

INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

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

ACTION.

1. A note for a pre-existing debt does not discharge the original cause of action, unless it is agreed that the note shall be taken in payment. *United States Bank v. Daniels*...*32

APPEAL.

1. Nature and extent of the powers of an appellate court. *Ex parte Sibbald*.....*488

APPEARANCE.

1. In the case of the State of Rhode Island v. Commonwealth of Massachusetts, the court said, "It has been contended that this court cannot proceed in this cause without some process and rule of decision prescribed, appropriate to the case, but no question on process can arise on these pleadings; none is now necessary, as the defendant has appeared and pleaded, which plea, in itself, makes the first point in the cause, without any additional proceeding; that is, whether the plea shall be allowed, if sufficient in law, to bar the complaint, or be overruled, as not being a bar in law, though true in fact," *Rhode Island v. Massachusetts**656
2. The state of Massachusetts, after having appeared to process issued against her, at the suit of the state of Rhode Island, on a bill filed for the settlement of boundary, after having filed an answer and plea to the bill, and having failed in a motion to dismiss the bill for want of jurisdiction; was, on motion of her counsel, allowed to withdraw

her appearance. *Massachusetts ads. Rhode Island*.....*756

See JURISDICTION.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

1. A debtor may prefer one creditor, pay him fully, and exhaust his whole property; leaving nothing for others equally meritorious. *Clarke v. White*.....*178

BAIL.

1. Where bail has been fixed, before the discharge of the principal under the insolvent laws, such a discharge will have no effect on the liability of the bail; if the discharge had been before the bail was fixed, it might have been a question, whether the bail had been discharged, under the rule laid down by the supreme court in the case of *Beers v. Haughton*, 9 Pet. 339. *Lyon v. Auchincloss*.....*239

BILL OF REVIVOR.

1. A bill of revivor is not the commencement of a new suit, but is the mere continuance of the old suit. It is upon ground somewhat analogous, that the circuit courts are held to have jurisdiction in cases of cross-bills and injunction bills, touching suits and judgments already in those courts. *Clarke v. Mathewson**164

BILL OF SALE.

1. Under the laws of Louisiana, and the decisions of the courts of that state, a mark for the name, to an instrument, by a person who is unable to write his name, is of the same effect as a signature of the name. *Zacharie v. Franklin*. *151
2. A bill of sale of slaves and furniture, reciting that the full consideration for the property transferred had been received, and which does not contain any stipulations or obligations of the party to whom it is given, is not a *cynalagmatic* contract, under the laws of Louisiana; and the law does not require that such a bill of sale shall have been made in as many originals as there were parties having a direct interest in it, or that it should have been signed by the vendee. *Id.*

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. A bill of exchange accepted and indorsed by citizens of Kentucky, and there negotiated, payable at New Orleans, was not, by force of the statute of Kentucky of 1798, subject to the payment of ten per cent. damages. *Bank of United States v. Daniels*. *32
2. A bill of exchange drawn in one state of the United States, on a person in another state, and payable there, is a foreign bill. *Id.*
3. Where a bill was drawn in Kentucky, on a person in Kentucky, and accepted, payable in New Orleans, the acceptor is liable on the contract, to the same extent as he would have been if he had accepted the bill in Louisiana. As a foreign bill, the holders were entitled to re-exchange, by commercial usage, when the protest for non-payment was made. *Id.*
4. Giving a note for a pre-existing debt, does not discharge the original cause of action; unless it is agreed, that the note shall be taken in payment. *Id.*
5. A party to a note, entitled to notice, may waive the notice, by a promise to see it paid, or an acknowledgment that it must be paid; or a promise that "he will set the matter to rights;" or by a qualified promise, having knowledge of the *laches* of the holder. *Reynolds v. Douglass*. *497

See EVIDENCE, 8-5.

BOTTOMRY.

See INSURANCE, 7, 9-11.

BOUNDARIES OF STATES.

1. The boundary established and fixed by com-

542

pact between nations, becomes conclusive upon all the subjects and citizens thereof, and binds their rights; and is to be treated, to all intents and purposes, as the true real boundary. The construction of such compact is a judicial question. *Rhode Island v. Massachusetts*. *657

2. There can be but two tribunals under the constitution who can act on the boundaries of states—the legislative or the judicial power; the former is limited, in express terms, to assent or dissent, where a compact or agreement is referred to them by the states; and as the latter can be exercised only by this court, when a state is a party, the power is here, or it cannot exist. . . . *Id.*
3. The supreme court exists by a direct grant from the people of their judicial power; it is exercised by their authority, as their agent selected by themselves, for the purposes specified; the people of the states, as they respectively became parties to the constitution, gave to the judicial power of the United States, jurisdiction over themselves, controversies between states, between citizens of the same or different states, claiming lands under their conflicting grants, within disputed territory. *Id.*
4. No court acts differently in deciding on boundary between states, than on lines between separate tracts of land; if there be uncertainty where the line is; if there be a confusion of boundaries by the nature of interlocking grants, the obliteration of marks, the intermixing of possession under different proprietors, the effects of accident, fraud or time, or other kindred causes; it is a case appropriate to equity. An issue at law is directed; a commission of boundary awarded; or, if the court are satisfied, without either, they decree what and where the boundary of a farm, a manor, province or a state is and shall be. *Id.*
5. There is neither authority of law nor reason for the position, that boundary between nations or states is, in its nature, any more a political question than any other subject on which they may contend. None can be settled without war or treaty, which is by political power; but, under the old and new confederacy, they could, and can, be settled by a court constituted by themselves, as their own substitutes, authorized to do that for states, which states alone could do before. *Id.*

See SUPREME COURT.

CASES CITED.

1. *Deneale v. Stump's Executors*, 8 Pet. 526;

- and Owings v. Kincannon, 7 Ibid. 399.
Wilson v. Life and Fire Insurance Company of New York.....*140
- 2 Dubois' Lessee v. Hepburn, 10 Pet. 1. *Hepburn v. Dubois' Lessee*.....*345
- 3 Morgan's Heirs v. Morgan, 2 Wheat. 290; Mollan v. Torrance, 9 Ibid. 537; and Dunn v. Clarke, 8 Pet. 1. *Clarke v. Muthawson*.....*165
- 4 New York v. New Jersey, 5 Pet. 287; Grayson v. Virginia, 3 Dall. 320; Chisholm's Executors v. Georgia, 2 Ibid. 419. *Massachusetts ads. Rhode Island*.....*757
- 5 United States v. Bailey, 9 Pet. 367. *White v. Turk*.....*238
- 6 United States v. State Bank of North Carolina, 6 Pet. 29; United States v. Amedy, 11 Wheat. 392; United States v. Fisher, 2 Cranch, 358; United States v. Hoce, 3 Ibid. 73; Price v. Bartlett, 8 Ibid. 431, Conrad v. Atlantic Insurance Co., 1 Pet. 439; Conrad v. Nicholl, 4 Ibid. 308; Brent v. Bank of Washington, 10 Ibid. 596; Hunter v. United States, 5 Ibid. 173. *Beaston v. Farmers' Bank of Delaware*.....*102
- 7 The decision of the court in the case of Foster v. Neilson, 2 Pet. 254, by which grants made by the crown of Spain, after the treaty of St. Ildefonso, of lands west of the river Perdido, and which were, by the United States, declared to be within the territory of Louisiana, ceded by France to the United States, were declared void, affirmed. *Garcia v. Lee*.....*511

CERTIFICATES OF DIVISION.

1. Where a case is certified from a circuit court, the judges of the circuit court having differed in opinion upon questions of law which arose on the trial of the cause; the supreme court cannot be called upon to express an opinion on the whole facts of the case, instead of upon particular points of law, growing out of the same. *Adams v. Jones*.....*207
2. The intention of congress, in passing the act authorizing a division of opinion of the judges of the circuit courts to be certified to the supreme court was, that a division of the judges of the circuit court, upon a single and material point in the progress of the cause, should be certified to the supreme court for its opinion; and not the whole cause. When a certificate of division brings up the whole cause, it would be, if the court should decide it, in effect, the exercise of original, rather than appellate jurisdiction. *White v. Turk*.....*238

CHANCERY AND CHANCERY PRACTICE.

1. Courts of chancery will not relieve for mistakes of fact. *Bank of United States v. Daniels*.....*32
2. Courts of equity are bound by statutes of limitation as courts of law.....*Id.*
3. The decree of the circuit court of the district of Columbia, dismissing a bill filed by the corporation of Georgetown, on behalf of themselves and the citizens of Georgetown, against the Alexandria Canal company, chartered by congress, praying that the company should be enjoined from building piers in the river Potomac, the erection of the same being an obstruction to the navigation of the river, and injuring its navigation, was affirmed. *Georgetown v. Alexandria Canal Company*.....*91
4. The jurisdiction of courts of chancery, in cases of nuisance, may be exercised in those cases in which there is imminent danger of irreparable mischief, before the tardiness of the law could reach it.....*Id.*
5. In what cases, and under what principles, it is competent for some persons to come into chancery, for themselves and others, having similar interests.....*Id.*
6. The rule in chancery is, if the answer of the defendant admits a fact, but insists on matter by way of avoidance, the complainant need not prove the fact admitted, but the defendant must prove the matter in avoidance. *Clarke v. White*.....*178
7. In equity, as in law, fraud and injury must concur to furnish ground for judicial action; a mere fraudulent intent, unaccompanied by any injurious act, is not the subject of judicial cognisance; fraud ought not to be conceived; it must be proved and expressly found.....*Id.*
8. The complainants in their bill alleged, that a conveyance of her real estate was made by a daughter to her father, for a nominal consideration; the answer denied the matter stated in the bill; and the defendants gave evidence of the transfer of stock, to the value of \$2000, on the day the conveyance was made, claiming that this was also the consideration in the deed: *Held*, that this evidence was admissible, without an amendment of the answer; it rebutted the allegation in the bill, that the deed was made wholly without consideration. *Jenkins v. Pye*.....*241
9. Where a defect of title to land sold was discovered by the vendee, after his purchase, and he proceeded to perfect the title in himself, and thus defeat the right of the vendor to the land, and he claimed a rescission of the contract of purchase, and a repayment of the sum paid by him for the land, it was *held*,

that he could not avail himself of the defect of title, while standing in the relation of purchaser, to defeat his agreement to make the purchase; he could, under the most favorable circumstances, only have the contract reformed, and the amount advanced to perfect the title, deducted from the unpaid purchase-money. A court of equity will not rescind such a contract of purchase, and will, on a bill filed by him to have such a contract rescinded, decline giving its aid against the vendors, to obtain the expenses of perfecting the title. *Galloway v. Finley*...*2

10. It is an established rule in equity, that when a vendor of land has not the power to make a title, the vendee may, before the time of performance, enjoin the payment of the purchase-money, until the ability to comply with the agreement is shown; but then, the court will give a reasonable time to procure the title, if it appears probable that it may be procured.....*Id.*
11. In reforming a contract for the sale of lands, equity treats the purchaser as a trustee for the vendor, because he holds under the vendor; and acts done to benefit the title, by the vendee, when in possession of the lands, inure to the benefit of him under whom the possession was obtained, and through whom the knowledge that a defect in the title existed was derived; the vendor and vendee stand in the relation of landlord and tenant; the vendee cannot disavow the vendor's title.....*Id.*
12. A bill of exceptions is altogether unknown in chancery practice; nor is a court of chancery bound to inscribe in an order-book, upon the application of one of the parties, an order which it may pass in a case before it. *Ex parte Story*.....*339
13. In a proceeding by a bill and *subpena* in chancery, in the circuit court of the United States of Louisiana, against upwards of 200 defendants, some of the latter appeared, and an affidavit was made, that in consequence of an epidemic in New Orleans and at La Fayette, and the absence of many of the defendants, it had been impossible for them to prepare for their defence, and they prayed time for the same; the circuit court allowed the defendants until the following term to appear and make defence. The conduct of the circuit court appears to have been strictly conformable to the practice and principles of a court of equity. *Poultney v. City of La Fayette*.....*472
14. Every court of equity possesses the power to mould its rules in relation to the time and manner of appearing and answering, so as to prevent the rule from working injustice. And it is not only in the power of the court

but it is its duty, to exercise a sound discretion upon this subject; and to enlarge the time whenever it shall appear, that the purposes of justice require it; the rules in chancery proceedings in the circuit courts, prescribed by this court, do not, and were not intended to, deprive the courts of the United States of this well-known and necessary power.....*Id.*

CHARGE OF THE COURT.

1. The court is not bound to give any hypothetical direction to the jury, and to leave them to find a fact, where no evidence of such fact is offered, nor any evidence from which it can be inferred. *McNeil v. Holbrook*.....*84
2. Where the items of an account stated were not disputed, but were admitted, and payment of the same demanded, it was not taking the question of fact, whether the account was a stated account, from the jury, for the court to instruct the jury that the account was a stated account. *Toland v. Sprague*.....*300

CIRCUIT COURTS.

1. The circuit court of each district sits within and for that district, and is bounded by its local limits; whatever may be the extent of the jurisdiction of the circuit court over the subject-matter of suits, in respect to persons and property, it can only be exercised within the limits of the district. Congress might have authorized civil process from any circuit court to have run into any state of the Union; it has not done so; it has not, in terms, authorized any civil process to run into any other district; with the single exception of *subpenas* to witnesses within a limited distance. In regard to final process, there are two cases, and only two, in which writs of execution can now by law be served in any other district than that in which the judgment was rendered; one in favor of private persons in another district of the same state; and the other in favor of the United States, in any part of the United States. *Toland v. Sprague*.....*300

See FOREIGN ATTACHMENT.

CIRCUIT COURT OF THE DISTRICT OF COLUMBIA.

1. The circuit court of the district of Columbia has jurisdiction to issue a *mandamus* to the postmaster-general of the United States,

commanding him to credit the amount found due to certain contractors for carrying the mail of the United States; the amount due to the contractors having been ascertained by the solicitor of the treasury of the United States, acting under an act of congress, referring the accounts to him. *Kendall v. United States*..... *524

See DISTRICT OF COLUMBIA: MANDAMUS.

COMMERCE.

See CONSTITUTIONAL LAW, 1.

COMMISSIONERS.

1. The acts of the commissioners appointed to adjust and settle land-titles in Louisiana, under the acts of congress authorizing and confirming the same; are conclusive as to all titles to lands which have been confirmed, according to the provisions of the different acts of congress on the subject. *Strother v. Lucas*..... *410

COMMON LAW.

1. At the date of the act of congress establishing the government of the district of Columbia, the common law of England was in force in Maryland; and, of course, remained and continued in force in the part of the district ceded by Maryland to the United States. The power to issue a *mandamus* in a proper case, is a part of the common law; and it has been fully recognised as in practical operation in a case decided in the court of that state. *Kendall v. United States*.....*524

See CIRCUIT COURT OF THE DISTRICT OF COLUMBIA: DISTRICT OF COLUMBIA: MANDAMUS.

COMPACTS BETWEEN STATES.

1. Compact between Virginia and Maryland, relative to the river Potomac. *Georgetown v. Alexandria Canal Co.*.....*91
2. The act of congress, which granted the charter to the Alexandria Canal company, is in no degree a violation of the compact between the states of Virginia and Maryland; nor of any of the rights that the citizens of either, or both states, claimed as being derived from it.....*Id.*

COMPOSITION WITH CREDITORS.

1. It is generally true, in cases of composition, that the debtor who agrees to pay a less sum

in the discharge of a contract, must pay punctually; if the agreement stipulates for partial payments, and the debtor fails to pay, the condition to take part is broken, the second contract forfeited; and is no bar to the original cause of action. *Clarke v. White*.....*178

2. In a composition for a debt, by which one party agreed to deliver goods to the amount of seventy per cent., in satisfaction of a debt exceeding \$10,000, and omitted to deliver within one dollar and forty-one cents of the amount, the mistake is too trivial to deserve notice.....*Id.*
3. If, upon failure or insolvency, one creditor goes into a contract of general composition common to the others; at the same time, having an under-hand agreement with the debtor, to receive a larger per cent.; such agreement is fraudulent and void....*Id.*
4. The rule cutting off under-hand agreements, in cases of joint and general compositions, as a fraud upon the other compounding creditors, and because such agreements are subversive of sound morals and public policy, has no application to a case where each creditor acts not only for himself, but in opposition to every other creditor; all equally relying on their vigilance to gain a priority which, if obtained, each being entitled to have satisfaction, cannot be questioned....*Id.*

CONQUEST.

1. Even in cases of conquest, the conqueror does no more than displace the sovereign and assume dominion over the country; "a cession of territory is never understood to be a cession of the property of the inhabitants; the king cedes only that which belongs to him; lands he had previously granted, were not his to cede. Neither party could so understand the Louisiana treaty; neither party could consider itself as attempting a wrong to individuals, condemned by the whole civilized world; 'the cession of a territory' should necessarily be understood to pass the sovereignty only, and not to interfere with private property." No construction of a treaty, which would impair that security to private property, which the laws and usages of nations would, without express stipulations, have conferred, would seem to be admissible, further than its positive words require. "Without it, the title of individuals would remain as valid under the new government, as they were under the old; and those titles, at least, so far as they were consummate, might be asserted in the courts of the United States, independently of this article." *Strother v. Lucas*.....*410

CONSTITUTIONAL LAW.

1. Under the clause of the constitution giving a power to congress "to regulate commerce with foreign nations, and among the several states," congress possesses the power to punish offences of the sort enumerated in the 9th section of the act of 1825. The power to regulate commerce, includes the power to regulate navigation, as connected with the commerce with foreign nations, and among the states; it does not stop at the mere boundary line of a state; nor is it confined to acts done on the waters, or in the necessary course of the navigation thereof; it extends to such acts done on land, which interfere with, obstruct or prevent the due exercise of the power to regulate commerce and navigation with foreign nations, and among the states. Any offence which thus interferes with, obstructs or prevents such commerce and navigation, though done on land, may be punished by congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers. *United States v. Coombs*. *76
2. Although the constitution does not, in terms, extend the judicial power to all controversies between two or more states; yet, it in terms excludes none, whatever may be their nature or subject. *Rhode Island v. Massachusetts*. *657
3. The supreme court, in construing the constitution as to the grants of powers to the United States, and the restrictions upon the states, has ever held, that an exception of any particular case pre-supposes that those which are not excepted, are embraced within the grant of prohibition; and have laid it down as a general rule, that where no exception is made, in terms, none will be made by mere implication or construction. *Id.*
4. In the construction of the constitution, the court must look to the history of the times, and examine the state of things existing when it was framed and adopted, to ascertain the old law, the mischief and the remedy. *Id.*
5. The supreme court cannot presume, that any state which holds prerogative rights for the good of its citizens, and, by the constitution, has agreed, that those of any other state shall enjoy rights, privileges and immunities in each as its own do, would either do wrong, or deny right, to a sister state, or its citizens; or refuse to submit to those decrees of the supreme court, rendered pursuant to its own delegated authority, when in a monarchy, its fundamental law declares that such decree executes itself. *Id.*
6. In the case of *Olmstead*, the supreme court expressed its opinion, that if state legislatures may annul the judgments of the courts

of the United States, and the rights thereby acquired, the constitution becomes a solemn mockery, and the nation is deprived of the means of enforcing its laws by its own tribunal. So fatal a result must be deprecated by all; and the people of every state must feel a deep interest to resisting principles so destructive of the Union, and in averting consequences so fatal to themselves. *Id.*

See BOUNDARIES OF STATES : JURISDICTION :
SUPREME COURT.

CONSTRUCTION OF STATE STATUTES.

1. The supreme court, in accordance to a steady course of decision for many years, will carefully examine and ascertain if there be a settled construction by the state courts of the statutes of the respective states, where they are exclusively in force; and abide by and follow such construction, when found to be settled. *Bank of the United States v. Daniels*. *32

CONSTRUCTION OF UNITED STATES
STATUTES.

1. If a section of an act of congress admits of two interpretations, one of which brings it within, and the other presses it beyond, the constitutional authority of congress; it is the duty of the supreme court to adopt the former construction; because a presumption never ought to be indulged, that congress meant to exercise or usurp any unconstitutional authority; unless that conclusion is forced on the court by language altogether unambiguous. *United States v. Coombs*. *72
2. Upon the general principles of interpreting statutes, where the words are general, the court are not at liberty to insert limitations not called for by the sense, or the objects, or the mischiefs of the enactment. *Id.*

CRIMES.

See JURISDICTION, 5.

DEBT.

1. An action of debt was instituted in the district court of the United States, on an obligation under the hands and seals of two persons; the action was against one of the parties to the instrument. The laws of Mississippi allow an action on such an instrument to be maintained against one of the parties only. *Rodgers v. Batchelor*. . . . *217

DECISIONS OF STATE COURTS.

1. The supreme court, in accordance to a steady course of decision for many years, feels it to be an incumbent duty, carefully to examine and ascertain if there be a settled construction by the state courts of the statutes of the respective states, where they are exclusively in force; and to abide by and follow such construction, when found to be settled. *Bank of United States v. Daniels*.....*32.
2. By the act of the legislature of Georgia, of 15th December 1810, the assignment or indorsement of a promissory note is made sufficient evidence thereof, without the necessity of proving the handwriting of the assignor. The judiciary act of 1789 declares, that the laws of the several states, except when the constitution, treaties or statutes of the United States require otherwise, are to be rules of decision in the courts of the United States, in trials at common law, where they apply. The court does not perceive any sufficient reason for construing this act of congress so as to exclude from its provisions those statutes of the several states, which prescribe rules of evidence in civil cases, in trials at common law. *McNeil v. Holbrook*.....*84.
3. The object of the law of congress was, to make the rules of decision of the courts of the United States, the same with those of the states; taking care to preserve the rights of the United States, by the exceptions contained in the section of the judiciary act. Justice to the citizens of the United States required this to be done; and the natural import of the words used in the act of congress, includes the laws in relation to evidence, as well as the laws in relation to property.....*Id.*

DEED OF FEME COVERT.

1. The deed of a *feme covert*, conveying her interest in lands which she owns in fee, does not pass her interest, by the force of its execution and delivery, as in the common case of a deed by a person under no legal incapacity. In such cases, an acknowledgment gives no additional effect between the parties to the deed; it operates only as to third persons, under the provisions of recording and kindred laws. The law presumes a *feme covert* to act under the coercion of her husband, unless before a court of record, a judge, or some commissioner, in England, by a separate acknowledgment, out of the presence of her husband, or, in these states, before some court, or judicial officer authorized to take and certify such acknowledgment,

the contrary appears. *Hepburn v. Dubois's Lessee*.....*345

DISTRICT OF COLUMBIA.

1. There is, in the district of Columbia, no division of powers between the general and state governments; congress has the entire control over the district, for every purpose of government; and it is reasonable to suppose, that in organizing a judicial department in this district all the judicial power necessary for the purposes of government, would be vested in the courts of justice. *Kendall v. United States*... ..*24

See COMMON LAW: MANDAMUS.

DOWER.

1. The doctrines of the common law, on the subject of dower, although since altered by an act of assembly in Maryland, were still the law of Maryland, when the United States assumed jurisdiction over the district of Columbia; and the act of congress of February 27th, 1801, which provides for its government, declares that the laws of Maryland, as they then existed, should continue and be in force in that part of the district which was ceded by that state. *Stille v. Carroll*.....*201
2. According to the principles of the common law, a widow was not dowerable in her husband's equity of redemption; and if a man mortgages in fee, before marriage, and dies without redeeming the mortgage, his widow is not entitled to dower.....*Id.*
3. Mortgages were made during the coverture, but the mortgage deeds were acknowledged by the wife, upon privy examination; and these acknowledgments, under the acts of assembly of Maryland of 1715, ch. 47, and 1766, ch. 14, bar the right of dower in the lots thus conveyed to the mortgagee. The legal estate passed to the mortgagee; and the husband retained nothing but the equity of redemption; and as the wife had no right of dower in this equitable interest, a subsequent deed, executed by the husband, conveyed the whole of his interest in the estate, and was a bar to the claim of dower. It was not necessary for the wife to join in such a deed, as she had no right of dower in the equity of redemption, which was conveyed by the deed..... *Id.*

EJECTMENT.

1. As there is no court of chancery of Pennsylvania, an action of ejectment is sustained on

- an equitable title, by the courts of that state. *Swayze v. Burke*.....*11
2. The plaintiff had brought an ejectment, which was before the court on a writ of error, in 1832, and the judgment in favor of the defendant was affirmed. (6 Pet. 763.) He afterwards brought another action of ejectment for the same land. Had this case been identical with the former, as to the merits, we should have followed the deliberate opinion delivered therein; but as one judgment in ejectment is not conclusive on the right of either possession or property in the premises in controversy, the plaintiff has a right to bring a new suit; and the court must consider the case, even it is in all respects identical with the former, though they may hold it to be decided by the opinion therein given. It is otherwise, when the second case, presents a plaintiff's or defendant's right, on matters of law or fact, material to its decision, not before appearing in the record; it then becomes the duty of the court to decide all pertinent questions arising on the record, in the same manner as if the case came before them for the first time, save such as arise on evidence identical as to the merits. In this case, it is a peculiar duty, enjoined upon us by the nature of the case, the course of the able and learned arguments as to the laws of Spain and her colonies, in its bearing on the interesting question before us, together with a view of the consequences of our final decision thereon. Were the court to leave any questions undecided, which fairly arise on the record, or to decide the cause or points of minor importance only, the value of the premises would justify future litigation; which no court of chancery might think proper to enjoin, so long as new and material facts could be developed, or pertinent points of law remain unsettled. *Strother v. Lucas*.....*410

EVIDENCE.

1. Where all the books, papers and vouchers of a clerk in the treasury, who had been a disbursing officer, relating to his disbursements and agency, have been destroyed by fire, without any fault of his; the case is, of necessity, open to the admission of secondary evidence; and under the general rule of evidence, he might be required to produce the best evidence which the nature of the case, under the circumstances, would admit. This rule, however, does not require of a party the production of the strongest possible evidence, but must be governed, in a great measure, by the circumstances of the case; and must

- have a bearing upon the matter in controversy; and must not be such as to leave it open to the suspicion or presumption, that anything left behind, and within the power of the party, would, if produced, make against him. *United States v. Laub*.....*1
2. It appeared, that the defendant offered to read in evidence, certain passages from a public document, mentioned in the bill of exceptions; the plaintiff's counsel consented to its being read, as the defendant's evidence; and after the same was read, the plaintiff's counsel requested the court to instruct the jury, that the conversation of defendant with Mr. Dicksons and Mr. McLean, read from the executive document, was not evidence to the jury, of the facts stated in such conversation, which instruction the court refused to give. The entire document referred to, is not set out in the bill of exceptions; and from what is stated, no conversation of the character objected to appears; but the evidence was admitted by consent; the plaintiffs were entitled to have the whole document read; and it was all in evidence before the court and jury. But the objection, on the ground, that some of the facts stated were only hearsay evidence, fails; the document, so far as it appears on the bill of exceptions contains no such conversation. This instruction, was, therefore, properly refused.....*Id.*
3. In an action on four promissory notes, one of which was made by the defendant in favor of the plaintiff, and the others were made by the defendant in favor of other persons, who had indorsed them to the plaintiff; parol evidence was properly admitted, that the defendant acknowledged that he was indebted to the plaintiff in the amount of the notes, and offered to confess judgment, in the course of a negotiation with the plaintiff's counsel, although the negotiation fell through, and although no proof was given of the handwriting or signatures of the indorsers of the notes. This case does not come within the reason or principles of the rules which excludes offers to pay, made by way of compromise upon a disputed claim, and to buy peace. *McNeil v. Holbrook*.....*84
4. The admissions of a defendant, that he is indebted to the plaintiff on promissory notes, when proved by competent testimony, are sufficient evidence of the transfer of negotiable paper, without proof of the handwriting of the payee. Whether the evidence was legally competent for that purpose, or not, is a question for the court, and not for the jury, in the absence of all contradictory testimony.....*Id.*
5. By the act of the legislature of Georgia, of

- 15th December 1810, the assignment or indorsement of a promissory note is made sufficient evidence thereof, without the necessity of proving the handwriting of the assignor. The judiciary act of 1789 declares, that the laws of the several states, except when the constitution, treaties or statutes of the United States require otherwise, are to be rules of decision in the courts of the United States, in trials at common law, where they apply. The court does not perceive any sufficient reason for construing this act of congress so as to exclude from its provisions, those statutes of the several states which prescribe rules of evidence in civil cases, in trials at common law. *Id.*
- 6 Where the grantor of an annuity, by deed, has conveyed all the interests in the property charged with the annuity, and an allegation of usury in the granting of the annuity is afterwards made, he may be a witness to prove usury; if he is not a party to the suit, and has conveyed all his right and title to the property to others, his creditors, thus divesting himself of all interest arising out of the original agreement, and is released from his debts by them, and is not liable to the costs of the suit. *Scott v. Lloyd.* *145
7. The decision in *Pet. C. C. 301 (Willings v. Consequa)*, where the court held, that a party named on the record might be released, so as to constitute him a competent witness, was cited in the argument. The court said, such a rule would hold out to parties a strong temptation to perjury, and we think it is not sustained either by principle or authority. *Id.*
8. Evidence will be legal, as rebutting testimony, as, to repel an imputation of charge of fraud, which would not be admissible as original evidence. *Zacharie v. Franklin.* *151
9. It is error, on the trial of a writ of right, before the grand assize, to prevent the introduction of written evidence, because in a trial of another cause, between the demandant, offering the testimony, and a defendant claiming in opposition to the demandant, under the same title with that of the defendant, before the grand assize, the court had frequently examined the title set up by the written evidence offered, and had become fully cognisant of it; and had, in that trial, at the suit of the demandant, in which it had been produced, decided that it in no wise tended to establish a legal title to the land in controversy in the demandant. *Bradstreet v. Thomas.* *174
10. The demandant had a right to place before the assize all the evidence which she thought might tend to establish her right of property, which had been ruled to be competent evidence in another suit; against the competency of which, nothing was objected in this suit; and the assize had a right to have such evidence before them, that they might apply to it the instructions of the court, as the law of the case, without which they could not do it. *Id.*
11. There is a safer repository of the adjudications of courts, than the remembrance of judges; and their declaration of them, is no proof of their existence. *Id.*
12. In a case in equity, brought by appeal from the court of appeals of East Florida, the contents of certain documents which contained the agreements of the parties, were stated to be set out in the bill; the contracts were not proved in the cause, by testimony, nor was their non-production accounted for by secondary evidence. The decrees of the Florida courts were reversed, and the cause remanded to the court of appeals, to allow the pleadings to be amended, and the documents referred to, or the contents of the same, to be duly authenticated and proved, &c. *Levy v. Arredondo.* *218
13. Where the evidence in a cause conduces to prove a fact in issue before a jury, if it is competent in law, a jury may infer any fact from such evidence which the law authorizes a court to infer on a demurrer to evidence. After a verdict in favor of either party, on the evidence, he has a right to demand of a court of error, that they look to the evidence only for one purpose, with the single eye to ascertain whether it was competent in law to authorize the jury to find the facts which made out the right of the party, on a part or the whole of his case; if, in its judgment, the appellate court shall hold that the evidence was competent, then they must found their judgment on all such facts as were legally inferrible therefrom; in the same manner, and with the same legal results as if they had been definitely set out in a special verdict. So, on the other hand, the finding of a jury on the whole evidence in a cause, must be taken as negating all the facts in which the party against whom their verdict is given, has attempted to infer from, or establish from, the evidence. *Hepburn v. Du-bois's Lessee.* *345
14. A translation by the secretary of the board of land-commissioners of Florida, whose duty it was to translate Spanish documents given in evidence before the board of commissioners, of a certified copy of a Spanish grant of land in Florida, which had been produced to the board, was properly admitted as evidence of the grant; satisfactory proof having been given to the court, that the original grant could not be found in the records

of East Florida; and that this was the best evidence, from the nature of the case, which could be given of the existence of the original paper, lost or destroyed. *United States v. Delespine's Heirs*. *654

FLORIDA LAND-CLAIMS.

1. A grant of land in East Florida was made by the governor, before the cession of Florida by Spain to the United States, on conditions which were not performed by the grantee, within the time limited in the grant; or any exertions made by him to perform them. No sufficient cause for the non-performance of the conditions having been shown, the decree of the supreme court of East Florida, which confirmed the grant, was reversed. *United States v. Mills's Heirs*. *215
2. A grant for land in Florida, by Gov. Coppinger, on condition that the grantee build a mill, within a period fixed in the grant, was declared to be void; the grantee not having performed the condition, nor shown sufficient cause for its non-performance. *United States v. Kingsley*. *476
3. Under the Florida treaty, grants of land made before the 24th January 1818, by his Catholic Majesty, or by his lawful authorities, stand ratified and confirmed, to the same extent that the same grants would be valid, if Florida had remained under the dominion of Spain; and the owners of conditional grants, who have been prevented from fulfilling all the conditions of their grants, have time, by the treaty, extended to them, to complete such conditions. That time, as was declared by the supreme court in *Arredondo's Case*, 6 Pet. 478, began to run, in regard to individual rights, from the ratification of the treaty; and the treaty declares, if the conditions are not complied with, within the terms limited in the grant, that the grants shall be null and void. *Id.*
4. In the construction of the Florida treaty, it is admitted, that the United States succeeds to all those equitable obligations which we are to suppose would have influenced his Catholic Majesty, to secure their property to his subjects, and which would have been applied by him in the construction of a conditional grant, to make it absolute; and further, that the United States must maintain the rights of property under it, by applying the laws and customs by which those rights were secured, before Florida was ceded; or by which an inchoate right of property would, by those laws and customs, have been adjudicated by the Spanish authority to have become a perfect right. *Id.*

See LOUISIANA AND FLORIDA TREATIES.

FOREIGN ATTACHMENT.

1. Process of foreign attachment cannot be properly issued by the circuit courts of the United States, in cases where the defendant is domiciled abroad, or not found within the district in which the process issues, so that it cannot be served upon him. *Toland v. Sprague*. *300
2. By the general provisions of the laws of the United States: 1. The circuit courts can issue no process beyond the limits of their districts. 2. Independently of positive legislation, the process can only be served upon persons within the same districts. 3. The acts of congress adopting the state process, adopted the form and modes of service only, so far as the persons are rightfully within the reach of such process; and did not intend to enlarge the sphere of the jurisdiction of the circuit courts. 4. The right to attach property to compel the appearance of persons, can properly be used only in cases in which such persons are amenable to the process of the circuit court, *in personam*; that is, where they are inhabitants, or found within the United States; and not where they are aliens, or citizens resident abroad, at the commencement of the suit, and have no inhabitancy here. *Id.*
3. In the case of a person being amenable to process, *in personam*, an attachment against his property cannot be issued against him; except as a part of, or together with, process to be served upon his person. *Id.*
4. A party against whose property a foreign attachment has issued, in a circuit court of the United States, although the court had no right to issue such attachment, having appeared to the suit, and pleaded to issue, cannot afterwards deny the jurisdiction of the court. The party had, as a personal privilege, a right to refuse to appear; but it was also competent to him to waive the objection. *Id.*

FRAUD.

1. The administrator of his father, who left a valuable estate in the county of Allegheny, Pennsylvania, suffered the estate to be sold by the sheriff, for a debt due by the intestate, and the estate was purchased by the attorney of the creditor, for a considerable sum beyond the debt; who, after holding it for some time, conveyed it to the administrator, by deed, vesting the estate in him, in his own right, he having been paid the amount of the debt due by the intestate. The administrator, to an application made

to him by a legal heir and a grandchild, who lived in the state of Mississippi, represented that the intestate had not left more property than would pay his debts; there was evidence that less than one-tenth of the real estate of the intestate would have satisfied the judgment for what it was sold; the administrator claimed the property conveyed to him as his own, and to exclude all claims to it by the grandchild of the intestate: *Held*, that no title to the estate, against the claim of the co-heir of the intestate, was acquired under the deed made to him by the attorney of the creditor; and that in a proceeding in ejectment by the co-heir, to recover her part of the real estate, in order to maintain the suit, it was not necessary to prove that the purchaser at the sheriff's sale participated in the fraud, in order to enable the co-heir to recover in an ejectment. *Swayze v. Burke*. *11

2. That fraud is cognisable in a court of law, as well as in a court of equity, is a well-established principle; it has often been so ruled in the supreme court. *Id*.

FRAUDULENT CONVEYANCES.

1. Where there is clearly a *bond fide* grantor, the grant is not one of those conveyances within the statutes against fraudulent conveyances. *Clarke v. White*. 178
2. W. purchased a lot of ground in the city of Washington, early in 1829, for \$1532, on a credit of one, two and three years, and paid the notes at maturity; he took possession, immediately after the purchase, and commenced improving, by erecting buildings on it; on the 14th of January 1832, Smith, who had sold the land at the request of W., conveyed it to a trustee, for the benefit of the infant children of W. The improvements, before the deed, amounted in value to \$3000, and after the deed \$1200 or \$1600; he failed in December, 1833; and the property was then worth about \$6000; the deed of conveyance by Smith, was not recorded until within one day of the expiration of the time prescribed for recording such deed, by the statute of Maryland. Parties who made a composition of a large debt due to them by W., in which composition they sustained a loss of thirty per cent., knew at the time of the composition, of the conveyance of this property to the infant children of W., and of his large improvements on the same; and made the composition with this knowledge. The court refused to declare the agreement of composition void, because of this transaction. *Id*.

GRANTS.

1. This court has uniformly held, that the term "grant" in a treaty, comprehends not only those which are made in form, but also any concession, warrant, order or permission to survey, possess or settle, whether evidenced by writing or parol, or presumed from possession; and that in the term "laws" is included custom and usage, when once settled; though it may be "comparatively of recent date, and is not one of those to the contrary of which the memory of a man runneth not, which contributed so much to make up the common-law code, which is so justly venerated." *Strother v. Lucas*. *410
2. A grant may be made by a law, as well as a patent pursuant to a law; and a confirmation by a law, is as fully to all intents and purposes a grant, as if it contained in terms a grant de novo. *Id*.

See FLORIDA LAND-CLAIMS: LOUISIANA AND FLORIDA TREATIES.

GRANTS IN LOUISIANA AND IN FLORIDA.

See FLORIDA LAND-CLAIMS: LOUISIANA AND FLORIDA TREATIES.

GUARANTEE.

1. Upon a letter of guarantee, addressed to a particular person, or to persons generally, for a future credit to be given to a party in whose favor the guarantee is drawn; to charge the guarantor, notice is necessarily to be given to him, that the person giving the credit has accepted or acted upon the guarantee, and has given credit on the faith of it. This is not an open question in the supreme court, after the decisions which have been made in *Russell v. Clarke*, 7 Cranch 69; *Edmondston v. Drake*, 5 Pet. 624; *Douglass v. Reynolds*, 7 Ibid. 113; and *Lee v. Dick*, 10 Ibid. 482. *Adams v. Jones*. *207
2. The rule is well settled, that the guarantor of a promissory note, whose name does not appear on the note, is bound, without notice, where the maker of the note was insolvent at its maturity; unless he can show he has sustained some prejudice by want of notice of a demand on the maker of the note, and notice of non-payment. *Reynolds v. Douglass*. *497
3. If the guarantor could prove he had suffered damage by the neglect to make the demand on the maker of the note, and to give notice, he would only be discharged to the extent of the damage sustained. *Id*

4. In order to enable the party claiming under a guarantee, to recover from the guarantor by a letter of credit, he must prove that notice of its acceptance had been given in a reasonable time after the letter of credit had been accepted; this notice need not be proved to have been given in writing, or in any particular form; but may be inferred by the jury from facts and circumstances which warrant such inference. *Id.*
5. A recognition of the parties to a letter of credit, of their obligation to pay as guarantors, under a supposed liability, which did not arise from the facts of the case, and of which facts they were ignorant; would not be a waiver of the notice they were entitled to have of the acceptance of their guarantee. *Id.*
6. A promise to pay a debt, by the guarantors, qualified with a condition, which was rejected, is not a waiver by the guarantor of his right to notice of the acceptance of their guarantee. *Id.*
7. When the party in whose favor a letter of credit is given, afterwards becomes insolvent, and his insolvency is known to the guarantors; it is not necessary, in an action on the letter of credit, to prove that a demand of payment was made on the insolvent. *Id.*

INSOLVENT LAWS.

See BAIL.

INSURANCE.

1. By the well-settled principles of law, in the United States, the state of the facts, and not the state of the information, at the time of the abandonment, constitutes the criterion by which is to be ascertained whether a total loss has occurred or not, for which an abandonment can be made. If the abandonment, when made, is good, the rights of the parties are definitively fixed; and do not become changed by any subsequent events; if, on the other hand, the abandonment, when made, is not good, subsequent circumstances will not affect it; so as retroactively to impart to it a validity which it had not at its origin. *Bradlie v. Maryland Insurance Co* *378
2. In cases where the abandonment is founded upon a supposed technical total loss, by a damage or injury exceeding one-half the value or the vessel, although the fact of such damage or injury must exist at the time, yet it is necessarily open to proof, to be derived from subsequent events. Thus, if the repairs, when subsequently made, clearly exceed the half value, it is plain, that this affords one of the best proofs of the actual damage or injury; on the other hand, if the subsequent repairs are far below the half value, this, so far as it goes, affords an inference the other way. In many cases of stranding, the state of the vessel may be such, from the imminency of the peril, and the apparent cost of expenditures requisite to deliver her from it, as to justify an abandonment; although, by some fortunate occurrence, she may be delivered from her peril, without an actual expenditure of one-half of her value, after she is in safety. Where, in the circumstances in which the vessel then may have been, in the highest degree of probability, the expenditures to repair her would exceed half her value, and if her distress and peril be such as would induce a considerate owner, uninsured, and upon the spot, to withhold every attempt to get the vessel off, because of such apparently great expenditures; the abandonment would, doubtless, be good. *Id.*
3. In respect to the mode of ascertaining the value of the ship, and, of course, whether she is injured to the amount of half her value, it has, on the fullest consideration, been held by the supreme court, that the true basis of the valuation is the value of the ship at the time of the disaster; and that if, after the damage is, or might be, repaired, the ship is not, or would not be, worth, at the place of repairs, double the cost of repairs, it is to be treated as a technical total loss. *Id.*
4. The valuation in the policy, or the value at the home port, or in the general market of other ports, constitutes no ingredient in ascertaining whether the injury by the disaster is more than one-half of the value of the vessel, or not. For the like reason, the ordinary deduction in case of a partial loss of "one-third new for old," from the repairs, is equally inapplicable to cases of a technical total loss, by an injury exceeding one-half of the value of the vessel. *Id.*
5. The mere retardation of the voyage, by any of the perils insured against, not amounting to, nor producing, a total incapacity of the ship eventually to perform the voyage, cannot, upon principles well established, be admitted to constitute a technical total loss, which will authorize an abandonment. A retardation, for the purpose of repairing damage from the perils insured against, that damage not exceeding one moiety of the value of the ship, falls directly within this doctrine; under such circumstances, if the ship can be repaired, and is repaired, and is thus capable of performing the voyage, there is no ground of abandonment, founded upon

- the consideration, that the voyage may not be worth pursuing, for the interest of the ship-owner; or that the cargo has been injured so that it is not worth transporting further on the voyage; for the loss of the cargo for the voyage, has nothing to do with the insurance upon the ship for the voyage.....*Id.*
6. An insurance on time differs, as to this point, in no essential manner, from one upon a particular voyage; except in this, that in the latter case, the insurance is upon a specific voyage described in the policy; whereas, a policy on time insures no specific voyage, but it covers any voyage or voyages whatsoever, undertaken within, and not exceeding, in point of duration, the limited period for which the insurance is made. But it does not contain an undertaking that any particular voyage shall be performed, within a particular period; it warrants nothing as to any prolongation or retardation of the voyage; but only that the ship shall be capable of performing the voyage undertaken, notwithstanding any loss or injury which may accrue to her during the time for which she is insured; and of repairing it, if interrupted.....*Id.*
7. There is no principle of law which makes the underwriters liable, in the case of a merely partial loss of the ship, if money is taken up on bottomry for the necessary repairs and expenditures; and which makes it the duty of the underwriters to deliver the ship from the bottomry bond, to the extent of their liability for the expenditures; and that if they do not, and if the vessel is sold under the bottomry bond, they are liable, not only for the partial loss, but for all other losses to the owner, for their neglect....*Id.*
8. The underwriters engage to pay the amount of the expenditures and losses directly flowing from the perils insured against; but not any remote or contingent losses to the owner, from their neglect to pay the same.... *Id.*
9. The underwriters are not bound to supply funds, in a foreign port, for the repairs of any damage to the ship, occasioned by a peril insured against; they undertake only to pay the amount, after due notice and proof of the loss, and within a prescribed time.....*Id.*
10. If, to meet the expenditures for repairs, the master is compelled to take up money on bottomry, and thereby an additional premium becomes payable, that constitutes a part of the loss for which the underwriters are liable; but in cases of partial loss, the money is not taken up on account of the underwriters, but of the owner; and they become liable for the loss, whether the bot-

- tomry bond ever becomes due and payable, or not.....*Id.*
11. In the case of a partial loss, where money is taken up on bottomry bond, to defray the expenditures of repairs, the underwriters have nothing to do with the bottomry bond; but are simply bound to pay the partial loss, including their share of the extra expenses of obtaining the money in that mode, as a part of the loss.....*Id.*

JUDICIAL POWERS.

1. It is a sound principle, that in every well-organized government, the judicial powers should be co-extensive with the legislative; so far, at least, as they are to be enforced by judicial proceedings. *Kendall v. United States*.....*524

JURISDICTION.

1. The jurisdiction of the supreme court, in writs of error and appeals from the circuit court, is limited to cases where the sum in controversy exceeds \$2000. Where, by a decree of the circuit court, on an application to have a judgment of the circuit court reformed, so as to expunge therefrom \$1000, and if the decree of the circuit court, ordering the same, had been affirmed in the supreme court, the appellants would have been obliged to allow the deduction of \$1000 from the judgment, with nineteen years' interest, amounting together to the sum of \$2040: it was *held*, that the supreme court had jurisdiction of the appeal. *Bank of United States v. Daniels*.....*32
2. The demandant, a subject of the king of Great Britain, instituted an action, by writ of right, in the district court for the northern district of New York, against the defendant, a citizen of New York; in the declaration, there was no averment that the defendant was a citizen of New York. The defendant pleaded to the first count in the declaration, and demurred to the second and third counts; the demandant joined in the demurrer, and averred that the defendant was a citizen of New York; in the subsequent proceedings in the case in the district court, and afterwards in the supreme court, no exception was taken by the defendant, that there was no averment in the declaration, that the demandant was a citizen of the United States, nor until the case came a second time before the supreme court, to which it was now brought by a writ of error, prosecuted by the demandant in the writ of right. The defendant moved to dismiss the writ of error, for the want of an averment of

- the citizenship of the defendant in the declaration. The court overruled the motion. *Bradstreet v. Thomas*. *59
3. To give the supreme court of the United States jurisdiction, under the 25th section of the judiciary act, in a case brought from the highest court of a state, it must be apparent in the record, that the state court did decide in favor of the validity of a statute of the state the constitutionality of which was brought into question on the writ of error. Two things must be apparent in the record; first, that some one of the questions stated in the 25th section did arise in the state court; and secondly, that a decision was actually made thereon, by the same court, in the manner required by the section. *McKinney v. Carroll*. *66
4. Indictment in the circuit court of the United States for the southern district of New York, for feloniously stealing a quantity of merchandise, belonging to the ship Bristol, the ship being in distress, and cast away on a shoal of the sea, on the coast of the state of New York; the indictment was founded on the 9th section of the act, entitled, "an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved 3d March 1825. The goods were taken above high-water mark, upon the beach, in the county of Queens, in the state of New York: *Held*, that the offence committed was within the jurisdiction of the circuit court. *United States v. Coombs*. 72
5. In cases purely dependent upon the locality of the act done, the admiralty jurisdiction is limited to the sea, and to the tide-water as far as the tide flows. Mixed cases may arise, and often do arise, where the act and services done are of a mixed nature; as, where salvage services are performed, partly on tide waters and partly on shore, for the preservation of the property, in which the admiralty jurisdiction has been constantly exercised to the extent of decreeing salvage. *Id.*
6. A bill was filed by W., a citizen of Connecticut, against M. and others, citizens of Rhode Island, to the circuit court of the United States for the district of Rhode Island; an answer was put into the bill, and the cause was referred to a master for an account; pending these proceedings, the complainant died, and administration of his effects was granted to C., a citizen of Rhode Island, who filed a bill of revivor in the circuit court. The laws of Rhode Island do not permit a person residing out of the state to take out administration of the effects of a deceased person within the state; and they make such administration indispensable to the prosecution and defence of any suit in the state, in right of the estate of the deceased: *Held*, that the bill of revivor was, in no just sense, an original suit, but was a mere continuation of the original suit, the parties to the original suit were citizens of different states, and the jurisdiction of the court completely attached to the controversy; having so attached, it could not be divested by any subsequent proceedings; and the circuit court of Rhode Island had rightful authority to proceed to its final determination. *Clarke v. Mathewson*. *164
7. If, after the proper commencement of a suit in the circuit court, the plaintiff removes into, and becomes a citizen of, the same state with the defendant; the jurisdiction of the circuit court over the cause is not affected by such change of domicile. *Id.*
8. The death of a party, pending a suit, does not, where the cause of action survives, amount to a determination of the suit. It might, in suits at common law, upon the mere principles of that law, have produced an abatement of the suit, which would have destroyed it; but in courts of equity, an abatement of the suit, by the death of the party, has always been held to have a very different effect; for such abatement amounts to a mere suspension, and not to a determination, of the suit. It may again be put in motion by a bill of revivor; and the proceedings being revived, the court proceeds to its determination as on an original bill. . . . *Id.*
9. In the 31st section of the judiciary act of 1789, congress manifestly treats the revivor of a suit, by or against the representatives of the deceased party, as a matter of right, and as a mere continuance of the original suit; without any distinction as to the citizenship of the representative, whether he belongs to the same state where the cause is depending, or to another state. *Id.*
10. The supreme court has not jurisdiction of a case brought by a writ of error from the supreme court of the state of Missouri, under the 25th section of the judiciary act, where the question was whether the appellee was a slave. The provisions of the treaty by which Louisiana was ceded to the United States, and in which was a guarantee of the property of persons residing at the time of the cession, within the territory of Louisiana, may be enforced in the courts of the state of Missouri; the allegation that the treaty has been misconstrued by the supreme court of the state, in refusing to sanction the claim asserted, will not give the supreme court of the United States jurisdiction in the case. *Choteau v. Marguerite*. . . . *507
11. In the case of *Crowell v. Randell*, 10 Pet.

- 368, the court revised all the cases on jurisdiction under the 25th section of the judiciary act, and laid down the law as they wished it to be universally understood. . . *Id.*
12. No court can, in the ordinary administration of justice, in common-law proceedings, exercise jurisdiction over a party, unless he voluntarily appear, or be found within the jurisdiction of the court, so as to be served with process; such process cannot reach the party beyond the territorial jurisdiction of the court. This is a personal privilege, which may be waived by appearance; and if advantage is to be taken of it, it must be by plea, or some other mode, at an early stage of the cause. *Rhode Island v. Massachusetts*. *657
13. Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit; to adjudicate or exercise any judicial power over them. . . *Id.*
14. An objection to jurisdiction, on the ground of exemption from the process of the court in which the suit is brought, or the manner in which a defendant is brought into it, is waived by appearance and pleading to issue; but when the objection goes to the power of the court over the parties, or the subject-matter, the defendant need not, for he cannot, give the plaintiff a better writ or bill. *Id.*
15. In the case of *Rhode Island v. Massachusetts*, the court did not mean to put the jurisdiction of the supreme court on the ground, that jurisdiction was assumed in consequence of the state of *Massachusetts* having appeared in that cause; it was only intended to say, that the appearance of the state superseded the necessity of considering the question, whether any and what course would have been adopted by the court, if the state had not appeared; the court did not mean to be understood, that the state had concluded herself, on the ground that she had voluntarily appeared; or, that if she had not appeared, the court would not have assumed jurisdiction of the case. Being satisfied the court had jurisdiction of the subject-matter of the bill, so far at least as respected the question of boundary, all inquiry as to the mode and manner in which the state was to be brought into court, or what would be the course of proceeding, if the state declined to appear, became entirely unnecessary. *Massachusetts ads. Rhode Island*. *767

LAND TITLES IN LOUISIANA AND MISSOURI.

1. The state of Missouri was formerly a part of the territory, first of France, next of Spain, then of France, who ceded it to the United

- states by the treaty of 1803, in full propriety, sovereignty and dominion, as she had acquired and held it; by which, this government put itself in place of the former sovereigns, and became invested with all their rights, subject to their concomitant obligations to the inhabitants. Both were regulated by the law of nations, according to which, the rights of property are protected, even in the case of a conquered country; and held sacred and inviolable, when it is ceded by treaty, with or without any stipulation to such effect; and the laws, whether in writing, or evidenced by the usage and customs of the conquered or ceded country, continue in force, until altered by the new sovereign. *Strother v. Lucas*. *410
2. No principle can be better established by the authority of the supreme court, than "that the acts of an officer, to whom a public duty is assigned by his king, within the sphere of that duty, are *primâ facie* taken to be within his power." "The principles on which it rests, are believed to be too deeply founded in law and reason, even to be successfully assailed; he who would controvert a grant, executed by the lawful authority, with all the solemnities required by law, takes on himself the burden of showing that the officer has transcended the powers conferred upon him; or that the transaction is tainted with fraud." *Id.*
3. Where the act of an officer to pass the title to land, according to the Spanish law, is done contrary to the written order of the king, produced at the trial, without any explanation; it will be presumed, that the power has not been exceeded; that the act was done on the motives set out therein; and according to some order known to the king and his officers, though not to his subjects; and courts ought to require very full proof, that he had transcended his powers, before they so determine it. *Id.*
4. The unwritten law of Louisiana, before the cession of the territory to the United States. *Id.*
5. In favor of long possession and ancient appropriation, everything which was done will be presumed to have been rightfully done; and though it do not appear to have been done, the law will presume that whatever was necessary has been done. *Id.*
6. Regulations under the Spanish laws relative to town-lots and out-lots. *Id.*

See LOUISIANA AND FLORIDA TREATIES.

LIMITATION OF ACTIONS.

1. No principle of law is better settled, than to bring a case within the exception of merchandise accounts between merchant and

- merchant, in the statute of limitations, there must be an account; and that, an account open or current; that it must be a direct concern of trade; that liquidated demands on bills and notes, which are only traced up to the trade or merchandise, are too remote to come within this description. When the account is stated between the parties, or when anything has been done by them, which, by their implied admission, is equivalent to a settlement; it has then become an ascertained debt. Where there is a settled account, that becomes the cause of action, and not the original account; although it grew out of an account between merchant and merchant, their factors or servants. *Toland v. Sprague*. *300
2. T. shipped a quantity of merchandise, by P., to Gibraltar, who, on arriving there, placed the goods in the hands of S., and received advances from S. upon them; in 1825, S. sold the goods and transmitted an account-sales, as of the merchandise received from P., to T., who received it in September 1825, stating the balance of the proceeds to be \$2578. T., in 1825, wrote to S., directing him to remit the amount to him, deducting \$1000, which had been advanced by S. on the goods, and which had been remitted by P. to T.; S. refused to make the remittance, alleging that P. was largely indebted to him. No suit was instituted by T. against S., until August 1834. The account was a stated account; and the statute of limitations applied to it. *Id.*
 3. The mere rendering an account does not make it a stated account; but if the other party receives it, admits the correctness of the items, claims the balance, or offers to pay it, as it may be in his favor or against him, then it becomes a stated account. It is not at all important, that the account was not made out between the plaintiff and the defendant; the plaintiff having received it, having made no complaint as to the items or the balance; but, on the contrary, having claimed that balance, thereby adopted it, and by his own act treated it as a stated account. *Id.*
 4. T. shipped merchandise consigned to P., as supercargo; P. put the goods into the hands of S., a merchant of Gibraltar, as the merchandise of T., and received an advance upon them; S. having sold the merchandise, rendered an account of the sales, stating the sales to have been made by order of P., and crediting the proceeds in account with P. The account came into the hands of T., in 1825; and he claimed the balance of the proceeds from S., deducting the advance made by S. to P., and payment of the same was refused by P.: *Held*, that as T. had a right, in 1825, to call on S. to account, and as no suit was instituted against S. until 1834; S. having always denied his liability to T. for the amount of the sales, from the time of the demand; the statute of limitations was a bar to an action to recover the amount from S. *Id.*
 5. Courts of equity are no more exempt from obedience to statutes of limitations, than courts of common law. *Bank of United States v. Daniels*. *32
 6. The statute of limitations is a bar, in a case where, at the time of the return of a bill of exchange, payable in New Orleans, and drawn in Kentucky, protested for non-payment, the parties to it, in 1819, paid as damages on the bill, ten per centum on the amount; and did not, until 1827, claim that, by the law of Kentucky, no damages were payable on such a bill. In 1819, the parties to the bill paid \$3330.67 on account of the bill for \$10 000, the cost of protest and damages; and gave their note for \$8000, for the balance of the bill, which was discounted, and the proceeds, by express agreement, applied to the payment of the bill. If no damages were payable on the bill for \$10,000, an action to recover back the same, as included in the payment of the \$3330.67, could have been instituted in 1829. *Id.*

LOUISIANA AND FLORIDA TREATIES.

1. Congress, in order to guard against imposition, declared by the law of 1804, that all grants of land made by the Spanish authorities, in the territory west of the Perdido, after the date of the treaty of St. Ildefonso, should be null and void; excepting those to actual settlers, acquired before December 20th, 1803. *Garcia v. Lee*. *511
2. The controversy in relation to the country lying between the Mississippi and the Perdido rivers, and the validity of the grants made by Spain in the disputed territory, after the cession of Louisiana to the United States were carefully examined and decided in the case of *Foster v. Neilson*. This court, in that case, decided, that the question of boundary between the United States and Spain was one for the political departments of the government; that the legislative and executive branches having decided the question, the courts of the United States were bound to regard the boundary determined by them as the true one; that grants made by the Spanish authorities, of lands which, according to this boundary line, belonged to the United States, gave no title to the grantees, in opposition to those claiming

under the United States; unless the Spanish grants were protected by the subsequent arrangements made between the two governments; and that no such arrangements were to be found in the treaty of 1819, by which Spain ceded the Floridas to the United States, according to the fair import of its words, and its true construction. *Id.*

8. In the case of *Foster v. Neilson*, the supreme court said, that the Florida treaty of 1819 declares, that all grants made before the 24th January 1818, by the Spanish authorities, "shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid, if the territories had remained under the dominion of his Catholic Majesty;" and in deciding the case of *Foster v. Neilson*, the court held, that even if this stipulation applied to lands in the territory in question, yet the words used did not import a present confirmation, by virtue of the treaty itself, but that they were words of contract; "that the ratification and confirmation which were promised, must be the act of the legislature; and until such shall be passed, the court is not at liberty to disregard the existing laws on the subject." Afterwards, in the case of the *United States v. Percheman*, 7 Pet. 86, in reviewing the words of the eighth article of the treaty, the court, for the reasons there assigned, came to a different conclusion; and held, that the words were words of present confirmation, by the treaty, where the land had been rightfully granted, before the cession; and that it did not need the aid of an act of congress to ratify and confirm the grant. This language was, however, applied by the court, and was intended to apply, to grants made in a territory which belonged to Spain at the time of the grant; the case then before the court was one of that description; it was in relation to a grant of land in Florida, which unquestionably belonged to Spain, at the time the grant was made; and where the Spanish authorities had an undoubted right to grant, until the treaty of cession in 1819; it is of such grants, that the court speak, when they declare them to be confirmed and protected by the true construction of the treaty; and that they do not need the aid of an act of congress to ratify and confirm the title of the purchaser. The court do not apply this principle to grants made within the territory of Louisiana. The case of *Foster v. Neilson* must, in all other respects, be considered as affirmed by the case of *Percheman*; as it underwent a careful examination in that case, and as none of its principles were questioned, except that referred to. *Id.*

4. The leading principle in the case of *Foster v. Neilson*, which declares, that the boundary line determined on as the true one by the political departments of the government, must be recognised as the true one by the judicial departments, was, after that case, directly acknowledged and affirmed by this court, in 1832, in the case of the *United States v. Arredondo*, 8 Pet. 711; and this decision was given by the court, with the same information before them as to the meaning of the Spanish side of the treaty, which is mentioned in the case of *Percheman*. *Id.*

MANDAMUS.

1. The Court refused to award a *mandamus* to the district judge of the district of Louisiana, commanding him to sign a bill of exceptions tendered to him, and to command him to have inscribed, by the clerk of the court, in the order-book of the court, an order passed by him, in a case which was before him under a mandate from the supreme court of the United States, requiring him to do, and to have done, certain matters, to carry into effect the decree of the supreme court, in a case which had been brought before the court by appeal from the district of Louisiana. *Ex parte Story*. *339
2. The statements contained in a petition addressed to the supreme court, asking for "a rule to show cause why a *mandamus*, in the nature of a writ of *procedendo*, should not be issued," not being verified by affidavit; they cannot, under the decisions and practice of the court, be considered. *Poultney v. City of La Fayette*. *472
3. The circuit court of the United States for the district of Columbia, has a right to award a *mandamus* to the postmaster-general of the United States, requiring him to pass to the credit of certain contractors of the United States' mail, a sum found to be due to them by the solicitor of the treasury of the United States; the solicitor acting under the provisions of a special act of congress. Such a proceeding does not interfere, in any respect whatever, with the rights and duties of the executive; nor does it involve any conflict or powers between the executive and judicial departments of the government. The *mandamus* does not seek to direct or control the postmaster-general in the discharge of his official duty, partaking, in any respect, of an executive character; but to enforce the performance of a mere ministerial act, which neither he nor the president had any authority to deny or control. *Kendall v. United States*. *524
4. The act required by the law to be done by

- the postmaster-general was simply to credit S. & S. with the full amount of the award of the solicitor of the treasury; this was a precise, definite act, purely ministerial; and about which the postmaster-general had no discretion whatever. It was not an official act in any other sense than being a transaction in the department where the books and accounts were kept; and was an official act in the same sense that an entry in the minutes of the court, pursuant to an order of the court, is an official act. There was no room for the exercise of discretion, official or otherwise; all that was shut out by the direct and positive command of the law; and the act required to be done was, in every just sense, a mere ministerial act. *Id.*
5. The common law, as it was in force in Maryland, when the cession of the part of the state within the district of Columbia was made to the United States, remained in force in the district. The writ of *mandamus* which issued in this case, in the district court of the district of Columbia, must be considered as it was at common law, with respect to its object and purpose; and varying only in the form required by the different character of the government of the United States. It is a writ, in England, issuing out of the king's bench, in the name of the king, and is called a prerogative writ, but considered a writ of right; and is directed to some person, corporation, or inferior court, requiring them to do some particular thing, therein specified, which appertains to their office, and which is supposed to be consonant to right and justice; and where there is no other adequate, specific remedy, such a writ, and for such a purpose, would seem to be peculiarly appropriate. The right claimed is just, and established by positive law; and the duty required to be performed is clear and specific; and there is no other adequate remedy. *Id.*
6. The result of the cases of *McIntire v. Wood*, and *McClung v. Silliman* clearly is, that the authority to issue the writ of *mandamus* to an officer of the United States, commanding him to perform a specific act, required by a law of the United States, is within the scope of the judicial powers of the United States, under the constitution: but that the whole of that power has not been communicated by law to the circuit courts of the United States in the several states; it is a dormant power, not yet called into action and vested in those courts. There is nothing growing out of the official character of a party, that will exempt him from this writ, if the act to be performed is merely ministerial. *Id.*
7. The power to issue the writ of *mandamus* is, in England, given to the king's bench only, as having the general supervising power over all inferior jurisdictions and officers, and is co-extensive with judicial power; and the same theory prevails in the state governments of the United States, where the common law is adopted, and governs in the administration of justice; the power of issuing this writ is generally confided to the highest court of original jurisdiction. *Id.*
8. There can be no doubt, but that, in the state of Maryland, a writ of *mandamus* might be issued to an executive officer, commanding him to perform a ministerial act required of him by the laws; and, if it would lie in that state, there can be no good reason why it should not lie in the district of Columbia, in analogous cases. *Id.*
9. The powers of the supreme court of the United States and of the circuit courts of the United States, to issue writs of *mandamus*, granted by the 14th section of the judiciary act of 1788, is only for the purpose of bringing the case to a final judgment or decree, so that it may be reviewed; the *mandamus* does not direct the inferior court how to proceed, but only that it must proceed according to its own judgment, to a final determination; otherwise, it cannot be reviewed in the appellate court. It is different in the circuit court of the district of Columbia, under the adoption of the laws of Maryland, which included the common law. *Id.*
10. The cases of *McIntire v. Wood*, 7 Cranch 504; and *McClung v. Silliman*, 6 Wheat. 598, have decided that the circuit courts of the United States, in the several states, have no power to issue a *mandamus* against one of the officers of the United States. *Id.*
11. The power of the circuit court of the district of Columbia, to exercise the jurisdiction to issue a writ of *mandamus* to a public officer, to do an act required of him by law, results from the 3d section of the act of congress, of February 27th, 1801, which declares that the court and the judges thereof shall have all the power by law vested in the circuit courts of the United States. The circuit courts referred to, were those established by the act of February 13th, 1801; the repeal of that law, fifteen months afterwards, and after the circuit court for this district had been organized, and had gone into operation, under the act of 27th February 1801, could not, in any manner, affect that law any further than was provided by the repealing act. *Id.*

MANDATE.

1. The supreme court is bound to grant a mandate to the inferior court, which will suit the case. *Ex parte Sibbald*. *488

- 2 Where the mandate which has been issued by the clerk of the supreme court, to the inferior court, was not an execution of the final decree of the court in the case; at a subsequent term of the court, on its being shown that the decree of the court in the case in which it had been issued, had not been executed, the clerk was ordered to make out a certificate of the final decree of the court before rendered, and a mandate according to the final decree and the opinion of the court, on a petition filed; stating that the decree of the court was not executed by reason of an imperfection in the first mandate *Id.*
3. Where the supreme court have executed their power, in a case before them, and their final decree or judgment required some further act to be done, it cannot issue an execution, but will send a special mandate to the court below to award it. Whatever was before the court, and is disposed of, is considered finally settled *Id.*
4. The inferior court is bound by the decree, as the law of the case, and must carry it into execution according to the mandate; they can examine it for no other purpose than execution; nor give any other or further relief; nor review it upon any matter decided on appeal, for error apparent; nor intermeddle with it further than to settle so much as has been remanded *Id.*
5. After a mandate, no rehearing will be granted; and on a subsequent appeal, nothing is brought up but the proceedings subsequent to the mandate *Id.*
6. If the special mandate directed by the 24th section of the judiciary act is not obeyed, then the general power given to "all the courts of the United States to issue any writs which are necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law," by the 14th section of the judiciary act, fairly arises; and a *mandamus* or other appropriate writ, will go *Id.*
7. At the time when a decree was made in the district court of Louisiana, in a case before it, the complainant was dead; the executrix was afterwards admitted by the district court to become a party to the suit, and prosecuted an appeal to the supreme court, where the decree of the district court was reversed on the merits; and the case was sent back to the district court on a mandate, requiring the decree of a supreme court to be carried into effect. The decease of the plaintiff, before the decree, and his having left other heirs besides the executrix, were offered, in the form of a supplement answer to the original bill, to the district court, when

acting under the mandate of the supreme court, to show error in the proceedings of that court, with a view to bring the case again before the supreme court, in order to have a re-examination and a reversal of the decree of that court; the district court refused to permit the evidence of the matters alleged to be entered on the records of the court, or to sign a bill of exceptions, stating that the same had been offered. The court, in the case of *Skilern's Executors v. May's Executors*, 6 Cranch 267, said: "as it appeared that the merits of the case had been finally decided in this court, and that its mandate required only the execution of the decree, the circuit court was bound to carry that decree into execution, although the jurisdiction of the court was not alleged in the pleadings." In the case now before the court, the merits of the controversy were finally decided by this court, and its mandate to the district court required only the execution of the decree. On the authority of this case, the refusal to allow the defendant to file a supplemental answer and plea, was sustained. *Ex parte Story*. *339

NUISANCE.

1. The Potomac river is a navigable stream or part of the *jus publicum*; and any obstruction to its navigation would, upon the most established principles, be a public nuisance. A public nuisance being the subject of criminal jurisdiction, the ordinary and regular proceeding at law, is by indictment or information, by which the nuisance may be abated, and the person who caused it may be punished. A court of equity may take jurisdiction in cases of public nuisance, by an information filed by the attorney-general. If any particular individual have sustained special damage from the erection from it, he may maintain a private action for such special damage; because to that extent, he has suffered beyond his portion of injury, in common with the community at large. *Georgetown v. Alexandria Canal Co.*... *91

See CHANCERY AND CHANCERY PRACTICE.

PARENT AND CHILD.

1. The complainants, as the ground to invalidate a deed made by a daughter, of twenty-three years of age, to her father, by which she conveyed the estate of her deceased mother to her father, he having a life-estate, as tenant by the curtesy, in the same; asserted, that such a deed ought, upon considerations of public policy, growing out of the relations of the parties, to be deemed

- void. We do not deem it necessary to travel over all the English authorities which have been cited; we have looked into the leading cases, and cannot discover anything to warrant the broad and unqualified doctrine asserted; all the cases are accompanied with some ingredient, showing undue influence exercised by the parent, operating on the fears or hopes of the child; and sufficient to show reasonable grounds to presume, that the act was not perfectly free and voluntary, on the part of the child; and in some cases, although there may be circumstances tending, in some small degree, to show undue influence; yet, if the agreement appears reasonable, it has been considered enough to outweigh slight circumstances, so as not to affect the validity of the deed. It becomes less necessary for the court to go into a critical examination of the English chancery doctrine on this subject; for, should the cases be found to countenance it, we should not be disposed to adopt or sanction the broad principle, that the deed of a child to a parent, is to be deemed *prima facie*, void. *Jenkins v. Pye*.....*241
2. To consider a parent disqualified to take a voluntary deed from his child, without consideration, on account of their relationship, is opening a principle at war with all filial, as well as parental, duty and affection; and acting on the presumption that a parent, instead of wishing to promote his interest and welfare, would be seeking to overreach and defraud his child; whereas, the presumption ought to be, in the absence of all proof tending to a contrary conclusion, that the advancement of the interest of the child was the object in view; and to presume the existence of circumstances conducing to that result. Such a presumption harmonizes with the moral obligations of a parent to provide for his child; and is founded upon the same benign principle that governs cases of purchases made by parents, in the name of a child; the natural and reasonable presumption in all transactions of this kind is, that a benefit was intended the child, because in the discharge of a moral and parental duty.....*Id.*
3. In the year 1813, a daughter, twenty-three years old, conveyed all her remainder in the real estate which had belonged to her mother, to her father, for a nominal consideration; she married two years afterwards, and died in 1818; no complaint of the transaction was made in the lifetime of the daughter, nor during the lifetime of the father, who died in 1831. Lapse of time, and the death of the parties to a deed, have always been considered, in a court of chancery, entitled to great

weight, and almost controlling circumstances, in cases of this kind.....*Id.*

PARTNERSHIP.

1. The funds of a partnership cannot be rightfully applied by one of the partners to the discharge of his own separate pre existing debts, without the express or implied assent of the other parties; and it makes no difference in such a case, that the separate creditor had no knowledge, at the time, of the fact of the fund being partnership property. *Rogers v. Batchelor*.....*217.
2. Whatever acts are done by any partner, in regard to partnership property or contracts, beyond the scope and objects of the partnership, must, in general, to bind the partnership, be derived from some further authority, express or implied, conferred upon such partner, beyond that resulting from his character as partner.....*Id.*
3. The authority of each partner to dispose of the partnership funds, strictly and rightfully extends only to the business and transactions of the partnership itself; and any disposition of those funds, by any partner, beyond such purpose, is an excess of his authority as partner; and a misappropriation of those funds, for which the partner is responsible to the partnership; though in the case of *bona fide* purchasers, without notice, for a valuable consideration, the partnership may be bound by the acts of one partner.....*Id.*
4. If one partner write a letter, in his own name, to his creditor, referring to the concerns of the partnership, and his own private debts to those to whom the letter is addressed; the letter not being written in the name of the firm, it cannot be presumed, that the other partner had a knowledge of the contents of the letter, and sanctioned them; unless some proof of this effect was given, the other partner ought not to be bound by the contents of the letter.....*Id.*

PATENTS FOR LANDS.

1. A patent for lands, issued after the decease of the patentee, passes no title to the lands; there must be a grantee, before the grant can take effect. *Galloway v. Finley*.....*264
2. The acts of congress of 1807, and the subsequent acts relative to the titles to military lands, were intended to remedy any defects in the patenting the lands in the name of the warrantee, who might have been deceased at the time of the emanation of the patent: and to secure the title to the lands to the heirs of the patentee. The statute is general, including by name all grants, not distinguish-

ing between void and valid ; and the plainest rules of propriety and justice require, that the courts should not introduce an exception, the legislature having made none.....*Id.*

PLEAS AND PLEADING.

1. The effect and nature of an averment in a plea put in by a defendant, when it is not essential to the plea. *Toland v. Sprague*. *300

POSTMASTER-GENERAL.

See **MANDAMUS**.

POTOMAC RIVER.

1. The Potomac river is a navigable stream, or part of the *jus publicum*; and any obstruction to its navigation would, upon the most established principles, be a public nuisance. *Georgetown v. Alexandria Canal Co.*... *91

See **COMPACTS BETWEEN STATES**.

PRACTICE.

1. Where one of three parties, plaintiffs in a writ of error, dies, after the writ of error is issued, it is not necessary to make the heirs and representatives of the deceased, parties to the writ of error; as the cause of action survives to the other two plaintiffs in error. *McKinney v. Carroll*..... *66
2. The court refused to allow ten per centum per annum interest, as damages for suing out a writ of error on the amount of the judgment in the circuit court, under the 17th rule of the court, in a case in which the construction of a statute of the state of Georgia was involved; and also questions relative to proofs of the handwriting of the maker of promissory notes. The case was not considered as one where the writ of error was sued out merely for delay. *McNeil v. Holbrook*. *84
3. A defendant in an appeal, using the copy of the record received from the circuit court lodged by the appellant, cannot have the appeal docketed and dismissed, under the 30th rule of the court; on the ground, that the appellant has failed to comply with the 37th rule, which requires a bond to be given to the clerk of the supreme court, before the case is docketed. He must, to sustain a motion to dismiss the cause, produce the certificate of the circuit court, stating the cause; and certifying that such an appeal has been duly sued out and allowed. *West v. Brashier*..... *101
4. The practice seems to be well settled, that in suits against a state, if the state shall neg-

lect to appear, on due service of process, no coercive measures will be taken to compel appearance; but the complainant will be allowed to proceed *ex parte*. *Massachusetts ads. Rhode Island*..... *757

See **MANDAMUS: WRIT OF ERROR**.

PRESIDENT.

1. To contend, that the obligations imposed on the president to see the laws faithfully executed implies a power to forbid their execution, is a novel construction of the constitution, and is entirely inadmissible. *Kendall v. United States*..... *524
2. Congress, by a special act passed for the purpose, directed the accounts of certain mail contractors to be referred to the solicitor of the treasury, and that the amount found by the solicitor to be due to the contractors should be passed to their credit, by the postmaster-general of the United States. The postmaster-general refused to allow to the credit of the mail contractors, the whole sum found to be due to them by the solicitor of the treasury, and a *mandamus* was asked from the circuit court of the district of Columbia, to the directed to the postmaster-general, commanding him to conform to the act of congress, and the report of the solicitor of the treasury. In opposition to the prayer for the *mandamus*, it was urged, that the postmaster-general was alone subject to the direction of the president of the United States, with respect to the execution of the duty imposed on him by the law under which the solicitor of the treasury acted; and this right of the president was claimed as growing out of the obligation imposed upon him by the constitution, to take care that the laws be faithfully executed. This doctrine cannot receive the sanction of this court; it would be vesting in the president a dispensing power, which has no countenance for its support in any part of the constitution; and is asserting a principle, which if carried out in its results, to all cases falling within it, would be clothing the president with a power to control the legislation of congress and paralyze the administration of justice.....*Id.*

PRIORITY OF THE UNITED STATES.

1. An attachment at the suit at the Farmers' Bank of Delaware, was issued against the effects of the Elkton Bank, on the 24th of September 1830, and under it were attached the funds of the Elkton Bank in the hands of one of its debtors; on the 8th day of July

- 1831, an attachment was issued, at the suit of the United States, the United States being creditors of the Elkton Bank, and it was laid on the same funds which had been previously attached at the suit of the Farmers' Bank of Delaware. The money thus attached by the Farmers' Bank of Delaware, in the hands of a debtor to the Elkton Bank, by legal process, before the issuing of the attachment in behalf of the United States, was bound for the debt for which it was first legally attached, by a writ in the nature of an execution; and the right of a private creditor, thus acquired, could not be defeated by the process subsequently issued at the suit of the United States. If the district court of the United States has a right to appoint receivers of the property of an insolvent bank which is indebted to the United States, for the purpose of having the property of the bank collected and paid over to satisfy the debt due to the United States by the bank; this would not be a transfer and possession of the property of the bank, within the meaning of the act of congress; and the right of the United States to a priority of payment, would not have attached to the funds of the bank. *Beaston v. Bank of United States*. *102
2. From the language of the fifth section of the act of congress of March 3d, 1797, giving a priority to debts due to the United States, and the construction given to it by the supreme court, those rules are clearly established. 1st. That no lien is created by the statute. 2d. The priority established can never attach, while the debtor continues the owner, and in possession of the property, although he may be unable to pay his debts. 3d. No evidence can be received of the insolvency of the debtor, until he has been divested of his property in one of the modes stated in the section. 4th. Whenever the debtor is thus divested of his property, the person who becomes invested with the title, is thereby made a trustee for the United States, and is bound to pay the debt first, out of the proceeds of the debtor's property. *Id.*
3. All debtors to the United States, whatever their character, and by whatever mode bound, may be fairly included within the language used in the fifth section of the act of congress. It is manifest, that congress intended to give priority of payment to the United States over all other creditors, in the cases stated therein; it, therefore, lies upon those who claim exemption from the operation of the statute, to show that they are not within its provisions. *Id.*
4. Corporations are to be deemed and considered persons, within the provisions of the fifth section of the act of congress of 1797, and the priority of the United States exists as to debts due by them to the United States. *Id.*
5. The legislature of Maryland passed an act, authorizing the stockholders of the Elkton Bank to elect trustees, who were to take possession of the funds and property of the bank, for the purposes of discharging the debts of the bank, and distributing the residue of the funds, which might be collected by them, among the stockholders. This, had the law been carried into effect, was not such an assignment of all the property of the bank as would entitle the United States to a priority of payment out of the funds of the bank. *Id.*
6. No one can be divested of his property, by any mode of conveyance, statutory or otherwise, unless, at the same time, and by the same conveyance, the grantee becomes invested with the title. The moment the transfer of property takes place, the person taking it, whether by voluntary assignment, or by operation of law, becomes, under the statute, bound to the United States for the faithful performance of the trust. . . . *Id.*

RECORDING OF DEEDS.

1. By the common law, a deed of land is valid, without registration; and where registry acts require deeds to be recorded, they are valid, until the time prescribed by the statute has expired; and, if recorded within the time, are as effectual from the date of execution, as if no registry act existed. *Clarke v. White*. *178

SHERIFF'S SALE.

1. It is clear, that a purchaser at a sheriff's sale cannot protect himself against a prior claim, of which he had no notice; or be held a *bond fide* purchaser, unless he shall have paid the money. *Swayze v. Burke*. . . . *11

SPECIFIC PERFORMANCE.

1. The doctrine of a court of chancery, in cases for specific performance, has reference, ordinarily, to executory agreements for the conveyance of lands; and is rarely applied to contracts affecting personal property; where the relief prayed for in a bill, is the delivery to the complainant of instruments to which he is entitled, and not the execution of an executory contract, any further than to decree the amount the complainant has been

compelled to pay against the terms of the contract, chancery has jurisdiction of the cause; and the court will end the cause, without sending the parties to law as to part, having granted relief for part. *Clarke v. White*.....*178

STATUTE LAW.

1. It was not an uncommon course of legislation in the states, at an early day, to adopt, by reference, British statutes; and this has been the course by legislation in congress, in many instances, when state practice and state process has been adopted. Such adoption has always been considered as referring to the law existing at the time of adoption, and no subsequent legislation has ever been supposed to affect it; and such must, necessarily, be the effect and operation of such adoption. *Kendall v. United States*.....*524

STATES.

See **APPEARANCE: BOUNDARIES OF STATES:**
CONSTITUTIONAL LAW: JURISDICTION.

SUPREME COURT.

1. The supreme court has jurisdiction of a bill filed by the state of Rhode Island against the state of Massachusetts, to ascertain and establish the northern boundary between the states, that the rights of sovereignty and jurisdiction be restored and confirmed to the plaintiffs; and they be quieted in the enjoyment thereof, and their title; and for other and further relief. *Rhode Island v. Massachusetts*.....*657
2. The supreme court is one of limited and special original jurisdiction; its action must be confined to the particular cases, controversies and parties, over which the constitution and laws have authorized it to act; any proceeding without the limits prescribed is *coram non jndice*, and its action a nullity. And whether the want or excess of power is objected by a party, or is apparent to the court, it must surcease its action, or proceed extra-judicially.....*Id.*
3. The several states of the United States, in their highest sovereign capacity, in the convention of the people thereof, on whom, by the revolution, the prerogative of the crown and the transcendent power of parliament devolved, in a plenitude unimpaired by any act, and controllable by no authority, adopted the constitution; by which they respectively made to the United States a grant of judicial power over controversies between

two or more states. By the constitution, it was ordained, that this judicial power, in cases where a state was a party, should be exercised by the supreme court, as one of original jurisdiction; the states waived their exemption from judicial power, as sovereigns by original and inherent right, by their own grant of its exercise over themselves in such cases; but which they would not grant to any inferior tribunal. By this grant, the supreme court acquired jurisdiction over the parties in this cause, by their own consent and delegated authority, as their agent for executing the judicial power of the United States in the cases specified; Massachusetts has appeared, submitted to the process, in her legislative capacity, and pleaded, in bar of the plaintiff's action, certain matters on which the judgment of the court is asked. All doubts as to jurisdiction over the parties are thus at rest, as well by the grant of power by the people, as the submission of the legislature to the process; and calling on the court to exercise its jurisdiction on the case presented by the bill, plea and answer.....*Id.*

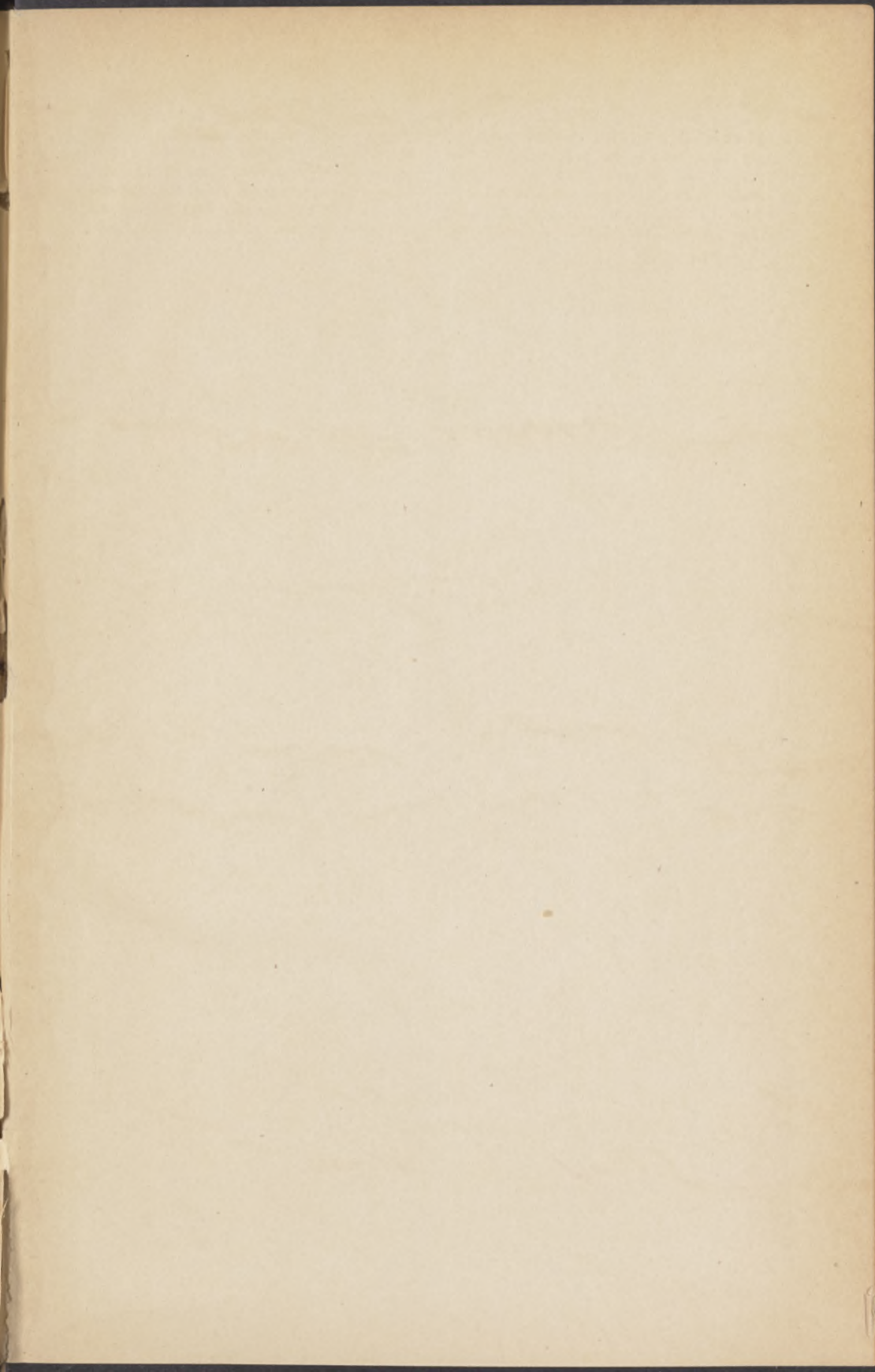
TREATIES.

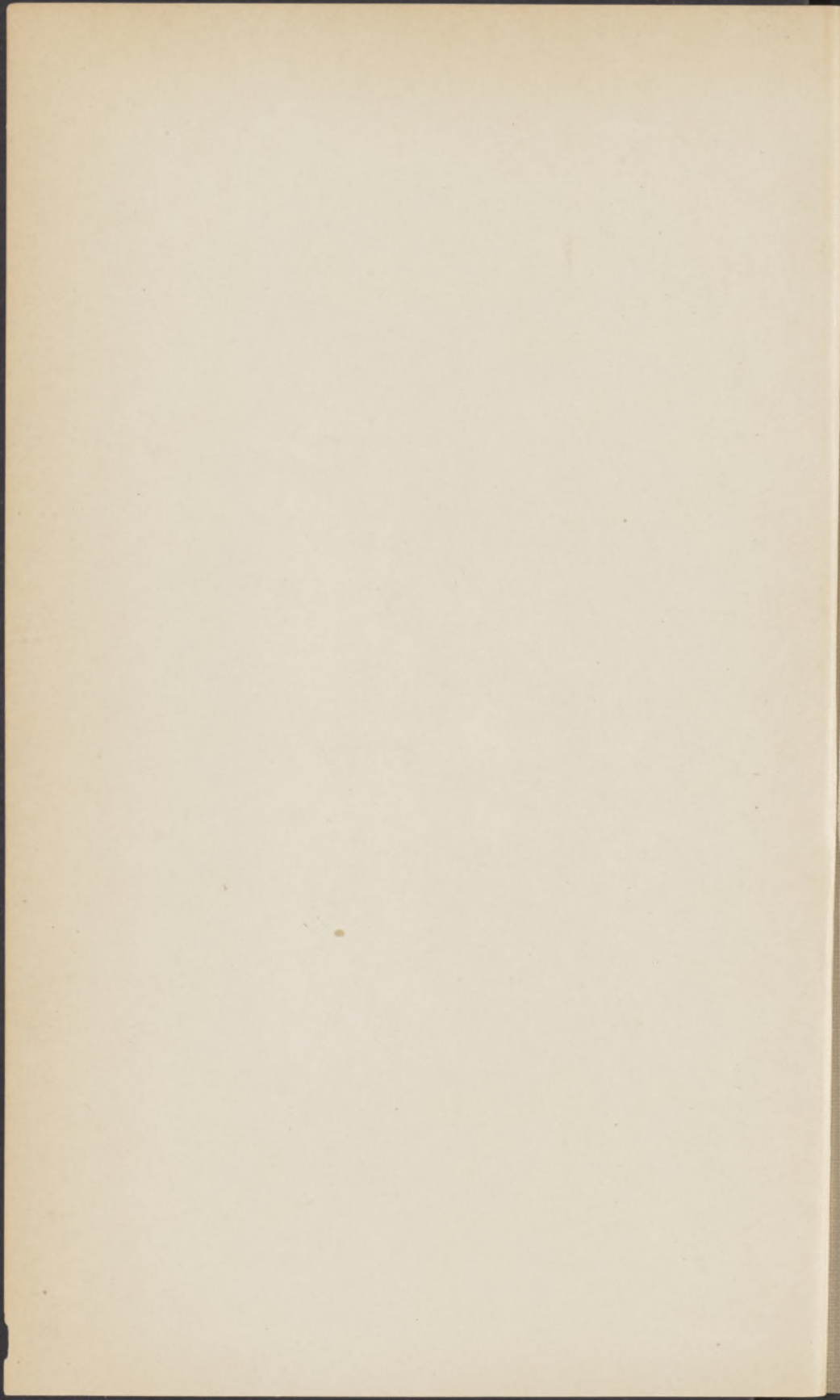
See **LOUISIANA AND FLORIDA TREATIES.**

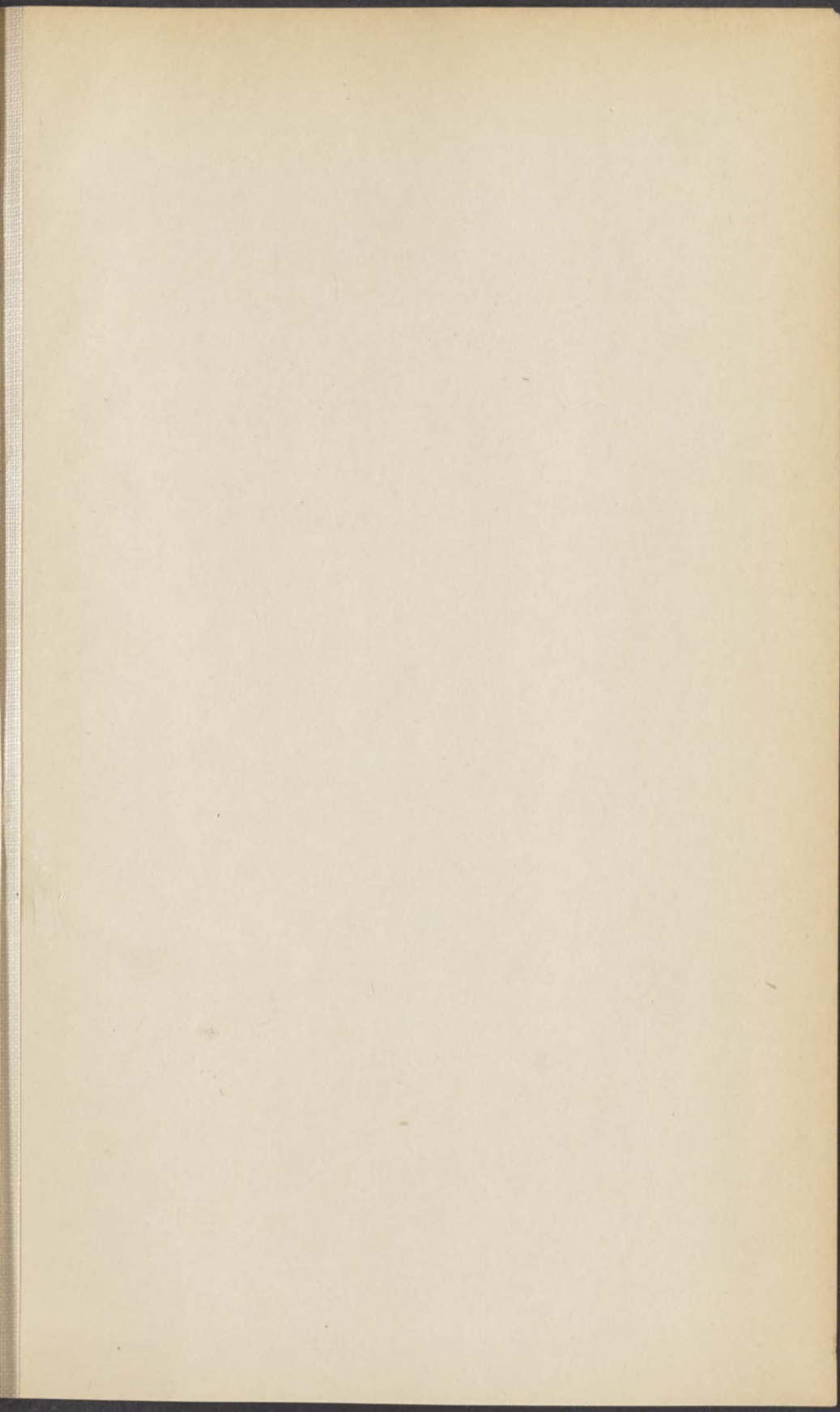
WRIT OF ERROR.

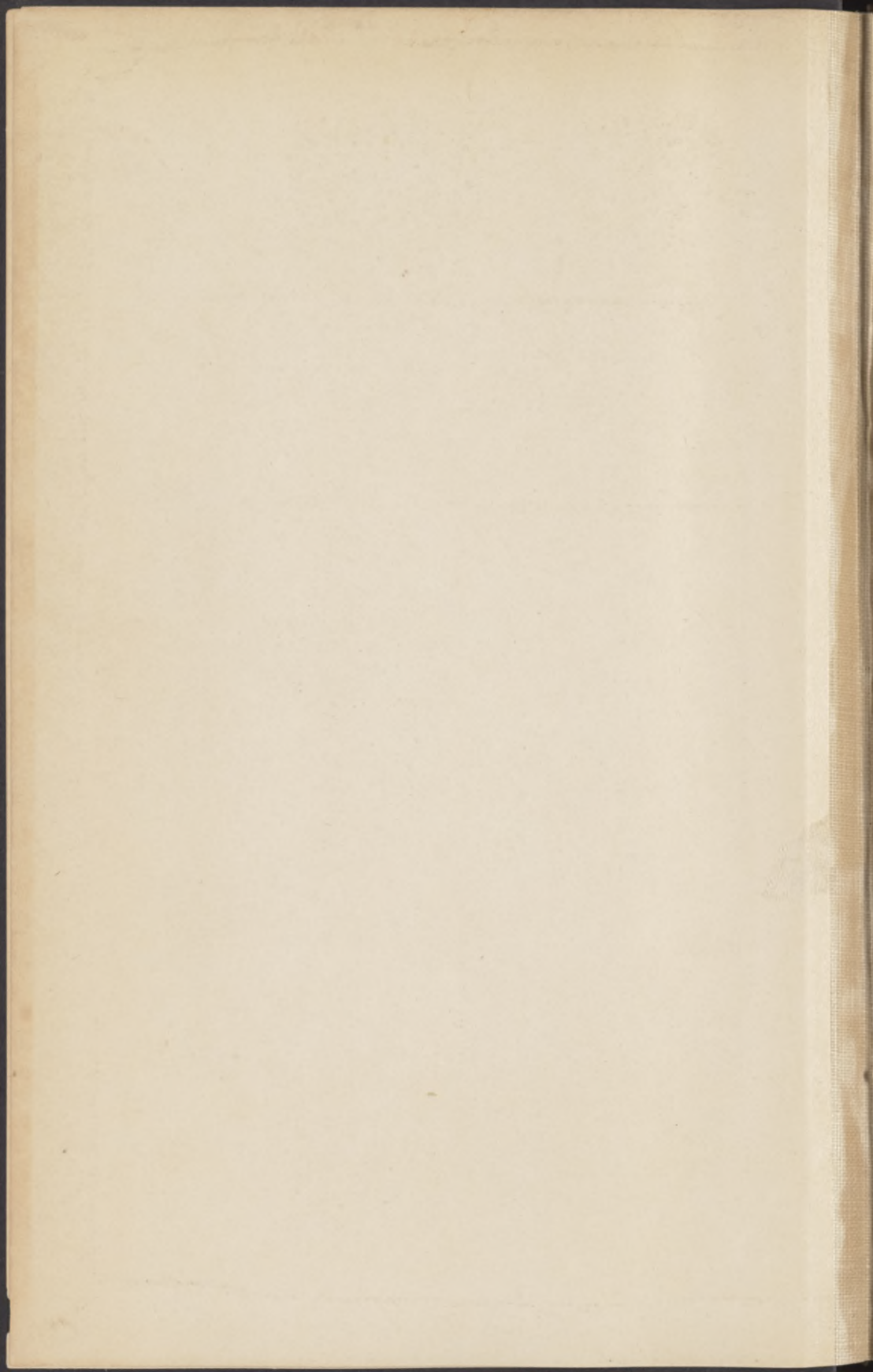
1. Where one of three parties, plaintiffs in a writ of error, dies, after the writ of error is issued, it is not necessary to make the heirs and representatives of the deceased, parties to the writ of error; as the cause of action survives to the two other plaintiffs in error. *McKenney v. Carroll*.....*66
2. In certain proceedings for the sale of property mortgaged, the widow and children of the deceased owner of the property were made defendants; the district court of Louisiana gave a judgment in favor of the plaintiffs. The widow was entitled to her community in the property mortgaged, and had taken the property, at the appraisal and estimation. The writ of error to the district court of Louisiana was issued in the name of "The heirs of Nicholas Wilson," without naming any person as plaintiff; the widow of Nicholas Wilson did not join in the writ of error. The writ of error was dismissed on the two grounds, that no person was named in it; and that the widow of Nicholas Wilson had not joined in it. *Wilson v. Life and Fire Insurance Co.*.....*140
3. The rule of court is, that where there is a substantial defect in the appeal, or writ

- of error, the objection may be taken at any time before the judgment; on the ground, that the case is not legally before the court, and that it has not jurisdiction to try it.....*Id.*
4. The judiciary act of 1789 authorizes the supreme court to issue writs of error, to bring up final judgments or decrees in a civil action, &c. The decision of the circuit court upon a rule or motion is not of that character; such decisions are not final judgments. *Toland v. Sprague*.... *300
- 564









37 U. S.

Set 1

