

INDEX

TO THE

PRINCIPAL MATTERS CONTAINED IN THIS VOLUME.

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

ACCOUNTS OF EXECUTORS.

1. The testator gave his wife all the proceeds of his estate, for the maintenance of his children, and directed his debts to be paid out of particular portions of his real and personal estate; the wife took all the proceeds of the estate, for the maintenance of herself and family, and for the education of the children; at the time of the decease of the testator, he was supposed to be wealthy, and the wife continued to live in the same manner after, as before, the decease of her husband; after her death, the surviving executor was charged with a *devastavit*, for having allowed the expenditures of the widow of the testator to be so large. The auditor to whom the accounts of the executors were referred, made an estimate of the expenses of the family of the widow for twelve years, without having called for vouchers for all the items of the expenditures. The court held, an allowance of \$6000 for the expenses of the family, for twelve years, must certainly be a very moderate charge; it was a proper subject of inquiry for the auditor, and there was no ground upon which this court could say the allowance was exceptionable; from the nature of the expenditure for the daily expenses of the family, it could hardly be expected, that a regular account would be kept; and especially, under the large discretion given by the testator in his will, in relation to the maintenance of his family. *Peter v. Beverly*.....*532
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ACTION OF DEBT.

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ACTIONS AGAINST PUBLIC DEBTORS.

1. If a navy-agent, without a receipt from a purser, upon a requisition for money, volunteers to pay demands which it is the purser's duty to pay, or pay the orders of a purser, and shall permit the receipts for the sums paid by him to get into the purser's possession, by whom they are exhibited at the treasury, and allowed in the final settlement of his account, without the purser's having given credit to the navy-agent, or to the government, for the amount; it assumes the character of a private transaction between the purser and navy-agent, or becomes a debt due from the purser, as an individual, to the navy-agent, as a private person; and the latter cannot claim the amount at the treasury, as an allowance, in the settlement of his account, nor as a legal or equitable credit, in a suit against him by the United States. *United States v. Hawkins*.....*125
2. The statute relating to settlements of accounts prevents delinquent officers from delaying the

United States, by frivolous pretences, from obtaining judgment at the return-term; gives to the defendant the full benefit of having every credit to which he may suppose himself equitably entitled, and which has been disallowed, passed upon by a jury; and guards the district-attorney from surprise, by informing him, through the treasury department, before the time of trial, of the credits which have been claimed, and the reasons for the rejection of them. All the provisions of this statute, regulating the institution of suits and the recovery by judgment of unpaid balances from delinquent officers, are as much a part of their bonds, as if they were recited in them; and officers and their sureties are, in contemplation of law, apprised of those provisions, when their bonds are executed. *Id.*

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See *Ventress v. Smith*, *161.

ADMIRALTY.

See SALVAGE: *Hobart v. Drozan*, *108.

AGENT AND PRINCIPAL.

1. If an agent discover a defect in the title of his principal to land, he cannot misuse it to acquire a title for himself; and if he does, he will be held as a trustee holding for his principal. *Ringo v. Binns* *269

AMENDMENT.

1. After a case has been dismissed for want of jurisdiction, the pleadings having been technically defective; the court will not, at a subsequent term, allow them to be amended, and the case reinstated on the docket; it would be, in effect, a reversal of the former decree, after the case had been finally disposed of in this court. *Jackson v. Ashton* *480
2. There will be no difficulty in making the amendment in the circuit court, in such a case, if that court shall see fit, in its discretion, to allow it to be done, and the cause may then be reheard there; and on a decree, newly rendered, the case may be brought up on appeal; or a decree may be there rendered, by consent of parties, in order to bring up the case, without delay. *Id.*

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1. By the rules of an appellate court, it can act on no evidence which was not in the court below, nor receive any paper which was not used at the hearing. *Boone v. Chiles*... *177

APPOINTMENT.

1. The appointment of a paymaster is complete, when made by the president, and confirmed by the senate; the giving a bond for the faithful performance of his duties is a mere ministerial act, for the security of the government; and not a condition precedent to his authority to act as a paymaster. *United States v. Bradley* *343

APPURTENANCES.

1. Construction of the term. *Harris v. Elliott* *25
2. The term "appurtenances," in common parlance, and in legal acceptance, is used to signify something appertaining to another thing as principal, and which passes as incident to the principal thing. Land cannot be appurtenant to land; the soil and freehold of streets will not pass to the United States, under and by virtue of the term "appurtenances." *Id.*

BILLS OF EXCHANGE.

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BONDS AND DEEDS.

1. Bonds and other deeds may, in many cases, be good in part, and void for the residue, where the residue is founded in illegality, but not *malum in se*. *United States v. Bradley* *343
2. There is no solid distinction between bonds and other deeds, containing conditions, covenants or grants, not *malum in se*, but illegal at the common law; and those containing conditions, covenants or grants illegal by the express prohibitions of statutes. In each case, the bonds or other deeds are void, as to such conditions, covenants or grants, which are illegal; and are good as to all others which are legal and unexceptionable in their purport; the only exception is, when the statute has not confined its prohibitions to the illegal conditions, covenants or grants; but has expressly, or by necessary implication, avoided the whole instrument, to all intents and purposes. *Id.*

BONDS OF PUBLIC OFFICERS.

1. In the case of the United States *v.* Tingey, 5 Pet. 115, it was held, that the United States, being a body politic, as an incident to their general right of sovereignty, have a capacity to enter into contracts, and take bonds, in cases within the sphere of their constitutional powers, and appropriate to the just exercise of those powers, through the instrumentality of the proper department to which those powers are confided, whenever such contracts or bonds are not prohibited by law; although the making of such contracts, or taking such bonds, may not have been prescribed by any pre-existing legislative act. From the doctrine here stated, the court have not the slightest inclination to depart; on the contrary, from further reflection, they are satisfied that it is founded upon the soundest principles of law, and the just interpretation of the constitution. *United States v. Bradley*. *343
2. The act of congress of 1816 nowhere declares that all other bonds, not taken in the prescribed form, shall be utterly void; nor does such an implication arise from any of the terms contained in the act, or from any principles of public policy which it is designed to promote. A bond may, by mutual mistake or accident, and wholly without design, be taken in a form not prescribed by the act; it would be a very mischievous interpretation of the act, to suppose, that under such circumstances, it was the intentment of the act, that the bond should be utterly void; nothing but very strong and express language should induce a court of justice to adopt such an interpretation; where the act speaks out, it would be our duty to follow it; where it is silent, it is a sufficient compliance with the policy of the act, to declare the bond void as to any conditions which are imposed upon a party, beyond what the law requires; this is not only the dictate of the common law, but of common sense. *Id.*

CERTIFICATE OF DIVISION.

1. Although the words of the act of congress are general, that whenever any question shall occur before a circuit court, upon which the opinion of the judges shall be opposed, the point shall be certified, &c.; yet it is very certain, that this cannot embrace every question that may arise in the progress of a cause, from its commencement; there may be many motions made in the different stages

- of a cause, before trial, that could not be brought here under a certificate of division; such as motions for amendments, for commissions, for continuances, &c., and various other motions that arise in the progress of a suit; which, if brought up in this manner, would occasion great delay and expense; these, and all other questions resting in the discretion of the circuit court, are not to be reviewed here. *Davis v. Braden*. *286
2. The questions which may be certified, are those which may arise on the trial of a case, and are such as may be presented upon the final hearing of a cause, or pleas to the jurisdiction of the court; the motion in the present case does not stand on stronger grounds than a motion for a new trial; and it has been decided in this court, in the case of *United States v. Daniel*, 6 Wheat. 542, that a division of opinion upon such a motion cannot be brought here by a certificate of a division of opinion in the circuit court; and the reason assigned is, that the granting or refusing a new trial is a mere matter of discretion; and the refusal, although the grounds of the motion be spread upon the record, is no sufficient cause for a writ of error; the effect of the division is, that the motion is lost: so, in the present case, the effect of the division of opinion is, that the motion is lost, and the plaintiff is driven to a new suit. *Id.*
3. The court do not mean to decide, definitively, that no question can be brought here upon a certificate of a division of opinion, unless the point arose upon the trial of the cause; but are very much induced to think, that such is the true construction of the act: but from the general words used, cases may possibly arise that we do not foresee. *Id.*
4. A question whether a plaintiff in ejectment shall be permitted to enlarge the term in the demise, is one within the discretion of the court to which a motion for the purpose is submitted; and cannot be certified to the supreme court, if the judges of the circuit court are divided in opinion on the motion, under the provisions of the act of congress of the 29th of April 1802. *Smith v. Vaughan*. *366
5. Questions respecting the practice of the circuit court, in equity causes, which depend upon the exercise of the sound discretion of the court, in the application of the rules which regulate the course of equity proceedings, to the circumstances of such particular case; are not questions which can be certified, on a division of opinion of the judges of the circuit court, under the act of 1802, ch. 32. *Packer v. Nixon*. *403

CHAMPERTY AND MAINTENANCE.

See *Boone v. Chiles*, *177.

CHANCERY AND CHANCERY PRACTICE.

1. The complainants filed a bill in the circuit court of Kentucky, claiming a conveyance of the legal title, and an account of rents and profits, of a tract of land, the legal title to which was derived, in virtue of the law of Virginia, under a settlement and a pre-emption right, held by Reuben Searcy; the latter gave his bond to Hoy, to make a deed of one-half of the land to which he was thus entitled; the other half having been given by him to one Martin, to obtain the location and patenting; he afterwards gave the plats and surveys to Hoy, who, in 1785, obtained a patent for the land, which he was to have a deed for; Hoy, in 1781, assigned the bond of Searcy to George Boone, and made himself surety for its performance; and George Boone assigned the bond to Thomas Boone, the ancestor of the complainants. Thomas Boone lived in the state of Pennsylvania, and was in Kentucky in 1802, 1810 and 1819, in the neighborhood of the land; but while there, he took no measures, personally, to obtain the title or possession of it; in 1787, he gave to George Boone a power of attorney to obtain a conveyance of the land; and in 1802, he made a conditional sale of it to Hezekiah Boone; the condition was not performed by Hezekiah Boone; so that, under the agreement, he obtained no right to the land. Possession was taken of parts of the land, and improvements made, as early as, or before, 1806, and the persons in possession were among the defendants. George Boone exceeded his powers, and made agreements to sell the land; and also agreed to give up to one of the heirs of Hoy, Searcy's bond; and some of the heirs sold parts of the land to the persons in possession, asserting a right to the legal title; and another of the heirs sold, by a quite-claim deed, all her rights, as one of the heirs of Hoy, to Green Clay. Afterwards, William Chiles, alleging that he had obtained from George Boone, and from Hezekiah Boone, the conditional purchaser, the equitable right of Thomas Boone, under Searcy's bond, filed, in the name of Thomas, George and Hezekiah Boone, and in his own name, in the county court of Bourbon county, a bill against the heirs of Hoy, the persons in possession, and against Green Clay, alleging him to be a purchaser, with notice of Thomas Boone's equitable title under Searcy and Hoy; and obtained from that court a decree for a conveyance to him of the legal title, and afterwards a deed for

the same, from a commissioner appointed to execute the same; this decree was afterwards, on appeal, reversed for informality; but before the same was reversed, the complainants filed this bill, asking for a conveyance from Chiles of all the title he held in the land, either under the decree, or in any other manner. Chiles, after the bill was filed purchased from Green Clay the rights he held; and, in his answer, alleged him to have been an innocent purchaser, without notice; the persons in possession, who purchased from Chiles, after the decree of the Bourbon court, answered, asserting their possession, and that they were protected by the statute of limitation; and submitted to such rules and regulations, according to law and equity, as the case might require. In 1822, Thomas Boone made an agreement with Boone Engles, by which the latter took upon himself the institution and conducting of this suit, for a portion of the benefit to the derived from it; and this the persons in possession alleged to be champerty. The court decreed a conveyance by Chiles, and by others who held the legal title, to be made to the complainants, of all the lands unsold, and not in the possession of others; and that those who were in possession, who had purchased from Chiles, should pay to the complainants the sums which they agreed to pay, respectively, with interest, according to their respective contracts. *Boone v. Chiles*,.....*177

2. A party is not allowed to state one case in a bill or answer, and make out a different one by proof; the *allegata* and *probata* must agree; the latter must support the former. *Id.*
3. It is a general principle, in courts of equity, that, where both parties claim by an equitable title, the one who is prior in time is deemed the better in right; and that where the equities are equal in point of merit, the law prevails.....*Id.*
4. Tenants in possession of land, of which the complainants claimed a conveyance of the legal title, were made parties to the proceeding, by an amended bill; the original bill having charged that the land had been occupied by them for ten or twelve years, as the tenants of the holder to the legal title; they were not charged with fraud, nor were they placed in any such relation to the land. No case exists, as to the tenants, for the interference of a court of equity, whether they occupied the lands, as the tenants of the holder of the legal title, as declared in the original bill, or as tenants in possession under another; the complainants are to be supposed to have their remedy at law, for the recovery of the land, until they shall charge and show that the tenants obtained, and re-

- tain possession in contravention of some equity subsisting between them and the complainants. *Ringo v. Binns*. *269
5. The rule to be applied to a bill seeking a discovery from an interested party, is, that the complainant shall charge in his bill, that the facts are known to the defendant, and ought to be disclosed by him; and that the complainant is unable to prove them by other testimony; and when the facts are desired to assist a court of law in the progress of a cause, it should be affirmatively stated in the bill, that they are wanted for such purpose. *Brown v. Swann*. *497
6. The general rule is, that after a verdict at law, a party comes too late with a bill of discovery; there must be a clear case of accident, surprise or fraud, before equity will interfere; such now is the established doctrine in England, and has been, for a longer time, the doctrine in the United States. And the doctrine, as applied to a case for relief from usury, is, that a defendant sued at law on a contract alleged to be usurious, will not be entitled to a bill of discovery, if he suffers a verdict and judgment to be taken against him; and especially, when he does so, without making a defence at law. The reason of the rule is, that the proof of usury is a good defence at law; and when it is in the knowledge of the defendant, no satisfactory reason can be given, why the discovery was not sought, while the suit was pending. *Brown v. Swann*. *497
7. Whenever a party seeking a discovery had knowledge of the facts, during the pendency of a suit at law, equity will not permit him to do so afterwards, to enjoin a judgment. *Id.*
8. A. filed a bill in the circuit court, for an injunction to prevent the sale of property by a trustee, to whom it had been conveyed to secure the payment of a sum of money borrowed by him at usurious interest; the money borrowed had not been repaid; and the bill sought no discovery of the usury from the defendant, but averred, that the complainant would be able to prove it by competent testimony; the circuit court dismissed the bill: *Held*, that the decree of the circuit court was correct. *Stanley v. Gadsby*. *521
9. The case of *Stanley v. Gadsby* is substantially an application for relief from usury; and the consequence of granting the injunction would be, relief upon terms at variance with the rule of equity so fully recognised at this term of the court, in the case of *Brown v. Swann*: that he who seeks the aid of equity to be delivered from usury, must do equity, by paying the principal and legal interest upon the money borrowed; the complainant

- does not offer to do so in this bill. This is essential to every such application in a court of equity: first, to give the court jurisdiction; and to enable the chancellor, if he thinks proper to do so, to require the payment of principal and interest before the hearing of the cause; the relief sought in such cases is an exemption from the illegal usury; the whole inquiry, on the hearing, is to establish that fact; and to give relief to that extent; whenever a complainant does not comply with the rule, by averring in his bill his readiness or willingness to pay principal and interest, he can have no standing in a court of equity. *Id.*
10. It is a well-settled rule in chancery, in the construction of wills, as well as other instruments, that when land is directed to be sold and turned into money, or money is directed to be employed in the purchase of lands; courts of equity, in dealing with the subject, will consider it that species of property into which it is directed to be converted. *Peter v. Beverly*. *532
11. Distribution of assets of the estate of an intestate. *Id.*

See HUSBAND AND WIFE.

CHARGE OF THE COURT.

1. A court may not only present the facts proved, in their charge to the jury, but give their opinion as to those facts, for the consideration of the jury; but, as the jurors are the triers of facts, such an expression of opinion by the court should be so guarded as to leave the jury free in the exercise of their own judgments; they should be made distinctly to understand, that the instruction was not given as a point of law, by which they were to be governed; but as a mere opinion as to the facts; and to which they should give no more weight than it was entitled to; the correctness of every charge must depend upon the phraseology used by the court. *Tracy v. Swartwout*. *80
2. The court are not bound to charge the jury on points of law, which do not grow out of the facts proved on the trial of the cause. *Clarke v. Kownslar*. *657
3. The circuit court was required to instruct the jury upon points of law, growing out of allegations of facts, of which there was no evidence: the refusal of the court to do so was correct. *Id.*

COLLECTOR OF DUTIES.

1. When a collector of the public revenue is liable for acts which are not authorized by a sound construction of the laws relating to

- duties on merchandise imported. *Tracy v. Swartwout*.....*80
2. The collector has a right to hold possession of imported goods, until the duties are paid, or secured to be paid, as the law requires; but, if he retain possession of the goods, and refuse to deliver them, after the duties are paid, or bond given or tendered, for the proper rate of duties; he is liable for the damages which may be sustained by this refusal.....*Id.*
 3. A collector of the revenue is not personally liable, in an action to recover back an excess of duties paid, as collector, and by him, in the regular or ordinary course of his duty, paid into the treasury of the United States; he, the collector, acting in good faith, and under instructions from the treasury department, and no protest being made at the time of payment, or notice not to pay the money over, or intention to sue to recover back the amount, given him. *Elliott v. Swartwout*.....*137
 4. In a case of voluntary payment, by mere mistake of law, no action will lie to recover back the money; the construction of the law is open to both parties, and each presumed to know it.....*Id.*
 6. Any instructions of the treasury department to a collector, cannot change the law, nor affect the rights of a party injured by them; he is not bound to take and adopt that construction; he is at liberty to judge for himself, and act accordingly. These instructions from the treasury seem to be thrown into the question, in this case, for the purpose of showing, beyond all doubt, that the collector acted in good faith. To make the collector answerable, after he had paid over the money, without any intimation having been given, that the duty was not legally charged, cannot be sustained, upon any sound principle of policy or of law; there can be no hardship in requiring the party to give notice to the collector, that he considers the duty claimed illegal; to put him on his guard, by requiring him not to pay over the money; the collector would then be placed in a situation to claim an indemnity from the government; but if the party is entirely silent, and no intimation of an intention to seek a repayment of the money, there can be no ground upon which the collector can retain the money, or call upon the government to indemnify him against a suit. It is no sufficient answer to this, that the party cannot sue the United States; it is the case of a voluntary payment, under a mistake of law, and the money paid over into the treasury; and if any redress is to be had, it must be by application to the favor of the government, and not on the ground of a legal right.....*Id.*
 6. The collector is personally liable, in an action to recover back an excess of duties paid to him as collector, and by him paid over, in the regular and ordinary course of his duty, into the treasury of the United States; he, the collector, acting in good faith, and under instructions from the treasury department; a notice having been given him, at the time of payment, that the duties were charged too high, and that the party paying, so paid, to get possession of his goods, and intended to sue to recover back the amount erroneously paid; and a notice not to pay over the amount into the treasury.....*Id.*

COMMERCIAL GUARANTEE.

1. L., at Memphis, Tennessee, addressed a letter to D. & Co., at New Orleans, stating that N. & D. wished to draw on them for \$2000, saying, "please accept their draft, and I hereby guaranty the punctual payment of it." In a letter of the same date, to one of the firm of N. & D., he said, "I send a guarantee for \$2000; the balance I have no doubt your friend W. will do for you." N. & D. drew a bill on D. & Co., for \$4250, which they accepted; and after having paid the draft, they gave notice to L. that they looked to him for the money; no notice was given by D. & Co. to L. that they intended to accept, or had accepted, and acted upon the guarantee, before they paid the draft; the drawers of the bill did not reimburse D. & Co. for any part of it. An action was instituted to recover \$2000 from L., being part of the bill for \$4250: *Held*, that although the bill was drawn for \$4250, the guarantee would have operated to bind L. for the sum of \$2000 included in it, if notice of the acceptance of it had been given by D. & Co. to L.; but having omitted to give such notice, or that they intended to accept, or had accepted and acted on the guarantee, L. was not liable to D. & Co. for any part of the bill for \$4250. *Lee v. Dick*.....*482
2. A guarantee is a mercantile instrument, and to be construed according to what is fairly to be presumed to have been the understanding of the parties, without any strict technical nicety.....*Id.*
3. If the guarantee stood alone, unexplained by the letter which accompanied it, it would undoubtedly be limited to a specific draft for \$2000, and would not cover that amount, in a bill for a larger sum; but the letter which accompanied it fully justified the conclusion, that the defendant undertook to guaranty \$2000 in a draft for a larger amount

The letter and guarantee were both written by the defendant, on the same sheet of paper, bear the same date, and may be construed together as constituting the guarantee. . . *Id.*

4. The decision of the court in the case of *Douglas v. Reynolds*, 7 Pet. 125, affirmed. In that case, the court held, that a party giving a letter of guaranty has a right to know whether it is accepted; and whether the person to whom it addressed means to give credit on the footing of it or not; it may be most material, not only as to his responsibility, but as to future rights and proceedings; it may regulate, in a great measure, his course of conduct, and his exercise of vigilance in regard to the party in whose favor it is given; especially is it important, in case of a continuing guarantee, since it may guide his judgment in recalling or suspending it. The last remark by no means warrants the conclusion, that notice is not necessary in a guarantee of a single transaction; but only that the reason of the rule applies more forcibly to a continuing guarantee. . . . *Id.*
5. The same strictness of proof of notice is not necessary, to charge a party upon his guarantee, as would be necessary to support an action upon the bill itself, when, by the law-merchant, a demand upon, and refusal by, the acceptors must be proved, in order to charge another party upon the bill. There are many cases, where the guarantee is of a specific existing demand, by a promissory note, or other evidence of a debt, and such guarantee, is given upon the note itself, or with a reference to it and recognition of it, when no notice would be necessary; the guarantor, in such cases, knows precisely what he guarantees, and the extent of his responsibility; and any further notice to him would be useless; but when the guarantee is prospective, and to attach upon future transactions, and the guarantor uninformed whether his guarantee has been accepted and acted upon, or not; the fitness and justice of the rule requiring notice is supported by considerations that are unanswerable. . . . *Id.*

CONSTITUTIONALITY OF STATE LAWS.

1. The power of the legislature of Rhode Island in relation to the confirmation of such sales of real estate, is greater than the strict judicial power; they may sanction past transactions, where vested rights are not disturbed; while the court can only authorize a title to be made in future. *Leland v. Wilkinson*. . . *294

CONSTRUCTION OF FEDERAL STATUTES.

1. Specific questions arising in the circuit court in which the judges of the circuit court are divided in opinion, can only be certified under the act of congress of 1802; the whole case cannot be brought up upon a general question. *Harris v. Elliott*. . . . *25

CONSTRUCTION OF STATE LAWS.

1. Construction of the fourth section of the act of the assembly of Pennsylvania, passed the 15th of March 1815, providing for the sale of lands for taxes. *Dubois v. Hepburn*. . . . *1
2. Construction of the statutes of Virginia against usury. *Brown v. Swann*. . . . *497
3. Construction of the acts of the legislature of North Carolina and Tennessee, relative to registering and recording deeds for lands in Tennessee, in force in the state of Tennessee. *Denn v. Reid*. . . . *524
4. Construction of the statute of Tennessee providing for the substitution of executors or administrators, when either party to a suit dies before judgment. *Davis v. Braden*. *286
5. The power to sue for debts due to the estate of an intestate is implied in the authority given to administrators *ad colligendum*, issued under the authority of the statute law of Mississippi. . . . *Id.*
6. Construction of the laws of Georgia, relative to the rights of aliens to real and personal estate which belonged to a citizen of Georgia who died intestate, leaving alien and citizen representatives of different degrees of kindred. *McLearn v. McLellan*. . . . *625

COUNTERFEITING.

1. The head pistareen is no part of the Spanish milled dollar; such pistareen, or piece of coin, is not a silver coin of Spain, made current by law in the United States. *United States v. Gardner*. . . . *618

DAMAGES.

1. When a collector or public officer is liable to an action for damages, for acts done in the course of the performance of the duties of his office. *Tracy v. Swartwout*. . . . *80
2. Some personal inconvenience may be experienced by a public officer who shall be held responsible in damages for illegal acts done under instructions of a superior; but as the government, in such cases, is bound to indemnify the officer, there can be no eventual hardship. *Elliott v. Swartwout*. . . . *137

DEDICATION.

1. The vacant land in front of the city of New Orleans, and on the Mississippi, was dedicated to the use of the city of New Orleans, before the cession of Louisiana to the United States, and having been so dedicated, did not become the property of the United States, when Louisiana was ceded by France; the alluvial deposits from the river Mississippi belonged to the owners of the land bounding on their river, to which additions were so made. *New Orleans v. United States*. *662
2. In order to dedicate property for public use, in cities and towns, and other places, it is not essential, that the right to use the same shall be vested in a corporate body; it may exist in the public, and have no other limitation than the wants of the community at large. *Id.*
3. The principles upon which the case of the city of Cincinnati *v.* White, 6 Pet. 431, and that of Barclay *v.* Howell, *Id.* 489, were decided, examined and affirmed. *Id.*
4. If buildings had been erected on lands within the space dedicated for public use, or grants of part of the same had been made by the power which had authority to make, and had made a dedication of the same to public use; the erection of the buildings and the making of the grants would not be considered as disproving the dedication, and the grants would not affect the vested rights of the public. *Id.*

DEMURRER.

1. It is an established rule in demurrers, that although the pleading demurred to may be defective, the court will give judgment against the party whose pleading was first defective in substance. *Sprigg v. Bank of Mount Pleasant* *257

DEVASTAVIT.

See EXECUTORS.

DISTRIBUTION OF ASSETS.

1. A tract of land, in the state of Georgia, was purchased by A. McLearn, on which he established a rice plantation, put slaves upon it, paid part of the purchase-money, gave a judgment for the balance, and died, leaving a son, James H. McLearn, his devise; who, to obtain possession of the estate, mortgaged the land and slaves for the balance of the judgment; a judgment, under the laws of Georgia, binds personal as well as real property. The son died, part of the debt being unsatisfied; leaving as his nearest of kin, aliens; and also more remote kindred; who

were citizens of the United States; the real estate was sold to satisfy, and did satisfy, the mortgage; the personal estate was sold by the executor; the aliens, who were nearest of kin, claimed the proceeds of the personal estate; the kindred of the deceased, who were more remote, but who were citizens of the United States, claimed that the personal estate should have been appropriated to pay the mortgage; and that not having been so appropriated, they were entitled to the money arising from its sale, to reimburse them for the value of the real estate taken by the mortgagor; the aliens nearest of kin not being entitled, by the law of Georgia, to take real estate by descent. The court held, that as both the real and personal estate had been charged with the mortgage debt, both funds must be applied, in proportion to their respective amounts, to its payment; any debt, not covered by the mortgage, to be paid out of the personal estate. The nearest of kin to take the residue of the proceeds of the personal estate, and the remoter kin, citizens of the United States, to take the residue of the proceeds of the real estate, and the real estate unsold. *McLearn v. McLellan*. *625

DUTIES ON IMPORTS.

1. When damages may be recovered from a collector of the revenue, for insisting on the payment of more duties than, by a sound construction of the law, goods are liable for, and detaining the goods for such unlawful claim. *Tracy v. Swartwout*. *80
2. Under the act of congress, passed on the 14th of July 1832, entitled "an act to alter and amend the several acts imposing duties on imports," worsted shawls with cotton borders, and worsted suspenders with cotton straps or ends, are not subjected to a duty of fifty per centum *ad valorem*. *Elliott v. Swartwout*. *137
3. Laws imposing duties on the importation of goods, are intended for practical use and application by men engaged in commerce; and hence it has become a settled rule in the interpretation of statutes of this description, to construe the language adopted by the legislature, and particularly in the denomination of articles, according to the commercial understanding of the terms used. *Id.*

See COLLECTOR OF DUTIES.

EQUITY.

1. The purchasers of land of which they were in possession, under a supposed legal title, obtained by their vendor, by improper means,

and which title was afterwards declared to inure to the holders of the superior equitable title, who had failed to prosecute their claims for upwards of thirty years, were confirmed in their titles, and adjudged to pay the purchase-money of the land to the holders of the superior equitable title. *Boone v. Chiles*. *177

See CHANCERY AND CHANCERY PRACTICE.

ERROR.

1. It is incumbent on a plaintiff in error, to make out an alleged error, clearly and satisfactorily; every reasonable intendment should be in favor of a judgment of a court. *Ventress v. Smith*. *161

EVIDENCE.

1. On the trial of an action against a collector of duties, for not having delivered goods to the importer, it appeared, that the collector had insisted on a bond being given for a greater amount of duties than the goods were lawfully subjected to; the plaintiff offered evidence to prove that he was unable to give the bond in the large amount required; he had not made known this inability to the collector when the bond was insisted upon. The evidence was properly refused. *Tracy v. Swartwout*. *80
2. The defendant, in an action against him by the United States, upon a treasury-transcript, or official bond, or in any suit for the recovery of money claimed by the United States, may give in evidence of a set-off, any claims to credits which have been exhibited to the accounting officers, after the commencement of the suit, and before the trial. *United States v. Hawkins*. *125
3. Copies of records of the proceedings in a state court, which showed that a suit was still pending in the court where the copy was certified, but which were given at a period anterior to the trial of a case in which they were offered in evidence, and in the interval, the case, from the course of the court in which it was depending, might have been decided, were allowed to be read in evidence; from which the jury might infer the suit was depending and undetermined. *Hagan v. Lucas*. *400
4. Hearsay evidence. *Ellicott v. Pearl*. . . *412
5. The general rule is, that evidence, to be admissible, should be given under the sanction of an oath, legally administered; and in a judicial proceeding, depending between the parties affected by it, or those who stand in privity of estate or interest with them.

Hearsay is admitted in cases of pedigree, of prescriptive rights and customs, and some other cases of a public, or *quasi* public nature; in a case of pedigree, it is admitted, upon the ground of necessity, or the great difficulty, and sometimes the impossibility of proving remote facts of this sort by living witnesses; but in these cases, it is only admitted, when the tradition comes from persons intimately connected, or in close relation, with the family, or from sources of a kindred nature; which, in a general sense, may be said to import verity; there being no *lis mota* or other interest, to affect the credit of their statement *Id.*

6. In cases of prescriptive rights and customs, and other claims of a public nature, tradition and reputation have been, in like manner, admitted; they are all cases of a general right, affecting a number of persons, having a common interest. *Id.*
7. The mortgagee of property insured against loss by fire, is a competent witness, in an action against the insurers, to recover a loss, alleged to have been sustained by the destruction of the property insured. *Columbia Insurance Co. v. Lawrence*. *507
8. The army registers, published by the adjutant and inspector-general of the army, containing the general regulations of the army, which are delivered by the departments to the officers of the army, are not evidence to establish the pay and emoluments of officers in the service; these are fixed and determined by acts of congress. *Wetmore v. United States*. *647
9. The registers are compilations issued and published to the army, by the direction of the secretary at war, in the exercise of his official authority; and when authenticated by him, would be evidence of the facts, strictly so, they may contain; such as the names of officers, date of commissions, promotions, resignations, and regimental rank, brevet and other rank, or the department of the army to which officers belong; but from none of these can an inference be drawn by a jury, to establish the pay and emoluments of officers; as they are provided for by law, and must be determined by the court, when they are doubtful, and the subject of dispute in a case between an officer and the United States. Nor can such registers be evidence of the correctness of any classification of the officers of departments into the general staff of the army; for though they are probably correct, being prepared by persons whose professional duty it is to be well informed upon the subject, and who, for their familiarity with military science and the general arrangement of armies, are supposed to be

expert interpreters of the acts of congress for the organization of our army; still, what officers are of the staff, or general staff, depends upon acts of congress, which are to be expounded by the courts, when an officer claims a judicial determination of his rights as to pay and emoluments from his having been arranged as belonging to the staff. . . *Id.*

EXECUTION.

1. Property once levied on, remains in the custody of the law, and it is not liable to be taken by another execution, in the hands of a different officer; and especially, by an officer acting under a different jurisdiction. *Hagan v. Lucas*. *400
2. Personal property was levied on by a sheriff, under the judgment of the state court of Alabama, and was, according to the provisions of the law of that state, delivered to a person claiming the title to it against the defendant in the execution, and who gave bond to the sheriff for the same; the marshal of the United States, under an execution issued against the same defendant, on a judgment obtained in the court of the United States, levied on the property in the hands of the claimant, before the validity of his claim was decided. A most injurious conflict of jurisdiction would be likely often to arise between the federal and the state courts, if the final process of the one could be levied on property which had been taken by the process of the other; the marshal or the sheriff, as the case may be, by a levy, acquires a special property in the goods, and may maintain an action for them; but if the same goods may be taken in execution, at the same time, by the marshal and the sheriff, does this special property vest in the one or the other, or both of them? No such case can exist; property once levied on, remains in the custody of the law, and it is not liable to be taken by another execution, in the hands of a different officer; and especially, by an officer acting under a different jurisdiction. *Id.*
3. On the giving of the bond, the property is placed in the possession of the claimant; his custody is substituted for the custody of the sheriff; the property is not withdrawn from the custody of law; in the hands of the claimant, under the bond for its delivery to the sheriff, the property is as free from the reach of other processes, as it would have been in the hands of the sheriff. *Id.*
4. Under the state jurisdiction, a sheriff, having execution in his hands, may levy on the same goods; and where there is no prior claim, on the sale of the goods, the proceeds

should be applied in proportion to the sums named in the executions; and where a sheriff has made a levy, and afterwards receives executions against the same defendant, he may appropriate any surplus that shall remain, after satisfying the first levy, by the order of the court. But the same rule does not govern, where the executions, as in the present case, issue from different jurisdictions; the marshal may apply moneys collected under several executions, the same as the sheriff; but this cannot be done as between the marshal and the sheriff. *Id.*

EXECUTORS AND ADMINISTRATORS.

1. If executors have paid a debt to banks, or the banks have accepted their note in payment, in place of the notes of the testator, so that the executors became the debtors, and personally responsible to the banks; the only effect of this is, that the executors became the creditors of the estate, instead of the banks, and may resort to the trust fund to satisfy the debt. *Peter v. Beverly*. . . *532
2. It is a well-settled rule, that one executor is not responsible for the *devastavit* of his co-executor, any further than he is shown to have been knowing and assenting, at the time, to such *devastavit* or misapplication of the assets; merely permitting his co-executor to possess the assets, without going further and concurring in the application of them, does not render him answerable for the receipts of his co-executor; each executor is liable only for his own acts, and what he receives and applies; unless he joins in the direction and misapplication of the assets. *Id.*
3. Executors and administrators, in making sales of property, must comply strictly with the requisites of all statutory provisions on the subject; and unless every essential direction of the law is complied with, all whose interests are affected by the authority to sell are not concluded by the sale, unless, from a long acquiescence, a foundation is laid for a fair and reasonable presumption, that the requisites of the law had been complied with; no such presumption can arise in this case. It is a general rule of law, that a sale by a person who has no right to sell, is not valid against the rightful owner. *Ventress v. Smith*. *161
4. Authority given to executors and administrators to sell, is a personal trust, and must be strictly pursued; and if they transcend their authority, in any essential particular, their act is void. *Id.*
5. Administrator *ad colligendum*. *Id.*
6. The administrator in Alabama, is authorized

to sell and dispose of the personal estate of an intestate, by public sale, at auction, under an order of court, and after notice according to the provisions of the law. A purchase at private sale was made, *bonâ fide*, of slaves belonging to the estate, from the administrator; the sale was void under the laws of Alabama. *Id.*

EXTINGUISHMENT.

1. It is a settled doctrine, that the acceptance of a negotiable note for an antecedent debt, will not extinguish the debt; unless it be expressly agreed, that it is received as payment. *Peter v. Beverly*. *532

FEME SOLE.

See HUSBAND AND WIFE.

FLORIDA, LOUISIANA AND MISSOURI
LAND-CLAIMS.

1. A grant of land in Florida, within the Indian boundary, by the governor acting under the crown of Spain, before the cession of Florida to the United States, was confirmed to the grantee, by the decree of the judge of the eastern district of Florida; the decree was affirmed on appeal. *United States v. Fernandez*. *303
2. The subject of grants of land within the Indian boundary, which had not, by any official act, been declared a part of the royal domain, was fully and ably considered in the case of *Johnson v. McIntosh*, 8 Wheat. 543. Every European government claimed and exercised the right of granting lands, while in the occupation of the Indians. *Id.*
3. The grants of land, in the possession of the Indians, by the governor of Florida, under the crown of Spain, were good, to pass the right of the crown; the grants severed them from the royal domain, so that they became private property; which was not ceded to the United States by the treaty with Spain. *Id.*
4. This court cannot attach any condition to a grant of absolute property in the whole of the land. This grant was made by the governor of East Florida, in absolute property, with a promise of a title in form; he was the exclusive judge of the conditions to be imposed on his grant, and of their performance. *United States v. Segui*. *306
5. A grant of land, by the governor of East Florida, in consideration of services to the Spanish government, made before the cession of the territory of Florida to the United States, confirmed. *United States v. Chaires*. *308
6. Under a grant of the governor of Florida, prior to the cession of the same to the United States, of 16,000 acres of land, for the purpose of erecting a water-mill, a survey of 520 acres was made; and at another place, a survey of 15,630 acres was also made. The court held, that the first survey of 520 acres was valid, and that the survey of 15,480 acres was invalid; but that the grantee had a title to 15,480 acres of vacant land; which he had a right to have surveyed, adjoining the survey of 520 acres. *United States v. Seton*. *309
7. Under a Spanish grant of five miles square, 10,000 acres were surveyed at one place, and 6000 acres were surveyed at another place, as the whole quantity of ungranted land could not be found together. The grant was confirmed. *United States v. Sibbald*. *313
8. On the 18th of April 1802, the lieutenant-governor of Upper Louisiana granted 1600 arpents of land, near certain rivers named in the grant, with directions to survey the same in a vacant place of the royal domain; but no survey was made before the cession of Louisiana to the United States. As the grant contained no description of the land granted, and was not located within the time prescribed by the act of congress of the 10th of March 1804, it comes directly within the point decided by this court in the case of *John Smith, T.* and cannot be confirmed. *Wherry v. United States*. *338
9. In repeated decisions, the supreme court have affirmed the authority of local governors, under the crown of Spain, to grant land in Louisiana, before the same was ceded by Spain to France: and the court have also affirmed the validity of descriptive grants, though not surveyed before the 11th of March 1854, in Missouri, and the 24th of January 1818, in Florida. *Mackey v. United States*. *340
10. John Smith, T., claimed a confirmation of a grant of land by the governor-general of Louisiana, made on the 11th of February 1796; Louisiana was ceded by France to the United States, by the treaty 1803; in 1811, surveys were made under the grant, of several tracts of land, varying in numbers of acres, and several of them including lead mines; no survey of any land was made under the grant, until after the treaty of cession. By the decree of the district court, the claim was rejected; the decree was affirmed. *Smith v. United States*. *326

FLORIDA TREATY.

1. By the eighth article of the treaty ceding

Florida to the United States, the same time is allowed to the owners of land granted under the authority of Spain, to fulfil the conditions of their grants, after the date of the treaty, as was limited in the grants. It has been decided by this court, in the case of Arredondo, that as to individual rights, the treaty is to be considered as dated at its ratification.

United States v. Sibbald. *313

2. It has been decided in Arredondo's case, that that provision of the treaty as to the performance of the conditions in grants, is not confined to owners of land by occupancy or residence; but extends to persons who have a legal seisin and possession of land, in virtue of a grant; and that, in the situation of the province, and the claimants to land at the time of the cession, it was enough, that they should show a performance of the condition *cypres*. *Id.*

GEORGIA.

1. Construction of the laws of Georgia, relating to the claims of aliens on the estate of an intestate, a citizen of the United States. *McLearn v. McLellan*. *625

GRANT.

1. It would be a dangerous doctrine, to consider the issuing of a grant, as conclusive evidence of a right in the power which issued it; on its face, it may be conclusive, and cannot be controverted; but if the thing granted was not in the grantor, no right passes to the grantee. *New Orleans v. United States*. *662

GRANTS WITHIN THE INDIAN BOUNDARY.

See FLORIDA LAND-CLAIMS, 3.

GUARANTEE.

See COMMERCIAL GUARANTEE.

HUSBAND AND WIFE.

1. Agreements between husband and wife, during coverture, for the transfer by him of property, directly to the latter, are undoubtedly void at law; equity examines them with great caution, before it will confirm them; but it does sustain them, when a clear and satisfactory case is made out, that the property is to be applied to the separate use of the wife; where the consideration of the transfer is a separate interest of the wife, yielded up by her for the husband's

benefit, or of their family; or which has been appropriated by him to his uses; where the husband is in a situation to make a gift of property to the wife, and distinctly separates it from the mass of his property for her use; either case equity will sustain, though no trustee has been interposed to hold for the wife's use. *Wallingsford v. Allen*. *563

INFANT AND INFANCY.

1. What acts of an infant are actually void and what are voidable. *Tucker v. Moreland*. *5
2. What acts of an infant become confirmed by their recognition after he becomes of full age. *Id.*
3. In what cases, an infant may bind himself by deed. *Id.*
4. How the deeds of an infant are to be disaffirmed, on his arrival at age. *Id.*
5. How the acts of an infant shall or may be avoided, after he becomes of full age. . . . *Id.*
6. How the acts of an infant done, when pretending to be of full age, operate to bind him after full age. *Id.*

INSOLVENT LAW OF LOUISIANA.

1. A creditor who has not been served with notice of an application by his debtor for a respite, under the insolvent law of Louisiana, is in no sense a party to the proceedings, and his rights were in no sense affected by them. *Haydel v. Girod*. *283

INSURANCE AGAINST FIRE.

1. The decision of this court in the case of *Lawrence v. Columbia Insurance Co.*, 2 Pet. 47, referred to; and the principles laid down in that case relative to representations by the assured to the insurers, re-affirmed. *Columbia Insurance Co. v. Lawrence*. *507
2. The decision of this court in 2 Pet. 26, 53, 56, as to the effect of a misdescription of property insured, on the liability of insurers against loss by fire, re-affirmed. . . . *Id.*

INTESTACY.

1. Distribution of assets of the estate of an intestate among alien and citizen representatives. *McLearn v. McLellan*. *625

JUDICIAL PROCEEDINGS.

1. There is no principle of law better settled than that every act of a court of competent

- jurisdiction, shall be presumed to have been rightly done, till the contrary appears; this rule appears as well to every judgment or decree rendered, in the various stages of their proceedings, from the initiation to their completion; as to their adjudication that the plaintiff has a right of action; every matter adjudicated becomes a part of their record; which thenceforth proves itself, without referring to the evidence on which it has been adjudged. *Voorhees v. Bank of United States**449
2. That some sanctity should be given to judicial proceedings; some time limited, beyond which they should not be questioned; some protection afforded to those who purchase at sales by judicial process; and some definite rules established, by which property thus acquired may become transmissible, with security to the possessors, cannot be denied. In this country, particularly, where property, which, within a few years, was but of little value, in a wilderness, is now the site of large and flourishing cities; its enjoyment should be at least as secure, as in that country where its value is less progressive. *Id.*
 3. It is among the elementary principles of the common law, that whoever would complain of the proceedings of a court, must do it in such time as not to injure his adversary by unnecessary delay in the assertion of his right. If he objects to the mode in which he is brought into court, he must do it, before he submits to the process adopted; if the proceedings against him are not conducted according to the rules of law and the court, he must move to set them aside for irregularity; or, if there is any defect in the form or manner in which he is sued, he may assign those defects specially, and the court will not hold him answerable till such defects are remedied. But if he pleads to the action generally, all irregularity is waived; and the court can decide only on the rights of the parties to the subject-matter of controversy; their judgment is conclusive, unless it appears on the record, that the plaintiff has no title to the thing demanded, or that in rendering judgment they have erred in law; all defects in setting out a title, or in the evidence to prove it, are cured; as well as all irregularities which may have preceded the judgment. *Id.*
 4. So long as a judgment remains in force, it is, in itself, evidence of the right of the plaintiff to the thing adjudged, and gives him a right to process to execute the judgment; the errors of the court, however apparent, can be examined only by an appellate power: and by the laws of every country, a time is fixed for such examination, whether in re-

dering judgment, issuing execution, or enforcing it by process of sale or imprisonment; no rule can be more reasonable, than that the person who complains of an injury done him, should avail himself of his legal rights, in a reasonable time, or that that time should be limited by law. *Id.*

5. The line which separates error in judgment from the usurpation of power is very definite; and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity, collaterally, when it is offered in evidence in an action concerning the matter adjudicated, or purporting to have been so. In the one case, it is a record, importing absolute verity; in the other, mere waste paper; there can be no middle character assigned to judicial proceedings, which are irreversible for error; such is their effect between the parties to the suit; and such are the immunities which the law affords to a plaintiff who has obtained an erroneous judgment or execution. *Id.*

JURISDICTION.

1. The *onus probandi* of the amount in controversy, to establish the jurisdiction in a case brought before the supreme court by writ of error, is upon the party seeking to obtain a revision of the case; he must prove that the value exceeds \$2000, exclusive of costs. In this case, the matter in question is the ownership of one negro woman and two children, who are slaves, and it is not supposed that their value can be equal to that sum. The writ of error was dismissed. *Hagan v. Poison*.*160
2. The 25th section of the judiciary act of 1780, confers appellate jurisdiction on the supreme court from final judgments and decrees, in any suit in the highest court of law or equity of a state, in which a decision in the suit could be had, in three classes of cases: first, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; secondly, where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of such, their validity; thirdly, where is drawn in question the construction of any clause of the constitution, or of a treaty or statute of, or commission held under, the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either

- party under such clause of the said constitution, treaty, statute or commission. The section then goes on to provide, that no other error shall be assigned or regarded as a ground of reversal, in any such case as aforesaid, than such as appears upon the face of the record, and immediately respects the before-mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions or authorities in dispute. *Crowell v. Randell*. *368
3. In the interpretation of the 25th section of the act of 1789, it has been uniformly held, that to give the supreme court appellate jurisdiction, two things should have occurred and be apparent in the record: first, that some one of the questions stated in the section did arise in the court below; and secondly, that a decision was actually made thereon, by the same court, in the manner required by the section. If both of these do not appear on the record, the appellate jurisdiction fails; it is not sufficient to show, that such a question might have occurred, or such a decision might have been made in the court below; it must be demonstrable that they did exist, and were made. *Id.*
 4. It has been decided, that it is not indispensable, that it should appear on the record *in totidem verbis*, or by direct and positive statement, that the question was made, and the decision given by the court below on the very point; but that it is sufficient, if it is clear, from the facts stated, by just and necessary inference, that the question was made, and that the court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of that question as indispensable to that judgment *Id.*
 5. A review of the cases of *Owings v. Norwood's Lessee*, 5 Cranch 344; *Smith v. State of Maryland*, 6 *Ibid.* 281; *Martin v. Hunter's Lessee*, 1 Wheat. 304; *Inglee v. Coolidge*, 2 *Ibid.* 363; *Miller v. Nichols*, 4 *Ibid.* 311, 315; *Williams v. Norris*, 12 *Ibid.* 117, 124; *Hickie v. Starke*, 1 Pet. 98; *Wilson v. Black-bird Creek Marsh Association*, 2 *Ibid.* 245, 250; *Satterlee v. Matthewson*, *Ibid.* 380; *Harris v. Dennie*, 3 *Ibid.* 292, 302; *Craig v. State of Missouri*, 4 *Ibid.* 410; *Fisher v. Cockerell*, 5 *Ibid.* 256; *City of New Orleans v. De Armas*, 9 *Ibid.* 234. *Id.*
 6. In order to bring a case for a writ of error or an appeal to the supreme court, from a court of the highest jurisdiction of any of the states, within the 25th section of the judiciary act, it must appear on the face of the record: 1st, That some one of the questions stated in that section did arise in the state court: 2d, That the question was decided by the state court, as required in the same section. It is not necessary that the question should appear on the record to have been raised, and the decision made, in direct and positive terms, *ipsissimis verbis*; but it is sufficient, if it appears by clear and necessary intendment, that the question must have been raised, and must been decided, in order to have induced the judgment; it is not sufficient, to show that a question might have arisen or been applicable to the case, unless it be further shown on the record, that it did arise, and was applied by the state court to the case. *Id.*
- JURISDICTION IN ERROR TO A STATE COURT.**
- See JURISDICTION: *Crowell v. Randell*, *368.
- LANDS AND LAND TITLES.**
1. The legislature of Kentucky passed an act by which a defective entry on land was made perfect; the agent of the holder of the defective title, after having become acquainted with its defect during his agency, took out a patent for the land in his own name. The court held, that the patent was void against the act of the legislature; and the holder of the patent was decreed to convey his legal title to the claimants, under the law of Kentucky. *Ringo v. Binns*. *269
 2. Purchasers with or without notice of outstanding title. *Boone v. Chiles*. *177
- See FLORIDA, LOUISIANA, AND MISSOURI LAND CLAIMS.
- LIMITATION IN CHANCERY.**
- See *Boone v. Chiles*, *177.
- MANUMISSION OF SLAVES.**
1. Manumission of slaves, under the statute of Maryland of 1796. *Wallingsford v. Allen*. *583
 2. A wife, having separated herself from her husband, for ill-treatment by him, applied to the county court of Prince George, Maryland, for alimony, which was allowed to her, *pendente lite*; the husband gave the wife a female negro slave, and some other property in discharge of the alimony; she removed to Washington, hired out the slave; and afterwards, in consideration of a sum of money,

and for other considerations, she manumitted, by deed, the slave, and her two infant children, the eldest not three years old; some time after the arrangement between the husband and wife, a final separation took place between them, by a verbal agreement; each to retain "the property each had, and to be quits for ever," and the wife relinquished all further claim for alimony; after the death of the wife, the husband claimed the female and her children as his slaves: *Held*, that they were free by virtue of the deed of manumission executed by the wife. *Id.*

3. It would be an unreasonable restraint upon the privileges of manumission, as it is granted in the Maryland law of 1796, if it were interpreted to exclude the manumission of mother and infant child, the former being of healthy constitution and able to maintain it, as of other children who, in natural progress of human life would be able, in a few years, to maintain themselves by labor, and who would find in their adolescence, persons who would gladly maintain them for the services they could render. *Id.*

MARKET OVERT.

1. It has sometimes been contended, that a *bonâ fide* purchase for a valuable consideration, and without notice, was equivalent to a purchase in *market overt*, under the English law, and bound the property against the party who had right. This Saxon institution of *market overt*, which controls and interferes with the application of the common law, has never been recognised in any of the United States, or received any judicial sanction. *Ventress v. Smith*. *161

MORTGAGEE.

1. There is no principle of law or of equity by which a mortgagee has a right to claim the benefit of a policy, underwritten for the mortgagor, on the mortgaged property, in case of loss by fire; it is not attached, nor an incident to his mortgage; it is strictly a personal contract for the benefit of the mortgagor, to which the mortgagee has no more title than any other creditor. *Columbia Insurance Co. v. Lawrence*. *507

PAYMASTERS.

1. A paymaster in the army of the United States, appointed under the act of congress passed the 24th of April 1816, is entitled to the pay and emoluments of a major of infantry, and not to those of a major of cavy. *Wetmore v. United States*. *647

PILOTS.

1. When pilots are entitled to be considered as salvors, and are entitled to salvage. *The Hope*. *108
2. Suits for pilotage on the high seas, and on waters navigable from the sea, as far as the tide ebbs and flows, are within the admiralty and maritime jurisdiction of the United States; the service is strictly maritime and falls within the principles already established by this court in the case of *The Thomas Jefferson*, 10 Wheat. 428, and *Peyroux v. Howard*, 5 Pet. 622. *Id.*

See SALVAGE.

PLEAS AND PLEADING.

1. No rule in pleading is better settled, or upon sounder principles, than that every plea, in discharge or avoidance of a bond should state positively and in direct terms, the matter in discharge or avoidance; it is not to be inferred *arguendo*, or upon conjecture. *United States v. Bradley*. *843

See CHANCERY AND CHANCERY PRACTICE:
DEMURRER.

POSSESSION OF LANDS.

1. The assumption that there can be no possession to defeat an adverse title, except in one or other of these ways, that is, by an actual residence, or an actual inclosure, is a doctrine wholly irreconcilable with principle and authority; nothing can be more clear, than that a fence is not indispensable to constitute possession of a tract of land; the erection of a fence is nothing more than an act presumptive of an intention to assert an ownership and possession over the property; but there are many other acts, which are equally evincive of such an intention of asserting such ownership and possession; such as entering upon land and making improvements thereon; raising a crop of corn; felling and selling the trees thereon, under color of title. *Ellicott v. Pearl*. *414
2. An entry into possession of a tract of land, under a deed containing specific metes and bounds, gives a constructive possession of the whole tract, if not in any adverse possession; although there may be no fence or inclosure round the ambit of the tract, and an actual residence only on a part of it; to constitute actual possession, it is not necessary that there should be any fence or inclosure of the land. *Id.*
4. Where there has been an entry on land, under color of title, by deed, the possession is

deemed to extend to the bounds of that deed; although the actual settlement and improvements were on a small parcel only of the tract; in such a case, where there is no adverse possession, the law construes the entry to be co-extensive with the grant to the party; upon the ground, that it is his clear intention to assert such possession.*Id.*

4. The demandants in a writ of right claimed adversely to all the tenants, upon a title independent and distinct from theirs; the tenants all claimed under an adverse title by deed for 7000 acres; that is, under a title common to them all. The demandants could not recover any of the tract in controversy, unless they were seised thereof within thirty years the period prescribed by the statute of limitations for writs of right; if, therefore, there had been thirty years adverse possession of the particular tract in controversy, by any of the tenants, the demandants failed in their suit, and were debarred from any recovery.*Id.*
5. The court instructed the jury, that if they should find that the patent for the land, under which the title of the tenants was derived, did not cover all the land; yet if they find from the evidence, that the tenants, or any of them, or those claiming under them, had had possession of the land in contest, for thirty years next before the commencement of the demandants' suit, they must find for the tenants.*Id.*

PRACTICE.

1. The death of the appellee having been suggested, and the counsel for the executor of the appellee having offered to enter his appearance for the executor, the court sustained a motion to dismiss the cause, as no person appeared to prosecute the suit. *Hooke v. Linton*.*107
2. Although a *venire de novo* is frequently awarded by a court of errors, upon a bill of exceptions, to enable parties to amend; and although amendments may, in the sound discretion of the court, upon a new trial, be permitted; the *venire de novo* is, in no instance, anything more than an order for a new trial, in an cause in which the verdict or judgment is erroneous in matter of law; and is never "equivalent to a new suit;" no statute of the United States alters the law in this regard. *United States v. Hawkins*.*125
3. Generally speaking, all joint obligors, and other persons bound by covenants, contract, or *quasi* contract, ought to be made parties to the suit; and the plaintiff may be compelled to join them all, by a plea in abatement for the non-joinder; but such an objec-

tion can only be taken advantage of by a plea in abatement; for if one party only is sued, it is not matter in bar of the suit, or in arrest of judgment upon the finding of the jury, or of variance in evidence upon the trial. But the same doctrine does not appear to have been acted upon to the full extent, in cases of recognisance and judgments, and other matters of record, such as bonds to the crown; if, in cases of this sort, it appears by the declaration, or other pleadings, that there is another joint-debtor who is not sued, although it is not averred, that he is living; the objection need not be pleaded in abatement, but it may be taken advantage of upon demurrer, or in arrest of judgment. *Gilman v. Rives**298

4. A judgment that a declaration is bad in substance (which alone, and not matter of form, is the ground of a general demurrer), can never be pleaded as a bar to a good declaration for the same cause of action; the judgment is in no just sense a judgment upon the merits.*Id.*
5. The transcript of the record had been lodged by the plaintiffs in error, with the clerk of the court, on the 24th of October 1835; who refused to file it, or docket the cause, until the plaintiffs had given the fee-bond, in pursuance of the 37th rule of the court; the counsel for the plaintiffs in error moved to have the transcript filed and docketed; alleging they had done all the law required, to be done in order to bring the case before this court. On the part of the defendant in error, his counsel filed and read in open court, certified copies of the writ of error, citation, and appeal bond, and of the judgment of the circuit court; and having stated that the plaintiffs in error had failed to have the case docketed, according to the 30th rule of the court, they moved to have the case docketed and dismissed. The court overruled the motion to docket and dismiss the cause, and also the motion to have the transcript filed, and the cause docketed without the fee-bond being first given. These motions were overruled on the 18th of January 1836; and the court allowed the plaintiffs in error until the 1st day of March following to give the clerk the fee-bond; on the failure so to give the same, the writ of error to be dismissed. *Owings v. Tiernan*.*447

SEC CHANCERY AND CHANCERY PRACTICE.

PRINCIPAL AND AGENT.

1. It is the settled doctrine of the law, that where money is illegally demanded and received by an agent, he cannot exonerate him-

self from personal responsibility, by paying it over to his principal, when he has had notice not to pay it over. *Elliott v. Swartwout*.....*137

PRINCIPAL AND SURETY.

1. When principal and surety are bound jointly and severally, although there is no express averment on the face of the instrument, that all are principals, yet the surety cannot aver by pleading, that he is surety only. *Sprigg v. Bank of Mount Pleasant*.....*257
2. When one who is, in reality, only surety, is willing to place himself in the situation of principal, by expressly declaring upon his contract, that he binds himself as such, there cannot be any hardship in holding him to the character in which he assumes to place himself; as to that particular contract, he undertakes as a partner with the debtor; and has no more right to disclaim the character of principal, than the creditor has to treat him as principal, if he had set out in the obligation, that he was only surety.....*Id.*
3. Extending to a principal further time for payment, will discharge a surety.....*Id.*

PRIORITY OF THE UNITED STATES.

1. The priority of the United States for the payment of debts due to them by an insolvent debtor, or by the estate of a deceased debtor, does not extend to affect the lien of an incorporated bank on the stock held by one indebted to the bank, when, by the charter of the bank, it is provided that no transfer of the stock of any one indebted to the bank, shall be made, before the debt due by a stockholder of the bank shall be paid. *Brent v. Bank of Washington*.....*596
2. It has been the uniform construction of the fifth section of the act of 1797, and of the similar provision in the 65th section of the collection act of 1799, that, whether in a case of insolvency, death or assignment, the property of the debtor passes to the assignee, executor or administrator; the priority of the United States operating, not to prevent the transmission of the property, but giving them a preference in payment out of the proceeds.....*Id.*
3. This preference is in the appropriation of the debtor's estate; so that if, before it has attached, the debtor has conveyed or mortgaged his property, or it has been transferred in the ordinary course of business, neither are over-reached by the statutes; and it has never been decided, that it affects any lien, general or specific, existing when the event

took place which gave the United States a claim of priority.....*Id.*

4. Another rule is settled by the cases; that the priority does not attach to property legally transferred to a creditor on *respondentia*, though he may hold it subject to an account, equity, or trust for the borrower; such transfer will be protected against the United States, though not an out and out sale in the course of business, so as to divest the equitable as well as the legal interest of the party.....*Id.*

PROTEST OF BILLS.

1. A bill of exchange, drawn in one state of the Union, on a person in another, is a foreign bill of exchange, and to be treated as such. *Dickins v. Beal*.....*572
2. What will be due diligence in giving notice of the protest of a bill of exchange.....*Id.*
3. Evidence of the protest of a bill of exchange.....*Id.*

PUBLIC HIGHWAY.

1. Under certain acts of the legislature of Massachusetts, and the proceedings of the town of Charlestown, Massachusetts, certain streets were laid out; the United States purchased, for a navy-yard, the ground through which the streets passed, and closed up the streets, discontinuing the use of them, and using the ground over which they passed as part of the navy-yard; the original owners claimed the ground, on the allegation that it reverted to them, the uses for which it had been appropriated having ceased. The court held, that the right of the owners of the freehold was not barred by the act of the legislature of Massachusetts of the 30th of October 1771; the law in Massachusetts is well settled, that where a mere easement is taken for a public highway, the soil and freehold remain in the owner of the land, incumbered only with the easement; and that, upon the discontinuance of the highway, the soil and freehold revert to the owner of the land. *Harris v. Elliott*.....*25

PUBLIC OFFICERS.

1. A bond given by a paymaster, to execute the duties of his office faithfully, the condition of which did not in its very terms conform to the law of the United States, but which required no duties to be performed which were not in conformity with the duties of his office, is valid. *United States v. Bradley*.....*343

2. Where a ministerial officer acts in good faith, he is not liable to exemplary damages for an injury done; but he can claim no further exemption, where his acts are clearly against law. *Tracy v. Swartwout*.....*80
3. Some personal inconvenience may be experienced by an officer who shall be held responsible in damages, for illegal acts done under instructions of a superior; but, as the government in such cases is bound to indemnify the officer, there can be no eventual hardship.....*Id.*
4. A collector of the revenue is not personally liable, in an action to recover back an excess of duties paid, as collector, and by him, to him in the regular or ordinary course of his duty, paid into the treasury of the United States; he, the collector, acting in good faith, and under instructions from the treasury department, and no protest being made at the time of payment, or notice not to pay the money over, or intention to sue to recover back the amount, given him: otherwise, if notice had been given. *Elliott v Swartwout*.....*137

See COLLECTOR OF DUTIES.

PURCHASERS.

1. A purchaser with notice may protect himself under a purchaser by deed, without notice, but cannot do it by purchase from one who holds or claims by contract only. *Boone v. Chiles*.....*177
2. A *bonâ fide* purchaser, without notice, is an especial favorite in courts of equity.....*Id.*
3. Proceedings in equity against a *bonâ fide* purchaser, without notice, by the holder of the superior title.....*Id.*
4. Principles of law applicable to such purchasers.....*Id.*

RECORDING OF DEEDS.

1. Construction of the acts of the legislatures of North Carolina and Tennessee, relative to registering and according deeds for lands in Tennessee, in force in the state of Tennessee. *Denn v. Reid*.....*524

RHODE ISLAND.

See CONSTITUTIONALITY OF STATE LAWS:

Leland v. Wilkinson, *194.

RIPARIAN RIGHTS.

1. The question is well settled at common law, that the person whose land is bounded by a stream of water which changes its course gradually by alluvial formations, shall still

hold the same boundary, including the accumulated soil; no other rule can be applied, on just principles; every proprietor whose land is thus bounded, is subject to loss, by the same means which may add to his territory; and as he is also without remedy for his loss in this way, he cannot be held accountable for his gain; this rule is no less just when applied to public, than to private rights. *New Orleans v. United States*.....*662

RULES OF COURT.

1. Construction of the rule relative to the docketing and dismissing causes, passed at January term 1835. *Owings v. Tiernan*.....*24

SALES FOR PAYMENT OF DEBTS

1. David Peter, of the district of Columbia, by his will, declared it to be his intention, that all the proceeds of all his estate should be vested in his wife, for her support and for the maintenance and education of his children; that no appraisement or valuation should be had of any part of the property attached to his dwelling-house; that his children should receive good educations; he provided for the payment of his debts, by the following clause in his will: "I wish all my debts to be as speedily paid as possible, for which purpose I desire, that the tract of land on which Dulin lives, together with all personal property thereon, may be sold and applied to that purpose; and in aid of that, as soon as sales can be effected, so much of my city property as may be necessary to effect that object;" he appointed his wife, Johns and George Peter, his executors. The whole of the personal property attached to the dwelling-house, went into the hands of Mrs. Peter; and she maintained her family, and educated her children, out of the proceeds of the estate; at the time of the decease of David Peter, he was largely indebted to the banks in the district of Columbia; and the executors, to obtain a continuance of the loans, and considering it advantageous to the estate to do so, gave their individual notes for the debts, and received the notes of their testator; this was done, under the understanding that the arrangement was to continue so long as the banks should be willing to indulge the estate; or until the executors could make sales of the estate for the payment of the debts; in the settlement of the accounts of the executors, in the orphans' court, the notes of the testator, received from the banks, were charged by the executors

The Dulin farm was sold, but no title made to the purchaser, he having paid a part of the purchase-money, and given his notes, indorsed, for the balance; his notes were not paid, and an ejectment was brought for the recovery of the estate, which had not been decided. George Peter survived the other executors; and he was called upon by the banks to sell the real estate of David Peter, directed to be sold to pay the debts; the children of David Peter obtained a perpetual injunction of the circuit court to prevent the sale of the city property of their father, for the payment of the debts; alleging that no debts were due, as the notes of the executors had been received by the banks for the debts of the testator, and they had charged them in their accounts with the estate; and also alleging negligence in not collecting the balance due for the sale of "the Dulin farm;" and that the executors were liable as for a *devastavit*, for the money which went into the hands of their mother, for the support of the family, and the education of the children; and it was denied, that the power to sell the estate of the testator survived, to the surviving executor, George Peter. The court *held*, that the direction of the will of David Peter to sell a portion of his real estate for payment for his debts, created a power coupled with an interest, that survived; that the surviving executor was, by necessary implication, the person authorized to execute that power and fulfil that trust; that the debt due the banks had not been extinguished, by the notes substituted by the executors, as renewals in the bank, nor the estate of the testator in any way discharged from the payment of the debt; that the executors were not chargeable with negligence, or misapplication of the personal estate, that ought to render them personally responsible for these debts; and that satisfaction of these debts should be had out of the lands appropriated by the testator for that purpose. The perpetual injunction granted by the circuit court was ordered to be dissolved.

Peter v. Beverly.....*532

2. The general principle of the common law, as laid down by Lord Coke, and sanctioned by many judicial decisions, is, that when a power given to several persons, is a mere naked power to sell, not coupled with an interest, it must be executed by all, and does not survive; but where the power is coupled with an interest, it may be executed by the survivor. It is not a power coupled with an interest, in executors, because they may derive a personal benefit from the devise; for a trust will survive, though no way beneficial to the trustee; it is the possession of the

legal estate, or a right in the subject over which the power is to be exercised, that makes the interest in question; and when an executor, guardian or other trustee, is invested with the rents and profits of land for the sale or use of another, it is still an authority coupled with an interest, and survives...*Id.*

3. The courts of America have generally applied to the construction of such powers, the great and leading principle which applies the construction of other parts of the will, to ascertain and carry into execution the intention of the testator. When the power is given to executors, to be executed in their official capacity of executors, and there are no words in the will, warranting the conclusion that the testator intended, for safety, or some other object, a joint execution of the power; as the office survives, the power ought also to be construed as surviving. And courts of equity will lend their aid to uphold the power, for the purpose of carrying into execution the intention of the testator, and preventing the consequences that might result from an extinction of the power; and where there is a trust, charged upon the executors, in the direction given to them in the disposition of the proceeds, it is the settled doctrine of courts of chancery, that the trust does not become extinct, by the death of one of the trustees; it will be continued in the survivors, and will not be permitted, in any event to fail, for the want of a trustee...*Id.*

SALVAGE.

1. The brig *Hope*, with a valuable cargo, had been conducted, in the evening, by a pilot, inside of Mobile point, where pilots of the outer harbor usually leave vessels which they pilot inside of that bar; the pilot was discharged, and the *Hope* proceeded up the bay of Mobile; the wind soon after changed, blew a violent gale from the north-west, both anchors parted, and the *Hope* was driven on a shoal, outside of the point, among the east breakers; the gale increased to a hurricane, and forced the vessel on her beam-ends, and her masts and bowsprit were cut away; the master and crew deserted her, to save their lives. After various fruitless efforts to save her, the libellants, all pilots of the outer harbor of Mobile, two days after she was stranded, and while yet in great peril, succeeded; and she was brought up to the city of Mobile by them, towed by their pilot boat, assisted by a steam-boat employed by them. On a libel for salvage, the district court of the United States for the district of Alabama allowed, as salvage, one third of \$15,299.58; the appraised value of the brig and cargo;

- the owners of the brig and cargo appealed to this court. *The Hope*. *108
2. The amount of salvage allowed by the district court was certainly not, under the circumstances of the case, unreasonable; this court is not in the habit of revising such decrees as to the amount of salvage, unless upon some clear and palpable mistake, or gross allowance of the court below. It is equally against sound policy and public convenience, to encourage appeals of this sort in matters of discretion; unless there has been some violation of the just principles which ought to regulate the subject. . . . *Id.*
 3. The jurisdiction of the district courts of the United States, in cases of admiralty and maritime jurisdiction, is not ousted by the adoption of the state laws by the act of congress; the only effect, to leave the jurisdiction concurrent in the state courts; and, if the party should sue in the admiralty, to limit his recovery to the same precise sum to which he would be entitled under the state laws, adopted by congress, if he should sue in the state courts. *Id.*
 4. A pilot, while acting within the strict line of his duty, however he may entitle himself to extraordinary pilotage compensation for extraordinary services, as contradistinguished from ordinary pilotage for ordinary services, cannot be entitled to claim salvage; in this respect, he is not distinguished from any other officer, public or private, acting within the appropriate sphere of his duty. But a pilot, as such, is not disabled, in virtue of his office, from becoming a salvor; on the contrary, whenever he performs salvage services beyond the line of his appropriate duties or under circumstances to which those duties do not justly attach, he stands in the same relation to the property as any other salvor; that is, with a title to compensation to the extent of the merit of his services, viewed in the light of a liberal public policy. *Id.*
 5. Seamen, in the ordinary course of things, in the performance of their duties, are not allowed to become salvors, whatever may have been the perils, or hardships, or gallantry of their services, in saving the ship and cargo; extraordinary events may occur, in which their connection with the ship may be dissolved *de facto*, or by operation of law; or they may exceed their proper duty, in which case, they may be permitted to claim as salvors. *Id.*
 6. It is not within the scope of the positive duties of a pilot, to go to the rescue of a wrecked vessel, and employ himself in saving her or her cargo, when she is wholly un navigable; that is a duty entirely distinct in its nature, and no more belonging to a pilot than it would be to supply such a vessel with masts or sails, or to employ lighters to discharge her cargo, in order to float her. It is properly a salvage service, involving duties and responsibilities, for which his employment may peculiarly fit him; but yet, in no sense, including in the duty of navigating the ship. *Id.*
 7. This was a case where the libellants acted as salvors, and not as pilots; they had, at the time, no particular relation to the distressed ship; they proffered useful services as volunteers, without any pre-existing covenant that connected them with the duty of employing themselves for her preservation; the duties they undertook were far beyond any belonging to pilots, and precisely those belonging to salvors. *Id.*
- ### SPANISH GRANTS IN LOUISIANA.
1. A concession and survey of land in Missouri, which was granted by the lieutenant-governor of Upper Louisiana, before the treaty of Louisiana, confirmed; so far as the land embraced in the same has not been sold by the United States. For the quantity of land so sold, the owners of the concession may enter a like quantity in any land-office in Missouri, after the same has been offered for sale. *Soulard v. United States*. . . . *100
 2. Where no survey was made, under a grant of land in Louisiana, which had been given by the proper authorities of Spain, before the cession of Louisiana, and no special description of the land given in the grant, so that it was clearly designated and set apart from the royal domain; the grant was not valid as against the United States. *John Smith T. v. United States* *326
 3. The principles which have been established by the decisions of the court, in relation to claims to lands under grants from the crown of Spain, or the officers of Spain authorized to make grants. *Id.*
 4. The act of congress of 1804, which submitted claims to land in Louisiana to judicial cognisance, confined the court to such claims as had been legally made, granted or issued, before the 10th of March 1804, which were protected by the treaty of 1803, and might have been perfected into a complete title, under the laws, usages and customs of Spain, if she had continued to hold the government of the province. *Id.*
 5. The laws of the United States give no authority to an individual to survey his grant or claim to lands; he may make lines to designate the extent and bon'cs of his claim, but he can acquire no rights thereby. *Id.*

TAX-SALES.

1. The law of Pennsylvania, authorizing the redemption of lands sold for taxes, ought to receive a liberal and benign construction in favor of those whose estates would be otherwise divested; especially, where the time allowed is short, an ample indemnity given to the purchaser, and a penalty is imposed on the owner. The purchaser suffers no loss; he buys with full knowledge that his title cannot be absolute for two years; if it is defeated by redemption, it reverts to the lawful proprietors. *Dubois v. Hepburn*. *1
2. It would seem not to be necessary for the purposes of justice, or to effectuate the objects of the law, that the right to redeem should be narrowed down by a strict construction. *Id.*
3. It comports with the words and spirit of the law, to consider any person who has an interest in land sold for taxes, as the owner thereof, for the purposes of redemption. *Id.*
4. Any right which, in law or equity, amounts to an ownership in the land, any right of entry upon it, to its possession or enjoyment, or any part of it, which can be deemed an estate in it; makes the person the owner, so far as it is necessary to give him the right to redeem. *Id.*
5. The law does not require a payment or tender; an offer and refusal is made equivalent to a receipt of the money by the treasurer, and authorizes a recovery of the land by suit, as if no sale had been made. *Id.*

TRADITION AND REPUTATION.

1. When evidence. *Ellicott v. Pearl*. . . *112

TRUSTEE AND CESTUI QUE TRUST.

1. Time does not bar a direct trust, as between trustee and *cestui que trust*, till it is disavowed; as, where a constructive trust is made out in equity, time protects the trustee, though his conduct was originally fraudulent, and his purchase would have been repudiated for fraud; so, where a party takes possession in his own right, and was *primâ facie* the owner, and is turned into a trustee by matter of evidence merely; and where one intending to purchase the entire interest in the land, took a conveyance, without words of limitation to his heirs, passing only as an estate for life, the lapse of fourteen years after the expiration of the life-estate, was a

protection to the heirs of the purchaser. *Boone v. Chiles*. *177

2. What that reasonable time is, within which a constructive trust can be enforced, depends on the circumstances of the case; but there can be few cases where it can be done, after twenty years' peaceable possession, by the person who claims in his own right, but whose acts have made him a trustee by implication. *Id.*

USURY.

1. Construction of the statute of Virginia against usury. *Brown v. Swann*. . . . *497

VENIRE DE NOVO.

1. Although a *venire de novo* is frequently awarded by a court of error, upon a bill of exceptions, to enable parties to amend, and though amendments may, in the sound discretion of the court, upon a new trial, be permitted; the *venire de novo* is, in no instance, anything more than an order for a new trial, in a cause in which the verdict or judgment is erroneous in matter of law; and is never "equivalent to a new suit;" no statute of the United States alters the law in this regard. *United States v. Hawkins*. . . *125

VOLUNTARY BONDS.

See *United States v. Bradley*, *343.

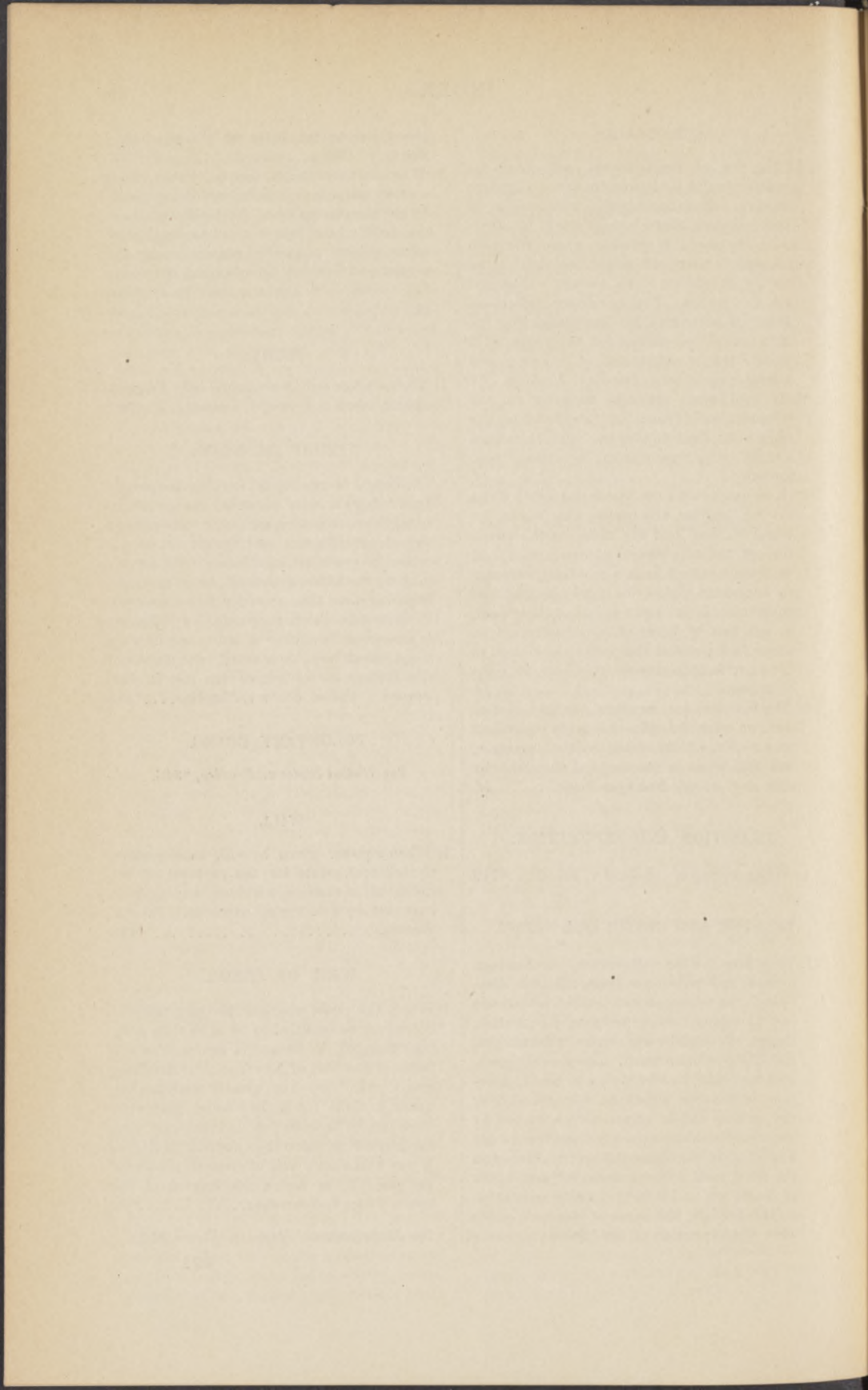
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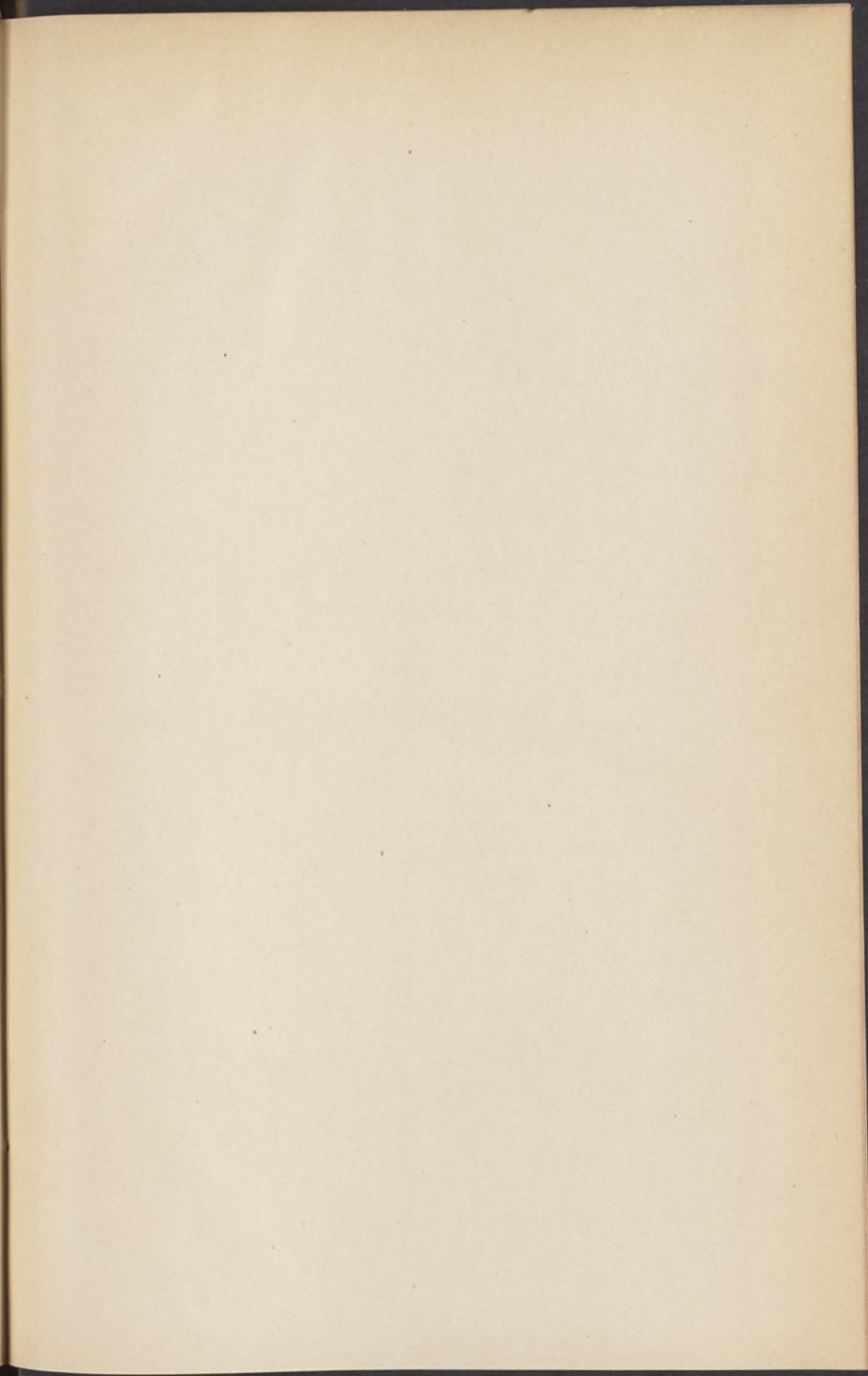
1. When a power given by will, to executors, to sell real estate for the payment of the debts of a testator, survives, and may be executed by a surviving executor. *Peter v. Beverly*. *532

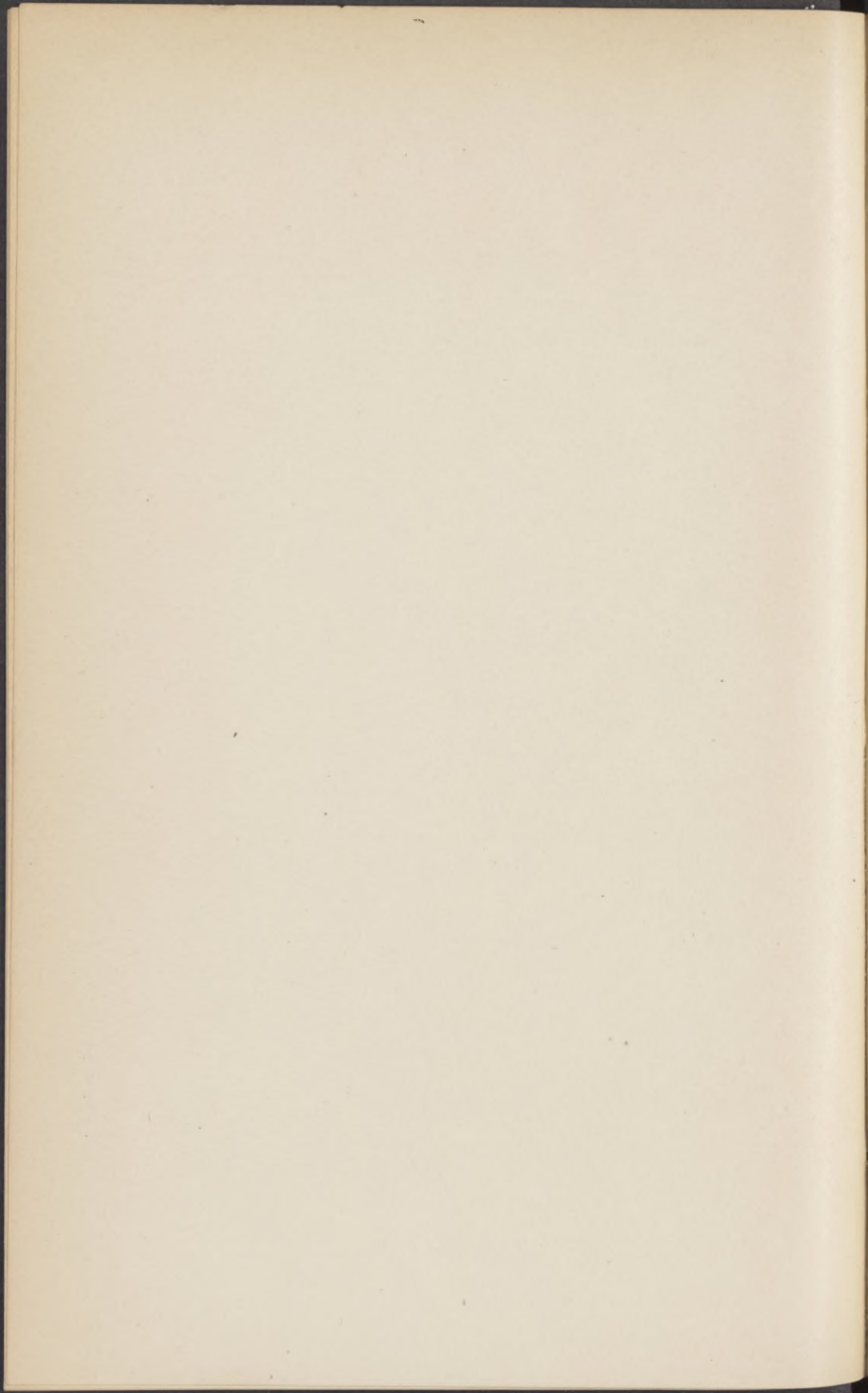
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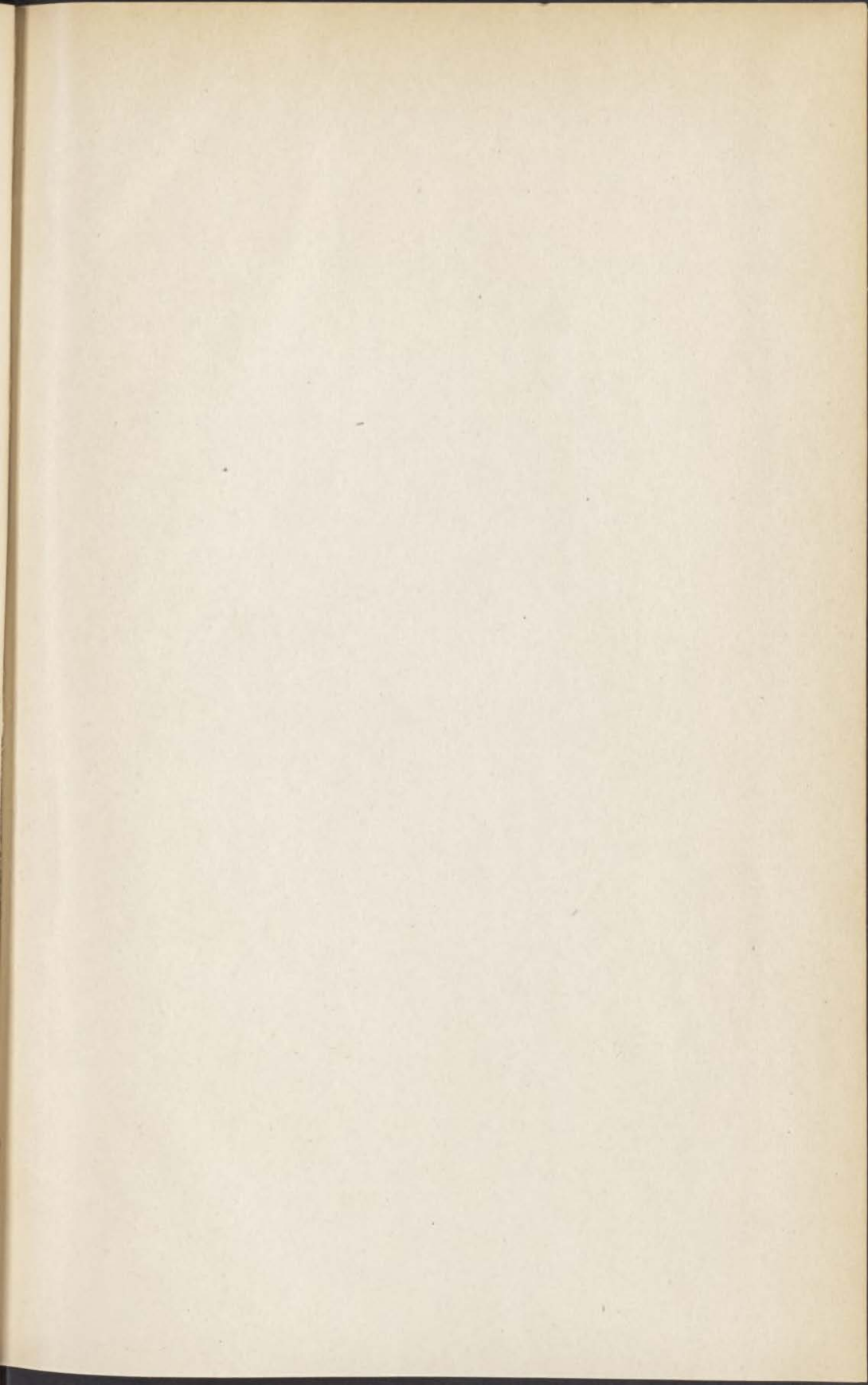
1. Where the court charged the jury, that the defendant was entitled to no more than nominal damages, in an action against the collector of the port of New York, for detaining goods, until they had greatly deteriorated, under a claim for higher duties than they were legally liable to pay, and the jury gave the plaintiff no more than nominal damages; it was held, that a writ of error would lie for the plaintiff, to revise the opinion of the court. *Tracy v. Swartwout*. *80

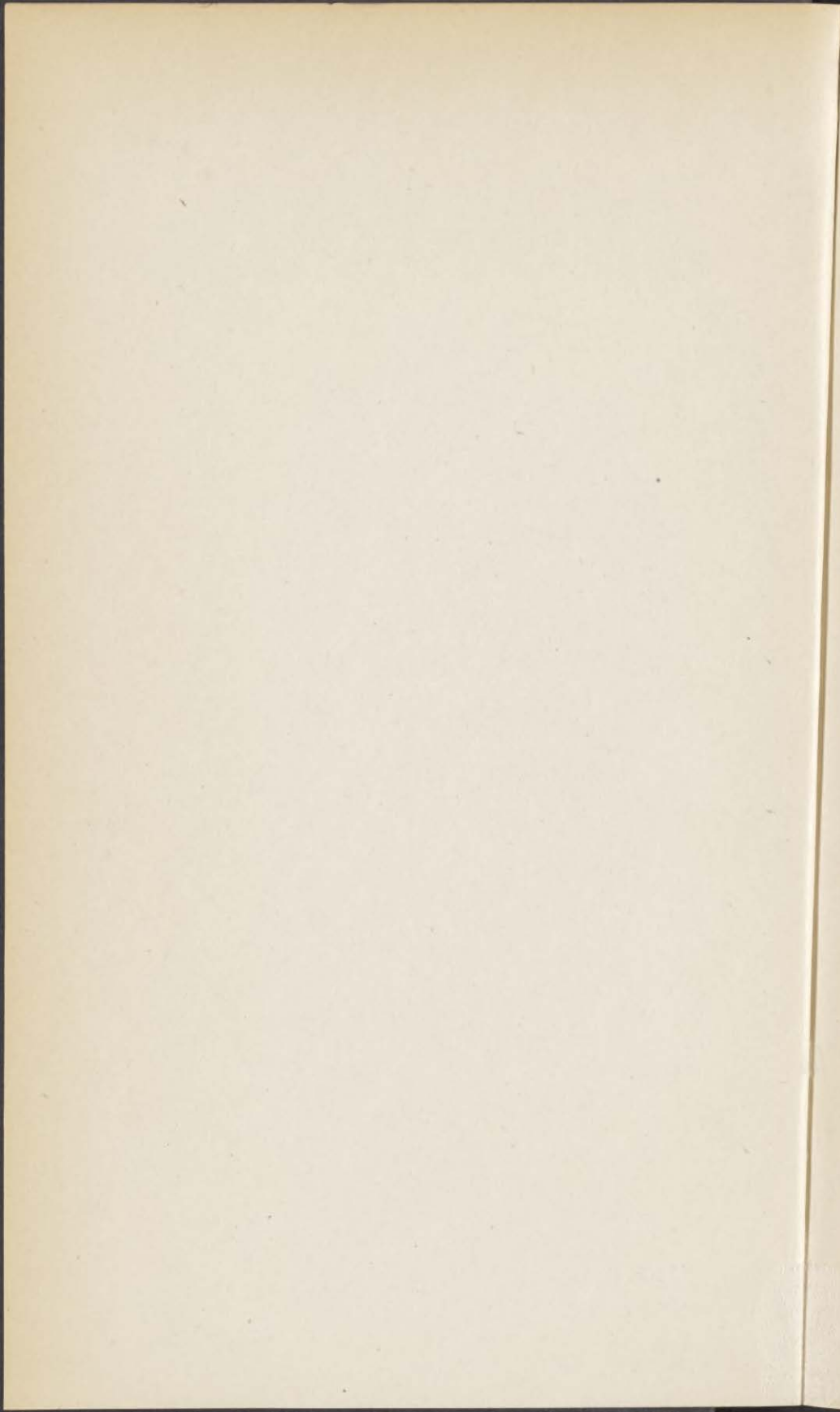
See JURISDICTION: *Hagan v. Foison*, *160.

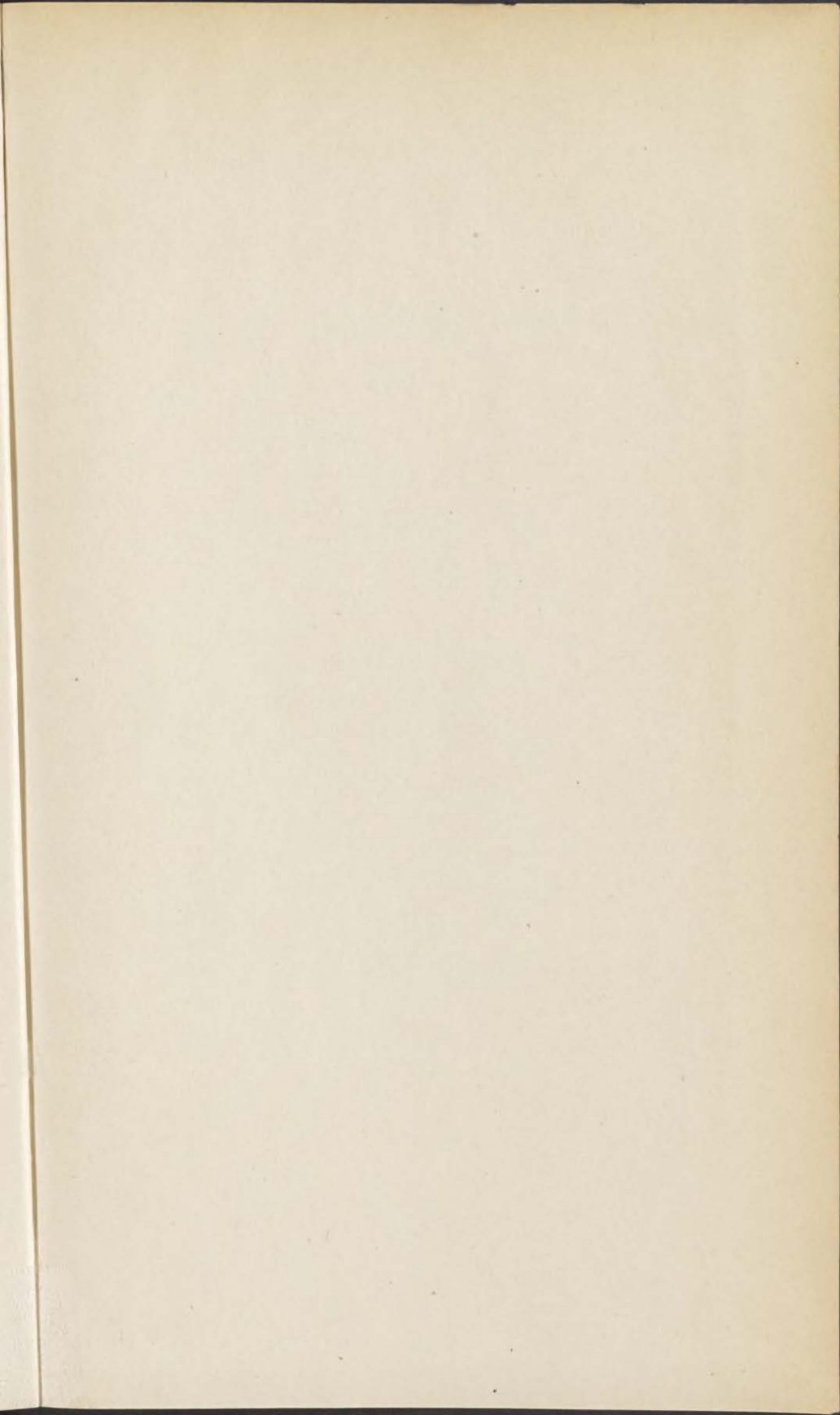












35 U. S.

Set 1

