

# INDEX

TO THE

## MATTERS CONTAINED IN THIS VOLUME.

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

### ACTION.

See EVIDENCE, 1.

#### ACTIONS ON BILLS OF EXCHANGE.

1. A suit may be brought against the drawer and indorser of a bill of exchange on its non-acceptance; the undertaking of the drawer and indorser is, that the drawee shall accept and pay; and the liability of the drawer only attaches, when the drawee refuses to accept, or having accepted, refuses to pay. A refusal to accept is, then, a breach of the contract, upon the happening of which, a right of action instantly accrues to the payee, to recover from the drawer the value expressed in the bill, that being the consideration the payee gave for it; such also is the undertaking of an indorser, before the bill is presented for acceptance, he being in fact a new drawer of the same bill, upon the terms expressed on its face. *Evans v. Gee*...\*80

#### ACTS OF CONGRESS RELATIVE TO THE SLAVE TRADE.

1. Certain persons, who were slaves in the state of Louisiana, were, by their owners, taken to France, as servants; and after some time, were, by their own consent, sent back to New Orleans; some of them, under declaration from their proprietors, that they should be free; and one of them, after her arrival, was held as a slave. The ships in which these persons were passengers, were, after

arrival in New Orleans, libelled for alleged breaches of the act of congress of April 20th, 1818, prohibiting the importation of slaves into the United States: *Held*, that the provisions of the act of congress did not apply to such cases; the object of the law was to put an end to the slave trade, and to prevent the introduction of slaves from foreign countries. The language of the statute cannot properly be applied to persons of color, who were domiciled in the United States, and who are brought back to their place of residence, after their temporary absence. *The Garonne*, and *The Fortune*... \*73

### ADMIRALTY

1. The admiralty has no jurisdiction in matters of account, between part-owners. *The Steamboat Orleans*... \*175
2. The master, even in a case of maritime services, has no lien upon the vessel for the payment of them... *Id.*
3. The jurisdiction of courts of admiralty, in cases of part-owners, having unequal interests and shares, is not, and never has been, applied to direct a sale, upon any dispute between them as to the trade and navigation of the ship engaged in maritime voyages, properly so called. The majority of the owners have a right to employ the ship, on such voyages as they please; giving a stipulation to the dissenting owners for the safe return of the ship, if the latter, upon a proper libel filed in the admiralty, require it; and the minority of the owners may employ the

- ship, in the like manner, if the majority decline to employ her at all. . . . . *Id.*
4. The admiralty has no jurisdiction over a vessel not engaged in maritime trade and navigation; though, on her voyages, she may have touched, at one *terminus* of them, in tide-water, her employment having been substantially on other waters. The true test of its jurisdiction in all cases of this sort, is whether the vessel is engaged, substantially, in maritime navigation, or in interior navigation and trade, not on tide-waters. . . . . *Id.*
5. The jurisdiction of courts of admiralty is limited, in matters of contract, to those, and those only, which are maritime. . . . . *Id.*
6. Contracts for the navigation of steamboats, employed substantially on other than tide-waters, or interior navigation and trade, are not the subjects of admiralty jurisdiction. *Id.*

#### ADMIRALTY JURISDICTION.

1. The master's wages are not a lien upon the vessel. *The Steamboat Orleans*. . . . . \*175

#### ADMIRALTY PRACTICE.

1. It is very irregular, and against the known principles of courts of admiralty, to allow, in a libel *in rem*, and *quasi* for possession, the introduction of any other matters of an entirely different character; such as an account of the vessel's earnings, or the claim of a part-owner for his wages and advances as master. *The Steamboat Orleans*. . . . \*175

#### ADVERSE POSSESSION OF LAND.

1. It is well settled, that to constitute an adverse possession of land, there need not be a fence, a building, or other improvement made; it suffices for this purpose, that visible notorious acts are exercised on the premises in controversy, for twenty-one years, after an entry under a claim and color of title. *Lessee of Ewing v. Burnett*. . . . . \*41
2. Where acts of ownership have been done upon land, which, from their nature, indicate a notorious claim of property in it, and are continued for twenty-one years, with a knowledge of an adverse claimant, without interruption, or an adverse entry by him, for twenty-one years; such acts are evidence of an ouster of a former owner, and of an actual adverse possession against him; if the jury think the property was not susceptible of a more strict and definite possession than had been held. . . . . *Id.*
3. Neither actual occupation nor cultivation are necessary to constitute actual possession, when the property is so situated as not to

admit of any permanent useful improvement; and the continued claim of the party has been evidenced by public acts of ownership, such as he would exercise over property which he claimed in his own right, and could not exercise over property which he did not claim. . . . . *Id.*

4. An adverse possession for twenty-one years, under claim or color of title, merely void, is a bar to a recovery under an elder title by deed, although the adverse holder may have had notice of this deed. . . . . *Id.*

#### ANTICHRESIS

1. L. conveyed, in 1822, in fee-simple, to F. & S. certain real estate in New Orleans, by deed, for a sum of money paid to him; and took from them a counter-letter, signed by them, by which it was agreed, that on the payment of a sum stated in it, on a day named, the property should be reconveyed by them to L., and if not so paid, the property should be sold by an auctioneer; and after repaying, out of the proceeds, the sum mentioned in the counter-letter, the balance should be paid to L. The money was not paid on the day appointed, and a further time was given for its payment, with additional interest and charges; and if not paid at the expiration of the time, it should be sold by an auctioneer; an agreement was, at the same time, made by L., that the counter-letter should be belivered up to F. & S. and cancelled. The money not being paid, it was again agreed between the parties, that if, on a subsequent day fixed upon, it should not, with an additional amount for interest, &c., be paid, the property should belong absolutely to F. & S.; the money was not paid, and F. & S. afterwards held the property as their own. The court held this transaction to be an *antichresis*, according to the civil code of Louisiana; and on a bill filed in the district court of the United States for the eastern district of Louisiana, in 1832, decreed, that the rents and profits of the estate should be accounted for by S., who had become the sole owner of the property, by purchase of F.'s moiety, and that the property should be sold by an auctioneer, unless the balance due S., after charging the sum due at the time last agreed upon for the payment of the money, and legal interest, with all the expenses of the estate, deducting the rents and profits, should be paid to S.; and on payment of the balance due S., the residue should be paid to the legal representative of L. *Livingston v. Story*. . . . \*351
2. Under the law of Louisiana, there are two

kinds of pledges—the pawn and the anti-*chresis*. A thing is said to be pawned, when a movable is given as a security; the *anti-chresis* is, when the security given consists in immovables. . . . . *Id.*

3. The *antichresis* must be reduced to writing. The creditor acquires by this contract the right of reaping the fruits or other rewards of the immovables given to him in pledge; on condition of deducting, annually, their proceeds, from the interest, if any should be due to him, and afterwards from the principal of his debt; the creditor is bound, unless the contrary is agreed on, to pay the taxes, as well as the annual charges of the property given to him in pledge; he is likewise bound, under the penalty of damages, to provide for the keeping and necessary repairs of the pledged estate; and may lay out, from the revenues of the estate, sufficient for such expenses. . . . . *Id.*
4. The creditor does not become proprietor of the pledged immovables, by the failure of payment at the stated time; any clause to the contrary is null: and in that case, it is only lawful for him to sue his debtor before the court, in order to obtain a sentence against him, and to cause the objects which have been put into his hands to be seized and sold. . . . . *Id.*
5. The debtor cannot, before the full payment of his debt, claim the enjoyment of the immovables which he has given in pledge; but the creditor, who wishes to free himself from the obligations under the *antichresis*, may always, unless he has renounced this right, compel the debtor to retake the enjoyment of his immovables. . . . . *Id.*
6. The doctrine of prescription, under the civil law, does not apply to this case, which is one of pledge; and if it does, the time before the institution of this suit had not elapsed, in which, by the law of Louisiana, a person may sue for immovable property. . . . . *Id.*
7. By the contract of *antichresis*, the possession of the property is transferred to the person advancing the money; in case of failure to pay, the property is to be sold by judicial process; and the sum which it may bring, over the amount for what it was pledged, is to be paid to the person making the pledge. . . . . *Id.*

APPEAL.

1. No appeal lies from the decree of a district judge of the United States, on a petition presented by the defendant, under the 2d section of the "act providing for the better organization of the treasury department;" where an order had issued by the solicitor of

the treasury to the marshal of the United States, and the property of an alleged debtor, the petitioner, had been seized and was about to be sold to satisfy the alleged debt; no appeal by the government is authorized by the act, and the general law giving appeals does not embrace the case. *United States v. Cox*. . . . . \*162

2. The law is the same, where an appeal was taken from the district judge to the circuit court, and an appeal taken thence to the supreme court; and where an appeal was taken to the supreme court, from the district judge of Louisiana, having the powers of a circuit court. *United States v. Nourse*, cited and confirmed. . . . . *Id.*
3. The act of congress gives to the district judge a special jurisdiction, which he may exercise at his discretion, while holding the district court, or at any other time; ordinarily, as district judge, he has no chancery powers; but in proceedings under this statute, he is governed by the rules of chancery, which apply to injunctions, except as to the answer of the government. . . . . *Id.*

BARRATRY.

See INSURANCE.

BILLS OF CREDIT.

1. The terms, bills of credit, in their mercantile sense, comprehend a great variety of evidences of debt, which circulate in a commercial country; in the early history of banks, it seems, their notes were generally denominated "bills of credit," but in modern times, they have lost that designation, and are either called bank-bills, or bank notes. But the inhibitions of the constitution, apply to bills of credit, in a limited sense. *Briscoe v. Bank of the Commonwealth of Kentucky*. . . . \*258
2. The definition of a bill of credit, which includes all classes of bills of credit emitted by the colonies or states, is a paper issued by the sovereign power, containing a pledge of its faith, and designed to circulate as money. . . . . *Id.*
3. A state cannot emit bills of credit, or, in other words, it cannot issue that description of paper, to answer the purposes of currency, which was denominated, before the adoption of the constitution, bills of credit; but a state may grant acts of incorporation for the attainment of those objects, which are essential to the interests of society; this power is incident to sovereignty, and there is no limitation on its exercise by the states,

- in the constitution, in respect to the incorporation of banks.....*Id.*
4. To constitute a bill of credit, within the constitution, it must be issued by a state, on the faith of the state; and designed to circulate as money; it must be a paper which circulates on the credit of the state, and so received and used in the ordinary business of life. The individual or committee who issues it, must have power to bind the state; they must act as agents; and of course, do not incur any personal responsibility, nor impart, as individuals, any credit to the paper. These are the leading characteristics of a bill of credit, which a state cannot emit.....*Id.*
5. When a state emits bills of credit, the amount to be issued is fixed by law; as also the fund out of which they are to be paid, if any fund be pledged for their redemption; and they are issued on the credit of the state, which in some form appears on the face of the notes, or by the signature of the person who issues them.....*Id.*

#### BILLS OF EXCEPTION.

1. In the ordinary course of things, on the trial of a cause before a jury, if an objection is made and overruled, as to the admission of evidence, and the party does not take any exception, he is understood to waive it; the exception need not, indeed, then, be put in form, or written out at large, and signed; but it is sufficient, if it be taken, and the right reserved to put it in form, within the time prescribed by the practice, or the rules of the court. *Poole v. Flegler*... \*185

#### BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. An action may be maintained on a promissory note made in favor of McM. & F., in the name of McM., F. having no interest in the note; the same having been given to McM. by F., on the dissolution of a partnership which had existed between McM. and F., for McM.'s share of the partnership property. Although the makers of the note and F. were citizens of Louisiana, a suit on the note was properly brought in the United States court of Louisiana; McM., who at the time the note was given, and the suit was brought, was a citizen of Ohio. *McMicken v. Webb*.....\*25
2. An indorsement in blank on a promissory note, authorizes the filling it up, either before or after action brought, with the name of the party for whose use the suit may be brought; and if the holder, though the in-

dorsee, is a citizen of another state, he may sue on the note, in the courts of the United States, although the maker and payee of the note were citizens of the same state, and not of the state of which the plaintiff is a citizen. *Evans v. Gee*.....\*80

3. The *bond fide* holder of a bill of exchange has a right to write over a blank indorsement, directing to whom the bill shall be paid, at any time before or after the institution of a suit; this is the settled doctrine in the English and American courts; and the holder, by writing such direction over a blank indorsement, ordering the money to be paid to a particular person, does not become an indorser.....*Id.*
4. A suit may be brought against the drawer and indorser of a bill of exchange, on its non-acceptance; the undertaking of the drawer and indorser is, that the drawee will accept and pay; and the liability of the drawer only attaches, when the drawee refuses to accept, or having accepted, fails to pay. A refusal to accept is, then, a breach of the contract, upon the happening of which, a right of action instantly accrues to the payee, to recover from the drawer the value expressed in the bill; that being the consideration the payee gave for it; such also is the undertaking of an indorser, before the bill has been presented for acceptance, he being, in fact, a new drawer of the same bill upon the terms expressed on its face...*Id.*

#### See JURISDICTION, 1, 2.

#### BOUNDARIES OF STATES.

1. It is a part of the general right of sovereignty, belonging to independent nations, to establish and fix the disputed boundaries between their respective limits; and the boundaries so established and fixed by compact between nations, become conclusive on all the subjects and citizens thereof, and bind their rights, and are to be treated, to all intents and purposes, as their real boundaries. This right is expressly recognised to exist in the states of the Union, by the constitution of the United States; and is guarded in its exercise, by a single limitation or restriction only, requiring the consent of congress. *Poole v. Flegler*.....\*185

#### CASES CITED.

1. Bank of the Commonwealth of Kentucky *v.* Wister, 2 Pet. 315. *Briscoe v. Commonwealth Bank of Kentucky*.....\*257
2. Bank of the United States *v.* Dunn, 6 Pet. 51. *United States v. Leffler*.....\*96
3. Bank of the United States *v.* Planters' Bank

of Georgia, 9 Wheat. 904. *Briscoe v. Commonwealth Bank of Kentucky*. . . . . \*257

4. *Beaty v. Lessee of Knowler*, 4 Pet. 165. *Charles River Bridge v. Warren Bridge*. \*420

5. *Brown v. State of Maryland*, 12 Wheat. 419. *Mayor, Aldermen, &c., of New York v. Miln*. . . . . \*102

6. *Columbia Insurance Company v. Lawrence*, 10 Pet. 597. *Waters v. Merchants' Louisville Insurance Company*. . . . . \*213

7. *Craig v. State of Missouri*, 4 Pet. 410. *Briscoe v. Commonwealth Bank of Kentucky*. \*257

8. *Gibbons v. Ogden*, 9 Wheat. 262. *Mayor, Aldermen, &c., of New York v. Miln*. \*102

9. *Jackson v. Chew*, 12 Wheat. 163. *Marlatt v. Silk*. . . . . \*1

10. *Jackson v. Lamphire*, 3 Pet. 289. *Charles River Bridge v. Warren Bridge*. . . . . \*420

11. *Peyroux v. Howard*, 7 Pet. 343. *The Steamboat Orleans*. . . . . \*175

12. *Providence Bank v. Billings*, 4 Pet. 514. *Charles River Bridge v. Warren Bridge*. \*420

13. *Satterlee v. Mathewson*, 2 Pet. 413. *Charles River Bridge v. Warren Bridge*. . . . . \*420

14. *The Steamboat Jefferson*, 10 Wheat. 429. *The Steamboat Orleans*. . . . . \*175

15. *United States v. Arredondo*, 6 Pet. 736. *Charles River Bridge v. Warren Bridge*. \*420

16. *United States v. Nourse*, 6 Pet. 470. *United States v. Cox*. . . . . \*165

head of equity, unless it be substantially set forth in the bill. . . . . *Id.*

See CONTRACT.

CHANCERY PRACTICE.

1. The 22d rule for the regulation of equity practice in the circuit courts, is understood by this court to apply to matters applicable to the merits, and not to mere pleas to the jurisdiction; and especially, to those founded on any personal disability, or personal character, of the party suing, or to any pleas merely in abatement. *Livingston v. Story*. . . . . \*351
2. The rule does not allow a defendant, instead of filing a formal demurrer or a plea, to insist on any special matter, in his answer, and have also the benefit thereof, as if he had pleaded the same matter and demurred to the bill. In this respect, the rule is merely affirmative of the general rule of the court of chancery; in which matters in abatement, and to the jurisdiction, being preliminary in their nature, must be taken advantage of by plea, and cannot be taken advantage of in a general answer, which necessarily admits the right and capacity of the party to sue. . . . *Id.*

See CHANCERY, 3.

CERTIFICATE OF DIVISION.

See DISCONTINUANCE.

CHANCERY.

1. The appellants filed a bill in the circuit court of Pennsylvania, claiming to have a bond and mortgage cancelled and delivered up to them; they alleged, that the same was given without consideration; was induced by threats of a prosecution for a criminal offence against the husband of the mortgagor; and that the instruments were, therefore, void; and that they were obtained by the influence the mortgagee, exercised over the mortgagor, he being a clergyman, and her religious visitor; and her mind being weak or impaired. The circuit court of Pennsylvania dismissed the bill; and on appeal to this court, the decree of the circuit court was affirmed. *Jackson v. Ashton*. . . . . \*229
2. A court of chancery will often refuse to enforce a contract, when it would also refuse to annul it; in such a case, the parties are left to their remedy at law. . . . . *Id.*
3. No admissions in an answer to a bill in chancery can, under any circumstances, lay the foundation for relief under any specific

CHARTERED PROPERTY.

1. In exercising the high powers conferred upon the supreme court of the United States, by the constitution, the court are fully sensible that it is their duty to deal with the great and extensive interests (chartered property), with the utmost caution, guarding, so far as they have power so to do, the rights of property, at the same time, carefully abstaining from any encroachment on the rights reserved to the states. *Charles River Bridge v. Warren Bridge*. . . . . \*420

See CONSTITUTIONAL LAW: EMINENT DOMAIN: PUBLIC GRANTS.

COMMERCE.

1. Construction of the provision of the constitution of the United States, giving to congress the right to regulate commerce. *New York v. Miln*. . . . . \*102

COMPACTS BETWEEN STATES.

1. The construction of a compact between the states of Virginia and Pennsylvania, is not to be settled, by the laws or decisions of either of those states; but by the compact itself. *Marlatt v. Silk*. . . . . \*1

2. The decision of a question of the construction of such a compact, is not to be collected from the decisions of either state, but is one of an international character. . . . . *Id.*
3. Construction of the compact between the state of Kentucky and the state of Tennessee, made in 1820, fixing the boundary line between those states. *Poole v. Fleegeer* . . . \*185
4. It is a part of the general right of sovereignty, belonging to independent nations, to establish and fix the disputed boundaries between their respective limits; and the boundaries so established and fixed by compact between nations, become conclusive upon all the subjects and citizens thereof, and bind their rights; and are to be treated, to all intents and purposes, as the real boundaries. This right is expressly recognised to exist in the states of the Union, by the constitution of the United States, and is guarded in its exercise by a single limitation or restriction only, requiring the consent of congress. . . . . *Id.*

CONSIDERATION.

See CONTRACT, 1.

CONSTITUTIONAL ACTION.

1. A uniform course of action, involving the right to the exercise of an important power by the state governments, for half a century; and this almost without question, is no unsatisfactory evidence that the power is rightfully exercised. *Briscoe v. Bank of the Commonwealth of Kentucky*. . . . . \*257

CONSTITUTIONAL LAW.

1. The provision of the act concerning passengers in vessels arriving in the port of New York, passed by the legislature of New York, in February 1824, which requires that the master of every vessel arriving in New York, from any foreign port, or from a port of any of the states of the United States, other than New York, under certain penalties prescribed in the law, within twenty-four hours after his arrival, to make a report in writing, containing the names, ages, and last legal settlement of every person who shall have been on board the vessel commanded by him, during the voyage; and if any of the passengers shall have gone on board any other vessel, or shall, during the voyage, have been landed at any place, with a view to proceed to New York, that the same shall be stated in the report—does not assume to regulate commerce between the port of New

- York and foreign ports; and so much of the said act is constitutional. *New York v. Miln* . . . . . \*103
2. A state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation; when that jurisdiction is not surrendered, or restrained by the constitution of the United States. . . . . *Id.*
  3. It is obvious, that the passengers laws of the United States only affect, through the power over navigation, the passengers, whilst on their voyage, and until they have landed; after that, and when they have ceased to have any connection with the ship, and when, therefore, they have ceased to be passengers, the acts of congress applying to them as such, and only professing to legislate in relation to them as such, have performed their office; and can, with no propriety of language, be said to come into conflict with the law of a state; whose operation only begins, where that of the laws of congress ends; whose operation is not even on the same subject; because, although the person on whom it operates is the same, yet, having ceased to be a passenger, he no longer stands in the only relation in which the laws of congress either professed or intended to act upon him. . . . . *Id.*
  4. The legislature of Kentucky, in 1820, passed an act establishing a bank, by the name of "The Bank of the Commonwealth of Kentucky," making the president and directors a corporation, capable of suing and being sued, and of holding and selling property; the bank was authorized to issue notes, and had a capital of two, and afterwards three millions of dollars, to be paid by all moneys paid into the state treasury for the state &c; the bank had authority to receive money on deposit, to make loans, and to issue promissory notes; and it was, exclusively, the property of the commonwealth. The notes were issued in the common form of bank-notes, signed by the president and cashier. The legislature afterwards gave defendants in execution, a right to stay the same for two years, if the plaintiff refused to receive the notes of the bank in payment of the debt due on the same: *Held*, that the notes of the bank were not bills of credit within the meaning of the constitution of the United States. *Briscoe v. Bank of the Commonwealth of Kentucky*. . . . . \*257
  5. To constitute a bill of credit, within the constitution, it must be issued by a state, on the faith of the state, and designed to circulate as money; it must be a paper which circulates on the credit of the state; and so re-

ceived and used in the ordinary business of life; the individual or committee who issue it, must have power to bind the state; they must act as agents, and of course, do not incur any personal responsibility, nor impart, as individuals, any credit to the paper. These are the leading characteristics of a bill of credit, which a state cannot emit; the notes issued by the Bank of the Commonwealth of Kentucky have not these characteristics.....*Id.*

6. When a state emits bills of credit, the amount to be issued is fixed by law; as also the fund out of which they are to be paid, if any fund be pledged for their redemption: and they are issued on the credit of the state, which in some form appears upon the face of the notes, or by the signature of the person who issues them.....*Id.*

7. The legislature of Massachusetts granted to Harvard College the liberty and power to dispose of a ferry from Charlestown, over Charles river, to Boston, and to receive a rent for the same; afterwards, the legislature incorporated a company to erect a bridge over Charles river, in the place where the ferry had been set up and was in use, the company paying annually to the college the sum of 200*l.*; the charter gave the company the right to take tolls for forty years, and afterwards extended the same to seventy years. Before the forty years expired, the legislature authorized the erection of another bridge from Boston to Charlestown, on Charles river, so near to the first bridge as injuriously to affect the tolls of the same, and this bridge afterwards became free; the proprietors of the first bridge applied to the supreme judicial court of Massachusetts, to restrain, by an injunction, the construction of the second bridge, and subsequently, for payment of the tolls taken, and for general relief. The court of Massachusetts dismissed the bill, and the case was brought up by writ of error to the supreme court of the United States, under the provisions of the 25th section of the judiciary act of 1789, on the ground, that the first charter granted was a contract, and that the grant of the second charter was a violation of it. The court affirmed the decree of the superior court of Massachusetts. *Charles River Bridge v. Warren Bridge*.....\*420

8. A state law may be retrospective in its character, and may divest vested rights, and yet not violate the constitution of the United States; unless it also impairs the obligation of contracts.....*Id.*

See **BILLS OF CREDIT.**

**CONSTRUCTION.**

1. Punctuation is a most fallible standard by which to interpret a writing; it may be resorted to, when all other means fail; but the court will first take the instrument by its four corners, in order to ascertain its true meaning; if that be apparent, on judicially inspecting it, the punctuation will not be suffered to change it. *Ewing v. Burnett*. \*41

**CONSTRUCTION OF STATUTES.**

1. Construction of the provision of the act of congress, passed May 5th, 1820, entitled "an act for the better organization of the treasury department," relating to the issuing of process of execution against a supposed debtor to the United States, under an order from the treasury department. *United States v. Cox*..... \*162

See **ACTS OF CONGRESS RELATIVE TO THE SLAVE-TRADE: APPEAL.**

**CONTRACT.**

1. The brig *Ann*, of Boston, on a voyage from New Orleans to Madeira, &c., was unlawfully captured by a part of the Portuguese squadron; and was, with her cargo condemned; upon the remonstrance of the government of the United States, the claim of the owner for compensation for this capture was, on the 19th of January 1832, admitted by the government of Portugal, to an amount exceeding \$33,000; one-fourth of which was soon after paid. On the 17th of January 1832, the owner of the *Ann* and cargo, neither of the parties knowing of the admission of the claim by Portugal, made an agreement with the appellant, to allow him a sum, a little below one-third of the whole amount of the sum admitted, as commissions; on his agreeing to use his utmost efforts for the recovery thereof. At the time this agreement was made, which was under seal, H. the appellee, was indebted to the appellant A., \$268, for services rendered to him in the course of a commercial agency for him; in the contract, it was agreed that this debt should be released. Under the contract, A. received the payment of one fourth of the amount admitted to be due to H. by Portugal; and H. filed a bill to have the contract rescinded, and delivered up to him; the debt of \$268 to be deducted from the same, with interest, &c. The circuit court made a decree in favor of H., and on the payment of \$268, with interest, the contract was ordered to be delivered up to be cancelled. The decree of the

- circuit court was affirmed; the court being of opinion, that the agreement had been entered into by both the parties to it, under a mistake, and under entire ignorance of the allowance of the claim of the owner of the Ann, and her cargo; it was without consideration; services long and arduous were contemplated, but the object of those services had been attained. *Allen v. Hammond*. \*63
2. If a life-estate in land be sold, and at the time of the sale, the estate is terminated by the death of the person in whom the right vested, a court of equity would rescind the purchase; if a horse be sold, which both parties believed to be alive, but was dead at the time of sale, the purchaser would not be compelled to pay the consideration. . . . . *Id.*
  3. The law on this subject is clearly stated in the case of *Hitchcock v. Giddings*, Dan. Exch. 1; where it is said, that a vendor is bound to know he actually has that which he professes to sell; and even though the subject of the contract be known to both parties to be liable to a contingency which may destroy it immediately; yet if the contingency has already happened, it will be void. . . . . *Id.*

#### COURTS OF THE UNITED STATES.

1. The local laws of the states of the United States can never confer jurisdiction on the courts of the United States; they can only furnish rules to ascertain the rights of the parties; and thus assist in the administration of the proper remedies, where the jurisdiction is vested by the laws of the United States. *The Steamboat Orleans*. . . . . \*175

#### DECISIONS OF STATE COURTS.

1. The supreme court adopts the decisions of state courts, when applicable to titles to lands; but when such titles depend on compacts between the states in the Union, the rule of decision is not to be collected from the decisions of the courts of either state, but is one of an international character. *Marlatt v. Silk*. . . . . \*1

#### DISCONTINUANCE.

1. On the trial of a cause in the circuit court of the district of Maine, upon certain questions which arose in the progress of the trial, the judges of the court were divided in opinion; and the questions were, at the request of the plaintiff, certified to the supreme court, to January term 1835. In December 1836, the plaintiff filed in the office of the clerk of the circuit court of Maine, a notice to the defendant, that he had discontinued the suit in the

circuit court; and that as soon as the supreme court should meet at Washington, the same disposition would be made of it there, and that the costs would be paid when made up; a copy of this notice was given to the counsel of the defendants. The plaintiff's counsel asked the court for leave to discontinue the cause; and the discontinuance was allowed. *Veazie v. Wadleigh*. . . . . \*55

2. *Quere?* Whether the party on whose motion questions are certified to the supreme court, under the act of congress, has a right, generally, to withdraw the record, or discontinue the case in the supreme court; the original cause being detained in the circuit court for ulterior proceedings? . . . . . *Id.*

#### EJECTMENT.

1. A tract of land, situated in that part of the state of Pennsylvania, which, by the compact with the state of Virginia, of 1780, was acknowledged to be within the former state, was held under the provisions of an act of assembly of Virginia, passed in 1779, by which actual *bona fide* settlers, prior to 1778, were declared to be entitled to the land on which the settlement was made, not exceeding 400 acres; the settlement was made in 1772. Of this tract, in the year 1786, a survey was made, and returned into the land-office of Pennsylvania, and a patent was granted for the same; the title set up by the defendants to the ejectment was derived from two land-warrants from the land office of Pennsylvania, dated in 1773, under which surveys were made in 1778, and on which patents were issued on the 9th of March 1782. The compact confirms private property and rights existing previous to its date, under and founded on, and recognised by, the laws of either state, falling within the other; preference being given to the elder or prior right; subject to the payment of the purchase-money required by the laws of the state in which they might be for such lands: *Held*, that the title derived under the Virginia law of 1779, and afterwards perfected by the patent from Pennsylvania, in 1788, was a valid title; and superior to that asserted under the warrants of 1773, and the patent founded on them, and issued in 1782. *Marlatt v. Silk*. . . . . \*1
2. The title derived under the act of the legislature of Virginia, of 1779, commenced in 1772, when the settlement was made; and therefore, stands as a right, prior in its commencement to that originating under the warrants of 1773. The question of title between the contending parties, is not to be decided by the laws or decisions of either

Pennsylvania or Virginia, but by the compact of 1780. . . . . *Id.*

3. The principles on which the case of *Jackson v. Chew*, 12 Wheat. 163, was decided, are not affected by the decision of the court in this case. In the case of *Jackson v. Chew*, the court said, that it adopted the state decisions, when applicable to the title of lands : that was in a case, the decision of which depended on the laws of the state, and their construction by the tribunals of the state. In the case at bar, the question arises under, and is to be decided by, a compact between two states ; where the rule of decision is not to be collected from the decisions of either state, but is one of an international character. . . . . *Id.*

EMINENT DOMAIN.

1. The object and the end of all government is, to promote the happiness and prosperity of the community by which it is established ; and it can never be assumed, that the government intended to diminish its power of accomplishing the end for which it was created : and in a country like ours, free, active and enterprising ; continually advancing in numbers and wealth ; new channels of communication are daily found necessary both for travel and trade ; and are essential to the comfort, convenience and prosperity of the people. A state ought never to be presumed to surrender this power ; because, like the taxing power, the whole community have an interest in preserving it undiminished : and when a corporation alleges, that a state has surrendered, for seventy years, its power of improvement and public accommodation in a great and important line of travel, along which a vast number of its citizens must daily pass ; the community have a right to insist, in the language of this court, " that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the state to abandon it, does not appear." The continued existence of a government would be of no great value, if, by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation ; and the functions it was designed to perform, transferred to the hands of privileged corporations. The rule of construction announced by the court, in the case of the *Providence Bank v. Billings*, was not confined to the taxing power, nor is it so limited in the opinion delivered ; on the contrary, it was distinctly placed on the ground, that the interests of the community were concerned in preserving undiminished, the

power in question : and whenever any power of the state is said to be surrendered or diminished ; whether it be the taxing power, or any other affecting the public interest ; the same principle applies, and the rule of construction must be the same. No one will question, that the interests of the great body of the people of the state, would, in this instance, be affected by the surrender of this great line of travel to a single corporation, with the right to exact toll and exclude competition for seventy years. While the rights of private property are sacredly guarded, we must not forget, that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation. *Charles River Bridge v. Warren Bridge.* . . . . . \*420

ENTRY ON LAND.

1. An entry by one on the land of another, is or is not an ouster of the legal possession arising from the title, according to the intention with which it is done ; if made under claim or color of title, it is an ouster ; otherwise, it is a mere trespass ; in legal language, the intention guides the entry and fixes its character. *Ewing v. Burnet.* . . . . . \*41

ERROR.

1. Although there may have been errors and imperfections in the record and proceedings in a case in the circuit court, if the parties go to a trial of the case, they must be considered or waived ; and they cannot constitute an objection to the judgment of the circuit court, after verdict, on a writ of error to the supreme court. *Evans v. Gee.* . . . \*80

EVIDENCE.

1. The United States instituted a joint action on a joint and several bond, executed by a collector of taxes, &c., and his sureties ; the defendant, the principal in the bond, confessed a judgment, by a *cognovit actionem*, and the United States issued an execution against his body, on the judgment ; upon which he was imprisoned, and was afterwards discharged from confinement, under the insolvent laws of the United States. The United States proceeded against the other defendants ; and on the trial of the cause before a jury, the principal in the bond having been released by his co-obligors, was offered by the defendants, and admitted by the circuit court, to prove that one of the co-obligors had executed the bond, on condition that

- others would execute it, which had not been done; the circuit court admitted the evidence: *Held*, that there was no error in the decision. *United States v. Leffler* .....\*86
2. The principle settled by this court, in the case of *Bank of the United States v. Dunn*, 6 Pet. 51, goes to the exclusion of the evidence of a party to a negotiable instrument, upon the ground of the currency given to it by the name of the witness called to impeach its validity; and does not extend to any other case to which that reasoning does not apply..... *Id.*

#### See BILLS OF EXCHANGE.

#### GOVERNMENT OF THE UNITED STATES.

1. The federal government is one of delegated powers; all powers not delegated to it, or inhibited to the states, are reserved to the states, or the people. *Briscoe v. Bank of the Commonwealth of Kentucky* .....\*257

#### GUNPOWDER.

1. In a case in which a vessel insured had been destroyed by the explosion of gunpowder, the court said, "If taking gunpowder on board a vessel insured against fire, was not justified by the usage of the trade, and, therefore, was not contemplated as a risk by the policy; there might be great reason to contend, that if it increased the risk, the loss was not covered by the policy." *Waters v. Merchants' Louisville Insurance Co.*.....\*213

#### INDORSEMENT.

1. The *bond fide* holder of a bill of exchange, has a right to write over a blank indorsement, directing to whom the bill shall be paid, at any time before or after the institution of the suit. *Evans v. Gee*.....\*80

#### INSURANCE.

1. The steamboat *Lioness* was insured on her voyages on the western waters, particularly from New Orleans to Natchitoches, on Red river, and elsewhere, "the Missouri and Upper Mississippi excepted," for twelve months; one of the perils insured against was, "fire;" the vessel was lost by the explosion of gunpowder. A loss by fire, where the fire was directly and immediately caused by the barratry of the master and crew, as the efficient agents, when the fire was communicated, and occasioned by the direct act and agency of the master and crew, intentionally done from a barratrous purpose, is not a loss within the

policy, if barratry is not insured against. *Waters v. Merchants' Louisville Insurance Co.*.....\*213

2. If the master or crew should barratrously bore holes in the bottom of a vessel, and she should thereby be filled with water and sink, the loss would properly be deemed a loss by barratry, and not by a peril of the seas or of rivers, though the water should co-operate in producing the sinking.....*Id.*
3. The doctrine, as applied to policies against fire on land, has, for a great length of time, prevailed, that losses occasioned by the mere fault or negligence of the assured, or his servants, unaffected by fraud or design, are within the protection of the policy; and as such are recoverable from the underwriters; this doctrine is fully established in England and America.....*Id.*
4. It is a well-established principle of the common law, that in all cases of loss, we are to attribute it to the proximate cause, and not to the remote cause; this has become a maxim to govern cases arising under policies of insurance.....*Id.*
5. In the case of the *Columbia Insurance Co. v. Lawrence*, 10 Pet. 507, this court thought that in marine policies, whether containing the risk of barratry or not, a loss, whose proximate cause was a peril insured against, is within the protection of the policy; not, withstanding it might have been occasioned, remotely, by the negligence of the master and mariners; the court have seen no reason to change that opinion.....*Id.*
6. As the explosion on board the *Lioness* was caused by fire, the fire was the proximate cause of the loss.....*Id.*
7. If taking gunpowder on board a vessel insured against fire, was not justified by the usage of the trade, and therefore, was not contemplated as a risk by the policy; there might be great reason to contend, that if it increased the risk, the loss was not covered by the policy.....*Id.*

#### JURISDICTION.

1. The residence of a party in another district of a state, than that in which the suit is brought in a court of the United States, does not exempt him from the jurisdiction of the court; the division of a state into two or more districts, cannot affect the jurisdiction of the court, on account of citizenship. If a party is found in the district in which he is sued, the case is out of the prohibition of the judiciary act, which declares that "no civil suit shall be brought in the courts of the United States, against a defendant, by

any original process, in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ." *McMicken v. Webb*. . . \*25

2. McMicken and Ficklin were in partnership, as merchants, in the state of Louisiana, and at the dissolution of the connection, Ficklin agreed to purchase the half of the stock belonging to McMicken; and after the partnership was dissolved, gave him, in payment for the same, a promissory note, payable, after its date, to the order of McMicken & Ficklin, which was executed by Ficklin, Jedediah Smith and Amos Webb, by which they promised, jointly and severally, to pay the amount of the note. Although the note was made payable to the order of McMicken and Ficklin, the latter was in no wise interested in it, as the payee thereof. McMicken was a citizen of Ohio, and the makers of the note were citizens of the state of Louisiana: *Held*, that the objection to the jurisdiction of the court, on the ground that the note was given to Ficklin & McMicken, and as Ficklin was a citizen of Louisiana, the suit is interdicted by the prohibition of the judiciary act, which declares, that the courts of the United States shall not have cognisance of a suit in favor of a *chose in action*, unless a suit could have been prosecuted in said court, for the same, if no assignment had been made, except in cases of foreign bills of exchange; cannot be sustained. Ficklin never had any interest, as payee, in the note; although the note had been given in the names of both persons, it was for the sole and individual benefit of McMicken, and there was no interest which Ficklin could assign. . . . . *Id.*

3. A bill of exchange was drawn, in Alabama, by a citizen of that state, in favor of another citizen of Alabama, on a person at Mobile, who was also a citizen of that state; it was, before presentation, indorsed in blank by the payee, and became, *bonâ fide*, by delivery to him, the property of a citizen of North Carolina; and by indorsement subsequently made upon it, by the attorney of the indorsee, the blank indorsement was converted into a full indorsement, by writing the words, pay to Sterling H. Gee, the plaintiff, over the indorser's name. The bill was protested for non-acceptance, and a suit was instituted on it, before the day of payment, against the indorser, in the district court of the United States for the district of Alabama: *Held*, that the district court of Alabama had jurisdiction of the case. *Evans v. Gee*. . . \*80

4. The rule was established by this court in *Young v. Bryan*, 6 Wheat. 146, that the circuit court of the United States has jurisdiction of a suit brought by the indorsee of a

promissory note, who was a citizen of one state, against the indorser, who was a citizen of a different state; whether a suit could be brought in that court by the indorsee against the maker, or not. . . . . *Id.*

5. Evidence to show that the original parties to the bill of exchange were citizens of the same state, if offered to affect the jurisdiction of the court, is inadmissible, under the general issue; a plea to the jurisdiction should be put in. . . . . *Id.*

6. The supreme court has no power, under the 25th section of the judiciary act of 1789, to revise the decree of a state court, when no question was raised or decided in the state court, upon the validity or construction of an act of congress, nor upon the authority exercised under it, but on a state law only. *McBride v. Hoey*. . . . . \*167

7. The local laws of a state of the United States can never confer jurisdiction on the courts of the United States; they can only furnish rules to ascertain the rights of the parties, and thus assist in the administration of the proper remedies, where the jurisdiction is vested by the laws of the United States. *The Steamboat Orleans*. . . . . \*175

JURY.

1. It is the exclusive province of the jury to decide what facts are proved by competent evidence; it is their province to judge of the weight of testimony, as tending, in a greater or less degree, to prove the facts relied upon. *Ewing v. Burnet*. . . . . \*41

KENTUCKY AND TENNESSEE.

1. Construction of the compact of 1820, between the states of Kentucky and Tennessee relative to the boundary between those states. *Poole v. Fleegeer*. . . . . \*185

LANDS AND LAND TITLES.

See COMPACT: POSSESSION OF LAND: STATUTES OF LIMITATION.

LIEN.

1. By the maritime law, the master has no lien on the ship even for maritime wages. *The Steamboat Orleans*. . . . . \*175

LOCAL LAW.

1. The provisions of the local law or civil code of Louisiana, were applied to a case which was instituted in the district court of the

- United States, under the chancery powers vested in that court, by the constitution of the United States, giving chancery jurisdiction to the courts of the United States. *Livingston v. Story*.....\*351
2. The local laws of a state can never confer jurisdiction on the courts of the United States; they can only furnish rules to ascertain the rights of the parties, and thus assist in the administration of the proper remedies where the jurisdiction is vested by the laws of the United States. *The Steamboat Orleans*.....\*175

### MANDAMUS.

1. Motion for a rule on the district judge of the district court of the United States for the Missouri district, to show cause why a *mandamus* should not issue from the supreme court, commanding him to order an execution to issue on a judgment entered in that court in the case of the Postmaster-general of the United States *v.* Rector's administrator. The motion was founded on an attested copy of the record of the proceedings in the district court; by which it appeared, that the district judge, on the motion of the district-attorney of the United States, for an order for an execution on this judgment, "after mature deliberation thereon," overruled the motion. The rule to show cause was refused. *Postmaster-General v. Trigg*.....\*173
2. The court have looked into the practice of this court, upon motions of this sort, and it does not appear to have been satisfactorily settled; for anything that appears, in this case, there may have been sufficient reason for the decision of the district court, overruling the motion for an execution; and there is nothing in the record, to create a *prima facie* case of mistake, misconduct or omission of duty, on the part of the district court. In such a state of facts, the court are bound to presume that everything was rightly done by the court, until some evidence is offered to show the contrary; and they cannot, upon the evidence before the court, assume that there is any ground for its interposition. *Id.*
3. A rule to show cause, is a rule upon the judge to explain his conduct; and implies that a case had been made out, which makes it proper that this court should know the reasons for his decision. When the record does not show mistake, misconduct or omission of duty on the part of the court; unless such a *prima facie* case to the contrary is made out, supported by affidavit, as would make it the duty of the court to interpose; such a rule ought not to be granted. *Id.*

### MASTER AND SLAVE.

1. The acts of congress which prohibit the slave-trade, and the importation of persons of color into the United States, do not apply to the case of a master, a citizen of the United States, who carries his slaves with him abroad, as his servants; and afterwards brings or sends them back to the United States, after such temporary absence. *The Ship Garonne*.....\*73

### PARTIES TO A WRITTEN INSTRUMENT.

1. The principle settled by this court, in the case of the Bank of the United States *v.* Dunn, 6 Pet. 51, goes to the exclusion of the evidence of a party to a negotiable instrument, upon the ground of the currency given to such instruments, by the name of the witness called to impeach their validity, and does not extend to a case in which that reasoning does not, apply. *United States v. Leffler*.....\*86

### PART-OWNERS OF VESSELS.

See ADMIRALTY, 3.

### PASSENGER LAWS.

1. The passenger laws of the United States apply only to passengers whilst on their voyage and until they have landed; after the landing of passengers, the laws of the United States do not come in conflict with the laws of a state, which obliges security to be given against their becoming chargeable as paupers; and for their removal out of the state, in the event of their having become so chargeable. *New York v. Miln*.....\*102
2. Persons are not the subject of commerce; and not being imported goods, they do not fall within the reasoning founded upon the construction of a power given to congress to regulate commerce, and the prohibition of the states from imposing a duty on foreign goods.....*Id.*

### PENNSYLVANIA LAND TITLES.

1. Construction of the compact between the states of Pennsylvania and Virginia, of 1780, relative to the titles to lands situated in the territory, the right to which was by that compact settled between those states. *Marlatt v. Silk*.....\*1

### PLEDGE.

- 1 Under the law of Louisiana, there are two kinds of pledges, the pawn and the *anti-*

*chresis* ; a thing is said to be pawned, when a movable is given as a security ; the *antichresis* consists of immovables. *Livingston v. Story* .....\*351

See ANTICHRESIS.

POSSESSION OF LAND.

1. An elder legal title to a lot of ground gives a right of possession, as well as the legal seisin and possession thereof, co-extensive with the right ; which continues until there is an ouster by actual adverse possession, or the right of possession becomes in some other way barred. *Ewing v. Burnet*....\*41
2. An entry by one, on the land of another, is or is not, an ouster of the legal possession, arising from the title, according to the intention with which it is done ; if made under claim or color of right, it is an ouster ; otherwise, it is a mere trespass ; in legal language, the intention guides the entry, and fixes its character. *Id.*
3. It is well settled, that to constitute an adverse possession, there need not be a fence, a building, or other improvement made ; it suffices for this purpose, that visible notorious acts were exercised over the premises in controversy, for twenty-one years after an entry under a claim and color of title.... *Id.*
4. Where acts of ownership have been done upon land, which, from their nature, indicate a notorious claim of property in it, and are continued for twenty-one years, with the knowledge of an adverse claimant, without interruption, or an adverse entry by him, for twenty-one years ; such acts are evidence of an ouster of the former owner, and of an actual adverse possession against him ; if the jury think that the property was not susceptible of a more strict and definite possession than had been so taken and held. Neither actual occupation, nor cultivation, are necessary to constitute actual possession, when the property is so situated as not to admit of any permanent useful improvement ; and the continued claim of the party has been evidenced by public acts of ownership, such as he would exercise over property which he claimed in his own right, and could not exercise over property which he did not claim..... *Id.*
5. An adverse possession for twenty-one years, under claim or color of title, merely void, is a bar to a recovery under an elder title by deed ; although the adverse holder may have had notice of the deed..... *Id.*

POSTPONEMENT.

1. In a case depending between the states of Rhode Island and Massachusetts, the senior

counsel appointed to argue the cause for the state of Rhode Island, by the legislature was prevented, by unexpected and severe illness, attending the court ; the court, on the application of the attorney-general of the state, ordered a continuance for the term. *Rhode Island v. Massachusetts*..... \*227

PRACTICE.

1. In the ordinary course of things, on the trial of a cause before a jury, if an objection is made and overruled, as to the admission of evidence, and the party does not take any exception, he is understood to waive it ; the exception need not, indeed, then be put in form, or written out at large and signed ; but it is sufficient, if it be taken, and the right reserved to put it in form, to be written out at large and signed, within the time prescribed by the practice or rules of the court. *Poole v. Fleeger*..... \*185
2. In the state of Tennessee, the uniform practice has been, for tenants in common in ejectment, to declare on a joint demise ; and to recover a part, or the whole, of the premises declared for, according to the evidence adduced..... *Id.*
3. After a case had been, at the request of the plaintiff, certified from the circuit court of Maine, on a division of opinion between the judges of the court, the plaintiff filed in the circuit court, a notice that he had discontinued the cause, and gave the defendant notice, that at the ensuing term of the supreme court, the cause would be then discontinued. On motion of the plaintiff, the court allowed the discontinuance. *Veazie v. Wadleigh*.....\*55

See MANDAMUS : POSTPONEMENT.

PRESCRIPTION.

1. The doctrine of prescription, under the civil law, does not apply to an *antichresis*. *Livingston v. Story*.....\*351

See ANTICHRESIS.

PROBATE OF WILL.

See WILL.

PUBLIC GRANTS.

1. Public grants are to be construed strictly ; in the case of the United States *v. Arredondo*, 6 Pet. 736, the leading cases on this subject are collected together by the learned judge, who delivered the opinion of the court ; and the principle recognised, that in grants by

- the public, nothing passes by implication. *Charles River Bridge v. Warren Bridge.* \*420
2. No good reason can be assigned for introducing a new and adverse rule of construction, in favor of corporations; while the rules of construction known to the English common law are adopted, and adhered to in every other case, without exception. . . . . *Id.*
  3. The legislature of Massachusetts incorporated a company to make a bridge over Charles river, from Charlestown to Boston, giving the company a right to take tolls for a number of years; the grant contained no exclusive privilege over the waters of the river, above or below the bridge; no right to erect another bridge, or to prevent other persons from erecting one; no engagement from the state, that another should not be erected; and no undertaking, not to sanction competition, nor to make improvements that would diminish the amount of its income. Upon all these subjects, the charter was silent; and nothing was said in it, about a line of travel, in which they were to have exclusive privileges; no words were used, from which an intention to grant any of these rights could be inferred: *Held*, if the plaintiffs were entitled to exclusive privileges, they must be implied simply from the nature of the grant; and cannot be inferred from the words by which the grant is made. . . . . *Id.*
  4. Amid the multitude of cases which have occurred, and have been dally occurring, for the last forty or fifty years, this is the first instance in which such an implied contract has been contended for; and this court is called upon to infer it, from an ordinary act of incorporation, containing nothing more than the usual stipulations and provisions to be found in every such law; the absence of any such controversy, where there must have been so many occasions to give rise to it, proves, that neither states, nor individuals, nor corporations, ever imagined that such a contract could be implied from such charters; it shows, that the men who voted for these laws, never imagined that they were forming such a contract; and if it is maintained, that they have made it, it must be by a legal fiction, in opposition to the truth of the fact, and the obvious intention of the party. The court cannot deal thus with the rights reserved to the states; and by legal intendments and mere technical reasoning, take away from them any portion of that power over their own internal police and improvement, which is so necessary to their well-being and prosperity. . . . . *Id.*
  5. Let it once be understood, that such charters carry with them these implied contracts, and give this unknown and undefined property in

a line of travelling; it will soon be found, that the old turnpike corporations will awake from their sleep, and will call on this court to put down the improvements which have taken their place; the millions of property which have been invested in railroads and canals, upon lines of travel which had been before occupied by turnpike corporations, will be put in jeopardy; we shall be thrown back to the improvements of the last century; and obliged to stand still, until the claims of the old turnpike corporations shall be satisfied, and they shall consent to permit the states to avail themselves of the lights of modern science, and to partake of the benefit of those improvements, which are now adding to the wealth and prosperity, and the convenience and comfort of every other part of the civilized world. . . . . *Id.*

PUNCTUATION.

1. Punctuation is a most fallible standard by which to interpret a writing; it may be resorted to, when all other means fail; but the court will first take the instrument by its four corners, in order to ascertain its meaning; if that be apparent, on judicially inspecting it, the punctuation will not be suffered to change it. *Ewing v. Burnet.* . . . . . \*41

RESCISSION.

1. If a life-estate in land be sold, and at the time of the sale, the estate is terminated by the death of the person in whom the right vested, a court of equity would rescind the purchase; if a horse be sold, believed to be alive by both parties, but actually dead at the time of the sale, the purchaser would not be compelled to pay the consideration. *Allen v. Hammond.* . \*53

See CONTRACT.

RESIDENCE.

1. The residence of a party to a suit in another district of a state in which a suit is brought, does not exempt him from the jurisdiction of a court of the United States, established in the state; the division of a state into two or more districts, cannot affect the jurisdiction of the court, on account of citizenship; if found in the district in which he is sued, the court has jurisdiction. *McMicken v. Webb.* . . . . . \*25

RULES OF THE SUPREME COURT.

1. The 2d rule of this court for the regulation of equity practice in the circuit courts, is

understood by this court to apply to matters applicable to the merits, and not to mere pleas to the jurisdiction; and especially to those founded on any personal disability, or personal character of the party suing; or to any pleas merely in abatement. The rule does not allow a defendant, instead of filing a formal demurrer, or a plea, to insist on any special matter in his answer; and have also the benefit thereof, as if he had pleaded the same matter, or had demurred to the bill; in this respect, the rule is merely affirmative of the general rule of the court of chancery; in which, matters in abatement, and to the jurisdiction, being preliminary in their nature, must be taken advantage of by plea, and cannot be taken advantage of, in a general answer, which necessarily admits the right and capacity of the party to sue. *Livingston v. Story*.....\*351

See RULE, No. 44, p. 5.

STATES.

1. A state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation; when that jurisdiction is not surrendered or restrained by the constitution of the United States. *New York v. Miln*. \*102
2. It is not only the right, but the bounden and solemn duty, of a state, to advance the safety, happiness and prosperity of its people; and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the powers over the particular object, or the manner of its exercise, are not surrendered, or restrained, by the constitution of the United States.....*Id.*
3. All those powers which relate to mere municipal regulation, or which may more properly be called internal police, are not surrendered or restrained; and consequently, in relation to these, the authority of a state is complete, unqualified and exclusive.....*Id.*

See SUITS AGAINST A STATE.

STATUTE OF LIMITATIONS.

1. An adverse possession for twenty-one years, under claim or color of title, merely void, is a bar to a recovery under an elder title by deed; although the adverse holder may have had notice of the deed. *Ewing v. Burnet*.....\*41

SUITS AGAINST A STATE.

1. No sovereign state is liable to be sued without her consent; under the articles of

confederation, a state could be sued only in cases of boundary; it is believed, that there is no case where a suit has been brought, at any time, on a bill of credit, against a state, and it is certain, that no suit could have been maintained on this ground, prior to the constitution. *Briscoe v. Bank of the Commonwealth of Kentucky*.....\*271

SUPREME COURT.

1. The supreme court of the United States has no power, under the 25th section of the judiciary act of 1789, to revise the decree of a state court, where no question was raised or decided in the state court, upon the validity or construction of an act of congress, or upon the authority exercised under it, but on a state law only. *McBride v. Hoey*....\*167

TENANTS IN COMMON.

1. In the state of Tennessee, the uniform practice has been, for tenants in common in ejectment, to declare on a joint demise, and to recover a part, or the whole, of the premises declared for, according to the evidence adduced. *Poole v. Fleegeer*.....\*185

TENNESSEE AND KENTUCKY.

1. Construction of the compact of 1820, between the states of Tennessee and Kentucky, relative to the boundary between those states. *Poole v. Fleegeer*....\*185

VENDOR.

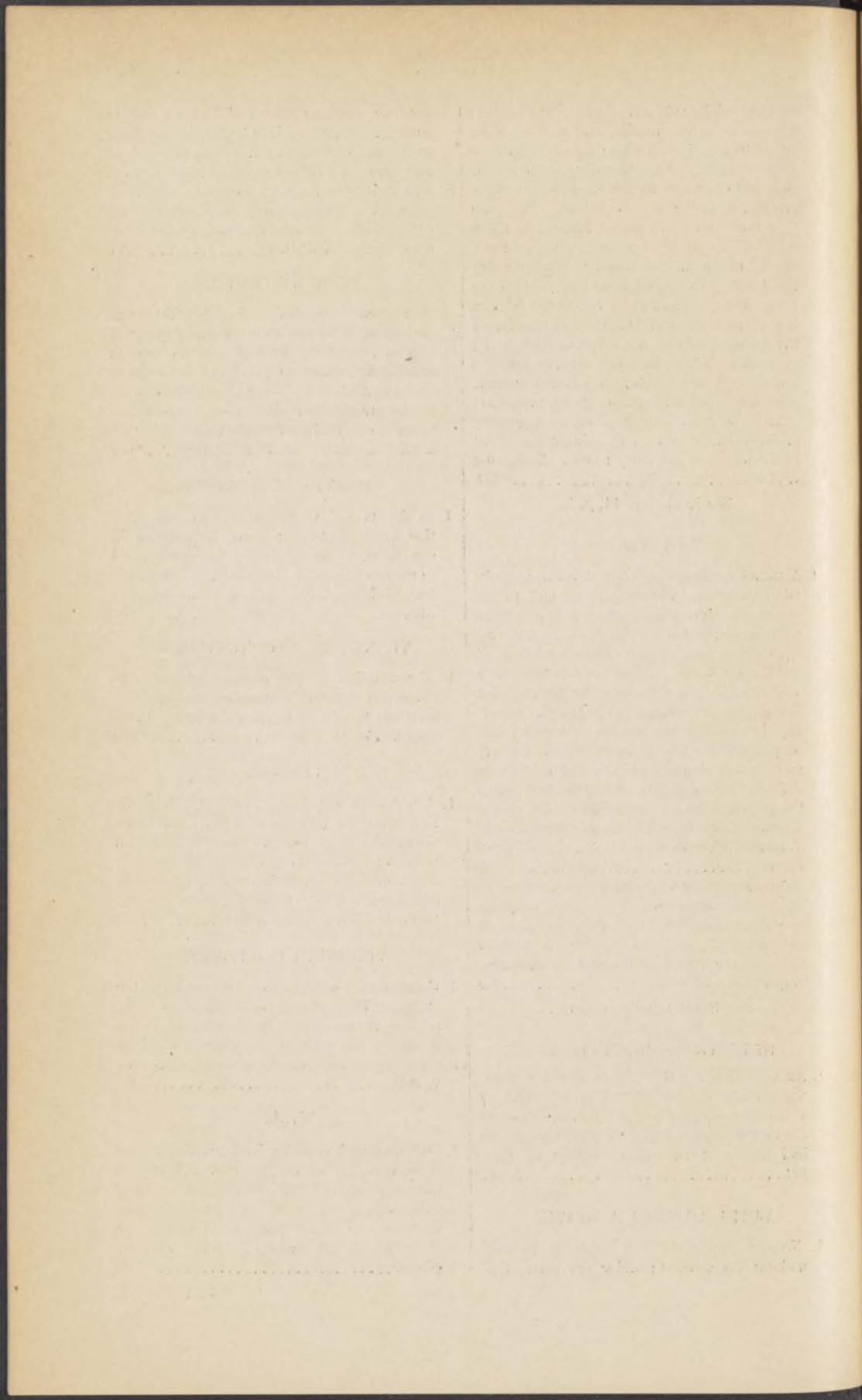
1. A vendor is bound to know that he actually has what he professes to sell; and even though the subject of the contract be known to both parties to be liable to a contingency, which may destroy it immediately; yet if the contingency has already happened, it will be void. *Allen v. Hammond*.....\*63

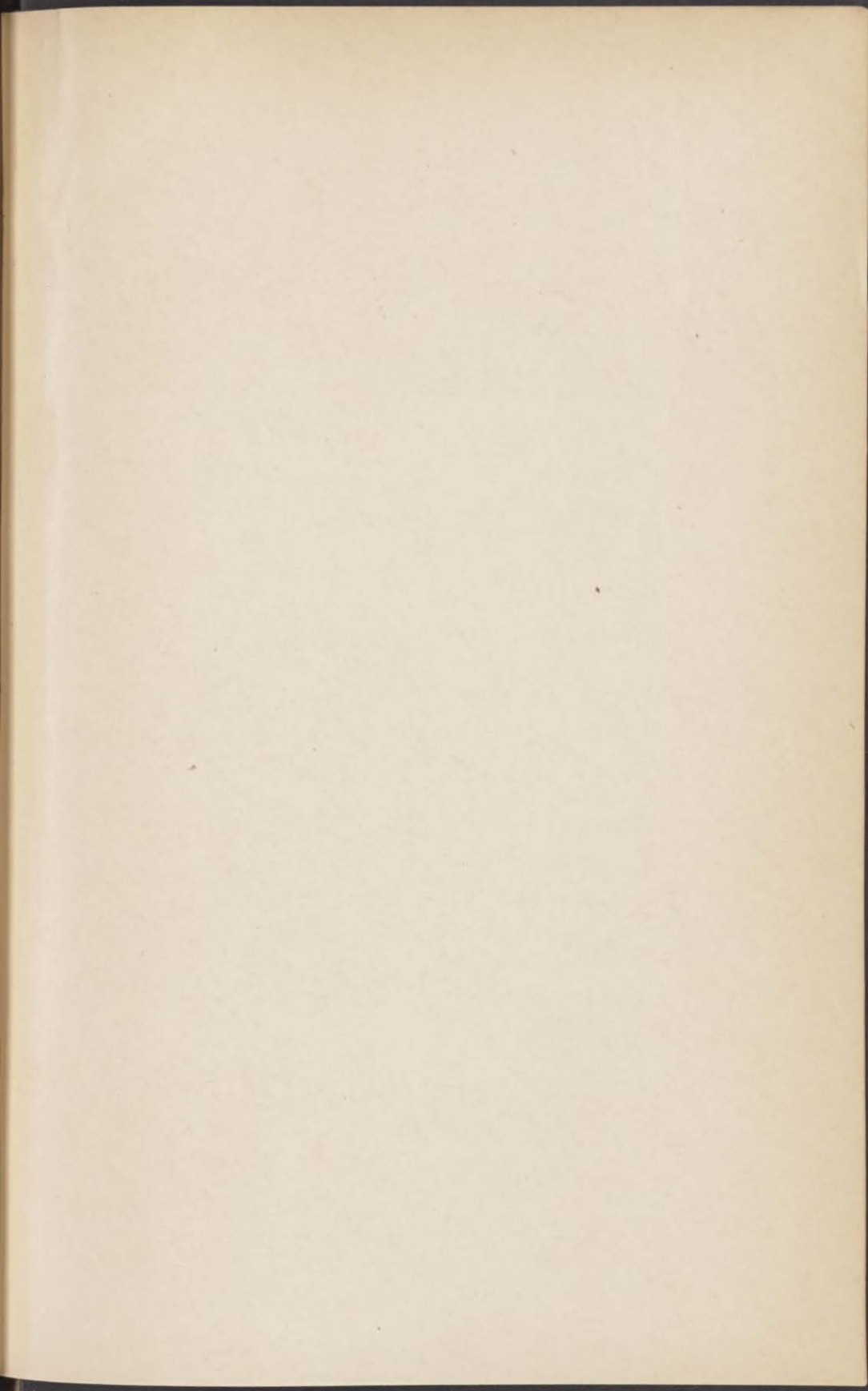
VIRGINIA LAND-TITLES.

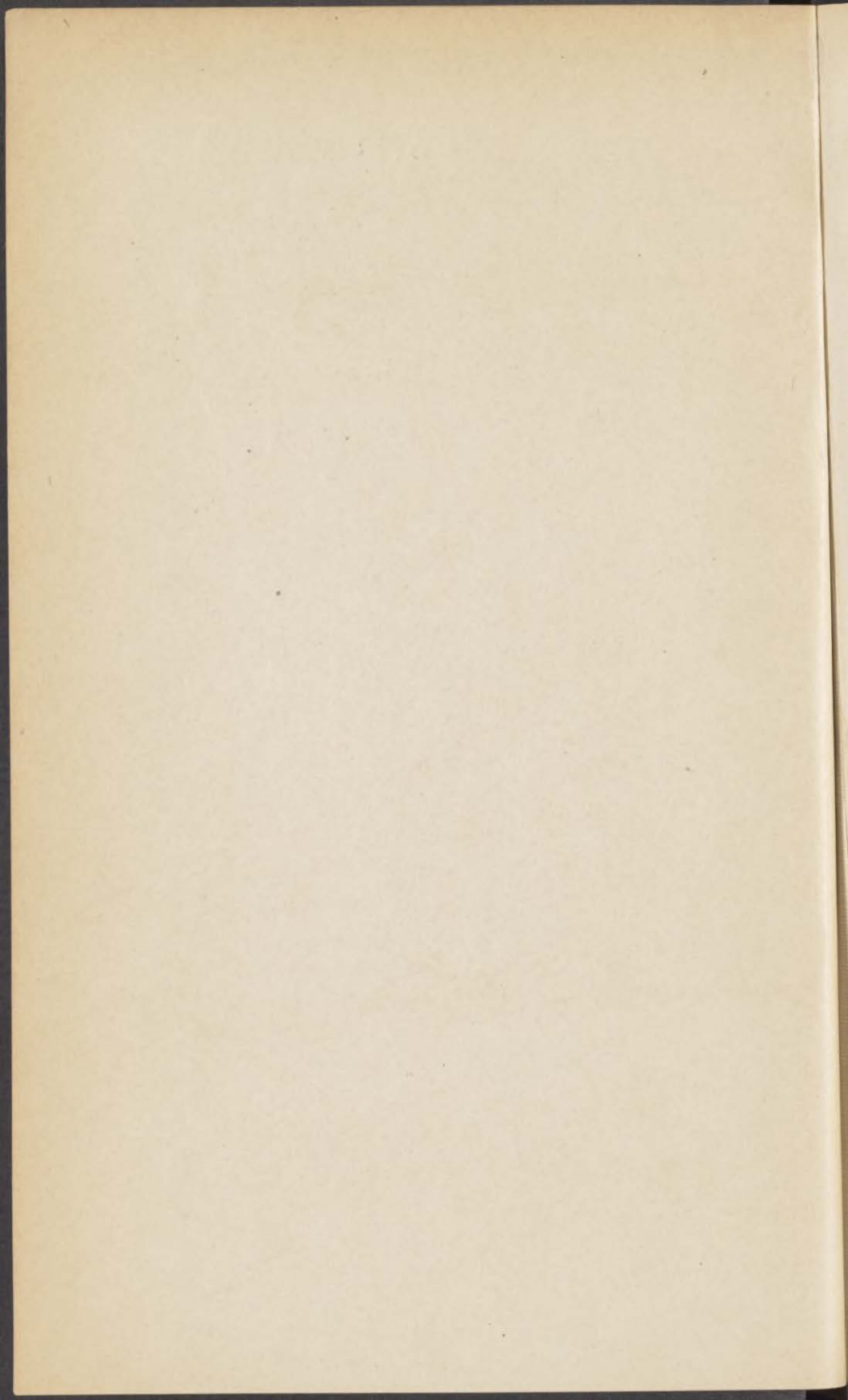
1. Construction of the compact between the states of Virginia and Pennsylvania, of 1780, relative to the title to lands, situated in the territory, the right to which was fixed by the compact between those states. *Marlatt v. Silk*.....\*1

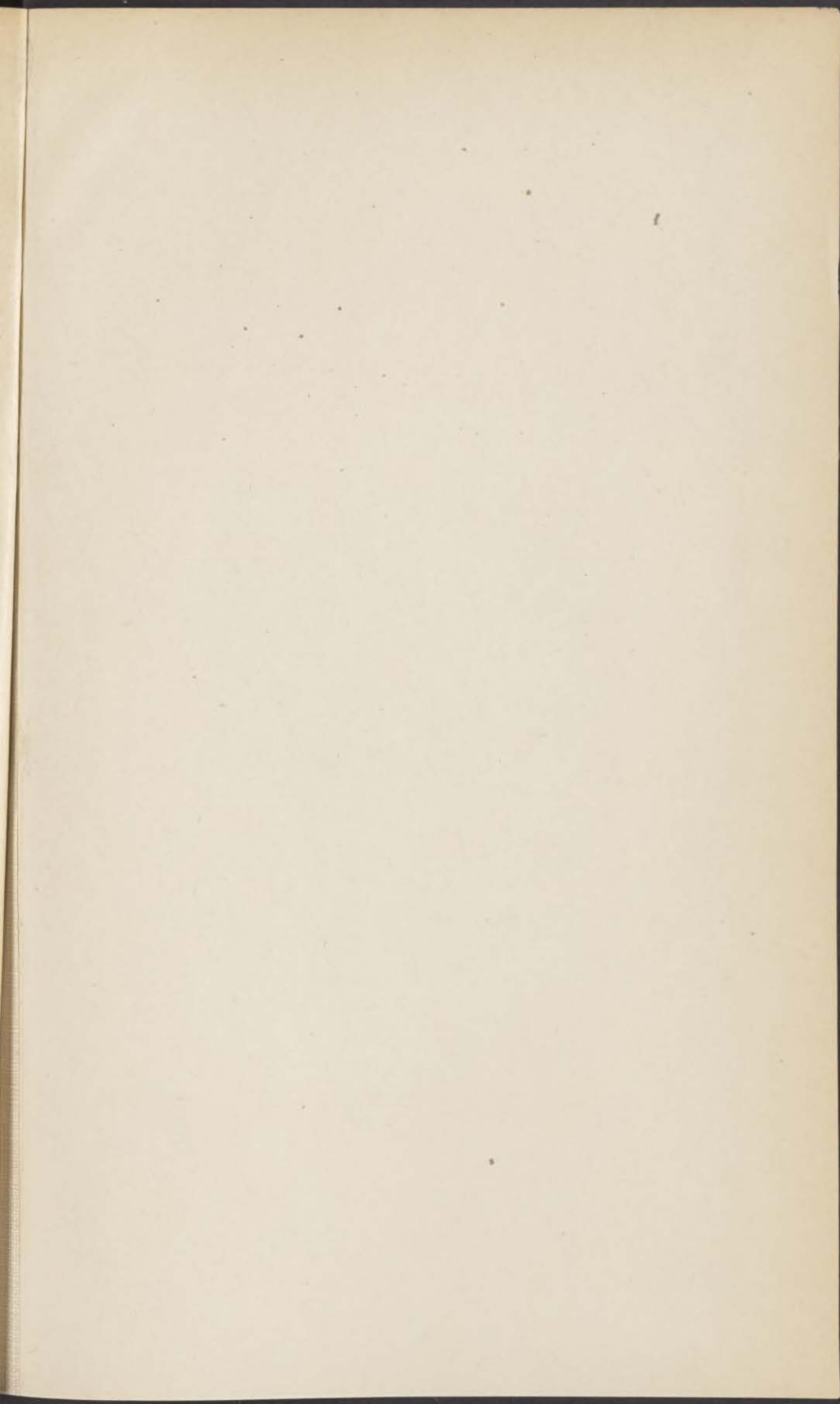
WILL.

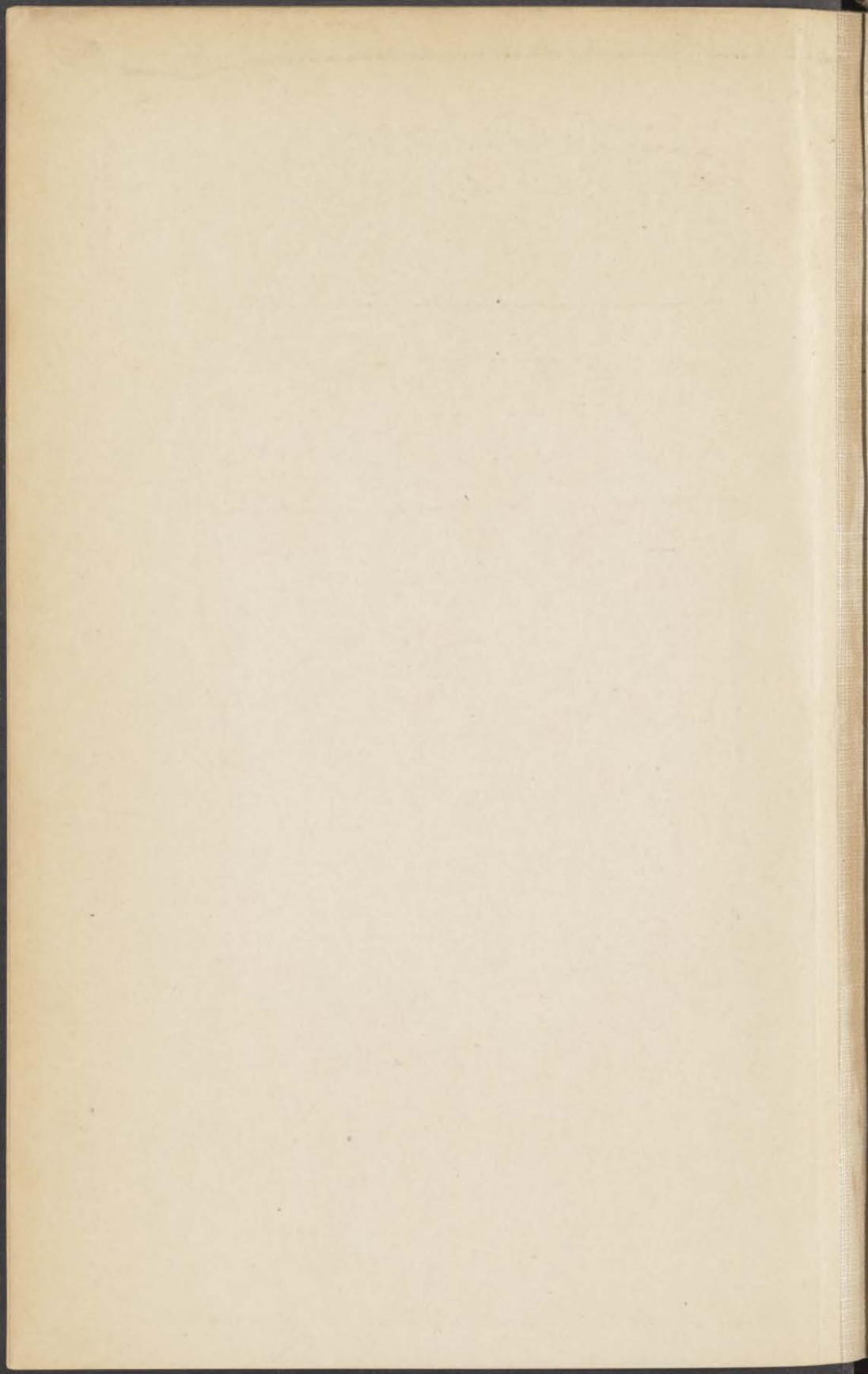
1. Where a will, devising lands, made in one state, is registered in another state, in which the lands lie, the registration has relation backwards; and it is wholly immaterial whether the same was made before or after the commencement of a suit. *Poole v. Fleegeer*.....\*185











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