio de la Plata had been regularly acknowledged as an independent nation, by the executive department of the government of the United States, before the

year 1827; it was argued, that the word "people" is not applicable to that nation or power. The objection is one purely technical, and we think not well founded; the word "people," as here used, is merely descriptive of the power in whose service the vessel was intended to be employed; and it is one of the denominations applied by the act of congress to a foreign power ..... *Id.*

11. Upon the true interpretation of the provision in the 65th section of the duty collection act of 1799, ch. 128, relative to granting judgment on motion, in suits on bonds to the United States for duties, the legislature intended no more than to interdict the party from an imparlance, or any other means or contrivances for mere delay; he should not, by sham pleadings, or other pretended defences, be allowed to avail himself of a postponement of the judgment, to the injury of the government, or in fraud of his obligation to make a punctual payment of the duties, when they had become due. There is no reason to suppose, that the legislature meant to bar the party from any good defence against the suit, founded upon real and substantial merits; an such an intention ought not, in common justice, to be presumed, without the most express declarations. *Ex parte Davenport.* *661

12. The language of the 65th section neither requires nor justifies any such interpretation; it merely requires that judgment should be rendered at the return-term, unless delay shall be indispensable for the attainment of justice..... *Id.*

13. Construction of the act of congress of 2d March 1805, entitled, "an act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana," passed March 2d, 1805; and of the fourth section of "an act respecting claims of land in the territories of Orleans and Louisiana," passed March 3d, 1807. *Strother* v. *Lucas* *753

14. The grant of the king of Spain to F. M. Arredondo & Son, for land at Alachua, in Florida, gave a valid title to these claimants, under the grant, according to the stipulations of the treaty between the United States and Spain, of 1819, the laws of nations, of the United States, and of Spain. *United States* v. *Arredondo*..... *691

15. Construction of the treaty with Spain, of 1819, relative to grants of lands in the territory of Florida; and of the several acts of congress, passed for the adjustment of private claims to land within that territory. *Id.*

See VIRGINIA MILITARY RESERVATION OF LANDS IN OHIO.

CONSULS.

See JURISDICTION, 4.

COSTS.

See JURISDICTION, 2.

COURTS.

1. No court is bound, at the mere instance of the party, to repeat over to the jury the same substantial proposition of law, in every variety of form which the ingenuity of counsel may suggest; it is sufficient, if it be once laid down, in an intelligible and unexceptionable manner. *Kelly* v. *Jackson*..... *622

CRIMES ACT.

1. The third section of the act of congress, entitled, "an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," passed March 3d, 1825, is to be limited to the laws of the several states in force at the time of its enactment. *United States* v. *Paul*.. *141

CRIMES AGAINST THE UNITED STATES.

1. Construction of the act of congress, passed April 20th, 1818, relative to acts which may operate to violate the neutrality of the United States. *United States* v. *Quincy*..... *446

DAMAGES.

1. Where a case was not one for vindictive or exemplary damages, the charge of the court to the jury was, that the plaintiffs were entitled to recover such damages as they had proved themselves entitled to, on account of the actual injury sustained by the seizure and detention of the goods; and in ascertaining what these damages were, the court directed them, that the plaintiffs had a right to recover the value of the goods (teas) at the time of the levy, with interest from the expiration of the usual credit on extensive sales. This was in conformity to the decisions of this court in the case of Conard *v.* Nicoll, 4 Pet. 291. *Conard* v. *Pacific Insurance Co*..... *262

DEDICATION.

1. The equitable owners of a tract of land on the river Ohio (the legal title to which was granted to John Cleves Symmes, from whom they

had purchased the land before the emanation of the patent from the United States) proceeded, in January 1789, to lay out on part of the said tract a town, now the city of Cincinnati; a plan was made and approved of by all the equitable proprietors, according to which, the ground lying between Front street and the river, was set apart as a common, for the use and benefit of the town for ever, reserving only the right of ferry; and no lots were laid out on the land thus dedicated as a common; afterwards, the legal title to the lands became vested in the plaintiff in this ejectment, who, under the same, sought to recover the premises so dedicated to public uses: *Held*, that the right of the public to use the common in Cincinnati must rest on the same principles as the right to use the streets; and that the dedication made, when the town was laid out, gave a valid and indefeasible title to the city of Cincinnati. *City of Cincinnati* v. *White* *431

2. Dedications of land for public purposes have frequently come under the consideration of this court; and the objections which have been raised against their validity, have been, the want of a grantee competent to take the title; applying to them the same rule which prevails in private grants, that there must be a grantee as well as a grantor. But that is not the light in which this court has considered such dedications for public use; the law applies to them rules adapted to the nature and circumstances of the case, and to carry into execution the intention and object of the grantor, and secure to the public the benefit held out and expected to be derived from and enjoyed by the dedication.....*Id.*
3. There is no particular form or ceremony necessary in the dedication of land to public use, all that is required is, the assent of the owner of the land, and the fact of its being used for public purposes intended by the appropriation .....*Id.*
4. Although the dedications of land for charitable and religious purposes, which, it is admitted, are valid, without any grantee to whom the fee could be conveyed, are the cases which most frequently occur, and are to be found in the books; it is not perceived, how any well-grounded distinction can be made between such cases, and the case of a dedication of land for the use of the city of Cincinnati; the same necessity exists in the one case as in the other, for the purpose of effecting the object intended. The principle, if well founded in the law, must have a general application to all appropriations and dedications for public uses, when there is no grantee *in esse* to take the fee; but this forms an exception to the rule applicable to private grants, and grows out of the necessity of the case.....*Id.*
5. In this class of cases, there may be instances where, contrary to the general rule, a fee may remain in abeyance, until there is a grantee capable of taking, when the object and purpose of the appropriation look to a future grantee in which the fee is to vest; but the validity of the dedication does not depend on this: it will preclude the party making the appropriation from re-asserting any right over the land; at all events, so long as it remains in public use, although there may never arise any grantee capable of taking the fee .....*Id.*
6. The doctrine of the law relative to the appropriation of land for public highways was applied to a public spring of water for public use, in the case, of McConnell *v.* Trustees of the town of Lexington, 12 Wheat. 582...*Id.*
7. All public dedications must be considered with reference to the use for which they are made; and streets in a town or city may require a more enlarged use of the land, in order to carry into effect the purposes intended, than may be necessary in an appropriation for a highway in the country; but the principle, so far as it respects the right of the original owner to distrub the use, must rest on the same ground in both cases; and applies equally to the dedication of the common as to the streets. This was for the public use, and the convenience and accommodation of the inhabitants of Cincinnati; and doubtless, greatly enhanced the value of the private property adjoining the common, and thereby compensated the owners for the land thus thrown out as public ground .....*Id.*
8. After being thus set apart for public use, and enjoyed as such, and private and individual rights acquired with reference to it, the law considers it in the nature of an estoppel *in pais*, which precludes the original owner from revoking such dedication. It is a violation of good faith to the public, and to those who have acquired private property with a view to the enjoyment of the use thus publicly granted.....*Id.*
9. If the ground in controversy in the ejectment had been dedicated for a particular purpose, and the city authorities had appropriated it to an entirely different purpose, it might afford ground for the interference of a court of chancery, to compel a specific execution of the trust, by restraining the corporation, or by causing the removal of obstructions. But even in such a case, the property dedicated would not revert to the original owner; the use would still remain in the public, limited only by the conditions imposed in the grant. *Barclay* v. *Howell*.....*498

10. In some cases, a dedication of property to public use, as, for instance, a street or public road, where the public has enjoyed the unmolested use of it for six or seven years, has been deemed sufficient for dedication .... *Id.*

DEEDS.

1. Proof of the handwriting of a deed, added to its being in the possession of the grantee, is *primâ facie* evidence that it was sealed and delivered. The evidence to establish the contents of a lost deed is the same as that required in the case of a lost bond. *Sicard* v. *Davis* *124
2. What should be considered proof of the loss of a deed, to entitle a party to read a copy in evidence..... *Id.*
3. In the probate of deeds, the court has a special limited jurisdiction, and the record should state facts which show its jurisdiction in the particular case; if this rule be disregarded, every deed admitted to record, on whatever evidence, must be considered as regularly admitted. *Ross* v. *McLung*.....*283
4. A deed which conveyed a large number of lots, in the city of Washington, contained an exception from the operation of the conveyance, of certain lots, the title to which was derived from certain conveyances which were specially referred to in the exception; in an ejectment for one of the lots mentioned in one of the conveyances referred to in the exception, it was *held*, that this exception is valid; and that the burden of proof to show that the lot for which the ejectment was brought was within the exception, was not upon the plaintiff in the action. That in many cases, the burden of proof is on the party within whose peculiar knowledge and means of information the fact lies, is admitted; but this rule is far from being universal, and has many qualifications upon its application. *Greenleaf* v. *Birth*.....*302

DEMURRER.

1. A demurrer is an answer in law to the bill, though not, in a technical sense, an answer according to the common language of practice. *State of New Jersey* v. *People of the State of New York* *323

See APPEARANCE.

DESCENT.

1. Descents are, as is well known, of two sorts, lineal, as from father to son, or grandfather to son or grandson; and collateral, as from brother to brother, and cousin to cousin, &c. They are also distinguished into mediate and immediate; but here the terms are susceptible of different interpretations; which circumstance has introduced some confusion into legal discussions, since different judges have used them in different senses. A descent may be said to be mediate or immediate, in regard to the mediate or immediate descent of the estate or right; or it may be said to be mediate or immediate, in regard to the mediateness or immediateness of the pedigree of degrees of consanguinity. Thus, a descent from the grandfather, who dies in possession, to the grandchild, the father being then dead; or from the uncle to the nephew, the brother being dead, is, in law, an immediate descent, although the one is collateral and the other lineal; for the heir is in the *per* and not in the *per* and *cui*. On the other hand, with reference to the line of pedigree or consanguinity, a descent is often said to be immediate, when the ancestor from whom the party derives his blood is immediate, and without any intervening link or degree; and mediate, when the kindred is derived from him, *mediante altero*, another ancestor intervening between them. *Levy* v. *McCartee*. *102

See ALIEN AND ALIENAGE.

DUTIES, COLLECTION OF.

1. There is no impossibility or impracticability in courts making such rules in relation to the filing of the pleadings, and the joining of issues, in actions for duties on merchandise, as will enable the causes to be heard and tried upon the merits, and a verdict found at the return-term of the court. *Ex parte Davenport*.....*661

DUTIES ON MERCHANDISE.

1. In point of fact, no duties, as such, can legally accrue upon the importation of prohibited goods; they are not entitled to entry at the custom-house, or to be bonded. *McLane* v. *United States* *404

EJECTMENT.

1. A count in a declaration in ejectment, on a demise from a different party, asserting a different title, is not distinguishable, so far as respects the statute of limitations, from a new action. *Sicard* v. *Davis* *124
2. In an ejectment for a tract of land, where the property sued for is described by metes and bounds, the jury may find a verdict for

part of the land, describing it in their verdict; the jury do no more than their duty, when they find a verdict according to the extent and limits of the title proved by the evidence. *McArthur* v. *Porter*.....*205

3. The defendant in an ejectment showed, *primâ facie*, a good title to recover; the defendant set up no title in himself, but sought to maintain his possession as a mere intruder, by setting up a title in third persons, with whom he had no privity. In such a case, it is incumbent upon the party setting up the defence, to establish the existence of such an outstanding title, beyond all controversy; it is not sufficient for him to show that there may possibly be such a title; if he leave it in doubt, that is enough for the plaintiff; he has a right to stand upon his *primâ facie* good title, and he is not bound to furnish any evidence to assist the defence; it is not incumbent on him, negatively, to establish the non-existence of such an outstanding title; it is the duty of the defendant to make its existence certain. *Greenleaf* v. *Birth.* *302

4. If the mere naked fee is in the plaintiff in an ejectment, it does not follow, he can recover possession of the land in such action. *City of Cincinnati* v. *White*.....*431

5. The action of ejectment is a possessory one; and the plaintiff, to entitle himself to recover, must have the right of possession; whatever takes away the right of possession, will deprive him of the remedy by ejectment. *Id.*

6. Formerly, it was necessary to describe the premises for which an action of ejectment was brought with great accuracy; but far less certainty is required in modern practice; all the authorities say, that a general description is good. The lessor of the plaintiff, on a lease for a specific number of acres, may recover any quantity of less amount. *Barclay* v. *Howell*.....*498

7. It was objected, that the claim of the plaintiff in error, which was for two arpens of land, adjoining the city of St. Louis, Missouri, was, from his own showing, no more than an equitable right, for which an action of ejectment would not lie; there is, in the state of Missouri, an act of the legislature regulating the action of ejectment, and enumerating various classes of cases of claims to lands where the action will lie, among which is a claim under any French or Spanish grant, warrant or order of survey, which, prior to the 10th of March 1804, had been surveyed by proper authority, under the French or Spanish governments, and recorded according to the custom and usages of the country. This would seem broad enough to embrace the claim in question, and authorize the right to be tried in an action of ejectment. *Quære?* If, under this law, an ejectment could be maintained on an equitable title, in the courts of the United States, in the state of Missouri. *Strother* v. *Lucas*.....*763

ENTRY OF LAND.

1. If an entry be made under a grant, and there is no adverse possession, the entry will be limited only by the grant, unless the contrary appear. *Miller* v. *McIntyre*.....*61

2. An entry of land, in Ohio, in the name of a person who was dead when the same was made, in a nullity. *McDonald's Heirs* v. *Smalley*.....*261

3. An entry of land in a county which was afterwards divided, does not, after the division, authorize a survey in the original county, if the land fall within the new county. *Boardman* v. *Reed*.....*328

ERROR.

1. On the trial of a suit in the district court of the United States for the eastern district of Louisiana, one of the defendants took a separate defence; and afterwards prosecuted a writ of error to this court, without joining the other two defendants in the writ; the other defendants also issued a separate writ of error; and the plaintiffs in error in each writ gave several appeal-bonds. The court overruled a motion to dismiss the cause; the ground of the motion being, that but one writ of error could be sued out, and that all the defendants should have united in the same. *Cox* v. *United States*.....*172

2. A writ of error will not lie to the circuit court of the United States, to revise its decision in refusing to grant a writ of *venditioni exponas*, issued on a judgment obtained in that court; a writ of error does not lie in such a case. *Boyle* v. *Zacharie*.....*648

3. All motions to quash executions are addressed to the sound discretion of the court, and as a summary relief which the court is not compellable to allow. The party is deprived of no right by the refusal; he is at full liberty to redress his grievance by writ of error, or *audita querela*, or other remedy known to the common law. The refusal to quash is not, in the sense of the common law, a judgment, much less a final judgment; it is a mere interlocutory order. Even at common law, error only lies from a final judgment; and by the express provisions of the judiciary act of 1789, a writ of error lies to this court only in cases of final judgments.....*Id.*

See JUDGMENT, 3.

ESTOPPEL.

1. The general rule of law is, that a recital of one deed in another, binds the parties and those who claim under them by matters subsequent; technically speaking, such a recital operates as an estoppel, which works on the interest in the land, and binds parties and privies—privies in blood, privies in estate, and privies in law. *Crane* v. *Morris*. . *598
2. If the recital of a lease, in a deed of release, be admitted to be good evidence of the execution of the lease, it must be good evidence of the very lease stated in the recital, and of the contents, so far as they are stated therein; for they constitute its identity..... *Id.*

EVIDENCE.

1. A party to a negotiable instrument will not be permitted, by his own testimony, to invalidate it. *Bank of United States* v. *Dunn*. *51
2. When parol evidence may be admitted to explain a written instrument ..... *Id.*
3. It is competent to prove by parol, that a guarantor signed his name in blank on the back of a promissory note, and authorized another to write a sufficient guarantee over it. *Id.*
4. The principles which have been established by the courts, relative to the admission of treasury transcripts in evidence, in suits by the United States against public officers. *Cox* v. *United States*.....*172
5. A paper certified by the secretary of state of Rhode Island, and by the governor, under the seal of the state, stating that certain laws were passed by the legislature of that state, and that certain matters were cognisable by the general assembly of Rhode Island, and of the practice of the assembly of Rhode Island in cases of a particular description, is not evidence, on the argument of a cause before this court. Usage and custom should be proved in the circuit court, on the trial of the case in which it may be referred to; but evidence of the same is not admissible in this court, if not found in the record. *Leland* v. *Wilkinson*.....*317
6. A certificate from the secretary of state of the state of Rhode Island, also certified by the governor, under the seal of the state, was offered to prove that certain proceedings had been had, at different times, in the legisiature of Rhode Island, on private petitions, relative to the administration and sale of the estates of deceased persons, for the payment of their debts; and that there had been certain usages and proceedings in the legislature of that state in regard to the same. The public laws of a state may, without question, be read in this court, and the exercise of any authority which they contain may be derived historically from them; but private laws, and special proceedings of this character, are governed by a different rule; they are matters of fact, to be proved as such, in the ordinary manner. This court cannot go into an inquiry as to the existence of such facts, upon a writ of error, if they are not found in the record.....*Id.*
7. A witness cannot be admitted to prove what was said by a witness who is dead, relative to a conversation on a former trial between the plaintiff and some of the defendants; as the evidence was not given between the same parties, it could only be received as hearsay. *Boardman* v. *Reed*.....*328
8. That boundaries may be proved by hearsay testimony, is a rule well settled, and the necessity or propriety of which is not now questioned; some difference of opinion may exist as to the application of this rule, but there is none as to its legal force ....*Id.*
9. Land-marks are frequently found of perishable materials, which pass away with the generation in which they are made; but in the improvement of the country, and from other causes, they are often destroyed; it is, therefore, important, in many cases, that hearsay or reputation should be received to establish ancient boundaries. But such testimony must be pertinent and material to the issue between the parties; if it have no relation to the subject, or if it refer to a fact which is immaterial to the point of inquiry, it ought not to be admitted.....*Id.*
10. The meaning of the parties to written instruments must be ascertained by the tenor of the writing, and not by looking at a part of it; and if a latent ambiguity arise from the language used, it may be explained by parol .....*Id.*
11. Secondary evidence to prove the contents if a commission issued to a Buenos Ayrean privateer, the vessel having been fitted out in Baltimore, may be given, after proof has been made of the fitting out of the vessel, of her having cruised under the commission, and made prizes of vessels belonging to the Emperor of Brazil, then at war with Buenos Ayres; and also, after it had been proved that the persons who had used the commission had been indicted for so doing, and could not be found. *United States* v. *Reyburn*.....*352
12. The evidence falls within the rule, that where the non-production of the written instrument is satisfactorily accounted for, satisfactory evidence of its existence and contents may be shown; this is a general rule of evidence applicable to criminal as well as to civil suits: a contrary rule not only might,

but probably would, render the law entirely nugatory; for the offender would only have to destroy the commission, and his escape from punishment would be certain..... *Id.*

13. The rule as to the admission of secondary evidence does not require the strongest possible evidence of the matter in dispute; but only that no evidence shall be given, which, from the nature of the transaction, supposes there is better evidence of the fact attainable by the party. It is said in the books, that the ground of the rule is a suspicion of fraud; and if there is better evidence of the fact which is withheld, a presumption arises, that the party has some secret or sinister motive in not producing it. Rules of evidence are adopted for practical purposes in the administration of justice; and must be so applied as to promote the ends for which they are designed..... *Id.*

14. The declarations of a surveyor, authorized by the owner of the land to survey and lay out a town, in reference to matters chiefly within the scope of his powers, are evidence against the owner of the land and his grantees, in an ejectment instituted to recover part of the land in the town. *Barclay* v. *Howell*..... *499

15. The declarations of a surveyor which contradict his official return, are clearly not evidence; nor ought they to be received, where he has no power to exercise a discretion, as explanatory of his return, while he is still living, and may be examined as a witness. *Id.*

16. The right of the court to decide on the legal effect of a written instrument, cannot be controverted; but the question of boundary is always a matter of fact for the determination of the jury..... *Id.*

17. The circuit court cannot be called upon, when a case is before a jury, to decide on the nature and effect of the whole evidence introduced in support of the plaintiff's case, part of which is of a presumptive nature, and capable of being urged with more or less effect to the jury. *Crane* v. *Morris* ... *598

18. An ejectment for a tract of land was tried upwards of seventy years after the date of a lease, recited to have been executed, in a deed of release of the premises in dispute, but which lease was not produced on the trial; under these circumstances, the lapse of time would alone be sufficient to justify a presumption of the due execution and loss of the lease, proper to be left to the jury.... *Id.*

19. The solemn probate of a deed, by a witness, upon oath, before a magistrate, for the purpose of having it recorded, and the certificate of the magistrate of its due probate, upon such testimony, are certainly entitled to more weight as evidence, than the mere unexplained proof of the handwriting of a witness, after his death; the one affords only a presumption of the due execution of the deed, from the mere fact that the signature of the witness is to the attestation clause; the other is a deliberate affirmation by the witness, upon oath, before a competent tribunal, of the material facts to prove the execution. *Id.*

20. Whenever evidence is offered to the jury, which is in its nature *primâ facie* proof, or presumptive proof, its character, as such, ought not to be disregarded; and no court has a right to direct the jury to disregard it, or to view it under a different aspect from that in which it is actually presented to them. Whatever just influence it may derive from that character, they jury have a right to give it; and in regard to the order in which they shall consider the evidence in a cause, and the manner in which they shall weigh it, the law has submitted it to them to decide for themselves; and any interference with this right would be an invasion of their privilege to respond to matters of fact ..... *Id.*

21. *Primâ facie* evidence of a fact, is such evidence as, in judgment of law, is sufficient to establish the fact; and if not rebutted, remains sufficient for the purpose; the jury are bound to consider it in that light; unless they are invested with authority to disregard the rules of evidence, by which the liberty and estate of every citizen are guarded and supported. No judge would hesitate to set aside their verdict and grant a new trial, if, under such circumstances, without any rebutting evidence, they disregarded it; it would be error in their part, which would require the remedial interposition of the court. In a legal sense, then, such *primâ facie* evidence, in the absence of all controlling evidence, or discrediting circumstances, becomes conclusive of the fact; that is, it should operate upon the minds of the jury as decisive to found their verdict as to the fact. Such are understood to be the clear principles of law on this subject. *Kelly* v. *Jackson*..... ..... *622

22. It is a general rule, that evidence by comparison of hands is not admissible, when the witness has had no previous knowledge of the handwriting, but is called upon to testify merely from a comparison of hands. There may be cases where, from the antiquity of the writing, it is impossible for any living witness to swear that he ever saw the party write; comparison of handwriting with documents known to be in his handwriting, has been admitted; but these are extraordinary instances, arising from the necessity of the case. *Strother* v. *Lucas* *763

23. Foreign laws should be proved; the court

cannot be charged with knowledge of foreign laws ..... *Id.*

FLORIDA.

1. The grant of the King of Spain to F. M. Arredondo & Son, for land at Alachua, in Florida, gave a valid title to these claimants, under the grant, according to the stipulations under the treaty between the United States, and Spain of 1819, the laws of nations, of the United States, and of Spain. *United States* v. *Arredondo* *691
2. Construction of the treaty with Spain of 1819, relative to grants of lands in the territory of Florida; and of the several acts of congress, passed for the adjustment of private claims to land within that territory..... *Id.*

FORFEITURES.

See PENALTIES AND FORFEITURES.

GEORGIA.

1. Georgia herself has furnished conclusive evidence that her former opinions on the subject of the Indians, concurred with those entertained by her sister states, and by the government of the United States; various acts of her legislature have been cited, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nation possessed a full right to the lands they occupied, until that right should be extinguished by the United states, with their consent; that their territory was separated from that of any state within whose chartered limits they might reside, by a boundary-line, established by treaties; that within their boundary, they possessed rights with which no state could interfere; and that the whole power of regulating the intercourse with them was vested in the United States. *Worcester* v. *State of Georgia* *515

HUSBAND AND WIFE.

1. That a husband, even before marriage, may, in virtue of the marriage contract, have inchoate rights in the estate of his wife, which, if the marriage is consummated, will be protected by a court of equity against any antecedent contracts and conveyances secretly made by the wife, in fraud of those marital rights, may be admitted; but they are mere equities, and in no just sense constitute any legal or equitable estate in her lands or other property, antecedent to her marriage. *Crane* v. *Morris* *598

INDIANS.

1. The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide, that all intercourse with them shall be carried on exclusively by the government of the Union. *Worcester* v. *State of Georgia* *515
2. The Indian nations have always been considered as distinct, independent, political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial; with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently, admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves; having each a definite and well-understood meaning; we have applied them to Indians, as we have applied them to other nations of the earth; they are applied to all in the same sense..... *Id.*

INSOLVENT LAWS

1. The judges of this court, who were in the minority of the court upon the general question as to the constitutionality of state insolvent laws, concurred in the opinion of Mr. Justice JOHNSON, in the case of Ogden *v.* Saunders, 12 Wheat. 213; that opinion is, therefore, to be deemed the opinion of the other judges, who assented to that judgment; whatever principles are established in that opinion, are to be considered no longer open for controversy, but the settled law of the court. *Boyle* v. *Zacharie*.....*635
2. The effect of a discharge under an insolvent law of a state, is at rest, so far as it depends on the antecedent decisions made by this court. The ultimate opinion delivered by

Mr. Justice JOHNSON, in the case of Ogden *v.* Saunders, 12 Wheat. 213, 258, was concurred in and adopted by the three judges who were in the minority on the general question of the constitutionality of state insolvent laws. So far then, as decisions upon the subject of state insolvent laws have been made by this court, they are to be deemed final and conclusive ..... *Id.*

JUDGMENT.

1. If execution issue under an erroneous judgment, the party who acts under it is justified; for the judgment is the act of the court. *Bank of United States* v. *Bank of Washington*..... *8
2. As respects third persons, whatever is done under an erroneous judgment, while it remains in full force, is valid and binding.. *Id.*
3. On the reversal of an erroneous judgment, the law raises an obligation on the party to the record, who received the benefit of it, to make restitution to the other party for what he has lost; sometimes this is done by a writ of restitution, without a *scire facias*, when the record shows the money has been paid; in other cases, a *scire facias* may be necessary to ascertain the amount..... *Id.*
4. The petition by which the suit on a bond was instituted stated the debt to be $15,550.18; the verdict of the jury was for $20,000; and upon this a judgment was entered up against the estate of two of the obligors in the bond, jointly and severally, for $20,000, and a judgment against two of the legal representatives of one of the obligors for $10,000 each. "Upon no possible ground, can this judgment be sustained." *Cox* v. *United States*..... *172

JURISDICTION.

1. Under the 11th section of the judiciary act of 1789, the payee of a promissory note made in one state of the Union, who has removed to another state, after the note is made, and before it is due, may institute suit on the note in the circuit court of the United States; the plaintiff being, at the time the suit is brought, a citizen of a state other than that of the maker of the note. *Kirkman* v. *Hamilton* *20
2. The supreme court has no jurisdiction in a case in which the judges of the circuit court have divided in opinion, upon a motion for a rule to show cause why the taxation of the costs of the marshal on an execution, should not be reversed and corrected. *Bank of United States* v. *Green*..... *26
3. It has been settled, that in order to give jurisdiction to this court, under the 25th section of the judiciary act, it is not necessary that the record should state, in terms, that an act of congress was, in point of fact, drawn in question; it is sufficient, if it appear from the record, that an act of congress was applicable to the case, and was misconstrued; or the decision of the state court was against the privilege or exemption specially set up under such statute. *Davis* v. *Packard* *41
4. In "the court for the correction of errors, in the state of New York," the plaintiff in error assigned as error, in a case removed by writ of error to that court, that he was at the time the action was brought, and continued, consul-general in the United States of the king of Saxony, and as such, should have been impleaded in some district court of the United States, and the supreme court of New York had no jurisdiction in the suit; no plea to the jurisdiction was tendered in the case, until it was before the court of errors; and in that court, the fact that the plaintiff in error was consul-general of the king of Saxony was not denied. The court of errors, in their decree, said, having examined and fully considered the causes assigned for error, they affirm the judgment of the supreme court. This was deciding again the privilege set up under the act of congress, which declares that the district courts of the United States shall have jurisdiction, exclusive of the courts of the several states, of all suits against consuls and vice-consuls..... *Id.*
5. The supreme court have not jurisdiction, in a case in which separate decrees have been entered in the circuit court for the wages of seamen; the decree in no one of the cases amounting to $2000; although the amount of the several decrees together exceeded that sum, and the seamen in each case claimed under the same contract with the owners of the ship. *Oliver* v. *Alexander*..... *143
6. It is very clear, that no seaman can appeal from the district to the circuit court, unless his own claim exceeds $50; nor from the circuit to the supreme court, unless his claim exceeds $2000. And the same rule applies to the owners or other respondents, who are not at liberty to consolidate the distinct demands of each seaman into an aggregate, thus making the claims of the whole the matter in dispute; but they can appeal only in regard to the demand of a seaman which exceeds the sum required by law for that purpose, as a distinct matter in dispute ..... *Id.*
7. The plaintiff claimed in his declaration the sum $1241, and laid his damages at $1000,

a general verdict having been given against him, the matter in dispute is the sum he claims, *ad quod damnum*. The court cannot judicially take notice, that by computation, it may possibly be made out, as matter of inference, from the plaintiff's declaration, that the claim may be less than $1,000; much less can it take such notice in a case where the plaintiff might be allowed interest by a jury, so as to swell the claim beyond $1,000. *Scott* v. *Lunt's Administrator* *349

8. A writ of error was issued to "the judges of the superior court for the county of Gwinnett, in the state of Georgia," commanding them to send to the supreme court of the United States, the record and proceedings in the said superior court of the county of Gwinnett, between the state of Georgia, plaintiff, and Samuel A. Worcester, defendant, on an indictment in that court. The record of the court of Gwinnett was returned, certified by the clerk of the court, and was also authenticated by the seal of the court; it was returned with, and annexed to, a writ of error, issued in regular form, the citation being signed by one of the associate justices of the supreme court, and served on the governor and attorney-general of the state more than thirty days before the commencement of the term to which the writ of error was returnable. The judiciary act, so far as it prescribes the mode of proceeding, appears to have been literally pursued. In February 1797, a rule was made on this subject, in the following words: "It is ordered by the court, that the clerk of the court to which any writ of error shall be directed, may make return of the same by transmitting a true copy of the record, and of all proceedings in the same, under his hand and the seal of the court;" this has been done. But the signature of the judge has not been added to that of the clerk; the law does not require it; the rule does not require it. *Worcester* v. *State of Georgia* *515

9. The plaintiff in error was indicted in the supreme court for the county of Gwinnett, in the state of Georgia, "for residing, on the 15th July 1831, in that part of the Cherokee nation, attached by the laws of the state of Georgia to that county, without a license or permit from the governor of the state, or from any one authorized to grant it, and without having taken the oath to support and defend the constitution and laws of the state of Georgia, and uprightly to demean himself as a citizen thereof, contrary to the laws of the said state." To this indictment he pleaded, that he was, on the 15th July 1831, in the Cherokee nation, out of the jurisdiction of the court of Gwinnett county; that he was a citizen of Vermont, and entered the Cherokee nation as a missionary, under the authority of the President of United States, and had not been required by him to leave it, and that with the permission and approval of the Cherokee nation he was engaged in preaching the gospel; that the state of Georgia ought not to maintain the prosecution, as several treaties had been entered into by the United States with the Cherokee nation, by which that nation was acknowledged to be a sovereign nation, and by which the territory occupied by them was guarantied to them by the United States; and that the laws of Georgia, under which the plaintiff in error was indicted, were repugnant to the treaties, and unconstitutional and void, and also that they were repugnant to the act of congress of March 1802, entitled, "an act to regulate trade and intercourse with the Indian tribes." The superior court of Gwinnett overruled the plea, and the plaintiff in error was tried and convicted, and sentenced, "to hard labor in the penitentiary for four years:" *Held*, that this was a case in which the supreme court of the United States had jurisdiction by writ if error, under the 25th section of the "Act to establish the judicial courts of the United States," passed in 1789.....*Id.*

10. The indictment and plea in this case draw in question the validity of the treaties made by the United States with the Cherokee Indians; if not so, their construction was certainly drawn in question; and the decision had been if not against their validity, "against the right, privilege, or exemption specially set up and claimed under them." They also draw into question the validity of a statute of the state of Georgia, "on the ground of its being repugnant to the constitution, treaties and laws of the United States, and the decision was in favor of its validity." .....*Id.*

11. It is too clear for controversy, that the act of congress by which this court is constituted, has given it the power, and, of course, inposed on it the duty, of exercising jurisdiction in this case. The record, according to the judiciary act and the rule and practice of the court, is regularly before the court.....*Id.*

12. The declaration was for a balance of accounts of $988.94, and the *ad damnum* was laid at $2000; the bill of exceptions showed that the United States claimed interest on the balance due them. Under those circumstances, it is no objection to the jurisdiction, that the bill of exceptions was taken by the counsel for the United States to a refusal of the court to grant an instruction, asked by the United States, which was applicable to certain items of credit only, claimed by the defendant, which would reduce the debt below

the sum of $1000; the court cannot judicially know what influence that refusal had upon the verdict. *United States* v. *McDaniel*.....*634

13. A petition filed in the district court of the United States of Louisiana, alleged, that the defendant had caused himself to be naturalized an American citizen, and that he was, at the time of the filing of the petition, residing in the parish of West Baton Rouge; *Held*, that this was equivalent to an averment that the defendant was a citizen of the state of Louisiana. *Cassies* v. *Ballon*.....*761
14. A citizen of the United States, residing in any state of the Union, is a citizen of that state .....*Id.*
15. The authorities, on the question of the jurisdiction of the courts of the United States on the allegation of citizenship, in proceedings in those courts, have gone as far in limiting the jurisdiction of those courts as it would be reasonable and proper to go....*Id.*
16. This court has jurisdiction in an appeal from the supreme court of the state of Ohio, in a case where was drawn in question at the trial the construction of the act by which Virginia ceded the territory she claimed north-west of the river Ohio to the United States, and of the resolution of congress accepting the deed of cession, and the acts of congress prolonging the time for completing titles to lands within the Virginia military reservation; the decision of the supreme court of Ohio, having been against the title set up under the acts of congress. *Wallace* v. *Parker* *680

LANDLORD AND TENANT.

1. That a lessee will not be allowed to deny the title of his lessor, is admitted; but it is not admitted, that a contract executed for the purpose of conveying and acquiring an estate in fee, but wanting that legal formality which is required to pass the title, may be converted into an agreement contemplated by neither party; and by this conversion, estop the purchaser, while it leaves the seller free to disregard the express stipulation. *Hughes* v. *Trustees of Clarksville* *369

LANDS AND LAND TITLES.

1. In an ejectment for land in the state of Virginia, the district court for the western district of Virginia, instructed the jury, "that the grant to the plaintiffs which was given in evidence, was a complete appropriation of the land therein described, and vested in the patentee the title; and that any defects in the preliminary steps by which it was acquired were cured by the grant." There can be no doubt of the correctness of this instruction; this court have repeatedly decided that no facts behind the patent can be investigated; a court of law has concurrent jurisdiction with a court of equity in matters of fraud; but the defect of an entry or survey cannot be taken advantage of at law; the patent appropriates the land, and gives the legal title to the patentee. *Boardman* v. *Reed*.....*328
2. Titles acquired under sales for taxes depend upon different principles; where an individual claims land under a tax sale, he must show that the substantial requisites of the law have been observed. But this is never necessary where the claim rests on a patent from the commonwealth; the preliminary steps may be investigated in chancery, where an elder equitable right is asserted; but this cannot be done at law.....*Id.*
3. If the grant appropriates the land, it is only necessary for the person who claims under it, to identify the land called for; whether the entry was made in legal form, or the survey was executed agreeable to the calls of the entry, are not matters which can be examined at law. When, from the evidence, the existence of a certain fact may be doubtful, either from want of certainty in the proof, or by reason of conflicting evidence, a court may be called upon to give instructions in reference to supposable facts; but this a court is never bound to do, where the facts are clear and uncontradicted.....*Id.*
4. That certain calls in a patent may be explained, or controlled by other calls, was settled by this court in the case of Stringer's Lessee *v.* Young, 3 Pet. 320. If the point had not been so adjudged, it would be too clear, on general principles, to admit of serious doubt.....*Id.*
5. The entire description of the patent must be taken, and the identity of the land ascertained by a reasonable construction of the language used. If there be a repugnant call, which by the other calls of the patent clearly appears to have been made through mistake, that does not make void the patent; but if the land granted be so inaccurately described as to render its identity wholly uncertain, it is admitted, that the grant is void.....*Id.*
6. An entry of land in one county which is afterwards divided, does not, after the division, authorize a survey in the original county, if the land fall within the new county.....*Id.*
7. Dedication of lands to public uses. *City of Cincinnati* v. *White* *431
8. Artificial or natural boundaries called for, control a call for course and distance. *Barclay* v. *Howell*.....*498
9. An unmolested possession for thirty years

would authorize the presumption of a grant; under peculiar circumstances, a grant has been presumed from a possession less than the number of years required to bar the action of ejectment by the statute of limitations. *Id.*

10. By the common law, the fee in the soil remains in the original owner, where a public road is made upon it, but the use of the road is in the public; the owner parts with this use only; for if the road should be vacated by the public, he resumes the exclusive possession of the ground; and while it is used as a highway, he is entitled to the timber and grass which may grow upon the surface, and to all minerals which may be found below it; he may bring an action of trespass against any one who obstructs the road..... *Id.*
11. Where the proprietor of a town disposes of all his interest in it, he would seem to stand in a different relation to the right of soil, in regard to the streets and alleys of the town, from the individual owner over whose soil a public road is established, and who continues to hold the land on both sides of it. *Quære?* Whether the purchasers of town lots are in this respect the owners of the soil over which the streets and alleys are laid as appurtenant to adjoining lots?..... *Id.*

See EJECTMENT: VIRGINIA MILITARY RESERVATION.

LAWS AND DECISIONS OF THE COURTS OF NEW YORK.

1. On a commercial question, especially, one deeply interesting to merchants, and to merchants only, the settled law of New York is entitled to great respect. *Spring* v. *Gray's Executors*..... *151

LEX LOCI.

1. A bond was given by the navy-agent at New Orleans, and his sureties, to the United States, conditioned that he should faithfully account for all public moneys received by him, &c. The sureties in the bond having been sued on the same, after his insolvency and decease, claimed that the United States were bound to divide their action, and take judgment against each surety, for his proportion of the sum due, according to the law of Louisiana; considering it a contract made there, and to be governed in this respect by the law of that state: *Held*, that the liability of the sureties must be governed by the rules of the common law; the accountability of the principal being at the city of Washington, to the treasury of the United States; and the bond being joint and several, each is bound for the whole; and that the contribution between the sureties is a matter with which the United States have no concern. *Cox* v. *United States*, *172
2. The general rule of law is well settled, that the law of the place where the contract is made, and not where the action is brought, is to govern, in enforcing and expounding the contract; unless the parties have a view to its being executed elsewhere; in which case, it is to be governed according to the law of the place where it is to be executed... *Id.*
3. Z. & T. were merchants at New Orleans; B. was a resident merchant at Baltimore. B., in 1818, being the owner of the ship Fabius, sent her to New Orleans, consigned to Z. & T., who procured a freight for her, and the ship having been attached for a debt due by B., in New Orleans, Z. & T., in order to release her, and enable her to proceed on her voyage, became security for the debt, and were obliged to pay the same, by the judgment of a court in New Orleans; B., on being informed that Z. & T. had become security for his debt, approved of the same, and promised to indemnify them for any loss they might sustain. The agreement of B. to indemnify Z. & T. was not, in contemplation of law, a Maryland contract, but a Louisiana contract, by which B. undertook to pay the money in the place where Z. & T. resided, and not in Maryland. The agreement of Z. & T., by which they procured the relief of the ship Fabius, was within their authority as consignees of the ship. *Boyle* v. *Zacharie*.. *635
4. Such a contract would be understood by all the parties, to be one made in the place where the advance was to be made; and the payment, unless otherwise stipulated, would also be understood to be made there. The case would in this aspect fall directly within the authority of Lanusse *v.* Barker, 3 Wheat. 101, 146..... *Id.*

LIMITATION OF ACTIONS.

1. The statute of limitations of North Carolina, passed in 1715, in force in Tennessee, bars the action only which it recites; it does not bar actions of debt generally, and therefore, is no bar to an action of debt on a promissory note *Kirkman* v. *Hamilton*..... *20
2. A bill was filed, in 1801, for the purpose of obtaining the legal title to certain lands in Kentucky, and afterwards new parties were made defendants to an amended bill, filed in 1815; until these parties had so become defendants, and parties to the bill, the suit cannot be considered as commenced against them. The statute of limitations will avail the new defendants, at the period when the amended bill was filed; and they are not to be af-

fected by the proceeding, during the time they were strangers to it. *Miller* v. *McIntyre*..... *61

3. Where the statute of limitations is pleaded at law, or in equity, and the plaintiff desires to bring himself within its savings, it would be proper for him, in his replication, or by an amendment of his bill, to set forth the facts specially ..... *Id.*

4. Adverse possession was taken in this case, in the spring of 1788 or 1789; in the spring of 1796, the ancestor of the complainants died, and his heirs brought suit against the present defendants in 1815; some of the complainants were not of full age in 1804. Unless the disability be shown to exist, so as to protect the right of the complainants, the effect of the statute, on that ground, cannot be avoided ..... *Id.*

5. At least twenty-six years elapsed after the adverse possession was taken by the defendants, before suit was brought against them by the complainants, and nineteen years from the decease of their ancestor. The statute of limitations of Virginia was made the statute of Kentucky, by adoption, in 1792: if the adverse possession which had been held for several years commenced at that time, or when the constitution formed by Kentucky was sanctioned by congress, it would give a possession of about twenty-two years; eighteen or nineteen of which were subsequent to the decease of the complainants' ancestor. Upon these facts, the statute of limitations of Kentucky is a bar to a claim of the land by the complainants..... *Id.*

6. The courts in Kentucky and elsewhere, by analogy, apply the statute of limitations in chancery, to bar an equitable right, when at law it would have operated against a grant; this principle has been well established and generally sanctioned in courts of equity.. *Id.*

7. At law, the statute operates where the conflicting titles are adverse in their origin; and no reason is preceived, against giving the statute the same effect in equity..... *Id.*

8. The principle clearly to be deduced from the decisions of this court on the statute of limitations is, that in addition to the admission of a present subsisting debt, there must be either an express promise to pay, or circumstances from which an implied promise may fairly be presumed. *Moore* v. *Bank of Columbia* *86

9. An examination and summary of the decisions of this court on the statute of limitations ..... *Id.*

10. The English statute of 9th May 1829, 9 Geo. IV., c. 14, relative to the limitation of actions ..... *Id.*

11. The construction of the act of limitations, that if adverse possession be taken in the lifetime of the ancestor, and be continued for twenty years, and for ten years after the death of the ancestor, no entry having been made by the ancestor or those claiming under him, the entry is barred, is established by the decisions of this court, as well as of the courts of Kentucky. *Sicard* v. *Davis*..*124

12. A count in the declaration in an ejectment, on a demise from a different party, asserting a different title, is not distinguishable, so far as respects the act of limitations, from a new action ..... *Id.*

13. Where the cause of action arose on a bill of lading, and a contract indorsed on it that the owners of the ship should have, as freight, one-half of the net proceeds of the cargo, the exception of the statute of limitations of the state of Maine in favor of accounts which concern the trade of merchandise between merchant and merchant, does not apply. *Spring* v. *Gray's Executors* *151

14. The case presented by the exception is not every transaction between merchant and merchant; not every account which might exist between them; but it must concern the trade of merchandise. It is not an exemption from the act, attached to the merchant merely, as a personal privilege; but an exemption which is conferred on the business as well as on the persons between whom that business is carried on. The accounts must concern the trade of merchandise; and the trade must be, not an ordinary traffic between a merchant aad any ordinary customer, but between merchant and merchant.... *Id.*

15. The trade of merchandise which can present an account protected by the exception, must be not only between merchant and merchant, but between the plaintiff and defendant. The account—the business of merchandise which produces it—must be between them..... *Id.*

16. The accounts between merchants, and which concern the trade of merchandise, excepted from the operation of the statute of limitations of Maine, depend on the nature and character of the transaction, and not on the books in which either party may choose to enter a memorandum or statement of it. The English and American cases does not oppose this construction of the words of the statute; and the American cases, as far as they go, are in favor of it..... *Id.*

17. It is a well-settled principle, that the statute of limitations does not run against a state; if a contrary rule were recognised, it would only be necessary for intruders on the public lands to maintain their possessions, until the statute of limitations had run, and they then would become invested with the title against

the government, and all persons claiming under it. *Lindsey* v. *Miller*.....*666

18. The construction of the two statutes of limitations of Tennessee, was never considered as finally settled until 1828, when the case of Gray *v.* Darby was decided. In that case, it has been adjudged, that it is not necessary, to entitle an individual to the benefit of the statutes, that he should show a connected title, either legal or equitable; that if he prove an adverse possession, under a deed, of seven years before suit is brought, and show that the land has been granted, he brings himself within the statutes. Since this decision, the law has been considered settled in Tennessee, and there has been so general an acquiescence in all the courts of the state, that the point is not now raised or discussed. As it appears to this court, that the construction of the statutes of limitations of Tennessee is now well settled, different from what was supposed to be the rule at the time this court decided the case, of Patton's Lessee *v.* Easton, and of Powell's Lessee *v.* Green; and as the instructions of the circuit court of Tennessee were governed by these decisions, and not by the settled law of the state, the judgment must be reversed, and the cause remanded for further proceedings. *Green* v. *Neal*.....*291

MANDAMUS.

1. It is not a proper case for a *mandamus* to a judge of the district court of the United States where he has refused to set aside a judgment entered by default; such applications are to the discretion of the court. *Ex parte Roberts*.....*216

2. Motion for a *mandamus* to the district judge of the southern district of New York, directing him to restore to the record a plea of "tender," which had been filed by the defendant, in a suit on a bond for the payment of duties, which had been ordered by the court to be stricken off as a nullity. As the allowance of double pleas and defences is a matter, not of absolute right, but of discretion in the court; and as the court constantly exercises a control over the privilege, and will disallow incompatible and sham pleas, no *mandamus* will lie to the court, for the exercise of its authority in such cases; it being a matter of sound discretion, exclusively appertaining to its own practice; the court cannot say, judicially, that the district court did not order the present plea to be stricken from the record on this ground; as the record itself furnishes no positive means of information. *Ex parte Davenport*..*661

3. A rule was granted to show cause why a *mandamus* should not be awarded to the district judge of the district court for the northern district of New York, commanding him to do certain acts relative to a cause instituted in that court. *Ex parte Bradstreet*.....*774

NEUTRALITY.

1. Construction of the act of congress, passed April 20th, 1818, entitled, "an act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned." *United States* v. *Quincy*.....*445

See CONSTRUCTION OF STATUTES.

NONSUIT.

1. The circuit court has no authority whatsoever to order a peremptory nonsuit, against the will of the plaintiff; this point has been repeatedly settled by this court, and is not now open for controversy. *Crane* v. *Morris*.....*598

PATENTS.

1. Where a defect in the specification on which a patent has issued, arose from inadvertence or mistake, and without any fraud or misconduct on the part of the patentee, the secretary of state has authority to accept a surrender of the patent, and cancel the record thereof; whereupon, he may issue a new patent, on an amended specification, for the unexpired part of the fourteen years granted under the first patent. *Grant* v. *Raymond*.....*218

2. The great object and intention of the act is, to secure to the public the advantages to be derived from the discoveries of individuals; and the means it employs are the compensation made to those individuals for the time and labor devoted to those discoveries, by the exclusive right to make up and sell the things discovered for a limited time; that which gives complete effect to this object and intention, by employing the same means for the correction of inadvertent error, which are directed in the first instance, cannot be a departure from the spirit and character of the act.....*Id.*

3. *Quære?* What would be the effect of a second patent, issued after an innocent mistake in the specification, on those who, skilled in the art for which is was granted, perceiving the variance between the specifications and the machine, had constructed, sold and used the machine? This question is not before the court, and is not involved in the

opinion given in the case. The defence, when true in fact, may be sufficient in law, notwithstanding the validity of the new patent..... *Id.*

4. The defendant in the circuit court, in this plea, assigned the particular defect supposed to exist in the specification, and then proceeded to answer in the very words of the act, that it did not contain a written description of the plaintiff's invention and improvement, and manner of using it, in such full, clear and exact terms, as to distinguish the same from all other things before known, so as to enable any person skilled in the art to make and use the same. The plea alleged, in the words of the act, that the pre-requisites to issuing a patent had not been complied with; the plaintiffs denied the facts alleged in the plea, and on this issue was joined. At the trial, the counsel for the defendant, after the evidence was closed, asked the court to instruct the jury, that if they should be of opinion, that the defendant had maintained and proved the facts alleged in their pleas, they must find for the defendants; the court refused this instruction, and instructed the jury, that the patent would not be void on this ground, unless such defective or imperfect specification or description arose from design, or for the purpose of deceiving the public. The instruction was erroneous, and the judgment of the circuit court ought to be reversed..... *Id.*

5. Courts did not, perhaps, at first, distinguish clearly between a defence which would authorize a verdict and judgment in favor of a defendant, in an action for the violation of a patent, leaving the plaintiff free to use his patent, and to bring other suits for its infringement; and one which, if successful, would require the court to enter a judgment not only for the defendant in the particular case, but one which declares the patent to be void; this distinction is now well settled. *Id.*

6. If the party is content with defending himself, he may either plead specially, or plead the general issue and give the notice required by the sixth section, of any special matter he means to use at the trial. If he shows that the patentee had failed in any of those pre-requisities on which the authority to issue the patent is made to depend, his defence is complete; he is entitled to the verdict of the jury, and the judgment of the court. But if, not content with defending himself, he seeks to annul the patent, he must proceed in precise conformity with the sixth section. If he depends on evidence "tending to prove that the specification filed by the plaintiff does not contain the whole truth relative to his discovery, or that it contains more than is necessary to produce the desired effect," it may avail him, so far as respects himself; but will not justify a judgment declaring the patent void, unless "such concealment or addition shall fully appear to have been made for the purpose of deceiving the public;" which purpose must be found by the jury, to justify a judgment of *vacatur*..... *Id.*

7. The defendant is permitted to proceed according to the sixth section, but is not prohibited from proceeding in the usual manner, so far as respects his defence; except that special matter may not be given in evidence on the general issue, unaccompanied by the notice which the sixth section requires. The sixth section is not understood to control the third; the evidence of fraudulent intent is required only in the particular case, and for the particular purpose stated in the sixth section..... *Id.*

PENALTIES AND FORFEITURES.

1. The ship Good Friends, and her cargo of British merchandise, owned by Stephen Girard, a citizen of the United States, was seized by the collector of the Delaware district, on the 19th of April 1812, for a violation of the non-intercourse laws of the United States, then in force; the ship and cargo were condemned as forfeited, in the district and circuit court of the Delaware district. On the 29th July 1813, congress passed an "act for the relief of the owners of the Good Friends," &c., and a remission of the forfeiture was granted by the secretary of the treasury, under the authority of the act, with exception of a sum equal to the double duties imposed by an act of congress passed on the 1st of July 1812. The collector was entitled to one moiety of the whole amount reversed by the secretary of the treasury, as the condition of the remission. *McLane* v. *United States*..... *404

2. Where a sentence of condemnation has been finally pronounced, in a case of seizure, this court, as an incident to the possession of the principal cause, has right to proceed to decree a distribution of the proceeds, according to the terms prescribed by law; and it is familiar practice, to institute proceedings for the purpose of such distribution, whenever a doubt occurs as to the rights of the parties who are entitled to share in the distribution..... *Id.*

3. The duty of the collector in superintending the collection of the revenue, and of making seizures for supposed violations of law, is onerous and full of perplexity; if he seize any goods, it is at his own peril; and he is condemnable in damage and costs, if it

should turn out, upon the final adjudication, that there was no probable cause for the seizure. As a just reward for his diligence, and a compensation for his risks, at once to stimulate his vigilance and secure his activity, the laws of the United States have awarded to him a large share of the proceeds or the forfeiture; but his right by the seizure is but inchoate; and although the forfeiture may have been justly incurred, yet the government has reserved to itself the right to release it, either in whole or in part, until the proceeds have been actually received for distribution; and in that event, and to that extent, it displaces the right of the collector. Such was the decision of this court in the case of the United States *v.* Morris, 10 Wheat. 246. . *Id.*

4. But whatever is reserved to the government out of the forfeiture, is reserved as well for the seizing officer as for itself, and is distributable accordingly; the government has no authority, under its existing laws, to release the collector's share, as such; and yet to retain to itself the other part of the forfeiture..... *Id.*

5. In point of law, no duties, as such, can legally accrue upon the importation of prohibited goods; they are not entitled to entry at the custom house, or to be bonded; they are, *ipso facto*, forfeited by the mere act of importation..... *Id.*

PENNSYLVANIA.

1. In Pennsylvania, there is no court of chancery, and it is known, that the courts in that state admit parol proof to affect written contracts, to a greater extent than is sanctioned in the states where a chancery jurisdiction is exercised. *Bank of United States* v. *Dunn.* *51

PLEADING.

1. The declaration contained two counts; the first, setting out the cause of action, stated "for that whereas, the said defendants and copartners, trading under the firm of Josiah Turner & Co., in the lifetime of said William, on the 1st day of March 1821, were indebted to the plaintiffs, and being so indebted," &c.; the second count was upon an *insimul computassent*, and began, "and also, whereas, the said defendants afterwards, to wit, on the day and year aforesaid, accounted with the said plaintiffs, and concerning divers other sums of money due and owing from the said defendants," &c. The defendants, to maintain the issue on their parts, gave in evidence to the jury, that William Turner, the person mentioned in the declaration, died on the 6th of January 1819, that he was formerly a partner with Josiah and Philip Turner, the defendants, under the firm of Josiah Turner & Co.; but that the partnership was dissolved in October 1817, and the defendants formed a copartnership in 1820. The defendants prayed the court to instruct the jury, that there is a variance between the contract declared on, and the contract given in evidence—William Turner being dead. The only allegation in the second count in the declaration from which it is argued, that the contract declared upon was one including William Turner with Josiah and Philip, is, "that the said defendants accounted with the plaintiffs;" but this does not warrant the conclusion drawn from it. The defendants were Josiah and Philip Turner; William Turner was not a defendant, and the terms, the said defendants, could not include him. There was no variance between the contract declared upon in the second count, and the contract proved upon the trial, with respect to the parties thereto. *Schimmelpennick* v. *Turner*..... *1

POSSESSION.

1. A possession taken under a junior patent which interferes with a senior patent, the lands covered by which are totally unoccupied by any person holding or claiming under it, is not limited to the actual inclosure, but is co-extensive with the boundaries claimed under such junior patent. *Sicard* v. *Davis*..... *124

PRACTICE.

1. The bringing up with the record of the proceedings in the circuit court, the charge of the court at large is a practice, with this court has often disapproved, and deems incorrect. *Conard* v. *Pacific Insurance Co.*..... *262

2. Motion to dismiss a writ of error, on the ground that one of the matters put in issue in the court below did not appear by the record, to have been decided: Refused, as the issue which was found by the jury, made the plea, upon which no issue appears to have been decided, immaterial. *Dufau* v. *Conprey's Heirs*..... *170

3. The declaration described the property for which the suit was instituted, as "lying between Water street and the river Monongahela, with the appurtenances, situate and being in the city of Pittsburgh;" the jury fond a general verdict for the plaintiff; and the defendants assigned for error, that the verdict being general, was void the the want of certainty. This must be considered as an

exception to the sufficiency of the declaration; as any other matter embraced in it might have been considered on a motion for a new trial, but cannot now be noticed. *Barclay* v. *Howell*.....*498

4. In respect to suits at common law, it is true, that the laws of the United States have adopted the forms of writs and executions, and other process, and the modes of proceeding authorized and used under the state laws, subject, however, to such alterations and additions as may, from time to time, be made by the courts of the United States. But writs of execution issuing from the courts of the United States in virtue of those provisions are not controlled or controllable, in their general operation or effect, by any collateral regulations and restrictions which the state laws have imposed upon the state courts to govern them in the actual use, suspension or superseding of them; such regulations and restrictions are exclusively addressed to the state tribunals, and have no efficacy in the courts of the United States, unless adopted by them. *Boyle* v. *Zacharie*.....*648
5. There is no impossibility or impracticability in courts making such rules in relation to the filing of the pleadings, and the joining of issues, in actions for duties on merchandise, as will enable the causes to be heard and tried upon the merits, and a verdict found at the return-term of the court. *Ex parte Davenport*.....*661
6. After a writ of error had been taken out to this court, on an indictment found and tried in the circuit court for the eastern district of Pennsylvania, a *nolle prosequi* was entered in that court, by order of the president of the United States, and a copy of the same having been filed in the office of the clerk of the supreme court, the court, on motion of the attorney-general, dismissed the cause. *United States* v. *Phillips*.....*776

PRIORITY OF THE UNITED STATES.

1. The priority of the United States extends as well to debts by bonds for duties, which are payable after insolvency or decease of the obligor, as to those actually payable or due at the period thereof. *United States* v. *State Bank of North Carolina*..... *29

RECORDING OF DEEDS.

1. The act of the legislature of Kentucky, of 1796, respecting conveyances, restrains the right to convey property, by certain rules which it prescribes, and which are deemed necessary for public convenience; the original right to convey property remains unimpaired, except so far as it is abridged by the statute. *Sicard* v. *Davis*..... *124
2. The first section of the act can apply only to purchasers of the title asserted by the conveyance, and to the creditors of the party who has made it; it protects such purchasers from a conveyance of which they had no notice, and which, if known, would have prevented their making the purchase; because it would have informed them, that the title was bad, that the vendor had nothing to sell. But the purchaser from a different person, of a different title, claimed under a different patent, would be entirely unconcerned in the conveyance; to him, it would be entirely unimportant, whether this distinct conflicting title was asserted by the original patentee, or by his vendor. The same general terms are applied to creditors and purchasers; and the word creditors can mean only the creditors of a vendor..... *Id.*
3. Under the statute, the only requisites to a valid conveyance of lands are, that it shall be in writing, and shall be sealed and delivered..... *Id.*
4. The acknowledgment, and the proof which may authorize the admission of the deed to record, and the recording thereof, are provisions which the law makes for the security of creditors and purchasers; they are essential to the validity of the deed, as to persons of that description, not as to the grantor; his estate passes out of him and vests in the grantee, so far as respects himself, as entirely, if the deed be in writing, sealed and delivered, as if it be also acknowledged, or attested and proved by three subscribing witnesses, and recorded in the proper court. In a suit between them, such a deed is completely executed, and would be conclusive, although never admitted to record, nor attested by any subscribing witness; proof of sealing and delivering would alone be required; and the acknowledgment of the fact by the party would be sufficient proof of it..... *Id.*
5. Deeds for lands in the district of Columbia, executed by an insolvent debtor, under the insolvent laws of the state of Pennsylvania, and under and in conformity with the insolvent laws of the state of Maryland, not having been enrolled in the general court where the lands lie, are, in a legal sense, mere nullities, and incapable of passing the lands described in them. *Greenleaf* v. *Birth*.. *302

REMAINDER.

1. A remainder may be limited after a life-estate in personal property. *Smith* v. *Bell*,*68

SEAMEN'S WAGES.

1. The contract of a seaman for his wages, is a distinct contract; although he may sign the same shipping articles with others, he is not understood to contract jointly, or to incur responsibility for any other; the contract is so contemplated by the act of congress. *Oliver* v. *Alexander*..... *143
2. Every seaman may sue severally in a court of common law for his wages; but a different practice prevails in the admiralty, as a special favor and peculiar privilege to seamen... *Id.*
3. Although the libel is joint in its form, the contract is always treated as a several distinct contract with each seaman..... *Id.*
4. The defence which is good against one seaman, may be wholly inapplicable to another; one may have been paid; another may not have performed the service; and another may have forfeited, in whole or in part, his claim to wages. But no decree whatever, which is made in regard to such claims, can possibly avail to the prejudice of the merits of others, which do not fall within the same predicament. And wherever, from the nature of the defence, it is inapplicable to the whole crew, the answer invariably contains separate averments, and is applied to each claim, according to its own peculiar circumstances. *Id.*
5. The decree follows the same rule, and assigns to each seaman, severally, the amount to which he is entitled, and dismisses the libel as to those and those only who have maintained no right to the interposition of the court in their favor..... *Id.*
6. The whole proceeding, though it assumes the form of a joint suit, is, in reality, a mere joinder of distinct causes of action, by distinct parties, growing out of the same contract; and bears some analogy to the known practice at common law of consolidating actions founded on the same policy of insurance; the act of congress adopts and sanctions the practice..... *Id.*

SPECIFIC PERFORMANCE.

See CHANCERY, 4, 5.

SUPREME COURT.

See CONSTRUCTION OF STATUTES, 2–6.

TREASURY TRANSCRIPT.

1. The principles which have been established by the decisions of this court relative to the admission of treasury transcripts in evidence, in suits by the United States against public officers. *Cox* v. *United States*.....*172

VIRGINIA MILITARY RESERVATION.

1. The plaintiff claimed the land in controversy, which was situated in the Virginia military district, in the state of Ohio, under a patent from the United States, dated 1st December 1824, founded on an entry and survey executed in the same year; the defendants offered in evidence a patent, issued by the state of Virginia, in March 1789, to Ricard C. Anderson, for the same land, which was rejected by the court; and they gave in evidence, an entry and survey of the land made in January 1783, recorded on the 17th of April, in the same year, and proved possession for upwards of thirty years. The warrant under which the defendants' survey was made, stated, that the services for which it issued were performed in the Virginia state line, and not on the continental establishment. On the 1st of March 1786, Virginia conveyed to the United States, the territory north-west of the river Ohio, with the reservation of such a portion of the territory, ceded between the rivers Scioto and Little Miami, as might be required to make up deficiencies of land on the south side of the Ohio, called the Green River lands, reserved for the Virginia troops on continental establishment. The holders of Virginia warrants had no right to locate them in the reservation, until the good land on the south side of the Ohio was exhausted, and it was deemed necessary that Virginia should give notice to the general government, when the Green River lands were exhausted; which would give a right to the holders of warrants to locate them in the district north of the Ohio. Lands could be entered in this district, only by virtue of warrants issued by Virginia to persons who had served three years in the Virginia line on the continental establishment. *Lindsey* v. *Miller*.....*666
2. In May 1800, congress authorized patents to issue on surveys made under Virginia warrants issued for services on the continental establishment; warrants issued by Virginia for services in her state line, gave no right to the holder to make an entry in the reserved district..... *Id.*
3. The land in the possession of the defendant was surveyed, under a warrant which did not authorize the entry of lands in the reserved district; the possession of the same did not bar the plaintiff's action..... *Id.*
4. The entry and survey of the defendant were

made before the deed of cession; at the time the location was made, the land in the reserved district was not liable to be appropriated in satisfaction of warrants granted by the state of Virginia for military services in the state line ..... *Id.*

5. No act of congress was passed, subsequently to the deed of cession, which enlarged the rights of Virginia to the lands in the military district beyond the terms of the cession; longer time was repeatedly given for locations, but no new rights were created. It would seem, therefore, to follow, that when the act of 1807 was passed, for the protection of surveys, congress could have designed to protect such surveys only as had been made in good faith; they could not have intended to sanction surveys made without the shadow of authority, or, what is the same thing, under a void authority.. ..... *Id.*
6. It is essential to the validity of an entry, that it shall call for an object, notorious at the time, and that the other calls shall have precision; a survey, unless carried into grant, cannot aid a defective entry, against one made subsequently; the survey, to be good, must have been made in pursuance of the entry. *Id.*
7. To cure defects in entries and surveys, was the design of the act of 1807; it was intended to sanction irregularities which had occurred without fraud, in the pursuit of a valid title. In the passage of this act, congress could have had no reference but to such titles as were embraced in the deed of cession..... *Id.*
8. Construction of the acts of congress relative to the Virginia reservation of military lands in Ohio. *Wallace* v. *Parker*..... *680

WILL.

1. The will of B. G. contained the following clause: "Also, I give to my wife, Elizabeth Goodwin, all my personal estate, whatsoever and wheresoever, and of what nature, kind and quality soever, after payment of my debts, legacies and funeral expenses, which personal estate I give and bequeath unto my said wife, Elizabeth Goodwin, to and for her own use and disposal absolutely; the remainder, after her decease, to be for the use of the said Jesse Goodwin," the son of the testator. Jesse Goodwin took a vested remainder in the personal estate, which came into possession after the death of Elizabeth Goodwin. *Smith* v. *Bell*..... *68
2. The first and great rule in the exposition of wills, to which all rules must bend, is, that the intention of the testator expressed in his will shall prevail, provided it be consistent with the rules of law; this principle is generally asserted in the construction of every testamentary disposition; it is emphatically the will of the person who makes it, and is defined to be "the legal declaration of a man's intentions, which he wills to be performed after his death." These intentions are to be collected from his words; and ought to be carried into effect, if the be consistent with law..... *Id.*
3. In the construction of ambiguous expressions, the situation of the parties may very properly be taken into view; the ties which connect the testator with his legatees, the affection subsisting between them, the motives which may reasonably be supposed to operate with him, and to influence him in the disposition of his property, are all entitled to consideration in expounding doubtful words, and ascertaining the meaning in which the testator used them..... *Id.*
4. The rule that a remainder may be limited after a life-estate in personal property, is as well settled as any other principle of our law; the attempt to create such limitations is not opposed by the policy of the law, nor by any of its rules. If the intention to create such limitation be manifested in a will, the courts will sustain it..... *Id.*
5. It is stated in many cases, that where there are two intents, inconsistent with each other, that which is primary will control that which is secondary..... *Id.*
6. Rules as to the construction of wills.... *Id.*

WRIT OF ERROR.

See ERROR, 1: Worcester *v.* State of Georgia.