INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

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

ACKNOWLEDGMENT OF DEEDS.

1. A deed was executed and acknowledged, under a decree, "W. M. Duncanson, guardian for Marcia Burnes;" and acknowledged by the guardian "to be his act and deed, as guardian aforesaid, and thereby the act and deed of the said Marcia:" This is a good execution and acknowledgment. *Van Ness* v. *Bank of United States* *17
2. The acts of the assembly of Maryland, prescribing the mode in which deeds should be acknowledged for the conveyance of real property, were adopted by congress in the act assuming jurisdiction in the district of Columbia, together with the other laws of Maryland then in force. The acts of the assembly of Maryland relating to the acknowledgment of deeds, do not require that justices of the peace, or other officers who have authority to take acknowledgments, shall describe in their certificates, their official character; whenever it is established by proof that the acknowledgment was made before persons authorized to take it, it must be presumed to have been taken by them in their official capacity.....*Id.*

ACTION.

1. The defendant in an action in the circuit court had, with others, received the proceeds of a joint and several promissory note discounted for them at the Bank of the Metropolis, and this note was afterwards renewed by their attorney, under a power of attorney authorizing him to give a joint note; but he gave a joint and several note, the proceeds of which the attorney received, and appropriated to pay the note already discounted at the bank; the interest of the sum borrowed was paid out of the money of the parties to the note: *Held*, that although the power of attorney may not have been executed in exact conformity to its terms; and may not have authorized the giving of a joint and several note (a question the court did not decide), yet the receipt of the proceeds of the note by the attorney, and the appropriation thereof to the payment of the former note, was sufficient evidence to sustain the money counts in the declaration. *Moore* v. *Bank of the Metropolis*.....*302
2. A mortgage was executed by D. G., as the agent of the Union Steam-Mill Company, conveying to the mortgagee certain lands in Rhode Island, with a woollen mill and other buildings, with the machinery in the mill; D. G. was, and had been, the general agent of the company, and as such, had made all purchases and sales for the company, and the mortgage was executed by him, with the consent and authority of the persons who, at the time of its execution, were members of the company. The machinery, and other movables, had been taken in execution by the marshal of Rhode Island, under an execution issued on a judgment obtained after the mortgage against the company: the court *held*, that although the mortgage was not valid as the deed of the corporation, it was sufficient to convey a title to the mortgagee in the machinery; and that he could main-

tain an action of replevin for them against the marshal. *Anthony* v. *Butler* *423

ALABAMA.

1. The state of Alabama has not merely acquiesced by silence, but her judicial tribunals nave declared the adoption of the law of international comity, in the case of a suit. *Bank of Augusta* v. *Earle*.....*519
2. The state of Alabama never intended, by its constitution, to interfere with the right of selling or purchasing bills of exchange... *Id.*

AMBIGUITY.

1. Extrinsic evidence is not admissible to explain a patent ambiguity, that is, one apparent on the face of the instrument; but it is admissible to explain a latent ambiguity, that is, one not apparent on the face of the instrument, but arising from extrinsic evidence; that is but to remove the ambiguity, by the same kind of evidence as that by which it is created. *Bradley* v. *Steam-Packet Company*.....*89
2. Extrinsic parol evidence is admissible to give effect to a written instrument, by applying it to its proper subject-matter, by proving the circumstances under which it was made; whenever, without the aid of such evidence, the application could not be made in the particular case..... *Id.*
3. It is a principle recognised and acted upon as a cardinal rule by all courts of justice, in the construction of contracts, that the intention of the parties is to be inquired into; and, if not forbidden by law, is to be effectuated.....*Id.*

AMENDMENT.

1. Where, by a misprision of the clerk of the circuit court, the judgment in a case brought up by a writ of error had not been entered according to the declaration, the supreme court allowed an amendment to be made, by the entry of the judgment, without awarding a *certiorari* to the circuit court. This was done in a case which had been brought up by a writ of error to the previous term of the court. *Woodward* v. *Brown*.....*1

APPEAL.

1. An original decree was made in the circuit court of Rhode Island, at June term 1834, and an appeal was taken to January term 1835, of the supreme court; this appeal was dismissed at January term 1837, on motion of the counsel for the appellees, without an examination or decision on the merits of the cause. At the November term of the circuit court, the defendants prayed and were allowed a second appeal to the supreme court; which appeal had not been entered on the docket of the supreme court in 1839; the circuit court afterwards proceeded to order execution of the decree of 1834, and the defendant appealed to the supreme court from this decree; *Held*, that this appeal from the decree of the circuit court, ordering the execution of the original decree, was not a *supersedeas* to further proceedings in the circuit court, to execute the original decree; and that the circuit court was at liberty to use its discretion to proceed to execute the original decree: *Held*, also, that the decree of execution was not a final decree, in the contemplation of the act of congress, from which an appeal lies. *Carr* v. *Hoxie*.....*460

ASSETS.

1. A bill was filed, claiming a specific performance of an alleged contract to convey a house and lot in Georgetown, for the benefit of the wife of the complainant, the complainant having expended a large sum of money in improving the property, in the expectation that it would be conveyed as required by the bill; the court, not considering that sufficient evidence of an agreement to convey the property was given, ordered that the property should be sold, and out of the proceeds that the advances made by the complainant should be repaid; the property sold for a sum far less than the amount expended: *Held*, that the balance unpaid, after the sale, was not a debt due by the estate of the father of the wife, and could not be claimed of his representatives, the estate being insolvent. *King* v. *Thompson*.....*123
2. The Josepha Secunda was condemned for a violation of the laws of the United States, prohibiting the slave-trade; and by a decree, the district court of Louisiana allowed the claim of the collector, the surveyor and naval officer, who had prosecuted for the forfeiture, to a portion of the proceeds of the sale of the property condemned; this decree was afterwards reversed, and the whole proceeds adjudged to the United States, on an appeal to the supreme court. William Emerson, the surveyor, afterwards died; and in 1831, congress passed an act for the relief of the collector, the heirs of William Emerson, and the heirs of the naval officer; under the authority of which, the sums which had been adjudged to those officers, and which had remained in the district court of Louisiana, were, by an order of the court, paid to them,

according to the provisions of the law. One of the creditors of William Emerson claimed the sum so paid to his legal representatives, as assets for the payment of his debt: *Held*, that the payment made by order of the district court, to the minor children of William Emerson, as his legal heirs, was rightfully made; and that the same could not be considered in their hands as assets for the payment of the debts of their father. *Emerson's Heirs* v. *Hall*.....*409

3. The prosecution of the Josepha Secunda by the officers of the customs of Louisiana, was not done under the authority of any law, or by any authority; and these acts imposed no obligation, either in law or equity, on the government to compensate them. The claim for those services could not have been set up either as an equitable or a legal off-set to any demand of the government against them, or either of them; while, under the rules of law, any specific demand on the government which imposed on it even an equitable obligation, might be set up as an off-set.....*Id.*
4. Services rendered under the requirements of law, or of contract, for which a compensation is fixed, constitute a legal demand on the government; services rendered under an authority which is casual, or in some degree discretionary, may constitute an equitable claim. No individual can be made a debtor against his will; voluntary benefits may be conferred on him, which may excite his gratitude; or which in the exercise of his generosity he may suitably reward; but this depends on his own volition. It would constitute a singular item under the law of assets, to raise a charge against an individual for a benefit conferred by some voluntary act of kindness. The rule is the same, whether the benefit be conferred on the government or an individual.....*Id.*
5. A claim against a foreign government for spoliations is not of this character; the demand in such a case is founded on the law of nations, and the obligation is perfect on the offending government.....*Id.*

BILLS OF EXCHANGE.

1. A person who takes a bill, which on its face was dishonored, cannot be allowed to claim the privileges which belong to a *bonâ fide* holder without notice; if he chooses to receive it under such circumstances, he takes with it all the infirmities belonging to it; and is in no better condition than the person from whom he received it. There can be no distinction in principle between a bill transferred after it is dishonored for non-acceptance, and one transferred after it has been dishonored for non-payment. *Andrews* v. *Pond*....*65
2. The acceptor of a bill of exchange stands in the same relation to the drawee, as the maker of a note does to the payee; the acceptor is the principal debtor in the case of a bill, precisely like the maker of a note. The liability of the acceptor grows out of and is to be governed by the terms of his acceptance; and the liability of the maker of a note grows out of and is to be governed by the terms of his note: the place of payment can be of no more importance in the one case than in the other. *Wallace* v. *McConnell*... .....*136
3. It is of the utmost importance, that all rules relating to commercial law should be stable and uniform; they are adopted for practical purposes to regulate the course of commercial transactions. When a note or bill is made payable at a particular bank, as is generally the case, it is well known, that according to the usual course of business, the note or bill is lodged at the bank for collection; and if the maker or acceptor calls to take it up, when it falls due, it will be delivered to him, and the business is closed; but should he not find the note or bill at the bank, he can deposit his money to meet the note when presented; and should he be afterwards prosecuted, he will be exonerated from all costs and damages, upon proving such tender and deposit; or should the note or bill be made payable at some place other than a bank, and no deposit could be made, or he should choose to retain his money in his own possession; an offer to pay the money at the time and place would protect him against interest and costs, on bringing the money into court.....*Id.*
4. In actions on promissory notes, or on bills of exchange, where the suit is against the maker, in the one case, and the acceptor in the other, and the note or bill is made payable at a specified time and place; it is not necessary to aver in the declaration, or to prove on the trial, that a demand of payment was made, in order to maintain the action; but if the maker or acceptor was at the place, at the time designated, and was ready and offered to pay the money, it is matter of defence to be pleaded and proved on his part.....*Id.*
5. The plaintiffs in an action on the second set of a foreign bill of exchange, which was protested for non-acceptance, with the protests thereto attached, can recover, without producing the first of the same set, or accounting for its non-production. *Downes* v. *Church*.....*205

BILL OF REVIEW.

1. A bill of review must be founded on some error apparent upon the bill, answer and other pleadings, and decree; a party is not at liberty to go into the evidence at large, in order to establish an objection in the decree, founded on the supposed mistake of the court, in its own deductions from the evidence. *Whiting* v. *Bank of United States*..*6
2. No party to a decree can, by the general principles of equity, claim a reversal of a decree, upon a bill of review, unless he has been aggrieved by it; whatever may have been his right to insist on the error at the original hearing, or on an appeal.....*Id.*

CARRIERS.

1. In an action against the owner of a stage-coach used for carrying passengers, for an injury sustained by one of the passengers, by the upsetting of the coach, the owner is not liable, unless the injury of which the plaintiff complains was occasioned by the negligence or want of proper skill or care in the driver of the carriage, in which he and his wife were passengers; the facts that the carriage was upset, and the plaintiff's wife injured, are *primâ facie* evidence that there was carelessness, or negligence or want of skill upon the part of the driver; and cast upon the defendant the burden of proving that the accident was not occasioned by the driver's fault. *Stokes* v. *Saltonstall*.....*181
2. It being admitted, that the carriage was upset and the plaintiff's wife injured, it is incumbent on the defendant to prove, that the driver was a person of competent skill, of good habits, and in every respect qualified and suitably prepared for the business in which he was engaged; and that he acted on the occasion with reasonable skill, and with the utmost prudence and caution; if the disaster in question was occasioned by the least negligence, or want of skill, or prudence, on his part; then the defendant is liable in damages.....*Id.*
3. If there was no want of proper skill, or care, or caution, on the part of the driver of a stage-coach, and the stage was upset by the act of the plaintiff or his wife, in rashly and improperly springing from it, then the defendant is not liable to an action; but if the want of proper skill or care of the driver placed the passengers in a state of peril, and they had, at the time, a reasonable ground for supposing that the stage would upset, or that the driver was incapable of managing his horses, the plaintiff is entitled to recover; although the jury may believe, from the position in which the stage was placed by the negligence of the driver, the attempt of the plaintiff or his wife to escape may have increased the peril, or even caused the stage to upset; and although they may also find, that the plaintiff and his wife would probably have sustained little or no injury, if they had remained in the stage.....*Id.*
4. If the driver was a person of competent skill, and in every respect qualified and suitably prepared for the business in which he was engaged, and the accident was occasioned by no fault or want of skill or care on his part, or that of the defendant or his agents, but by physical disability arising from extreme and unusual cold, which rendered him incapable for the time to do his duty; then the owner of the stage is not liable in an action for damages, for an injury sustained by a passenger .....*Id.*

CHANCERY.

1. R. B. L., in 1809, then residing in Virginia, for a valuable consideration, made a conveyance, in trust for the benefit of his wife, of certain personal property and slaves, which deed was duly recorded according to the provisions of the act of the legislature of Virginia; the property thus conveyed, remained in the possession of the husband and wife, while they resided in Virginia; and in 1814, R. B. L. removed to the district of Columbia, with his wife and family, and brought with him the slaves and property conveyed in trust for his wife. In 1817, R. B. L. borrowed a sum of money of the Bank of the United States, on his promissory note, indorsed by one of the trustees named in the deed of trust of 1809; at the time the loan was made, R. B. L. executed a deed of trust of eleven slaves, and among them were the slaves, and the household furniture, conveyed by the deed of 1809, to secure the bank for the amount of the loan; in 1827, R. B. L. died, entirely insolvent; during his residence in Washington, being in reduced circumstances, he sold some of the slaves conveyed by the deed of 1809, for the support of his family, without objection by his wife or her trustees. In 1834, the debt to the bank being unpaid, a bill was filed against Mrs. E. L., the wife of R. B. L., and the trustees, in order to compel the surrender of the remaining slaves, and the household furniture, to the trustee for the bank, for the sale of the same, to satisfy the debt due to the bank: *Held*, that the deed of 1809, vesting the property in Mrs. L.'s trustees, was effectual, according to the laws of Virginia, to protect the title thereto, against the subsequent creditors of, or purchasers from, R. B. L.;

and that the removal of R. B. L. and his wife, into the district of Columbia, with the property conveyed to the trustees for the use of Mrs. L., did not affect or impair the validity of the deed of trust. *Bank of United States* v. *Lee* *107

2. A liberal construction should be given to the clause of the Virginia statute, for the suppression of fraud; this is the well-established rule in the construction of the statute of Elizabeth; which the first section of the Virginia statute substantially adopts... *Id.*
3. If A. sells or conveys his lands or slaves to B., and then produces to another his previous paper title, and obtains credit on the goods or lands, by pledging them for money loaned, he is guilty of fraud; and if the true owner stands by, and does not make his title known, he will be bound to make good the contract; on the principle, that he who holds his peace, when he ought to have spoken, shall not be heard now that he should be silent; he is deemed, in equity, a party to the fraud..... *Id.*
4. It is a well-settled principle in equity, that a judgment-creditor, who is compelled to pay off prior incumbrances on land, to obtain the benefit of his judgment, may, by assignment, secure to himself the rights of the incumbrancers; and the same rule applies, where a junior mortgagee is obliged to satisfy prior mortgages; he stands as the assignee of such mortgages, and may claim all the benefits under the lien, that could have been claimed by the assignor; but the effect of this principle may be controlled by the acts of the parties. *Bank of United States* v. *Peter*..... *123
5. Where the legislature declares certain instruments illegal and void, there is inherent in the courts of equity, a jurisdiction to order them to be delivered up, and thereby give effect to the policy of the legislature. *Clarke* v. *Smith*..... *195
6. The state legislatures have, certainly, no authority to prescribe the forms or modes of proceeding in the courts of the United States; but having created a right, and at the same time, prescribed the remedy to enforce it, if the remedy prescribed is substantially consistent with the ordinary modes of proceeding on the chancery side of the federal courts, no reason exists why it should not be pursued in the same form as in the state courts; on the contrary, propriety and convenience suggest that the practice should not materially differ, when titles to land are the subjects of investigation..... *Id.*
7. The undoubted truth is, that when investigating and decreeing on titles in this country, the court must deal with them in practice as it finds them, and accommodate our modes of proceeding in a considerable degree to the nature of the case, and to the character of the equities involved in the controversy, so as to give effect to state legislation, and state policy; not departing, however, from what legitimately belongs to the practice of a court of chancery ..... *Id.*

CHANCERY PRACTICE.

1. According to the course of practice in the courts of the United States, in chancery cases, an original decree is to be deemed recorded and enrolled, as of the term in which the final decree was passed. A bill which seeks to have alleged errors revised for want of parties, or for want of proper proceedings, after the decree against his heirs, and after the decease of one of the parties, is certainly a bill of review; in contradistinction to a bill in the nature of a bill of review; which lies only where there has been no enrolment of the decree. *Whiting* v. *Bank of United States*..... *6
2. An original bill, in the nature of a bill of review, brings forward the interests affected by the decree, other than those which are founded in privity of representation.... *Id.*
3. In England, the decree always recites the substance of the bill and answer, and the pleadings, and also the facts on which the court founds its decree; but in America, the decree does not, ordinarily, recite these; and generally, not the facts on which the decree is founded. With us, the bill and answer, and other pleadings, together with the decree, constitute what is properly considered as the record..... *Id.*
4. The bill of review must be founded on some error apparent upon the bill, answer and other pleadings, and decree; a party is not at liberty to go into the evidence at large, in order to establish an objection in the decree, founded on the supposed mistake of the court in its own deductions from the evidence..... *Id.*
5. No party to a decree can, by the general principles of equity, claim a reversal of a decree, upon a bill of review, unless he has been aggrieved by it; whatever may have been his rights to insist on the error, at the original hearing, or on an appeal..... *Id.*
6. A decree of foreclosure of a mortgage and sale, are to be considered as the final decree, in the sense of a court of equity; the proceedings on the decree are a mode of enforcing the rights of the creditor, and for the benefit of the debtor; the original decree of foreclosure is final on the merits of the con-

troversy. If a sale is made, after such a decree, the defendant not having appealed, as he had a right to do, the rights of the purchaser would not be overthrown or invalidated, even by a reversal of the decree.....*Id.*

7. After a decree of foreclosure of a mortgage and sale, and the death of the defendant afterwards, it is not necessary to revive the proceedings against the heirs of the deceased party, before a sale of the property can be made.....*Id.*

8. Strictly, in chancery practice, though it is different in some of the states of the Union, no exceptions to a master's report can be made, which were not taken before the master, the object being to save time, and to give him an opportunity to correct his errors, or to reconsider his opinions. A party neglecting to bring in exceptions before the master, cannot afterwards except to the report, unless the court, on motion, see reason to be dissatisfied with the report, and refer it to the master for re-examination, with liberty to the party to take objections to it. *Story* v. *Livingston* 359

9. Exceptions to the report of a master must state, article by article, the parts of the report which are intended to be excepted to.....*Id.*

10. Exceptions to the report of a master, in chancery proceedings, are in the nature of a special demurrer, and the party objecting must point out the errors, otherwise the parts not excepted to will be taken as admitted.....*Id.*

11. In a reference to a master for any purpose, the order need not particularly empower him to take testimony, if the subject-matter is only to be ascertained by evidence. And in taking evidence, although the better plan is to take the answers in writing, upon written interrogatories, he may examine witnesses *vivâ voce ;* the parties to the suit being present, personally, or by counsel, and not objecting to such a course.....*Id.*

12. The 28th rule prescribed for the practice of courts of equity of the United States, provides for bringing witnesses before the master ; for their compensation ; for attachments, for a contempt, when witnesses refuse to appear on a *subpœna ;* and the last clause allows the examination of witnesses *vivâ voce*, when produced in open court. The same reasons which allow it to be done in open court, permit it to be done by a master.....*Id.*

13. The allowance of costs is a matter of practice, which need not be a part of the decree or judgment of the court, although it often is so ; as the payment of costs is, in most cases, made to depend upon the rules ; and when rules do not apply, upon the court's order in directing the taxation of costs.....*Id.*

14. The general rule in chancery proceedings is, that all persons materially interested in a suit, ought to be parties to it, either as plaintiffs or defendants, that a complete decree may be made between these parties ; but there are exceptions to this rule, and one of them is, when a decree in relation to the subject-matter in litigation can be made, without a person having his interest in any way concluded by the decree. .....*Id.*

15. When a complainant omits to bring before the court persons who are necessary parties, but the objection does not appear on the face of the bill, the proper mode to take advantage of it is, by plea and answer. The objection of misjoinder of complainants, should be taken either by demurrer, or on the answer of the defendants ; it is too late to urge a formal objection of the kind, for the first time, at the hearing.....*Id.*

CLERKS OF COURTS.

1. Motion for a rule on the district judge of the eastern district of Louisiana, to show cause why a *mandamus* should not be issued, requiring him to restore Duncan N. Hennen to the office of the clerk of the district court ; the petition stated the appointment of the relator to the office of clerk of the district court, in 1834 ; the full and complete performance of his duties as clerk of the court, until May 1837 ; the acknowledgment of the fidelity and capacity with which the duties of the office were performed, stated in writing by the district judge ; and the appointment of another person to the office, from personal motives, and the influence of friendship, and a knowledge of the capacity of the person appointed to perform the duties of the office ; the petition also stated the performance of the duties of clerk of the circuit court of the eastern district of Louisiana, under the appointment of clerk of the district court, and the offer to perform those duties, after his asserted removal as clerk of the district court ; and that the judges of the circuit court being divided in opinion as to his right to exercise the office of clerk, the business of the circuit court was entirely suspended : *Held*, the appointment of clerks of courts, properly belongs to the courts of law ; and a clerk of the court is one of those officers contemplated by the provision in the constitution, giving to congress the power to vest the appointment of inferior officers as they think proper. The appointing power designated by the constitution, in the latter part of the second section of the second article of the constitution, was,

no doubt, intended to be exercised by the department of the government to which the officer to be appointed most appropriately belonged. *Ex parte Hennen*.....*230

2. It cannot be admitted, that it was the intention of the constitution, that those offices which are denominated inferior offices, should be held during life; in the absence of all constitutional or statutory provision as to the removal of such officers, it would seem to be a sound and necessary rule, to consider the power of removal as incident to the power of appointment.... .....*Id.*

3. The tenure of ancient common-law offices, and the rules and principles by which they are governed, have no application to the office of the clerk of a district court of the United States. The tenure, in those cases, depends in a great measure upon ancient usage; but in the United States, there is no ancient usage, which can apply to and govern the tenure of offices created by the constitution and laws; they are of recent origin, and must depend entirely on a just construction of our constitution and laws: and the like doctrine is held in England, where the office is not an ancient common-law office, but of modern origin, under some act of parliament; in such a case, the tenure of the office is determined by the meaning and intention of the statute.....*Id.*

4. The law giving the district courts the power of appointing their own clerks, does not prescribe any form in which this shall be done; the power vested in the court is a continuing one; and the mere appointment of a successor would, *per se*, be a removal of the prior incumbent; so far at least as his rights were concerned.....*Id.*

5. The supreme court can have no control over the appointment or removal of a clerk of the district court; nor entertain any inquiry into the grounds of the removal. If the judge is chargeable with any abuse of his power, the supreme court is not the tribunal to which he is answerable.....*Id.*

COLLECTOR OF CUSTOMS.

1. The plaintiff, as the importer of certain merchandise from England, entered the same at the custom-house in New York, on the 29th of March 1837, as cases containing cotton gloves; he gave a bond for the duties, payable on the 27th of June 1838; in 1838, it was discovered, that one of the cases, No. 45, contained silk hose, and not cotton gloves. The plaintiff paid the bond to the collector, under protest; having claimed from the comptroller of the treasury to be released from the payment of the duties on case No. 45, alleging that, as silk hose, they were not liable to duty under the act of congress of 14th July 1832; and instituted a suit against the collector, to recover back the duties so paid to him: *Held*, that the suit could not be sustained, after so long a time from the entry of the merchandise: also, that silk hose, and all manufactures of silk, of which silk is the component material of chief value, coming from this side of the Cape of Good Hope, except sewing silk, was free of duty. *Bend* v. *Hoyt* *263

2. Even courts of equity will not interfere to assist a party to obtain redress for an injury which he might, by ordinary diligence, have avoided; and, *à fortiori*, a court of law ought not, when the other party has, by his very acts and omissions, lost his own proper rights and advantages.....*Id.*

3. A collector is generally liable in an action to recover back an excess of duties paid to him as collector, when the duties have been illegally demanded, and a protest of the illegality has been made at the time of payment, or notice given that the party means to contest the claim; nor is there any doubt, that a like action generally lies, where the excess of duties has been paid under a mistake of fact, and notice thereof has been given to the collector, before he has paid over the money to the government.....*Id.*

4. By the 69th section of the collection act of 1799, ch. 228, the goods or merchandises seized under that act are to be put into and remain in the custody of the collector, or such other persons as he may appoint for that purpose, no longer than until the proper proceedings are instituted, under the 89th section of the same act, to ascertain whether they are forfeited or not; and as soon as the marshal seizes the goods, under the proper process of the court, he is entitled to the sole and exclusive custody thereof, subject to the future orders of the court. *Ex parte Hoyt*.....*279

CONSTITUTIONAL LAW.

1. An action was instituted in the circuit court of the United States for the district of Alabama, by the Bank of Augusta, Georgia, against the defendant, a citizen of Alabama, on a bill of exchange drawn at Mobile, Alabama, on New York, which had been protested for non-payment, and returned to Mobile; the bill was made and indorsed for the purpose of being discounted by the agent of the bank, who had funds in his hands belonging to the plaintiffs for the purpose of purchasing bills of exchange, which funds were derived from bills and notes discounted by the bank or Georgia; the bill was dis-

counted by the agent of the bank, in Mobile, for the benefit of the bank, with their funds, to remit the said funds to the bank. The defendant defended the suit on the fact that the bank of Augusta was a corporation incorporated by an act of the legislature of Georgia, with such power as is usually conferred on banking institutions, as, to purchase bills of exchange, &c. The circuit court held, that the plaintiffs could not recover on the bill of exchange, and that the purchase of the bill by the agent of the plaintiffs was prohibited by the laws of Alabama, and gave judgment for the defendant. In the case of the United States Bank of Pennsylvania *v.* Primrose, the plaintiffs, a corporation by virtue of a law of the state of Pennsylvania, authorized by its charter to sue and be sued in the name of the corporation, and to deal in bills of exchange, and composed of citizens of Pennsylvania, and of the states of the United States, other than the state of Alabama, agent of the bank, resident in Mobile, and in possession of funds belonging to the bank, and intrusted with them for the sole purpose of purchasing bills of exchange, purchased a bill of exchange, and paid for the same in notes of the branch of the Bank of Alabama, at Mobile; the bill was protested for non-payment, and a suit was instituted in the circuit court against the payee, the indorser of the bill. The question for the opinion of the circuit court was, whether the purchase of the bill of exchange by the United States Bank was a valid contract, under the laws of Alabama; the circuit court decided, that the contract was void, and gave judgment for the defendant. The case of the New Orleans and Carrollton Railroad Company *v.* Joseph B. Earle, was similar to that of the Bank of Augusta *v.* Joseph B. Earle. The supreme court reversed the judgment of the circuit court in the three cases; and held, the contracts for the purchase of the bills valid; and that the plaintiffs acquired a legal title to the bills by the purchase. *Bank of Augusta* v. *Earle*.....*519

2. in the case of the Bank of the United States *v.* Deveaux, the supreme court decided, that on a question of jurisdiction, they might look to the character of the persons composing a corporation; and if it appeared, that they were citizens of another state, and the fact was set forth by proper averments, the corporation might sue in its corporate name in the courts of the United States. But in that case, the court confined its decision, in express terms, to a question of jurisdiction; to a right to sue; and evidently went, even so far, with some hesitation. The propriety of that doctrine is fully assented to, and it has ever since been recognised as authority in this court; but the principle has never been extended any further than it was carried in that case; and has never been supposed to extend to contracts made by a corporation, especially in another sovereignty.....*Id.*
3. The nature and character of a corporation created by statute, and the extent of the powers which it may lawfully exercise, have upon several occasions been under consideration in the supreme court. The cases of Head *v.* Providence Insurance Company, 2 Cranch 127; and Dartmouth College *v.* Woodward, 4 Wheat. 636, cited.....*Id.*
4. Whenever a corporation makes a contract, it is the contract of the legal entity—of the artificial being created by the charter—and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a state.....*Id.*
5. It may be safely assumed, that a corporation can make no contracts, and do no acts, either within or without the state which creates it, except such as are authorized by its charter; and those acts must also be done by such officers or agents, and in such manner, as the charter authorizes. And if the law creating a corporation does not, by the true construction of the words used in the charter, give it the right to exercise its powers beyond the limits of the state, all contracts made by it in other states would be void. *Id.*
6. It is very true, that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created; it exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and can not migrate to another sovereignty; but although it must live and have its being in that state only, yet it does not by any means follow, that its existence there will not be recognised in other places; and its residence in one state creates no insuperable objection to its power of contracting in another. It is, indeed, a mere artificial being, invisible and intangible; yet it is a person, for certain purposes, in contemplation of law; and has been recognised as such by the decisions of the supreme court. It is sufficient, that its existence as an artificial person, in the state of its creation, is acknowledged and recognised by the law of the nation where the dealing takes place; and that it is permitted, by the laws of that place, to exercise there the powers with which it is endowed....*Id.*

7. Courts of justice have always expounded and executed contracts made in a foreign country, according to the laws of the place in which they were made; provided that law was not repugnant to the laws or policy of their own country. The comity thus extended to other nations is no impeachment of sovereignty; it is the voluntary action of the nation by which it is offered; and is inadmissible, when contrary to its policy, or prejudicial to its interests; but it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereigns to which they belong, that courts of justice have continually acted upon it; as a part of the voluntary law of nations..... *Id.*

8. The court can perceive no sufficient reason for excluding from the protection of the law the contracts of foreign corporations, when they are not contrary to the known policy of the state, or injurious to its interests; it is nothing more than the admission of the existence of an artificial person, created by the law of another state, and clothed with the power of making certain contracts; it is but the usual comity of recognising the law of another state..... *Id.*

9. The states of the Union are sovereign states; and the history of the past, and the events which are daily occurring, furnish the strongest evidence, that they have adopted towards each other the laws of comity, in their fullest extent..... *Id.*

10. In the legislation of congress, where the states and the people of the several states are all represented, we find proof of the general understanding in the United States, that by the law of comity among the states, the corporations chartered by one, were permitted to make contracts in the others.. *Id.*

11. It is well settled, that by the law of comity among nations, a corporation created by one sovereignty is permitted to make contracts in another, and to sue in its courts; and that the same law of comity prevails among the several sovereignties of this Union. The public, and well-known, and long-continued usages of trade; the general acquiescence of the states; the particular legislation of some of them, as well as the legislation of congress; all concur in proving the truth of this proposition.. *Id.*

12. Franchises are special privileges, conferred by governments upon individuals, and which do not belong to the citizens of the country generally, of common right; it is essential to the character of a franchise, that it should be a grant from the sovereign authority; and in this country, no franchise can be held, which is not derived from a law of the state..... *Id.*

13. The comity of suit brings with it the comity of contract; and where the one is expressly adopted by the courts, the other must also be presumed, according to the usages of nations, unless the contrary can be shown.. *Id.*

14. The state of Alabama has not merely acquiesced by silence, but her judicial tribunals have declared the adoption of the law of international comity in the case of a suit..... *Id.*

15. The state of Alabama never intended, by its constitution, to interfere with the right of selling or purchasing bills of exchange... *Id.*

16. When the policy of a state is manifest, the courts of the United States are bound to notice it, as part of its code of laws; and to declare all contracts, in the state, repugnant to it, to be illegal and void..... *Id.*

CONTRACTS.

1. It is a principle recognised and acted upon as a cardinal rule by all courts of justice, in the construction of contracts, that the intention of the parties is to be inquired into; and if not forbidden by law, is to be effectuated. *Bradley* v. *Steam-Packet Company.**97

2. The general principle in relation to contracts made at one place to be executed at another, is well settled; they are to be governed by the laws of the place of performance; and if the interest allowed by the laws of the place of performance be greater than that permitted at the place of the contract, the parties may stipulate for the higher interest, without incurring the penalties of usury. *Andrews* v. *Pond*..... *65

3. Where a contract has been made, without reference to the laws of the state where it was made, or to the laws of the place of performance, and a rate of interest is reserved, forbidden by the laws of the state where the contract was made, which was concealed under the name of exchange, in order to evade the law against usury, the question is not, which law is to govern in executing the contract; unquestionably, it must be the law of the state where the agreement was entered into, and the instrument taken to secure its performance. A contract of this kind cannot stand on the same principles with a *bonâ fide* agreement made in one place to be executed in another. In the last-mentioned cases, the agreements are permitted by the *lex loci contractûs*; and will even be enforced there, if the party is found within its jurisdiction; but the same rule cannot be applied to contracts forbidden by its laws, and designed to evade them; in such cases, the legal consequences of such an agreement must be decided by the law of the place where the

contrnct was made; if void there, it is void everywhere.....*Id.*

CORPORATIONS.

1. An action was instituted in the circuit court of the United States for the district of Alabama, by the Bank of Augusta, Georgia, against the defendant, a citizen of Alabama, on a bill of exchange drawn at Mobile, Alabama, on New York, which had been protested for non-payment, and returned to Mobile; the bill was made and indorsed for the purpose of being discounted by the agent of the bank, who had funds in his hands, belonging to the plaintiffs, for the purpose of purchasing bills of exchange, which funds were derived from bills and notes discounted by the bank in Georgia; the bills were discounted by the agent of the bank, in Mobile, for the benefit of the bank, with their funds, to remit the said funds to the bank; the defendant defended the suit on the fact that the Bank of Augusta was a corporation incorporated by an act of the legislature of Georgia, with such power as is usually conferred on banking institutions, as, to purchase bills of exchange, &c. The circuit court held, that the plaintiffs could not recover on the bill of exchange, and that the purchase of the bill by the agent of the plaintiffs was prohibited by the laws of Alabama, and gave judgment for the defendant. In the case of the Bank of the United States of Pennsylvania *v.* Primrose, the plaintiffs, a corporation by virtue of a law of the state of Pennsylvania, authorized by its charter to sue and be sued in the name of the corporation, and to deal in bills of exchange, and composed of citizens of Pennsylvania, and states of the United States, other than the state of Alabama, the agent of the bank, resident in Mobile, and in possession of funds belonging to the bank, and intrusted with them for the sole purpose of purchasing bills of exchange, purchased a bill of exchange, and paid for the same in notes of the branch of the Bank of Alabama, at Mobile; the bill was protested for non-payment, and a suit was instituted in the circuit court against the payee, the indorser of the bill. The question for the opinion of the circuit court was, whether the purchase of the bill of exchange by the United States Bank was a valid contract, under the laws of Alabama; the circuit court decided, that the contract was void, and gave judgment for the defendant. The case of the New Orleans and Carrollton Railroad Company *v.* Joseph B. Earle, was similar to that of the Bank of Augusta *v.* Joseph B. Earle. The supreme court reversed the judgment of the circuit court in the three cases; and held the contracts for the purchase of the bills valid; and that the plaintiffs acquired a legal title to the bills by the purchase. *Bank of Augusta* v. *Earle*.....*519

2. In the case of the Bank of the United States *v.* Deveaux, the supreme court decided, that on a question of jurisdiction they might look to the character of the persons composing a corporation; and if it appeared, that they were citizens of another state, and the fact was set forth by proper averments, the corporation might sue in its corporate name in the courts of the United States. But in that case, the court confined its decision, in express terms, to a question of jurisdiction; to a right to sue; and evidently went even so far, with some hesitation. The propriety of that decision is fully assented to, and it has ever since been recognised as authority in this court; but the principle has never been extended any further than it was carried in that case; and has never been supposed to extend to contracts made by a corporation, especially in another sovereignty.....*Id.*

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4. Whenever a corporation makes a contract, it is the contract of the legal entity—of the artificial being created by the charter—and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a state.....*Id.*

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6. It is very true, that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created; it exists only in contemplation of law and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot

migrate to another sovereignty; but, although it must live and have its being in that state only, yet it does not by any means follow, that its existence there will not be recognised in other places; and its residence in one state creates no insuperable objection to its power of contracting in another. It is, indeed, a mere artificial being, invisible and intangible; yet it is a person, for certain purposes, in contemplation of law; and has been recognised as such by the decisions of this court. It is sufficient, that its existence as an artificial person, in the state of its creation, is acknowledged and recognised by the law of the nation where the dealing takes place; and that it is permitted, by the laws of that place, to exercise there the powers with which it is endowed..... *Id.*

7. It is well settled, that by the law of comity among nations, a corporation created by one sovereignty is permitted to make contracts in another, and to sue in its courts: and that the same law of comity prevails among the several sovereignties of this Union. The public, and well-known and long-continued usages of trade; the general acquiescence of the states; the particular legislation of some of them, as well as the legislation of congress, all concur in proving the truth of this proposition..... *Id.*

8. Franchises are special privileges, conferred by government upon individuals, and which do not belong to the citizens of the country generally, of common right; it is essential to the character of a franchise, that it should be a grant from the sovereign authority, and in this country, no franchise can be held, which is not derived from a law of the state... *Id.*

9. The court can perceive no sufficient reason for excluding from the protection of the law, the contracts of foreign corporations, when they are not contrary to the known policy of the state, or injurious to its interests; it is nothing more than the admission of the existence of an artificial person, created by the law of another state, and clothed with the power of making certain contracts; it is but the usual comity of recognising the law of another state..... *Id.*

10. In the legislation of congress, where the states and the people of the several states are all represented, we find proof of the general understanding in the United States, that by the law of comity among the states, the corporation chartered by one, were permitted to make contracts in the others. *Id.*

COURTS.

1. The presumption is, that the judgment of the circuit court is proper, and it lies on the plaintiff in error to show the contrary. *Bagnell* v. *Broderick*.....*436

DEBTOR AND CREDITOR.

1. A bill was filed, claiming a specific performance of an alleged contract to convey a house and lot in Georgetown, for the benefit of the wife of the complainant, the complainant having expended a large sum of money in improving the property, in the expectation that it would be conveyed as required by the bill; the court, not considering that sufficient evidence of an agreement to convey the property was given, ordered that the same should be sold, and out of the proceeds that the advances made by the complainant should be repaid; the property sold for a sum far less than the amount expended: *Held*, that the balance unpaid after the sale, was not a debt due by the estate of the father of the wife; and could not be claimed of his representatives. *King* v. *Thompson*..*128

DEVISE.

1. The testator devised to his wife one-third of his personal estate for ever, for her own proper use and benefit, and also one-third of all his real estate, during her lifetime, and in the event of her death, all the right in real property bequeathed to her, should be, and by the will was, declared to be vested in his infant son; the testator then proceeded to devise sundry lots and houses to his mother, his sisters, his brothers, separately, and his son; these were given to the respective devisees, "as their property for ever;" he then devised the balance of his real estate to his infant son "for ever," believed to be certain lots specified in the will: *Held*, that the wife took, under the will, one-third of all the real estate of the testator, during her life, and that his son took a fee-simple in one-third of the property given to the brothers and sisters of the testator, subject to the devise to his mother, and a fee-simple in all the real estate, specifically devised to him, subject to the devise of one-third to his mother, during her life. *Walker* v. *Parker*.....*166

2. The devisee of one of the lots devised to him for ever, which the court held was subject to the right to one-third in the wife of the devisor, and one-third after her decease, in fee, to the son of the devisor, cannot, by a proceeding in chancery, compel a sale of the property devised, or a partition; unless the court are satisfied it would be for the benefit of the infant son to make such sale, and

with the consent of all the other parties interested in the property.....*Id.*

DISTRICT OF COLUMBIA.

1. The proceedings of the courts of the state of Maryland, and the laws of that state prior to the passing of laws by congress providing for the government of the district of Columbia, were in full force and operation in that part of the district ceded by the state of Maryland, until congress had legislated for the government of the district of Columbia; and a decree of the court of chancery of Maryland, affecting property in the district of Columbia, in a cause entertained in that court, operated in the district until congress took upon itself the government of the district. *Van Ness* v. *Bank of United States.**17
2. The state of Maryland and the United States both intended, that suits pending in the courts of Maryland should be proceeded in, until the rights of the parties should be definitely decided; and that the judgments and decrees there made, should be as valid and conclusive as if the sovereignty had not been transferred.....*Id.*
3. Congress, by the 13th section of the act of February 27th, 1801, placed judgments and decrees thereafter to be obtained in the state courts of the state of which the district of Columbia had formed a part, on the same footing with judgments and decrees rendered before the cession.....*Id.*
4. If a guardian appointed by a court of the state of Maryland, in a cause instituted after congress had legislated for the district of Columbia, had been ordered, by a decree of the court, to make a deed of lands within the district, and had died, or had refused to make the conveyance as ordered, the court of the district would, on application, have been bound to appoint another person to execute the deed; and would not have been authorized to open again and re-examine the questions which had been decided in the Maryland court..*Id.*

DUTIES.

1. Stockings and half-stockings, made entirely of silk, imported from Liverpool, in October 1838, were exempted from the payment of duty, by the act of congress passed March 2d, 1833, entitled "an act to modify the act of the 14th July 1832, and all other acts imposing duties on imports." *Hardy* v. *Hoyt*.....*292
2. The importers of goods, in virtue of the importation thereof, become personally indebted to the United States for the duties thereon; the remedy of the United States for the duties is not exclusively confined to the lien on the goods, and the security of the bond given for the duties; the duties due upon all goods imported constitute a personal debt due to the United States from the importer; independently of any lien on the goods, and of any bond given for the duties; the consignee of goods imported is, for this purpose, treated as the owner and importer. *Meredith* v. *United States*.....*486
3. The right of the government to the duties accrues, in the fiscal sense of the term, when the goods have arrived at the port of entry; the debt for the duties is then due, although it may be payable afterwards, according to the regulations of acts of congress.....*Id.*
4. The debt due to the United States for duties on imported merchandise, is not extinguished by the giving of bonds, with surety, for the same. The revenue collection act of 1799, ch. 128, requires, that the collector should take the bonds for the duties from all the persons who are the importers; whether they be partners or part-owners.....*Id.*
5. The government of the United States have a right to retain money in their hands, belonging to a surety in a bond given for duties which are unpaid, until a suit shall be terminated for the recovery of the amount of the duties on the goods due by the importers; the government is not obliged to appropriate the money of the surety to the satisfaction of the bond, but may hold it as a security, until the suit is determined.....*Id.*

EJECTMENT.

1. In an action of ejectment, the day of the ouster need not be alleged; it is sufficient, if it be laid after the demise. *Woodward* v. *Brown*.....*1
2. The specific date under a *videlicet* is not necessary, in a declaration of ejectment, and may be rejected as surplusage; if it sufficiently appear on the face of the declaration that the ouster was after the entry under the several demises.....*Id.*
3. The rule is well established, that when the right of entry is by ouster of the title of the wife, the demise may be laid in the name of the husband, or in the names of the husband and wife.....*Id.*
4. In a declaration in ejectment, various demises were laid, and the verdict of this jury, and the judgment of the circuit court, were entered on one of the demises only; it was contended, that the court ought not to have entered a judgment on the issue found for

the plaintiff, but should have awarded a *venire de novo;* and that this irregularity might be taken advantage of upon a writ of error: *Held*, that if this objection had been made in the circuit court, on a motion in arrest of judgment, the plaintiff would have been permitted to strike out all the demises in the declaration, but that on which the verdict was given. The omission to strike out these demises was only, therefore, an omission of form; and the act of congress of 1789, ch. § 32, expressly provides, that no judgment shall be reversed for any defect or want of form; but that the courts of the United States shall proceed and give judgment, according as the right of the cause and matter in law shall appear to them, without regarding any imperfections, defects or want of form in the judgment or course of proceeding, except that specially demurred to. *Van Ness* v. *Bank of United States*.....*17

ENTRIES OF LAND.

1. The practice of giving in evidence a special entry, in aid of a patent, and dating the legal title from the date of the entry, is familiar in some of the states, and especially in Tennessee; yet the entry can only come in aid of the legal title, and is no evidence of such title, standing alone, when opposed to a patent for the same land. *Bagnell* v. *Broderick*.....*436

EQUITY OF REDEMPTION.

1. The equity of redemption of a mortgagor of land, in that part of the district of Columbia, ceded by the state of Maryland to the United States, cannot be taken in execution under a *fieri facias*. At the time of the cession, the rule of the common law was the law of Maryland. *Van Ness* v. *Hyatt*.....294

EVIDENCE.

1. The plaintiff in error had, by an agreement in writing, hired a steamboat to be put "on the route" from Washington, in the district of Columbia, to Potomac creek, until another steamboat, then building, should be prepared, and be put "on the route." The plaintiff in error was the contractor for carrying the mail of the United States, which was carried in a steamboat to Potomac creek; except in winter, when the navigation of the river Potomac was interrupted by ice, when the mail was carried by land; the steamboat so hired was employed in carrying the mail. The ice prevented the use of the steamboat; and the owners claimed, under the contract, the hire of the boat, during the time her employment was thus interrupted; the circuit court refused to allow parol evidence to be given to show the purpose for which the steamboat was employed, and to explain the meaning of the terms used in the contract, and of other matters conducing to show the meaning of the contract. The court held that the evidence was admissible. *Bradley* v. *Steam-Packet Company*.....*89
2. Extrinsic evidence is not admissible to explain a patent ambiguity, that is, one apparent on the face of the instrument; but it is admissible to explain a latent ambiguity, that is, one not apparent on the face of the instument, but one arising from extrinsic evidence; that is but to remove the ambiguity by the same kind of evidence as that by which it is created.....*Id.*
3. Extrinsic parol evidence is admissible, to give effect to a written instrument, by applying it to its proper subject-matter, by proving the circumstances under which it was made, whenever, without the aid of such evidence, the application could not be made in the particular case.....*Id.*
4. The defendant was indicted for receiving a treasury note, stolen from the mail of the United States; the indictment, in one of the counts, described one of the treasury notes as bearing interest annually of one per centum; a treasury note was offered in evidence, bearing interest at one M. per centum; and parol evidence was offered, to show that treasury notes, such as the one offered in evidence, were received by the officers of the government as bearing interest of one mill per centum per annum, not one per centum per annum. The court held that treasury notes issued by the authority of the act of congress passed on the 12th of October 1838, were promissory notes within the meaning of the act of congress of 3d March 1825. *United States* v. *Hardyman*.....*176
5. The letter M, which appeared on the face of the note offered in evidence, was a material part of the description of the note .....*Id.*
6. It would be proper to receive parol evidence, for the purpose of explaining the meaning of the letter M, and proving the practice and usage of the treasury department and officers of the government and others, lawful receivers of similar treasury notes; in order to show thereby the meaning intended to be attached, and actually attached, to the letter M, by the treasury department and others; and that by such meaning the said treasury note bears one mill per centum interest, and not one per centum interest.....*Id.*
7. Certain German documents were offered in evidence by the plaintiff, in the district

court of Louisiana, for the purpose of using such parts of them as contained depositions which related to the pedigree of the plaintiff, which were overruled by the district court, on the ground that they were not duly authenticated. In the case of Church *v.* Hubbart, 2 Cranch 187, this court held, that a certificate of a consul, under his consular seal, is not a sufficient authentication of a foreign law, to make it evidence; it not being one of his consular functions to grant such certificates; and also, that the proceedings of a foreign court, under the seal of a person who styles himself the secretary of foreign affairs in Portugal. is not evidence. On the principles of this case, the circuit court very properly rejected the depositions offered; the certificate and seal of the minister resident for Great Britain, in Hanover, is not a proper authentication of the proceedings of a foreign court, or of the proceedings of an officer authorized to take depositions. It is not connected in any way with the functions of the minister; his certificate and seal could only authenticate those acts which are appropriate to his office. *Stein* v. *Bowman.**209

8. The only mode in which depositions can be taken in a foreign country, is under a commission.....*Id.*
9. No rule is better established than that a party cannot be a witness in his own case.*Id.*
10. The objection to the competency of a party to a suit as a witness, does not arise so much from the small pecuniary liability to the payment of the costs, as from that strong bias which every party to a suit must naturally feel; and this influence is not the less dangerous, if the party be unconscious of its existence. Every individual who prosecutes or defends a suit, is, in the nature of things, disposed to view most favorably his own side of the controversy, and with no small prejudice, the side of his adversary. To admit a party on the record, under any circumstances, to be sworn as a witness in chief, would be attended with great danger; it would lead to perjuries, and the most injurious consequences, in the administration of justice.....*Id.*
11. From necessity, in cases of pedigree, hearsay evidence is admissible; but this rule is limited to the members of the family, who may be supposed to have known the relationship which existed in the different branches; the declaration of these individuals, they being dead, may be given in evidence to prove pedigree. And so is reputation, which is the hearsay of those who may be supposed to have known the fact, handed down from one to another, evidence. As evidence of this description must vary with the circumstances of each case, it is difficult, if not impracticable, to deduce from the books any precise and definite rule on the subject.....*Id.*
12. It is not every statement or tradition in a family that can be admitted as evidence; the tradition must be from persons having such a connection with the party to whom it relates, that it is natural and likely, from their domestic habits and connections, they are speaking the truth, and that they could not be mistaken.....*Id.*
13. The declarations offered as evidence were made subsequent to the commencement of the controversy, and, in fact, after the suit was commenced. It would be extremely dangerous to receive hearsay declarations in evidence respecting any matter, after the controversy has commenced; this would enable a party, by ingenious contrivances, to manufacture evidence to sustain his cause; it is, therefore, essential, when declarations are offered as evidence, that they should have been made before the controversy originated; and at a time and under circumstances when the person making them could have no motive to misrepresent the facts.....*Id.*
14. It is a general rule, that neither husband nor wife can be a witness for or against the other. This rule is subject to some exceptions, as when the husband commits an offence against the person of his wife....*Id.*
15. The husband and wife may be called as witnesses in the same case; and if, in their statement of facts, they should contradict each other, that would not destroy the competency of either; it would not follow from such contradiction, that either was guilty of perjury; in some cases, the wife may be a witness, under peculiar circumstances, where the husband may be interested in the question, and, to some extent, in the event of the cause.....*Id.*
16. The wife cannot be a witness to criminate her husband, or to state that which she has learned from him in their confidential intercourse; the rule which protects the domestic relations from exposure, rests upon considerations connected with the peace of families; and it is considered, that this principle does not afford protection to the husband and wife, while they are at liberty to invoke it or not, at their discretion, when the question is propounded; but it renders them incompetent to disclose facts in evidence, in violation of the rule. The husband being dead, does not weaken the principle; it would seem rather to increase than lessen the force of the rule.....*Id.*
17. To sustain a claim to the admission of the deposition of a witness in evidence, the affi-

davit of a person who represented himself to be the agent of the plaintiff, stated, that the witness had left Louisiana, before the commencement of the suit, and ascended the Mississippi, with the intention of going to Ohio; and that since then, the person who made the affidavit had not heard from him, although he had made inquiries. This does not amount to that degree of diligence which the law requires to introduce secondary evidence..... *Id.*

18. The defendant in an action in the circuit court, had, with others, received the proceeds of a joint and several promissory note discounted for them at the Bank of the Metropolis, and this note was afterwards renewed by their attorney, under a power of attorney authorizing him to give a joint note; but he gave a joint and several note, the proceeds of which the attorney received, and appropriated to pay the note already discounted at the bank; the interest of the sum borrowed was paid out of the money of the parties to the note: *Held*, that although the power of attorney may not have been executed in exact conformity to its terms; and may not have authorized the giving of a joint and several note (a question the court did not decide), yet the receipt of the proceeds of the note by the attorney, and the appropriation thereof to the payment of the former note, were sufficient evidence to sustain the money counts in the declaration. *Moore* v. *Bank of the Metropolis*..... *302

19. When an exception is taken, on a trial, to evidence, after it has been given without objection, to the whole matter stated in the exception, if any part of it was admissible, the objection may be properly overruled. It is the duty of a party taking exceptions to evidence, to point out the part excepted to, where the evidence consists of a number of particulars, so that the attention of the court may be drawn to the particular objection..... *Id.*

20. Where a deed of trust was made to secure the payment of certain promissory notes, in an action upon the deed, the notes may be read in evidence to prove the amount of the debt intended to be secured by the deed, without the notes having been assigned by the payees to the plaintiffs, the trustees in the deed. *Wilcox* v. *Hunt*..... *378

21. The general rule is, that the allegations in the answer or plea, in an action, and the proof, must agree; where there are no averments in a plea, to authorize the proof offered by a defendant, it is properly rejected by the court..... *Id.*

22. In Louisiana, when a contract, having subscribing witnesses to it, is proved to have been made out of the state, the state courts presume the witnesses reside at the place where the contract was made, and are not subject to process issued out of those courts; they therefore allow secondary evidence to prove the contract. This being the settled doctrine of the supreme court of Louisiana, the district court of the eastern district of Louisiana properly admitted evidence of the handwriting of the witnesses to a deed of trust which had been executed out of Louisiana, to go to the jury..... *Id.*

EXECUTION.

1. The principle of the common law undoubtedly is, that no property but that in which the debtor has a legal title is liable to be taken in execution; and accordingly, it is well settled in the English courts, that an equitable interest is not liable to execution. In the United States, different views have been taken of this question in the courts of the several states. Except as against the mortgagee, the mortgagor is regarded as the real owner of the property mortgaged; and this rule has very extensively prevailed in the states of the United States, that an equity of redemption is vendible, as real property, on an execution; and that it is also chargeable with the dower of the wife of the mortgagor. *Van Ness* v. *Hyatt*. *294

2. The equity of redemption of a mortgagor of land in that part of the district of Columbia, ceded by the state of Maryland to the United States, cannot be taken in execution under a *fieri facias*. At the time of the cession to the United States, the rule of the common law was the law of Maryland..... *Id.*

3. A *chose in action* is not liable to be levied on by a *fieri facias* ..... *Id.*

FLORIDA LAND TITLES.

1. A grant by Governor Coppinger, of 14,500 acres of land, in East Florida, part of 30,000 acres, granted in consideration of services to the crown of Spain, and the officers of Spain, which had been surveyed by the appointed officer, confirmed. *United States* v. *Levy*..... *81

2. The court refused to allow a survey of land to be made, to make up for a deficiency in the survey of 14,500 acres, in consequence of part of the land included therein being covered with water, and being marshes. Even if a survey had not been made under the concession, it would not be competent for the superior court of East Florida, or for the supreme court, to designate a new loca-

tion, varying from the original concession, as any such variation would be equivalent to a new grant..... *Id.*

3. A concession was made by the governor of Florida, before Florida was ceded to the United States, on condition, that the grantee should erect a water saw-mill: "and with the precise condition, that until he executes the said machinery, the grant to be considered void and without effect until that event takes place." The mill was never erected and no sufficient reason shown for its non-erection. The court held, that the concession gave no title to the land. *United States* v. *Drummond*..... *84
4. A grant of land in East Florida, by the Spanish governor, on the condition that a water saw-mill should be erected on the land, declared void; the condition of the grant not having been performed according to the terms of the grant. *United States* v. *Burgevin*.*85
5. A concession by the governor of East Florida made before the Florida treaty, in consideration of services, confirmed. *United States* v. *Heirs of Arredondo*.....*88
6. A concession of 38,000 acres of land was made in 1817, by the governor of East Florida, to F. M. Arredondo, in consideration of services to the crown of Spain; the petition to the governor, asking for the grant, described the situation of the land; and asked, as the survey could not be made, for want of surveyors, and the surveyor appointed by the government, having other occupations, could not attend, that the issuing of the title should be suspended, until the plat of the land could be obtained; but that, in the meantime, the decree of the governor on the petition should serve the petitioner as the title; to this application, the assent of the governor was given, by a decree ordering a concession in conformity with the petition. No survey was made under the concession, while Florida remained under the dominion of Spain; nor at any time after the cession of the territory to the United States. The court held, that want of a survey does not interfere with the title of a grantee; the land granted must be taken, as near as may be, to the place described in the petition, and cannot be taken elsewhere; and if it cannot be found there, the grantee has no claim to an equivalent: if it be found to interfere with previous grants to third persons, the concession will be lessened in quantity according to the extent of the rights of third persons; and an equivalent for such diminution cannot be surveyed elsewhere. *United States* v. *Heirs of F. M. Arredondo*..... *133
7. The acts of congress for ascertaining claims and titles to lands in Florida, whilst they recognise patents, grants, concessions or orders of survey, as evidence of title, when lawfully made; do not permit, in case of a deficiency in the quantity, from any cause whatever, the survey to be extended on other land..... *Id.*

FORECLOSURE OF A MORTGAGE.

1. A decree of foreclosure of a mortgage, and sale, are to be considered as the final decree, in the sense of a court of equity; the proceedings on a decree are a mode of enforcing the rights of the creditor, and for the benefit of the debtor; the original decree of foreclosure is final on the merits of the controversy. If a sale is made after such a decree, the defendant not having appealed, as he had a right to do, the rights of the purchaser would not be overthrown or invalidated, even by a reversal of the decree. *Whiting* v. *Bank of United States*..... *7
2. After a decree of foreclosure of a mortgage and a sale, and the death of the defendant after the decree, it is not necessary to revive the proceedings against the heirs of the deceased party, before a sale of the property can be made..... *Id.*

FOREIGN ATTACHMENT.

1. An attachment commenced and conducted to a conclusion, before the institution of a suit against the debtor in a court of the United States, may be set up as a defence to the suit; and the defendant will be protected *pro tanto* under a recovery had by virtue of the attachment, and may plead such recovery in bar. So too, an attachment pending in a state court, prior to the commencement of a suit in the court of the United States, may be pleaded in abatement. The attachment of the debt, in such case, in the hands of the defendant, will fix it there, in favor of the attaching creditors, and the defendant cannot afterwards pay it over to the plaintiff. The attaching-creditor will, in such a case, acquire a lien on the debt, binding on the defendant, and which the courts of all other governments, if they recognise such proceedings at all, will not fail to regard. The rule must be reciprocal; and when the suit in one court is commenced prior to proceedings under attachment in another court, such proceedings cannot arrest the suit. *Wallace* v. *McConnell*..... *136

FRAUD.

1. A bill was filed in the circuit court of the

southern district of New York, praying that a contract for the purchase and sale of a portion of a tract of land, in Goochland county, in the state of Virginia, on which there was a gold mine, should be rescinded; the purchaser alleged fraudulent misrepresentations as to the gold mine, and other arts of the seller, by which he was induced to make the purchase. The court affirmed the decree of the circuit court of the southern district of New York, by which the contract was ordered to be rescinded. *Smith* v. *Richards*..... ..... *26

2. It is an ancient and well-established principle, that wherever *suppressio veri*, or *suggestio falsi* occur, and more especially both together, they afford sufficient ground to set aside any release or conveyance..... *Id.*

3. The party selling property must be presumed to know whether the representation which he makes of it is true or false; if he knows it to be false, that is fraud of the most positive kind; but if he does not know it, then it can only be from gross negligence; and in contemplation of a court of equity, representations founded on a mistake resulting from such negligence, are fraud. The purchaser confides in them, upon the assumption that the owner knows his own property, and truly represents it; and it is immaterial to the purchaser, whether the misrepresentation proceeded from mistake or fraud; the injury to him is the same, whatever may have been the motives of the seller. The misrepresentations of the seller of property, to authorize the rescinding of a contract of sale by a court of equity, must be of something material, constituting an inducement or motive to purchase; and by which he has been misled to his injury; it must be in something in which the one party places a known trust and confidence in the other. *Id.*

4. Whenever a sale is made of property not present, but at a remote distance, which the seller knows the purchaser has not seen, but which he buys upon the representation of the seller, relying on its truth; then the representation in effect amounts to a warranty; at least, the seller is bound to make good the representation..... *Id.*

5. A liberal construction should be given to the clause of the Virginia statute, for the suppression of fraud; this is the well-established rule in the construction of the statute of Elizabeth, which the first section of the Virginia statute substantially adopts. *Bank of United States* v. *Lee*..... *107

6. If A. sells or conveys his land or slaves to B. and then produces to another his previous paper title, and obtains credit on the goods or lands, by pledging them for money loaned, he is guilty of fraud; and if the true owner stands by, and does not make his title known, he will be bound to make good the contract, on the principle, that he who holds his peace when he ought to have spoken, shall not be heard now that he should be silent; he is deemed, in equity, a party to the fraud..... *Id.*

FREIGHT.

1. The freight of a vessel totally lost by being run on shore for her preservation and that of the crew and cargo, ought to be allowed to the owner of the vessel, as the subject of general average; the cargo of the vessel being saved by the stranding. *Columbian Insurance Company* v. *Ashby*..... .. *331

GENERAL AVERAGE.

1. The brig Hope, with a cargo, bound from Alexandria, in the district of Columbia, for Barbadoes, insured in Alexandria, was assailed, while standing down the Chesapeake bay, by a storm, which soon after blew to almost a hurricane; the vessel was steered towards a point in the shore for safety, and was anchored in three fathoms water; the sails furled, and all efforts were made, by using the cables and anchors, to prevent her going on shore; the gale increased, the brig broke adrift, and dragged three miles; the windlass was ripped up, the chain cable parted, and the vessel commenced drifting again, the whole scope of both cables being payed out. The brig then brought up, below Craney Island, in two and half fathoms water; where she thumped or struck on the shoals on a bank, and her head swinging round, brought her broadside to the sea; the master finding no possible means of saving the vessel and cargo, and preserving the lives of the crew, slipped her cables, and ran her on shore for the safety of the crew, and preservation of the vessel and cargo; the vessel was run far up on a bank; where, after the storm, she was left high and dry, and it was found impossible to get her off; the lives of all the persons were saved; the whole cargo, of the value of $5335, insured for $4920, was taken out safely, and the vessel, her tackle, &c., were sold for $256: *Held*, that the insurers of the cargo were liable for a a general average. *Columbian Insurance Company* v. *Ashby*..... *331

2. The question of contribution cannot depend upon the amount of the damage sustained by the sacrifice of the property; for that would be to say, that if a man lost all his property for the common benefit, he should receive

nothing; but if he lost a part only, he should receive full compensation. No such principle is applied to the case of goods sacrificed for the common safety; why then should it be applied to the total loss of the ship for the like purpose? It is the deliverance from an immediate impending peril, by a common sacrifice, which constitutes the essence of the claim; it is the safety of the property, and not the voyage, which constitutes the foundation of general average..... ...*Id.*

3. A consultation by the master with the officers of the vessel, before running her on shore, with a view to her preservation, and that of the passengers and cargo, may be highly proper, in cases which admit of delay and deliberation, to prevent the imputation of rashness and unnecessary stranding by the master; but if the propriety and necessity of the act are otherwise sufficiently made out, no objection can be made to it. *Id.*
4. The freight of a vessel, totally lost, by being run on shore for her preservation and that of the crew and cargo, ought to be allowed to the owner of the vessel, as the subject of general average, the cargo of the vessel having been saved by the stranding..... *Id.*

GOVERNMENT.

1. The government of the United States having insisted, and continuing to insist, through its regular executive authority, that the Falkland islands do not constitute any part of the dominions within the sovereignty of Buenos Ayres, and that the seal fishery at those islands is a trade free, and lawful to the citizens of the United States, and beyond the competency of the Buenos Ayrean government to regulate, prohibit or punish; it is not competent for a circuit court of the United States to inquire into, and ascertain by other evidence, the title of the government of Buenos Ayres to the sovereignty of the Falkland islands. *Williams* v. *Suffolk Insurance Company*..... ....*415
2. When the executive branch of the government which is charged with the foreign relations of the United States, in its correspondence with a foreign nation, asumes a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department..... *Id.*

HUSBAND AND WIFE.

1. The rule is well established, that when the right of entry is by ouster of the title of the wife, the demise may be laid in the name of the husband, or in the names of the husband and wife. *Woodward* v. *Brown*..... *1
2. It is a general rule, that neither husband nor wife can be a witness for or against each other. This rule is subject to some exceptions; as when the husband commits an offence against the person of his wife. *Stein* v. *Bowman*.....*209
3. The husband and wife may be called as witnesses in the same case; and if, in their statements of facts, they should contradict each other, that would not destroy the competency of either; it would not follow from such contradiction, that either was guilty of perjury. In some cases, the wife may be a witness, under peculiar circumstances, when the husband may be interested in the question, and, to some extent, in the event of the suit..... *Id.*
4. The wife cannot be a witness to criminate her husband, or to state that which she has learned from him in their confidential intercourse; the rule which protects the domestic relations from exposure, rests upon considerations connected with the peace of families; and it is considered, that this principle does not afford protection to the husband and wife, which they are at liberty to invoke or not, at their discretion, when the question is propounded; but it renders them incompetent to disclose facts in evidence, in violation of the rule. The husband being dead does not weaken the principle; it would seem rather to increase, than lessen the force of the rule..... *Id.*

INDIAN TITLE.

1. The colonial charters, a great portion of the individual grants by the proprietary and royal governments, and a still greater portion by the states of the Union, after the revolution, were made for lands within the Indian hunting-grounds. North Carolina and Virginia, to a great extent, paid their officers and soldiers of the revolutionary war, by such grants; and extinguished the arrears due the army by similar means; it was one of the great resources which sustained the war, not only by those, but by other states. The ultimate fee, incumbered with the right of Indian occupancy, was in the crown, previous to the revolution; and in the states of the Union afterwards, subject to grant. This right of occupancy was protected by the political power, and respected by the courts, until extinguished; when the patentee took the unincumbered fee. So this court and the state courts have uniformly held. *Clarke* v. *Smith*.....*195

INDICTMENT.

1. The defendant was indicted for receiving

treasury notes of the United States, stolen from the United States' mail; the indictment, in one of the counts, described one of the treasury notes as bearing interest annually of one per centum; a treasury note was offered in evidence, bearing interest at one M. per centum; and parol evidence was offered, to show that treasury notes, such as the one offered in evidence, were received by the officers of the government, as bearing interest of one mill per centum per annum, not one per centum per annum. The court held, that treasury notes issued by the authority of the act of congress passed on the 12th of October 1838, were promissory notes within the meaning of the act of congress of 3d March 1825. *United States* v. *Hardyman*.....*176

2. When a note is given payable in foreign coin, the value of each coin in current money must be averred; and under such averment, evidence of the value may be received...*Id.*

INSURANCE.

1. A policy of insurance on a vessel, sailing under a register which has been obtained without conforming to the requisitions of the laws of the United States, relative to the registry and enrolling of vessels of the United States, is not void; and an action may be maintained on such a policy, to recover a loss sustained by the assured. The policy may not have been designed to aid, assist or advance any unlawful purpose; it was a lawful contract in itself, and only remotely connected with the use of the certificate of registry. There are cases in which a contract may be valid, notwithstanding it is remotely connected with an independent illegal transaction; which, however, it is not designed to aid or promote. Suppose, a vessel had been actually forfeited, for some antecedent illegal act, are all contracts for her future employment void; although there is no illegal object in view, and the forfeiture may never be enforced? *Ocean Insurance Company* v. *Polleys*.....*157

2. When a vessel, insured on a sealing voyage, was ordered by the government of Buenos Ayres, not to catch seal off the Falkland islands; and having continued to take seal there, she was seized and condemned, under the authority of the government of Buenos Ayres; the government of the United States not having acknowledged, but having denied the right of Buenos Ayres to the Falkland islands; the insurers were held liable to pay for the loss of the vessel and cargo. The master in refusing to obey the orders to leave the island acted under a belief that he was bound so to do as a matter of duty to the owners, and all interested in the voyage, and in vindication of the right claimed by the American government; he was not bound to abandon the voyage, under a threat or warning of such illegal capture. *Williams* v. *Suffolk Insurance Company*.....*415

INTEREST.

1. The correct rule as to interest is, that the creditor shall calculate interest whenever a payment is made: to this extent, the payment is first to be applied; and if it exceed the interest due, the balance is to be applied to diminish the principal. This rule is equally applicable, whether the debt be one which expressly draws interest, or on which interest is given as damages. *Story* v. *Livingston*.....*359

INTERNATIONAL COMITY.

1. Courts of justice have always expounded and executed contracts made in a foreign country according to the laws of the place in which they were made; provided that law was not repugnant to the laws or policy of their own country. The comity thus extended to other nations, is no impeachment of sovereignty; it is the voluntary act of the nation by which it is offered; and is inadmissible, when contrary to its policy or prejudicial to its interests; but it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it, as a part of the voluntary law of nations. *Bank of Augusta* v. *Earle*.....*519

2. The court can perceive no sufficient reason for excluding from the protection of the law, the contracts of foreign corporations, when they are not contrary to the known policy of the state, nor injurious to its interests; it is nothing more than the admission of the existence of an artificial person, created by the law of another state; and clothed with the power of making certain contracts; it is but the usual comity of recognising the law of another state.....*Id.*

3. The states of the Union are sovereign states; and the history of the past, and the events which are daily occurring, furnish the strongest evidence that they have adopted towards each other the laws of comity, in their fullest extent.....*Id.*

4. In the legislation of congress, where the states and the people of the several states are all represented, there is found proof of

the general understanding in the United States, that by the law of comity among the states, corporations chartered by one, arep ermitted to make contracts in the others.... *Id.*

5. It is well settled, that by the law of comity among nations, a corporation created by one sovereignty is permitted to make contracts in another, and to sue in its courts; and that the same law of comity prevails among the several sovereignties of the Union. The public, and well-known, and long-continued usages of trade, the general acquiescence of the states, the particular legislation of some of them, as well as the legislation of congress, all concur in proving the truth of this proposition..... *Id.*
6. The comity of suit brings with it the comity of contract; and where the one is expressly adopted by the courts, the other must also be presumed, according to the usages of nations, unless the contrary can be shown. *Id.*

JUDGMENTS OF STATE COURTS.

1. The judgment of a court of a state is not to be regarded in the courts of her sister states as a foreign judgment, or as merely *primâ facie* evidence of a debt, to sustain an action of debt upon the judgment; it is to be considered only distinguishable from a foreign judgment in this, that by the first section of the fourth article of the constitution, and by the act of May 26th, 1790, § 1, the judgment is conclusive on the merits, to which full faith and credit must be given, when authenticated as the act of congress has prescribed. *McElmoyne* v. *Cohen's Administrators*.....*312
2. The constitution declares, that full faith and credit shall be given, in each state, to the public acts, records and judicial proceedings of every other state, and provides that congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof; the latter clause, as it relates to judgments, was intended to provide the means of giving to them the conclusiveness of judgments upon the merits, when it is sought to carry them into judgment, by suits in the tribunals of another state. The authenticity of the judgment, and its effect, depend upon the law made in pursuance of the constitution; the faith and credit due to it as the judicial proceeding of a state is given by the constitution, independently of all legislation..... *Id.*
3. By the law of congress of May 26th, 1790, the judgment is made a debt of record, not examinable upon its merits; but it does not carry with it into another state, the efficacy of a judgment upon property, or upon persons, to be enforced by execution. To give it the force of a judgment in another state, it must be made a judgment there; and can only be executed in the latter, as its laws may permit ..... *Id.*
4. In the payment of the debts of a testator or intestate, in Georgia, the judgment of another state, whatever may have been the subject-matter of the suit, cannot be put upon the footing of judgments rendered in the state; it can only rank as a simple-contract debt, in the appropriation of the assets of the estate of a deceased person to the payment of debts..... *Id.*
5. The judgment of every tribunal, acting judicially, within the sphere of its jurisdiction, where no appellate tribunal is created, is final; and even where there is such an appellate power, its judgment is conclusive, where it only comes collaterally in question; so long as it is unreversed. But directly the reverse is true, in relation to the judgment of any court, acting beyond the pale of its authority. This principle is concisely and accurately stated by this court in the case of Elliot *v.* Piersol, 1 Pet. 340. *Wilcox* v. *McConnell*..... *498

JURISDICTION.

1. The jurisdiction of the district court of the United States for the district of Alabama, and the right of a plaintiff to prosecute his suit, having attached, by the commencement of the suit, in the district court, that right cannot be taken away or arrested, by any proceedings in another court. An attachment of the debt by the process of a state court, after the commencement of a suit in a court of the United States, cannot affect the right of the plaintiff to recover in the suit. *Wallace* v. *McConnell*.....*136
2. The settled construction given by the supreme court to the 25th section of the judiciary act of 1789, is, that to bring a case within the reach of that section, it must appear on the face of the record of the state court, either by express terms, or by clear and necessary intendment, that the question of the construction of a clause of a statute of the United States, did actually arise in the state court; not that it might have arisen or have been applicable to the case; and that the question was actually decided; not that it might have been decided by the state court against the title, right, privilege or exemption set up by the party. If, therefore, the decision made by the state court, upon the face of the record, is entirely consistent with the construction of the statute contended

for by the party appellant, no case is made out for the exercise of the appellate jurisdiction of the supreme court. *Ocean Insurance Company* v. *Polleys*.....*157

3. In the exercise of the appellate jurisdiction of the supreme court on the decisions of state courts, the supreme court is not at liberty to resort to forced inferences and conjectural reasonings, or possible, or even probable, suppositions, of the points raised and actually decided by those courts. The court must see plainly, that the decision was either directly made of some matter within the purview of the 25th section of the act of 1789; or that the decision could not have been such as it was, without necessarily involving such matter..... *Id.*
4. It is to the record, and to the record alone, that the supreme court can resort, to ascertain its appellate jurisdiction, in cases decided in the supreme or superior court of a state..... *Id.*
5. The record contained a certificate of the clerk of the court, that a motion was made for a new trial, and reasons and certain papers filed on which the motion was founded, were on the files of the court. This is not a part of the record; nor do the reasons on the files of the court become a part of the record, by such certificate. A writ of error, under the 25th section of the judiciary act, will not lie to a state court, in a case in which the proceedings of the court, which the writ of error seeks to revise, appears from such a certificate, by the clerk of the state court. *Read* v. *Marsh*..... *153
6. The chief justice of the supreme court, residing in the fourth circuit, who, under the act of congress of 1802, ch. 31, holds the court at the August term, has not the power to grant a rule for a *mandamus*, or a rule to show cause why a *mandamus* shall not issue; such a rule does not fall within the description of cases enumerated in the act of congress, for the action of the court, at the August session. *Ex parte Hennen*... *225
7. In the case of the Bank of the United States *v.* Deveaux, the supreme court decided, that on a question of jurisdiction, they might look to the character of the persons composing a corporation; and if it appeared, that they were citizens of another state, and the fact was set forth by proper averments, the corporation might sue in its corporate name, in the courts of the United States. But in that case, the court confined its decision, in express terms, to a question of jurisdiction; to a right to sue: and evidently went, even so far, with some hesitation. The propriety of that decision is fully assented to, and it has ever since been recognised as authority in this court; but the principle has never been extended any further than it was carried in that case; and has never been supposed to extend to contracts made by a corporation, especially in another sovereignty. *Bank of Augusta* v. *Earle*..... *519

LACHES.

1. The plaintiff, as the importer of certain merchandise from England, entered the same at the custom-house in New York, on the 29th of March 1837, as cases containing cotton gloves; he gave a bond for the duties, payable on the 27th of June 1838; in 1838, it was discovered that one of the cases, No. 45, contained silk hose, and not cotton gloves. The plaintiff paid the bond to the collector, under protest; and claimed from the comptroller of the treasury, to be released from the payment of the duties on case No. 45, alleging, that, as silk hose, they were not liable to duty under the act of congress of 14th July 1832; and instituted a suit against the collector, to recover back the duties so paid by him: *Held*, that the suit could not be sustained, after so long a time from the entry of the merchandise; also, that silk hose, and all manufactures of silk, of which silk is the component material of chief value, coming from this side of the Cape of Good Hope, except sewing silk, were free of duty. *Bend* v. *Hoyt*..... *263
2. Even courts of equity will not interfere to assist a party to obtain redress for an injury which he might, by ordinary diligence, have avoided; and, *à fortiori* a court of law ought not, when the other party has, by his very acts and omissions, lost his own proper rights and advantages.....*Id.*
3. A collector is generally liable in an action to recover back an excess of duties paid to him as collector, when the duties have been illegally demanded, and a protest of the illegality has been made at the time of payment, or notice given that the party means to contest the claim. Nor is there any doubt, that a like action generally lies, where the excess of duties has been paid, under a mistake of fact, and notice thereof has been given to the collector, before he has paid over the money to the government.....*Id.*
4. Nothing is more clear than the general rule, that *ex parte* settlements of accounts by executors in the orphans' court, being matters within the acknowledged jurisdiction of the court in the administration of estates, are *primâ facie* evidence of their correctness, and the *onus probandi* is upon those who seek to impeach them. If they seek to impeach them, it should be by a suit brought,

recenti facto, within a reasonable time, and at farthest within the period prescribed by the statute of limitations for actions at law on matters of account; or else assign some ground of exception or disability, within the analogy of the statute, to justify or excuse the delay; otherwise, it will be imputed to their voluntary *laches*, and relief will not be given by a court of equity. *Lupton* v. *Janney*.....*381

LANDLORD AND TENANT.

1. It is a well-established principle of law, that a tenant cannot dispute the title of his landlord: and where the marshal of the district of Columbia, having a writ of *habere facias possessionem* for the west half of a lot in the city of Washington, took possession of the east half of the lot, and the tenant of the persons who claimed to be the owners of the lot attorned to the plaintiffs in the writ, such attornment was without authority, and void. *Woodward* v. *Brown*..... *1
2. A tenant who disclaims his landlord's title is not entitled to notice to quit and deliver up possession..... *Id.*

LAND-TITLES IN ILLINOIS.

See PUBLIC LANDS.

LAND-TITLES IN KENTUCKY.

1. The state of Kentucky has an undoubted power to regulate and protect individual rights to her soil, and to declare what shall form a cloud on title; and having so declared, the courts of the United States, by removing such cloud, are only applying an old practice to a new equity created by the legislature, having its origin in the peculiar condition of the country. The unappropriated lands of the state of Kentucky have been opened to entry and grant, at a very cheap rate, which policy has let in abuses; the clouds upon old titles, by the issuance of new patents for the same land were the consequence; and the citizens of other states are entitled to come into the courts of the United States, to have their rights secured to them by the statute of Kentucky, of 1796. *Clarke* v. *Smith*..... *195
2. The state of Kentucky may prescribe any policy for the protection of the agriculture of the country, that she may deem wise and proper; she has, in effect, declared, that junior patents issued for previously granted lands, shall be delivered up and cancelled; with the addition, that a release of title shall be executed; and it is the duty of the courts to execute the policy..... *Id.*
3. In the state of Tennessee, the legislature has provided, that the courts of equity may divest a title, and vest it in another party to a suit; and that the decree shall operate as a legal conveyance. In Kentucky, the legislature has declared, that courts may appoint a commissioner to convey, as attorney in fact of litigant parties, and such shall pass the title; in both instances, binding infants and *femes covert*, if necessary. The federal courts of the United States, in the instances referred to, have adopted the same practice, for many years, without a doubt having been entertained of its propriety; it may be said, with truth, that it is a mode of conveyance, and of passing title, which the states have the exclusive right to regulate..... *Id.*

LAPSE OF TIME.

1. The executor of L. filed his accounts in the orphans' court of Alexandria, in 1816 and 1818, and settled his final account in 1821; no exceptions were taken to the accounts. In November 1831, a *subpœna* was issued against the executor, and in June 1833, a bill was filed by the devisee and legatee, against the executor, the object of which was to surcharge and falsify the accounts filed and settled in the orphans' court. The bill did not charge the executor with fraud, but imputed negligence, which was alleged to amount to a *devastavit;* no reason was given nor facts stated, to excuse the long delay and *laches* in bringing the bill: *Held*, that the lapse of time from the settlement of the accounts of the executor was a bar to this proceeding. *Lupton* v. *Janney*.....*381

LAWS OF NATIONS.

1. Courts of justice have always expounded and executed contracts made in a foreign country according to the laws of the place in which they were made; provided that law was not repugnant to the laws or policy of their own country. The comity thus extended to other nations is no impeachment of sovereignty; it is the voluntary act of the nation by which it is offered; and is inadmissible, when contrary to its policy, or prejudicial to its interest; but it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it, as a part of the voluntary law of nations. *Bank of Augusta* v. *Earle*.....*519
2. The states of the Union are sovereign states; and the history of the past and the events

which are daily occurring, furnish the strongest evidence that they have adopted towards each other the laws of comity, in their fullest extent.....*Id.*

3. The comity of suit brings with it the comity of contract; and where the one is expressly adopted by the courts, the other must also be presumed, according to the usages of nations, unless the contrary can be shown. *Id.*

LEX LOCI.

1. The general principle in relation to contracts made at one place to be executed at another, is well settled; they are to be governed by the laws of the place of performance; and if the interest allowed by the laws of the place of performance be greater than that permitted at the place of the contract, the parties may stipulate for the highest interest, without incurring the penalties of usury. *Andrews* v. *Pond*.....*65

2. When a contract has been made, without reference to the laws of the state where it was made, or to the laws of the place of performance, and a rate of interest is reserved forbidden by the laws of the place where the contract was made, which was concealed under the name of exchange, in order to evade the law against usury, the question is not, which law is to govern in executing the contract; unquestionably, it must be the law of the state where the agreement was entered into, and the instrument taken to secure its performance. A contract of this kind cannot stand on the same principles with a *bonâ fide* agreement made in one place to be executed in another; in the last-mentioned cases, the agreements are permitted by the *lex loci contractûs*, and will even be enforced there, if the party is found within its jurisdiction; but the same rule cannot be applied to contracts forbidden by its laws, and designed to evade them. In such cases, the legal consequences of such an agreement must be decided by the law of the place where the contract was made; if void there, it is void everywhere.....*Id.*

3. There is a material difference between the laws of New York and those of Louisiana, in relation to the dignity of instruments in writing; contracts made before a notary and two witnesses, called authentic acts, are, by the laws of Louisiana, elevated above all others; a contract under seal does not appear to be of greater dignity in Louisiana than one without seal; and those who sue in the courts of that state must abide the consequences of these rules. The validity and interpretation of contracts, are to be governed by the laws of the country where they are made; but the remedy must be according to the laws of the country where the suit is brought. *Wilcox* v. *Hunt*.....*378

LIEN.

1. It is the very nature and essence of a lien, that no matter into whose hands the property goes, it passes *cum onere*; if this were not the case, it would cease to be a lien. *Burton* v. *Smith*.....*464

2. Under the laws of Virginia, in relation to lands of which the debtor has an actual seisin, although there is no statute in Virginia which expressly makes a judgment a lien on the lands of the debtor, yet during the existence of the right of the plaintiff to take out an *elegit*, the lien of the judgment is universally acknowledged.....*Id.*

3. All the authorities, ancient and modern, agree in this proposition, that a reversion after an estate for life is assets, or, as some of the books express it, *quasi* assets, in the hands of the heir, in regard to the bond of the ancestor, binding heirs; and that in such case, the plaintiff may take judgment of it, *quando acciderunt*. Upon principle, it would seem to be clear, that whatever estate descended to the heir, which was liable as assets to the bond debt of the ancestor, must be bound by a judgment obtained against the ancestor in his lifetime.....*Id.*

4. There is a current of authorities going to prove, that a reversion after an estate for life is bound by a judgment obtained against the ancestor, from whom it immediately descended.....*Id.*

5. So far from its being proper for a court to hesitate about decreeing a sale of an interest, because it is reversionary, the character of the interest affords a stronger reason for such a decree; for although, in regard to property in present actual possession, the *elegit*, although tardy in its operation, yet is in some degree an effective remedy, inasmuch as the creditor will by that means annually receive something towards his debt; whereas, in the case of a dry reversion, if the outstanding life-estate should continue during half a century, the creditor might look on in hopeless despondency, without the possibility of receiving a cent from that source, except through the interposition of a court of equity in decreeing a sale.....*Id.*

LIMITATION OF ACTIONS.

1. The plea of the statute of limitations, in an action instituted in one state on a judgment obtained in another state, is a plea to the remedy; and consequently, the *lex fori* must

prevail in such a suit. *McElmoyle* v. *Cohen*..... *312

2. Prescription is a thing of policy, growing out of the experience of its necessity; and the time after which suits or actions shall be barred, has been, from a remote antiquity, fixed by every nation, in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction..... *Id.*
3. There is no constitutional inhibition on the states, nor any clause in the constitution, from which it can be even plausibly inferred, that the states may not legislate upon the remedy in suits on the judgments of other states, exclusive of all interference with their merits..... *Id.*
4. A suit in a state of the United States, on a judgment obtained in the courts of another state, must be brought within the period prescribed by the local law, the *lex fori*, or the suit will be barred. The statute of limitations of Georgia can be pleaded to an action in that state, founded upon a judgment rendered in the state court of the state of South Carolina..... *Id.*

MANDAMUS.

1. The chief justice of the supreme court, residing in the fourth circuit, who, under the act of congress of 1802, c. 31, holds the court at the August term, has not power to grant a rule for a *mandamus*, or a rule to show cause why a *mandamus* shall not issue; such a rule does not fall within the description of cases enumerated in the act of congress, for the action of the court, at the August term. *Ex parte Hennen*..... *228
2. The supreme court will not issue a *mandamus* to the district judge of the southern district of New York, in a case in which the district judge decided that the custody of goods, wares and merchandise, proceeded against, after a seizure by the collector of the port of New York, was in the marshal of the district, after process had issued by order of the court against the goods. The *mandamus* was asked for, after an argument before the supreme court to show that the custody of the goods was to continue in the collector of the port. This is neither more nor less than an application for an order to reverse the solemn judgment of the district judge, in a matter clearly within its jurisdiction; and to substitute another judgment in its stead. *Ex parte Hoyt*..... *279
3. A writ of *mandamus* is not a proper process to correct an erroneous judgment or decree rendered in an inferior court; that is a matter which is properly examinable on a writ of error, or on an appeal to the proper appellate tribunal. Nor can the supreme court issue a *mandamus* to the district court, on the ground that it is necessary for the exercise of its appellate jurisdiction; for if there is any appellate jurisdiction in this case, it is direct and immediate to the circuit court of the southern district of New York. It has been repeatedly declared by the supreme court, that it will not, by *mandamus*, direct a judge to make a particular judgment in a suit, but will only require him to proceed to render judgment..... *Id.*
4. The district judge of the eastern district of Louisiana, while holding a circuit court, ordered proceedings on a bill in equity to be in conformity with the rules of the courts of Louisiana, thus disregarding the rules for proceedings in the circuit courts of the United States in cases in chancery, prescribed and ordered by the supreme court of the United States. It was also declared, that the practice and proceedings in all civil causes, those of admiralty alone excepted, should be conformable to the provisions of the code of practice of Louisiana, and of the acts of the legislature of the state. Under this order, and by the course of the court, the proceedings on the bill in equity were suspended and prevented. A motion was made for a *mandamus* to the circuit court, in the nature of a writ of *procedendo*, to compel the court to proceed in the cause, according to the rules of practice prescribed to the courts of equity, of the United States, &c., to award attachments, &c., and in all things to proceed in the cause in such manner as the constitution and laws of the United States, and the principles and usages in equity, will authorize: *Held*, that this was not a case in which a *mandamus* would lie; the appropriate redress, if any, is to be obtained, after the final decision shall be had on the cause, by appeal. *Ex parte Whitney*..... *409
5. A writ of *mandamus* is not the appropriate remedy for any errors which may be made in a cause, by a judge, in the exercise of his authority; although they may seem to bear harshly, or oppressively on the party; the remedy in such cases must be sought in some other form..... *Id.*

MANDATE.

1. The mandate issued by the supreme court, in a case decided by the court, is to be interpreted according to the subject-matter; and it is in no manner to cause injustice. *Story* v. *Livingston*..... *359

MARSHALS.

See COLLECTOR OF THE CUSTOMS, 4.

MASTER OF A SHIP.

See SALE OF STRANDED VESSEL.

MISPRISION.

1. Where, by a misprision of the clerk of the circuit court, the judgment in a case brought up by a writ of error had not been entered according to the declaration, the supreme court allowed an amendment to be made, by the entry of the judgment, without awarding a *certiorari* to the circuit court. This was done in a case which had been brought up by a writ of error to the previous term of the court. *Woodward* v. *Brown*..... *1

PATENTS FOR LANDS.

1. The plaintiff in error had exhibited, in an action instituted against him in the circuit court of Missouri, evidence conducing to prove, that a patent from the United States, under which the plaintiff in the ejectment, the defendant in error, claimed the land, had been improperly granted by the government of the United States, and that the title to the land was in him: *Held*, that in an action at law, the patent from the United States for part of the public lands was conclusive. If those who claim to hold the land against the patent can show that it issued by mistake, then the equity side of the circuit court is the proper *forum*, and a bill in chancery is the proper remedy to investigate the equities of the parties. *Bagnell* v. *Broderick*.....*436
2. The practice of giving in evidence a special entry, in aid of a patent, and dating the legal title from the date of the entry, is familiar in some of the states, and especially in Tennessee; yet the entry can only come in aid of the legal title; and is no evidence of such title, standing alone, when opposed to a patent for the same land..... ... *Id.*

PLEADING.

1. An action was instituted on a promissory note, against the maker, by which he promised to pay, at the office of discount and deposit of the Bank of the United States, at Nashville, three years after date, $4080; in the declaration, which set out the note according to its terms, and alleged the promise to pay according to the tenor of the note, there was no averment that the note was presented at the bank, or demand of payment made there; the defendant pleaded payment and satisfaction of the note, and issue was joined thereon. Afterwards, at the succeeding term, the defendant interposed a plea *puis darrein continuance*, stating, that $4204, part of the amount of the note, had been attached by B. & W., in a state court of Alabama, under the attachment law of the state, and a judgment had been obtained against him for $4204 and costs, with a stay of proceedings until the further proceedings in the case; which remained undetermined. The plaintiff demurred to this plea; the circuit court sustained the demurrer; and judgment was given for the plaintiff for $679, the residue of the note beyond the amount attached, and a final judgment for the whole amount of the note: *Held*, that there was no error in the judgment of the circuit court. *Wallace* v. *McConnell*..... ...*136
2. It seems, that a plea *puis darrien continuance*, is considered as a waiver of all previous pleas; and the cause of action is admitted to the same extent as if no other defence had been urged than that contained in the plea..... *Id.*

PRACTICE.

1. In a declaration in ejectment, various demises were laid, and the verdict of the jury, and the judgment of the circuit court, were entered on one of the demises only; it was contended, that the court ought not to have entered a judgment on the issue found for the plaintiff, but should have awarded a *venire de novo*; and that this irregularity might be taken advantage of upon a writ of error: *Held*, that if this objection had been made in the circuit court, on a motion in arrest of judgment, the plaintiff would have been permitted to strike out all the demises in the declaration but that on which the verdict was given. The omission to strike out these demises was only, therefore, an omission of form; and the act of congress of 1789, c. 20, § 32, expressly provides, that no judgment shall be reversed for any defect or want of form; but that the courts of the United States shall proceed and give judgment, according as the right of the cause and matter in law shall appear to them, without regarding any imperfections, defects, or want of form in the judgment or course of proceeding, except that specially demurred to. *Van Ness* v. *Bank of United States* *17
2. The state of Rhode Island, on leave granted at January term 1838, to amend a bill previously filed by the state against the state of Massachusetts, amended the bill at this term, by inserting in it references to papers filed at the term of 1838; the state of Massa-

chusetts was allowed until the term of 1840 to answer. *Rhode Island* v. *Massachusetts* *23

3. The rules which govern courts of equity as to the allowance of time for filing an answer and other proceedings in suits between individuals, will not be applied by the supreme court to controversies between states of the Union; the parties in such cases, must, in the nature of things, be incapable of acting with the promptness of an individual ... *Id.*

4. A declaration in the circuit court of the United States for the Virginia district stated the plaintiffs to be "merchants, and partners trading under the firm and by the name and style of Duval & Co., of Philadelphia, in Pennsylvania." This was insufficient to give jurisdiction to the court in the action, if the exception had been taken by plea, or by writ of error, within the limitation of such writ. *Ross* v. *Duval*..... *45

5. In the district court of Louisiana, the defendant put in a plea of reconvention, which is authorized by the code of practice of Louisiana; the district court, on the motion of the plaintiffs, ordered the plea to be stricken off. The code of practice of Louisiana was adopted in Louisiana, by a statute of that state, passed after the act of congress of the 26th May 1824, regulating the practice of the district court of the United States for the eastern district of Louisiana; and the practice according to that code had not been adopted as part of the rules of practice of the district court, when the plea was stricken off: *Held*, that the plea was properly stricken off. *Wilcox* v. *Hunt* *378

PRESIDENT.

1. The president of the United States speaks and acts through the heads of the several departments of the government, in relation to the subjects which appertain to their respective duties. Both military posts and Indian affairs, including agencies, belong to the war department; a reservation of lands, made at the request of the secretary of war, for the purposes in his department, must be considered as made by the president of the United States, within the terms of the act of congress on the subject. *Wilcox* v. *McConnell*..... *490

PROCEEDINGS ON JUDGMENTS.

1. A judgment was obtained in the circuit court of the United States for the district of Virginia, in December 1821, and a writ of *fieri facias* was issued on this judgment, in January 1822, which was not returned; and no other execution was issued until August 1836, when a *capias ad satisfaciendum* was issued against the defendant: *Held*, that this execution issued illegally, in consequence of the lapse of time between the rendition of the judgment, and the issuing of execution in 1836. *Ross* v. *Duval*..... ...*45

2. The result of the opinion of the supreme court, in the case of Wayman *v.* Southard, 10 Wheat. 1, delivered by Chief Justice Marshall, was, that the execution laws of Kentucky, having passed subsequent to the process acts, did not apply to executions issued by the circuit courts of the United States; and that under the judiciary and process acts, the courts had power to regulate proceedings on executions. The power of the court to adopt such rules, was not embraced in the point certified for the decision of the court, and was not expressly adjudged; but it is the clear result of the argument of the court..... .... *Id.*

3. The act of the legislature of Virginia, of 1792, to regulate proceedings on judgments, is substantially and technically a limitation on judgments; and is not, therefore, an act to regulate process. It is a limitation law, and is a rule of property; and under the 34th section of the judiciary act, is a rule of decision for the courts of the United States... *Id.*

4. The act of the legislature of Virginia, of 1792, limits actions and executions on judgments rendered in the state courts; and the same rule must be applicable to judgments obtained in the courts of the United States. *Id.*

PROCESS.

1. The process act of congress, of 1828, was passed shortly after the decision of the supreme court of the United States, in the case of Wayman *v.* Southard, and United States Bank *v.* Halstead; and was intended as a legislative sanction of the opinions of the court in those cases. The power given to the courts of United States by this act, to make rules as a regulation of proceedings on final process, so as to conform the same to those of state laws on the same subject, extends to future legislation; and as well to the modes of proceeding on executions, as to the forms of writs. *Ross* v. *Duval*.. *45

PUBLIC LANDS.

1. Congress have the sole power to declare the dignity and effect of titles emanating from the United States; the whole legislation of the government in reference to the public lands, declares the patent to be the superior and conclusive evidence of legal title. Until it issues, the fee is in the government, which,

by the patent, passes to the grantee, and he is entitled to recover the possession in ejectment. *Bagnell* v. *Broderick*..... *439

2. When the title to the public land has passed out of the United States, by conflicting patents, there can be no objection to the practice adopted by the courts of a state, to give effect to the better right, in any form of remedy the legislature or courts of the state may prescribe..... *Id.*

3. No doubt is entertained of the power of the states to pass laws authorizing purchasers of lands from the United States to prosecute actions of ejectment upon certificates of purchase, against trespassers on the lands purchased; but it is denied, that the states have any power to declare certificates of purchase of equal dignity with a patent; congress alone can give them such effect....*Id.*

4. Ejectment for a tract of land in Cook county, Illinois, being a fractional section, embracing the military post called Fort Dearborn, at the time of the institution of the suit, in the possession of the defendant, as the commanding officer of the United States. The post was established in 1804, and was occupied by the troops of the United States until August 16th, 1812, when the troops were massacred, and the fort taken by the enemy; it was re-occupied by the United States in 1816, and continued to be so held until May 1823, during which time some factory houses, for the use of the Indian department, were erected on it; it was evacuated, by order of the war department, in 1823, and was, by order of the department, again occupied by troops, in 1828, as one of the military posts of the United States; was again evacuated in 1831, the government having authorized a person to take and keep possession of it; it was again occupied by troops of the United States, in 1832, and continued so to be at the commencement of this suit, being generally known, at Chicago, to be occupied as a military post of the United States. The buildings about the garrison were not sold in 1831, when it was evacuated; although a great part of the movable property in and about it, was sold. In 1817, Beaubean bought of an army contractor, for $1000, a house built on the land; there was attached to the house an enclosure, occupied as a garden or field, of which Beaubean continued in possession until 1836; in 1823, the factory houses on the land were sold by order of the secretary of war, and were bought by Beaubean, for $500; of these he took possession, and continued to occupy them, and to cultivate the land, without interruption by the United States, until the commencement of this suit. The United States, in May 1834, built a lighthouse on the land, and had kept twenty acres inclosed and cultivated; the land was surveyed by the government of the United States, in 1821; and in 1824, at the instance of the Indian agent of Chicago, the secretary of war requested the commissioner of the general land-office to reserve this land for the accommodation and protection of the property of the Indian agency; who, in 1821, informed the secretary of war, that he had directed this section of land to be reserved from sale, for military purposes. In May 1831, Beaubean claimed this land, at the land-office in Palestine, for pre-emption; this claim was rejected, and, by the commissioner of the land-office, he was, in February 1832, informed, that the land was reserved for military purposes; this information was also given to others who applied on his behalf; in 1834, he applied for this land to the office in Danville, and his application was rejected. In 1835, Beaubean applied for the land to the land-office at Chicago, when his claim to pre-emption was allowed; and he paid the purchase-money, and procured the register's certificate; Beaubean sold and conveyed his interest to the plaintiff in the ejectment: *Held*, that Beaubean acquired no title to the land, by his entry; and that the right of the United States to the land was not divested or affected by the entry at the land-office at Chicago; nor by any of the previous acts of Beaubean. *Wilcox* v. *McConnell*..... *490

5. The decision of the register and receiver of a land-office, in the absence of fraud, would be conclusive as to the facts that the applicant for the land was then in possession, and of his cultivating the land during the preceding year; because these questions are directly submitted to those officers. Yet, if they undertake to grant pre-emptions to land, on which the law declares they shall not be granted, then they are acting upon a subject-matter clearly not within their jurisdiction; as much so, as if a court, whose jurisdiction was declared not to extend beyond a given sum, should attempt cognisance of a case beyond that sum.....*Id.*

6. Appropriation of land by the government is nothing more or less than setting it apart for some particular use. In the case before the court, there was an appropriation of the land, not only in fact, but in law, for a military post; for an Indian agency; and for the erection of a lighthouse..... *Id.*

7. By the act of congress of 1830, all lands are exempted from pre-emption which are reserved from sale by order of the president of the United States. The president speaks and acts through the heads of the several

departments, in relation to subjects which appertain to their respective duties. Both military posts, and Indian affairs, including agencies, belong to the war department; a reservation of lands, made at the request of the secretary of war, for purposes in his department, must be considered as made by the president of the United States, within the terms of the act of congress..... *Id.*

8. Whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment, the land thus appropriated becomes severed frem the mass of public lands; and no subsequent law, or proclamation, or sale, will be construed to embrace it, or to operate upon it; although no other reservation were made of it..... *Id.*
9. The right of pre-emption is a bounty extended to settlers and occupants of the public domain; this bounty, it cannot be supposed, was designed to be extended to the sacrifice of public establishments, or of great public interests..... *Id.*
10. Nothing passes a perfect title to public lands, with the exception of a few cases, but a patent; the exceptions are, where congress grants lands, in words of present grant. The general rule applies as well to pre-emptions as to other purchasers of public lands.... *Id.*
11. The act of the legislature of Illinois, giving a right to the holder of a register's certificate of the entry of public lands, to recover possession of such land, in an action of ejectment, does not apply to cases where a paramount title to the lands is in the hands of the defendant, or of these he represents. The exception in the law of Illinois, applies to cases in which the United States have not parted with the title to the land, by granting a patent for it..... *Id.*
12. A state has a perfect right to legislate as she may please, in regard to the remedies to be prosecuted in her courts; and to regulate the disposition of the property of her citizens, by descent, devise or alienation; but congress is invested, by the constitution, with the power of disposing of the public land, and making needful rules and regulations respecting it..... *Id.*
13. Where a patent has not been issued for a part of the public lands, a state has no power to declare any title, less than a patent, valid, against a claim of the United States to the land; nor against a title held under a patent granted by the United States..... *Id.*
14. Whenever the question, in any court, state or federal, is, whether the title to property which had belonged to the United States has passed, that question must be resolved by the laws of the United States; but whenever the property has passed, according to those laws, then the property, like all other in the state, is subject to state legislation, so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States..... *Id.*

RECORDING OF DEEDS AND MORTGAGES.

1. A mortgage was recorded by the town-clerk of the place where the property was, he being the proper officer to record such instruments, under the statute of Rhode Island; he kept two books, in one of which he recorded mortgages, which included real estate; and in the other, mortgages upon personal property only; the mortgage in this case, was first recorded in the book kept for recording mortgages on real estate. He gave a certificate, "lodged in the town-clerk's office to record, November 20th, 1837, at 5 P. M., and recorded same day, in the record of mortgages, in East Greenwich, book No. 4," &c. The court *held*, that this certificate was properly received in evidence, in the circuit court. *Anthony* v. *Butler*..... *423
2. It is a well-settled rule, though a very technical one, that one partner cannot bind his copartners by deed; and it is equally well settled, that one partner may dispose of the personal property of the firm. One partner may bind his copartner by deed, if he is present, and assent to it; the seal of one partner, with the assent of the copartner, will bind the firm..... *Id.*
3. Where a statute requires that mortgages on personal property shall be recorded in a book to be specially kept for the purpose, and says nothing as to the book in which mortgages on real and personal property shall be recorded; and in the conveyance, the personal and real property is so blended as to be inseparable; to require a double record would seem to be an unreasonable construction of the statute. The record of the mortgage in the book kept for recording mortgages on real estate, is within a fair construction of the Rhode Island statute. *Id.*

SALE OF STRANDED VESSEL.

1. The right of the master to sell a vessel stranded, depends on the circumstances under which it is done, to justify it; the master must act in good faith, and exercise his best discretion for the benefit of all concerned; a sale can only be made on the compulsion of a necessity, to be determined in each case, by the actual peril to which the vessel is exposed, and from which it is probable, in the

opinion of persons competent to judge, the vessel cannot be saved; this is an extreme necessity. *New England Insurance Company* v. *The Sarah Ann* *387

2 The true criterion for determining the authority of the master to sell a vessel stranded near a foreign port, or in a port of the United States, or of a different state than that to which the vessel belongs, or in which the owners may be or reside, when the necessity occurs; is the distance of the owners or insurers from the scene of stranding. If, by the ordinary means to convey intelligence of the situation of the vessel, the master can obtain directions as to what to do, he should resort to those means; but if the peril is such, that there is a probability of loss, and it is made more hazardous by every day's delay, the master may act promptly to save something for the benefit of all concerned, though but little can be saved. There is no way of doing so more effectual, than by exposing the vessel to sale; by which the enterprise of such men is brought into competition, as are accustomed to encounter such risks, and who know from experience how to estimate probable profits of such adventures..... *Id.*

3. The power of the master to sell the hull of a stranded vessel, exists also as to her rigging and sails; which he may have stripped from her, after unsuccessful efforts to get her afloat; or when his vessel, in his own judgment, and that of those competent to form an opinion and to advise, cannot be delivered from her peril..... *Id.*

4. If the master sells without good faith, or without a sound discretion, the owner may against the purchaser, assert his right of property in the sails and rigging; as he may in any case of a stranded vessel, which has been sold without good faith in the master..... *Id.*

5. The court do not think the case of Smith *v.* Briddle, 2 W. C. C. 150, sound law; it is expressed in terms too broad..... *Id.*

SET-OFF.

1. An action was instituted by the United States, to recover from the assignees of S. Smith & Buchanan, insolvent merchants, the duties on merchandise imported by them, and for which bonds had been given, but which remained unpaid; the United States had retained, from money awarded under the treaty with France, to Lemuel Taylor, who was the surety in the bonds, a sufficient sum to pay the bonds; but had not appropriated the same towards their satisfaction; the assignees claimed to set off against the demand of the United States, the amount due by Lemuel Taylor, to the estate they represented, he having been discharged by the insolvent laws of Maryland. The court said, "whatever might be the merits of such an equitable claim, in any suit brought by Lemuel Taylor, the insolvent, or by his assignee, against S. Smith & Buchanan, or against their assignees; it could have no proper place in a suit brought by the United States to recover demands justly due to them for duties; it was to them *res inter alios acta*, and the United States were not called upon to engage in, or to unravel any of the accounts and set-offs existing between those parties, in a suit at law like the present." *Meredith* v. *United States*..... *486

STATUTES.

1. The rule is well settled, that to avoid a statute, a party must show himself to be within its exceptions. *Ross* v. *Duval*.. *45

STATUTES OF LIMITATION.

1. Acts of limitation are of daily cognisance in the courts of the United States; and in fixing the rights of parties, they must be regarded as well in the federal as in the state courts. *Ross* v. *Duval*..... *45

2. It is a sound principle, that where a statute of limitations prescribes the time within which suit shall be brought, or an act done, and a part of the time has elapsed, effect may be given to the act; and the time yet to run being a reasonable part of the whole time, will be considered the limitation in the mind of the legislature in such cases; this rule is believed to be founded on principle and authority..... *Id.*

SUPREME COURT.

1. The supreme court can have no control over the appointment or removal of a clerk of the district court; nor entertain any inquiry into the grounds of the removal. If the judge is chargeable with any abuse of his power, the supreme court is not the tribunal to which he is answerable. *Ex parte Hennen*..... *230

TITLE TO REAL PROPERTY.

1. The soundest reasons of justice and policy seem to demand, that every reasonable intendment should be made to support the titles of *bonâ fide* purchasers of real property. *Van Ness* v. *Bank of United States*.*17

USURY.

1. A bill of exchange, in payment of a debt due on a protested bill, was taken, in New York, from one of the parties to the protested bill; the exchange between Mobile, on which the bill was drawn, was stated to be ten per centum, and was added to the bill; and the damages on the protested bill, with interest, at the rate of interest in New York, from the time the first bill was protested, were added to the bill; it was sent to Mobile, and was placed to the credit of the owners by the indorsee, who received it before it came to maturity; the bill was afterwards protested for non-payment. An action was brought in Alabama, against the indorsers of the bill, one of whom was in New York when the bill was drawn, and who, being liable to suit on the protested bill, gave the second bill, to prevent suit being brought against him. The defendants alleged usury in the second bill; the rate of exchange allowed on the bill, being ten per centum, was given, and it being alleged, that the highest rate of exchange on Mobile, did not exceed five per centum. Although the transaction, as exhibited, appears, on the face of the account for which the bill was drawn, to be free from the taint of usury, yet if the ten per centum charged as exchange, or any part of it, was intended as a cover for usurious interest, the form in which it was done, and the name under which it was taken, will not protect the bill from the consequences of usury; and if the fact be established, it must be dealt with in the same manner as if the usury had been expressly mentioned in the bill itself; but whether the charge of ten per centum for exchange between New York and Mobile was intended as a cover for ususy or not, is a question exclusively for the jury; it is a question of intention. *Andrews* v. *Pond.* *65

2. In order to enable the jury to decide whether the usury was concealed under the name of exchange, evidence on both sides ought to have been admitted, which tended to show the usual rate of exchange between New York and Mobile, when the bill was negotiated..... *Id.*

3. There is no rule of law fixing the rate which may be charged for exchange; it does not depend on the cost of transporting specie from one place to another; although the price of exchange is no doubt influenced by it..... *Id.*

4. If, in consideration of further forbearance a creditor receives a new security from his debtor, for an existing debt, he cannot enlarge the amount due by exacting anything either by way of interest or exchange, for the additional risk, which he may suppose he runs by this extension or credit; nor on the opinion the may entertain as to the punctuality of payment, or the ultimate safety of his debt..... *Id.*

5. An action of covenant was instituted by the executors of M. J., upon an obligation executed by A. R. D., under seal, with M. J., by which she agreed to pay a certain note or bond, loaned by M. J. to A. R. D., which had been sold by A. R. D. at a usurious discount, and on a usurious contract. The bond or note of M. J. had been given to enable A. R. D. to raise money to pay a debt due by her, and for which the note of M. J. had been previously loaned to her; it was denied by the executors of M. J., that she had any knowledge of the usurious dealing in which the bond or note of M. J. was sold. The executors of M. J. were obliged to pay a large portion of the note or bond, and the action was instituted to recover so much as they had paid. A. R. D. set up the usury between her and the person to whom she had sold the note or bond, as a defence to the suit of the executors of M. J. It was held, that the action on the covenant of A. R. D. could be maintained; and that the usurious dealing between A. R. D. and the purchaser of the note or bond of M. J., did not render the covenant of A. R. D., to pay the bond or note, invalid. The court said, the contract between the defendant and the purchaser of the bond, if embracing no other person than themselves, could affect no contract between other parties, previously made; and whether that contract was usurious, dependent on the intention of the parties to it. If it was made *bonâ fide* for the sale and purchase of the bond, although at a discount which would insure to the purchaser twelve per cent. a year for the money advanced, it would not be usurious; if, on the other hand, the sale of the bond was a mere cover for avoiding the statutes against usury; and the real intention of the parties was to make a contract for the loan of money, at a higher rate than the legal interest; then the contract was usurious. But to involve M. J. in the usury, and to extend its taint to the covenant of A. R. D., it must be shown by proof, that M. J. executed the bond or note sold, for the purpose of aiding A. R. D. to borrow money at usurious interest; and not to enable A. R. D. to raise money by selling it in the market. When the holder of M. J.'s note threatened proceedings on it, it was not necessary that the executors of M. J. should give notice thereof. *Moncure* v. *Dermott*..... *345

6. No subsequent confirmation of a usurious contract, or new contract stipulating to pay the debt with the usurious interest, will make it valid.....*Id.*
7. It is the settled law of Virginia, that the *bonâ fide* purchaser of a bond or note, may take it at any rate or discount, however great, without violating the statute.....*Id.*

WRIT OF ERROR.

1. The certificate of the clerk of the court, that a motion was made for a new trial, and reasons and certain papers filed on which the motion was founded, which are on the files of the court, is not a part of the record; nor do the reasons on the files of the court become a part of the record by such certificate. A writ of error, under the 25th section of the judiciary act, will not lie to a state court in a case in which the proceedings of the court which the writ of error seeks to revise, appears from such a certificate, by the clerk of the state court. *Read* v. *Marsh*.....*153
2. A case cannot be brought by writ of error from a circuit court of the United States, upon an agreed statement of facts. *Keene* v. *Whittaker*..... *457
3. The rules of the supreme court require that the clerk of the circuit court to which any writ of error shall be directed, make return of the same, by annexing a true copy of the record and of all the proceedings in the cause, under his hand and the seal of the court. The court will not, according to the 31st rule, hear any cause, without a complete copy of the record having been brought up..... *Id.*

553