INDEX

TO THE

PRINCIPAL MATTERS CONTAINED IN THIS VOLUME.

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

ACTION.

1. A note to be paid "in the office notes of a bank" is not negotiable by the usage or custom of merchants; not being a promissory note by the law-merchant, the statute of Anne, or the kindred acts of assembly of Pennsylvania, it is not negotiable by indorsement; and not being under seal, is not assignable by the act of assembly of Pennsylvania on that subject, relating to bonds. No suit could be brought upon it in the name of the indorser; the legal interest in the instrument continues in the person in whose favor it was drawn, whatever equity another may have to claim the sum due on the same; and he only can be the party to a suit at law on the instrument. *Irvine* v. *Lowry*.....*293
2. The declaration in an action by an executor, for the recovery of money received by the defendant, after the decease of the testator, may be in the name of the plaintiff, as executor, or in his own name, without stating that he is executor; the distinction is, that when an executor sues on a cause of action which occurred in the lifetime of the testator, he must declare in the *detinet*, that is, in his representative capacity only; but when the cause of action accrues after the death of the testator, if the money when received will be assets, the executor may declare in his representative character, or in his own name. *Kane* v. *Paul*.....*33
3. An action was instituted in the circuit court of Mississippi on a promissory note, dated at and payable in New York; the declaration omitted to state the place at which the note was payable, and that a demand of payment had been made at that place: *Held*, that to maintain an action against the drawe or indorser of a promissory note or bill of exchange, payable at a particular place, it is not necessary to aver in the declaration, that the note, when due, was presented at the place for payment, and was not paid; but the place of payment is a material part of the description of the note, and must be set out in the declaration. *Covington* v. *Comstock*.....*43

ADMINISTRATORS.

See EXECUTORS AND ADMINISTRATORS.

AGENT OR FACTOR.

See FACTOR.

AVERAGE AND CONTRIBUTION.

See INSURANCE.

BOUNDARIES OF STATES.

1. In a case in which sovereign states of the United States are litigating a question of boundary between them, in the supreme court of the United States, the court have decided, that the rules and practice of the court of chancery should, substantially, govern, in conducting the suit to a final close. *Rhode Island* v. *Massachusetts*.....*210
2. In a controversy where two sovereign states are contesting the boundary between them, it is the duty of the court to mould the rules of chancery practice and pleading in such a manner as to bring the case to a final hear-

ing on its merits; it is too important in its character, and the interests concerned too great, to be decided upon mere technical principles of chancery pleadings.....*Id.*

3. The state of Rhode Island, in a bill against the state of Massachusetts, for the settlement of the boundary between the states, had set forth certain facts on which she relied in support of the claim for the decision of the supreme court, that the boundary claimed by the state of Massachusetts was not the true line of division between the states, according to their respective charters; to this bill the state of Massachusetts put in a plea and answer, which the counsel for the state of Rhode Island deemed to be insufficient. On a question whether the plea and answer were sufficient, the court held: that as, if the court proceeded to decide the case upon the plea, it must assume, without any proof on either side, that the facts stated in the plea are correctly stated, and incorrectly set forth in the bill, then it would be deciding the case upon such an issue as would strike out the very gist of the complainant's case, and exclude the facts upon which the whole equity is founded, if the complainant has any. That it would be unjust to the complainant not to give an opportunity of being heard according to the real state of the case between the parties; and to shut out from consideration the many facts on which he relies to maintain his suit.....*Id.*

4. The plea of the state of Massachusetts, after setting forth various proceedings which preceded and followed the execution of certain agreements with Rhode Island, conducing to show the obligatory and conclusive effect of those agreements upon both states, as an accord and compromise of a disputed right, proceeded to aver, that Massachusetts had occupied and exercised jurisdiction and sovereignty, according to the agreement, to this present time; and then set up as a defence, that the state of Massachusetts had occupied and exercised jurisdiction over the territory from that time up to the present; the defendants then pleaded the agreements of 1710 and 1718, and unmolested possession from that time, in bar to the whole bill of the complainant. The court held, that this plea was twofold: 1. An accord and compromise of a disputed right. 2. Prescription, or an unmolested possession from the time of the agreement. These two defences are entirely distinct and separate, and depend upon different principles; here are two defences in the same plea, contrary to the established rules of pleading; the accord and compromise, and the title by prescription, united in this plea, render it multifarious; and it ought to be overruled on this account.....*Id.*

CASES CITED AND AFFIRMED.

1. Arredondo's Case, 6 Pet. 691. *United States* v. *Wiggins*.....*334
2. Bank of Augusta *v.* Earle, 13 Pet. 584. *Runyan* v. *Coster*.....*122
3. Beers *v.* Houghton, 9 Pet. 332. *United States* v. *Knight*.....*301
4. Boyle *v.* Zacharie, 6 Pet. 648. *Evans* v *Gee* *1
5. Eliason *v.* Henshaw, 4 Wheat. 225. *Carr* v. *Duval*.....*77
6. Fairfax *v.* Hunter, 7 Cranch 61. *Runyan* v. *Coster*.....*122
7. Foster *v.* Neilson, 2 Pet. 254; and Garcia *v.* Lee, 12 Ibid. 511, which cases decide against the validity of the grants made by the Spanish government, in the territory lying west of the Perdido river, and east of the Mississippi river, after the Louisiana treaty of 1803, cited and affirmed. *Keene* v. *Whittaker*.....*172
8. Hunt *v.* Rousmanier, 8 Wheat. 211. *Sprigg* v. *Bank of Mount Pleasant* *201
9. Kelly *v.* Jackson, 6 Pet. 632. *United States* v. *Wiggins*.....*334
10. Kendall *v.* United States, 12 Pet. 527, 610, 614. *Decatur* v. *Paulding*.....*497
11. McCulloch *v.* State of Maryland, 4 Wheat. 422; and American Insurance Company *v.* Canter, 1 Pet. 542, cited. *United States* v. *Gratiot* *526
12. Owings *v.* Hull, 9 Pet. 624; Percheman's Case, 7 Ibid. 51; United States *v.* Delespine, 12 Ibid. 655, cited. *United States* v. *Wiggins*.....*334
13. Rhode Island *v.* Connecticut, 12 Pet. 735. *Rhode Island* v. *Massachusetts*.....*210
14. Sprigg *v.* Bank of Mount Pleasant, 10 Pet. 257, examined and affirmed. *Sprigg* v. *Bank of Mount Pleasant*.....*201
15. Wayman *v.* Southard, 1 Wheat. 10. *United States* v. *Knight*.....*301

CERTIFICATE OF DIVISION.

1. Action in the district court of the United States for the southern district of New York, by the United States against the defendant, for a penalty under the act of 1838, "to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam:" a verdict was rendered for the United States, and without a judgment on the verdict, the case was, by consent, removed to the circuit court of the United States; in the circuit court certain questions were presented on the argu-

ment, and a statement was made of those questions, and they were certified *pro formâ*, at the request of the counsel for the parties, to the supreme court, for their decision; no difference of opinion was actually expressed by the judges of the circuit court. The judgment or other proceedings on the verdict ought to have been entered in the district court; it was altogether irregular to transfer the proceedings in that condition to the circuit court. The case was remanded to the circuit court. *United States* v. *Stone*..... *524

2. In some cases, where the point arising is one of importance, the judges of the circuit court have sometimes, by consent, certified the point to the supreme court, as upon a division of opinion; when in truth they both rather seriously doubted, than differed about it. Those must be cases sanctioned by the judgment of one of the judges of the supreme court, in his circuit..... *Id.*

CHANCERY AND CHANCERY PRACTICE.

1. A decree for a specific performance of a contract to sell lands, refused, because a definite and certain contract was not made; and because the party who claimed the performance had failed to make it definite and certain on his part, by neglecting to communicate by the return of the mail conveying to him the proposition of the vendor, his acceptance of the terms offered. *Carr* v. *Duval*..... *77
2. If it be doubtful whether an agreement has been concluded, or it is a mere negotiation, chancery will not decree a specific performance..... *Id.*
3. A bill for an injunction was filed, alleging that the parties who had obtained a judgment at law for the amount of a bill of exchange, of which the complainant was indorser, had, before the suit was instituted, obtained payment of the bill from a subsequent indorser, out of the funds of the drawers of the bill, obtained by the subsequent indorser, from one of the drawers. It was held, that it was not necessary to make the subsequent indorser, who was alleged to have made the payment, a party to the injunction bill. *Atkins* v. *Dick*..*114
4. By a rule of the supreme court, the practice of the English courts of chancery is the practice in the courts of equity in the United States. In England, the party who puts in a plea, which is the subject of discussion, has the right to begin and conclude the argument; the same rule should prevail in the courts of the United States, in chancery cases. *Rhode Island* v. *Massachusetts*.....*210
5. In a case in which two sovereign states of the United States are litigating a question of boundary between them, in the supreme court of the United States, the court have decided, that the rules and practice of the court of chancery should substantially govern in conducting the suit to a final issue. (12 Pet. 735–9.) The court, on re-examining the subject, are fully satisfied with the decision..... *Id.*
6. In a controversy where two sovereign states are contesting the boundary between them, it is the duty of the court to mould the rules of chancery practice and pleading in such a manner as to bring the case to a final hearing on its merits; it is too important in its character, and the interests concerned too great, to be decided upon the mere technical principles of chancery pleading..... *Id.*
7. In ordinary cases between individuals, the court of chancery has always exercised an equitable discretion in relation to its rules of pleading, whenever it has been found necessary to do so, for the purposes of justice. In a case in which two sovereign states are contesting a question of boundary, the most liberal principles of practice and pleading ought, unquestionably, to be adopted, in order to enable both parties to present their respective claims in their full strength. If a plea put in by the defendant may in any degree embarrass the complainant in bringing out the proofs of his claim, on which he relies; the case ought not to be disposed of on such an issue. Undoubtedly, the defendont must have the full benefit of the defence which the plea discloses, but, at the same time, the proceedings ought to be so ordered, as to give the complainant a full hearing on the whole of his case..... *Id.*
8. According to the rules of pleading in the chancery courts, if the plea be unexceptionable in its form and character, the complainant must either set it down for argument, or he must reply to it, and put in issue the facts relied on in the plea; if he elect to proceed in the manner first mentioned, and sets down the plea for argument, he then admits the truth of all the facts stated in the plea, and merely denies their sufficiency in point of law to prevent the recovery; if, on the other hand, he replies to the plea, and denies the truth of the facts therein stated, he admits that if the particular facts stated in the plea are true, they are then sufficient in law to bar his recovery; and if they are proved to be true, the bill must be dismissed, without a reference to the equity arising from any other facts stated in the bill..... *Id.*
9. If a plea, upon argument, is ruled to be sufficient in law to bar the recovery of the

complainant, the court of chancery would, according to its uniform practice, allow him to amend, and put in issue, by a proper replication, the truth of the facts stated in the plea; but in either case, the controversy would turn altogether upon the facts stated in the plea, if the plea is permitted to stand. It is the strict and technical character of those rules of pleading, and the danger of injustice often arising from them, which has given rise to the equitable discretion always exercised by the courts of chancery in relation to pleas. In many cases, when they are not overruled, the court will not permit them to have the full effect of a plea; and will, in some cases, leave to the defendant the benefit of it at the hearing: and in others, will order it to stand for an answer, as, in the judgment of the court, may best subserve the purposes of justice..... *Id.*

10. The state of Rhode Island, in a bill against the state of Massachusetts, for the settlement of the boundary between the states, had set forth certain facts on which she relied in support of her claim for the decision of the supreme court, that the boundary claimed by the state of Massachusetts was not the true line of division between the states, according to their respective charters; to this bill, the state of Massachusetts put in a plea and answer, which the counsel for the state of Rhode Island deemed to be insufficient. On a question, whether the plea and answer were insufficient, the court held, that as, if the court proceeded to decide the case upon the plea, it must assume, without any proof on either side, that the facts stated in the plea are correctly stated, and incorrectly set forth in the bill, then it would be deciding the case upon such an issue as would strike out the very gist of the complainant's case, and exclude the facts upon which the whole equity is founded, if the complainant had any..... *Id.*

11. It is a general rule, that a plea ought not to contain more defences that one; various facts can never be pleaded in one plea, unless they are all conducive to the single point on which the defendant means to rest his defence..... *Id.*

See INJUNCTION.

CHARGE OF THE COURT.

1. The grantor in the deed was David Carrick Buchanan, and he declared in it that he was the same person who was formerly David Buchanan. The circuit court were required to charge the jury, that it was necessary to convince the jury, by proofs in court, that David Carrick Buchanan was the same person as the grantor named in the patent, David Buchanan; and that the statement by the grantor was no proof to establish the fact; the circuit court instructed the jury, that they must satisfied from the deed and other documents, and the circumstances of the case, that the grantor in the deed was the same person to whom the patent was issued; and they declared their opinion that such was the fact. The principle is well established, that a court may give their opinion on the evidence to the jury, being careful to distinguish between matters of law and matters of opinion, in regard to the facts. When a matter of law is given by the court to the jury, it should be considered by the court as conclusive; but a mere matter of opinion as to the facts will only have such an influence on the jury as they may think it entitled to. *Games* v. *Dunn*.....*322

CHESAPEAKE AND OHIO CANAL COMPANY.

1. The legislatures of Virginia and Maryland authorized the surrender of the charter granted by those states to the Potomac Company to be made to the Chesapeake and Ohio Canal Company, the stockholders of the Potomac Company assenting to the same; a provision was made in the acts authorizing the surrender, for the payment of a certain amount of the debts of the Potomac Company, by the Chesapeake and Ohio Canal Company, a list of those debts to be made out, and certified by the Potomac Company. This assignment does not impair the obligation of the contract of the Potomac Company with any one of its creditors, nor place him in a worse situation in regard to his demand; the means of payment possessed by the old company are carefully preserved, and indeed, guarantied by the new corporation; and if the fact can be established, that some *bonâ fide* creditors of the Potomac Company were unprovided for in the new charter, and have, consequently, no redress against the Chesapeake and Ohio Canal Company, it does not follow, that they are without remedy. *Smith* v. *Chesapeake and Ohio Canal Company* *45

CIRCUIT COURTS.

1. The mode of conducting trials, the order of introducing evidence, and the times when it is to be introduced, are properly matters belonging to the practice of the circuit courts, with which the supreme court ought not to interfere; unless it shall choose to prescribe some fixed general rules on the

subject, under the authority of the act of congress. The circuit courts possess this discretion in as ample a manner as other judicial tribunals. *Philadelphia and Trenton Railroad Company* v. *Stimpson*..... *448

CIRCUIT COURT OF THE DISTRICT OF COLUMBIA.

See HEADS OF DEPARTMENTS, 1–5 : MANDAMUS.

CONSIGNOR AND CONSIGNEE.

See FACTOR.

CONSTITUTION.

1. The fourth article of the constitution of the United States, which declares that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state," cannot, by any just construction of its words, be held to embrace an alleged error in a decree of a state court, asserted to be in collision with a prior decision of the same court in the same case. *Mitchell* v. *Lenox*.....*49

CONSTITUTIONALITY OF STATE LAWS.

1. The plaintiffs, merchants of New York, instituted a suit in the circuit court of Alabama, against the administrators of the maker of a note, dated in New York, and payable in New York ; the act of the assembly of Alabama provides, that the estate of a deceased person, which is declared to be insolvent, shall be distributed by the executors or administrators, according to the provisions of the statute, among the creditors; and that no suit or action shall be commenced or sustained against any executor or administrator, after the estate of the deceased has been represented as insolvent, except in certain cases not of the description of that on which this suit was instituted : *Held*, that the insolvency of the estate, judicially declared under the statute of Alabama, was not sufficient in law to abate a suit instituted in the circuit court of the United States, by a citizen of another state, against the representative of a citizen of Alabama. *Suydam* v. *Broadnax*.....*67
2. The exceptions in the sixth section of the law of Alabama, in favor of debts contracted out of the state, prevent the application of the statute, or its operation, in a case of a debt originating in and contracted by the deceased out of the state of Alabama....*Id.*
3. A sovereign state and one of the states of this Union, if the latter were not restrained by constitutional prohibitions, might, in virtue of sovereignty, act upon the contracts of its citizens, wherever made, and discharge them, by denying the right of action upon them in its own courts; but the validity of such contracts as were made out of the sovereignty or state, would exist and continue everywhere else, according to the *lex loci contractûs*.....*Id.*

CONSTRUCTION OF STATUTES.

1. It is undoubtedly a duty of the court to ascertain the meaning of the legislature, from the words used in the statute, and the subject-matter to which it relates ; and to restrain its operations within narrower limits than its words import, if the court are satisfied that the literal meaning of its words would extend to cases, which the legislature never designed to include in it. *Brewer* v. *Blougher*.....*178
2. In expounding a penal statute, the court, certainly, will not extend it beyond the plain meaning of its words ; for it has been long and well settled, that such statutes must be construed strictly ; yet the evident intention of the legislature ought not to be defeated by a forced and over-strict construction. *United States* v. *Morris*.....*464

See SLAVE-TRADE.

CONSTRUCTION OF UNITED STATES STATUTES.

1. Action on a bond to the United States for the liberty of the jail-yard of Portland, in the state of Maine ; the condition of the bond was, that J. K. and B. K. should "continue true prisoners in the custody of the jailer, within the limits of the jail-yard ;" it was agreed by the counsel for the plaintiff and defendants, that J. K. and B. K. had remained within "the limits of the jail-yard," as established under the laws of 1787, of Massachusetts, then prevailing in Maine ; the limits of the jail-yard having, in October, 1798, been extended over the whole county ; but had not remained within the limits established on the 29th of May 1787, and existing when the act of congress was passed, 4th of January 1800, authorizing persons under process from the United States, to have the "jail limits" as established by the laws of the state : *Held*, that the act of congress of 19th May 1828, gave the debtors imprisoned under executions from the courts of the United States, at the suit of the United States, the privilege of the jail limits in the several states, as they were fixed by

the laws of the several states at the date of that act. *United States* v. *Knight*.....*302

2. Whatever might be the liability of the officer who took the bond from the defendants, if the jail limits continued to be such as were established under the laws of Massachusetts, of 1787, the bond not having been taken under that law, and the condition being different from the requirements of those regulations; the parties to the bond, the suit being upon the bond, are bound for nothing whatsoever, but what is contained in the condition; whether it be or be not conformable with the law..... ....*Id.*

3. The statute of May 19th, 1828, entitled, "an act to further regulate processes in the courts of the United States," which proposes only to regulate the mode of proceeding in civil suits, does not divest the public of any right, does not violate any principle of pub lic policy, but on the contrary, makes provision, in accordance with the policy which the government has indicated, by many acts of previous legislation, to conform to state laws in giving to persons imprisoned under their execution, the privilege of jail limits, embracing executions at the suit of the United States.....*Id.*

4. The act of congress under which title was claimed, being a private act, and for the benefit of the city of Mobile, and certain individuals; it is fair to presume, it was passed with reference to the particular claims of individuals, and the situation of the land embraced in the law, at the time it was passed. *Pollard's Heirs* v. *Kibbe*.....*353

5. A lot of ground was granted by the Spanish government of Florida, in 1802, to Forbes & Company, in the city of Mobile, which was afterwards confirmed by the commissioners of the United States; the lot granted was 80 feet in front, and 304 feet in depth, bounded on the east by Water street; this, while the Spanish government had possession of the territory, was known as "a water lot." In front of this lot, was a lot which, at the time of the grant of the lot to Forbes & Company, was covered by the water of the bay and river of Mobile, the high tide flowing over it; and it was separated from Forbes & Company's lot, by Water street; it was afterwards, in part, reclaimed by Lewis, who had no title to it, and who was afterwards driven off by one of the firm of Forbes & Company; a blacksmith's shop was then put on the lot by them; and Lewis, again, by proceedings at law, obtained possession of the blacksmith's shop, it not being his improvement; the improvement was first made in 1823; the Spanish governor, in 1809, after the Louisiana treaty of 1803, and before the territory west of the Perdido was out of the possession of Spain, granted the lot in front of the lot owned by Forbes & Company, to William Pollard; but the commissioners of the United States, appointed after the territory was in the full possession of the United States, refused to confirm the same, "because of the want of improvement and occupancy." In 1824, congress passed an act, the second section of which gave to those who have improved them, the lots in Mobile, known under the Spanish government as "water lots;" except when the lot so improved had been alienated, and except lots of which the Spanish government had made "new grants," or orders of survey, during the time the Spanish government had "power" to grant the same; in which case, the lot was to belong to the alienee or the grantee. In 1836, congress passed an act for the relief of William Pollard's heirs, by which the lot granted by the Spanish government of 1809, was given to the heirs, saving the rights of third persons; and a patent for this lot was issued to the heirs of William Pollard, by the United States, on the second of July 1836: *Held*, that the lot lying east of the lot granted in 1802, by the Spanish government, to Forbes & Company, did not pass by that grant to Forbes & Company; that the act of congress of 1824 did not vest the title in the lot east of the lot granted in 1802 in Forbes & Company; and that the heirs of Pollard, under the second section of the act of 1824, which excepted from the grant to the city of Mobile, &c., lots held under "new grants" from the Spanish government, and under the act of congress of 1836, were entitled to the lot granted in 1809, by the Spanish governor to William Pollard....*Id.*

6. The term "new grants," in its ordinary acceptation, when applied to the same subject or object, is the opposite of "old;" but such cannot be its meaning in the act of congress of 1824; this term was doubtless used in relation to the existing condition of the territory in which such grants were made. The territory had been ceded to the United States by the Louisiana treaty; but in consequence of a dispute with Spain about the boundary line, had remained in the possession of Spain; during this time Spain continued to issue evidences of titles to lands within the territory in dispute. The term "new" was very appropriately used as applicable to grants and orders of survey of this description, as contradistinguished from those issued before the cession....*Id.*

7. The time when the Spanish government had the "power" to grant lands in the territory, by every reasonable intendment of the act of

congress of 1824, must have been so designated with reference to the existing state of the territory, as between the United States and Spain; the right to the territory being in the United States, and the possession in Spain. The language, "during the time at which Spain had the power to grant the same," was, under such circumstances, very appropriately applied to the case; it could, with no propriety, have been applied to the case, if Spain had full dominion over the territory, by the union of the right and the possession; and in this view, it is no forced interpretation of the word "power," to consider it here used as importing an imperfect right, as distinguished from complete lawful authority..... *Id.*

8. The act of congress of 25th April 1812, appointing commissioners to ascertain the titles and claims to lands on the east side of the Mississippi, and west side of the Perdido, and falling within the cession of France, embraced all claims of this description; it extended to all claims, by virtue of any grant, order of survey, or other evidence of claim whatsoever, derived from the French, British or Spanish governments; and the reports of the commissioners show, that evidence of claims of various descriptions, issued by Spanish authority, down to 1810, come under their examination. And the legislation of congress shows many laws passed confirming incomplete titles, originating after the date of the treaty between France and Spain at St. Ildefonso; such claims are certainly not beyond the reach of congress to confirm; although it may require a special act of congress for that purpose. Such is the act of congress of 2d July 1836, which confirms the title of William Pollard's heirs to the lot which is the subject of this suit..... *Id.*

See CONSTRUCTION OF STATUTES, 2; PERJURY: SLAVE TRADE.

CONTRACTS.

1. It has been frequently held, that the device of covering property as neutral, when in truth it was belligerent, is not contrary to the laws of war or of nations; contracts made with underwriters in relation to property thus covered, have always been enforced in the courts of a neutral country, where the true character of the property, and the means taken to protect it from capture have been fairly represented to the insurers. The same doctrine has always been held, where false papers have been used to cover the property, provided the underwriter knew, or was bound to know, that such stratagems were always resorted to by persons engaged in that trade. If such means may be used to prevent capture, there can be no good reason for condemning with more severity the continuation of the same disguise, after capture, in order to prevent the condemnation of the property, or to procure compensation for it, when it has been lost by reason of the capture. Courts of the capturing nation would never enforce contracts of that description; but they have always been regarded lawful in the courts of a neutral country. *De Valengin* v. *Duffy*..... .....*282
2. The Bank of the Metropolis contracted to deliver a title in fee-simple to Guttschlick, of a lot of ground, and at the time of the contract they held the lot, by virtue of a sale made under a deed of trust, at which sale they became the purchasers of the property; the same lot had, by a deed of trust, executed by the same person, been previously conveyed to another person, to indemnify an indorser of his notes, and it was by the trustee, afterwards, and after the contract with Guttschlick, sold and purchased by another: *Held*, that at the time of the contract, they had not a fee-simple in the lot, which could be conveyed to Guttschlick. *Bank of the Metropolis* v. *Guttschlick*.. *19

CORPORATION.

1. A corporation may be bound by contracts, not executed under their common seal, and by the acts of its officers in the course of their official duties; when, in a declaration, it is averred, that a bank by its officers agreed to a certain contract, this averment imports everything to make the contract binding. *Bank of the Metropolis* v. *Guttschlick*...*19
2. A paper executed by the president and cashier of a bank, purporting to convey a lot of ground held by the bank, is not the deed of the corporation..... *Id.*
3. An action of *assumpsit* was brought against the Bank of the Metropolis, on a contract under the seals of the president and cashier: *Held*, that the action was well brought; it makes no difference, in an action of *assumpsit* against a corporation, whether the agent was appointed under the seal or not; or whether he puts his own seal to a contract which he makes in behalf of the corporation..... *Id.*
4. The artificial being, a corporation aggregate, is not, as such, a citizen of the United States; yet the courts of the United States will look beyond the mere corporate character, to the individuals of whom it is composed; and if they were citizens of a different state from

the party sued, they are competent to sue in the courts of the United States; but all the corporators must be citizens of a different state from the party sued. The same principle applies to the individuals composing a corporation aggregate, when standing in the attitude of defendants, which does when they are in that of plaintiffs. *Commercial and Railroad Bank* v. *Slocomb*, *60; S. P. *Ervine* v. *Lowry*.....*393

5. The legislature of the state of New York, on the 18th of April 1823, incorporated "The New York and Schuylkill Coal Company;" the act of incorporation was granted for the purpose of supplying the city of New York and vicinity with coal; and the company having, at great expense, secured the purchase of valuable and extensive coal lands in Pennsylvania, the legislature of New York, to promote the supply of coal as fuel, granted the incorporation, with the usual powers of a body corporate, giving to it the power to purchase and hold lands, to promote and attain the objects of the incorporation. The recitals in the act of incorporation showed that this power was granted with special reference to the purchase of lands in the state of Pennsylvania; the right to hold the lands so purchased depends on the assent or permission, express or implied, of the state of Pennsylvania. *Runyan* v. *Coster* *122
6. The policy of the state of Pennsylvania, on the subject of holding lands in the state, by corporations, is clearly indicated by the act of the legislature of Pennsylvania, of April 6th, 1833. Lands held by corporations of the state, or of any other state, without license from the commonwealth of Pennsylvania, are subject to forfeiture to the commonwealth; but every such corporation, its feoffee or feoffees, hold and retain the same, to be divested or dispossessed by the commonwealth, by due course of law. The plain interpretation of this statute is, that until the claim to a forfeiture is asserted by the state, the land is held subject to be divested by due course of law, instituted by the commonwealth alone, and for its own use... *Id.*
7. The supreme court of Pennsylvania having decided, that a corporation has, in that state, a right to purchase, hold and convey land, until some act is done by the government, according to its own laws, to vest the estate in itself, the estate may remain in a corporation so purchasing or holding lands; but the estate is defeasible by the commonwealth. This being the law of Pennsylvania, it must govern in a case where land in Pennsylvania had been purchased by a corporation, created by the legislature of New York, for the purpose of supplying coal from Pennsylvania to the city of New York.....*Id.*
8. In the case of the Bank of Augusta *v.* Earle, 13 Pet. 584, and in various other cases decided in the supreme court, a corporation is considered an artificial being, existing only in contemplation of law; and being a mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. Corporations created by statute must depend for their powers, and the mode of exercising them, upon the true construction of the statute. *Id.*
9. A corporation can have no legal existence out of the sovereignty by which it is created, as it exists only in contemplation of law, and by force of the law; and when 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 may live and have its being in that state only, yet it does not 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. The corporation must show that the law of its creation gave it authority to make such contracts; yet, as in the case of a natural person, it is not necessary that it should actually exist in the sovereignty in which the contract is made; it is sufficient, that its existence, as an artificial person, in the state of its creation, is acknowledged and recognised by the state or nation where the dealing takes place; and that it is permitted by the laws of that place to exercise the powers with which it is endowed.....*Id.*
10. Every power which a corporation exercises in another state, depends for its validity upon the laws of the sovereignty in which it is exercised; a corporation can make no valid contract, without the sanction, express or implied, of such sovereignty; unless a case should be presented in which the right claimed by the corporation should appear to be secured by the constitution of the United States.....*Id.*

CRIMES.

See PERJURY.

DAMAGES.

See FACTOR.

DEED.

1. A deed was executed in Glasgow, Scotland, by which land in Ohio, which had been pat-

ented to David Buchanan by the United States, was conveyed to Walter Sterling; the deed recited, that it was made in pursuance of a decree of the circuit court of the United States for the district of Virginia; no exemplification of the decree was offered in evidence, in support of the deed. The court held, that as Buchanan was the patentee of the land, although he made the deed in pursuance of a decree of the circuit court of Virginia, the decree could add nothing to the validity of the conveyance; and therefore, it was wholly unnecessary to produce an exemplification of the decree; the deed was good without the decree. *Games* v. *Dunn*.....*322

2. The possession of a deed, regularly executed, is *prima facie* evidence of its delivery; under ordinary circumstances, no other evidence of the delivery of a deed than the possession of it, by the person claiming under it, is required.....*Id.*

3. A deed was executed by David Carrick Buchanan, stating that he was the same person who was formerly David Buchanan, the patentee of land in Ohio; the court held, that this was *primâ facie* evidence of the fact alleged; the law knows but one Christian name; and the omission and insertion of the middle name, or of the initial letter of that name, is immaterial; and it is competent for the party to show, that he is known by the one, as well as by the other. *Id.*

DEED OF TRUST.

1. In case of a deed of trust, executed to secure a debt, unless in case of some extrinsic matter of equity, a court of equity never interferes to delay or prevent a sale according to the terms of the trust; and the only right of the grantor in the deed, is the right to any surplus which may remain of the money for which the property was sold. *Bank of the Metropolis* v. *Guttschlick*.....*19

DISTRICT OF COLUMBIA.

1. The county of Alexandria, in the district of Columbia, cannot be regarded as standing in the same relation to the county of Washington that the states of the Union stand in relation to one another. *Bank of Alexandria* v. *Dyer*.....*141

See EXECUTORS AND ADMINISTRATORS, 8: LIMITATION OF ACTIONS.

DUTIES.

See PERJURY.

EJECTMENT.

1. In an action of ejectment, the defendants having entered into the consent rule, the plaintiff, in Ohio, is not to be called upon to prove the calls of the patent under which he claims, on the ground of establishing the different corners; the defendants are bound to admit, after they have entered into the consent rule, that they are in possession of the premises claimed by the lessor of the plaintiff. *Games* v. *Dunn*.....*322

See PRACTICE.

ERROR.

See WRIT OF ERROR.

EVIDENCE.

1. The proceedings in an action against the indorser of a note, by the holder, which gave to a trustee, by the terms of the deed of trust, a right to sell property held for the indemnity of the indorser, were proper evidence in an action on a contract for the sale of the lot, from which the party who had purchased under another title had been evicted by a title obtained under the deed of trust. No exceptions to the regularity of the proceedings offered in evidence can be taken, which should have been properly made in the original action by the party sued on the same. *Bank of the Metropolis* v. *Guttschlick*.....*19

2. Whether evidence be admissible or not, is a question for the court to decide; but whether it be sufficient or not to support the issue, is a question for the jury; the only case in which the court can make inferences from evidence, and pass upon its sufficiency, is on a demurrer to evidence.....*Id.*

3. When the deeds of the defendant in ejectment have been referred to by the plaintiff, for the sole purpose of showing that both parties claim under the same person; this does not prevent the plaintiff impeaching the deeds afterwards for fraud. *Remington* v. *Linthicum*.....*84

4. *Primâ facie* evidence of a fact, is such, as in judgment of law is sufficient to establish the fact, and if not rebutted, remains sufficient for evidence of it. *United States* v. *Wiggins*.....*334

5. The rule is, that secondary or inferior shall not be substituted for evidence of a higher nature which the case submits of; the reason of that rule is, that an attempt to substitute the inferior for the higher, implies that the higher would give a different aspect to the case of the party introducing the lesser;

"the ground of the rule is a suspicion of fraud." But before the rule is applied, the nature of the case must be considered, to make a right application of it; and if it shall be seen, that the fact to be proved is an act of the defendant, which, from its nature, can be concealed from all others except him whose co-operation was necessary before the act could be complete; then the admissions and declarations of the defendant, either in writing, or to others, in relation to the act, become evidence. *United States* v. *Wood*..... *431

6. It is certainly true, as a general rule, that the interpretation of written instruments properly belongs to the court, and not to the jury; but there are cases in which, from the different senses of the words used, or their obscure and indeterminate reference to unexplained circumstances, the true interpretation of the language may be left to the consideration of the jury, for the purpose of carrying into effect the real intention of the parties. This is especially applicable to cases of commercial correspondence, where the real objects, and intentions, and agreements of the parties are often to be arrived at only by allusions to circumstances which are but inperfectly developed. *Brown* v. *McGran*..... *479

7. It is incumbent on those who seek to show that the examination of a witness has been improperly rejected, to establish their right to have the evidence admitted; for the court will be presumed to have acted correctly, until the contrary is established. *Philadelphia & Trenton Railroad Company* v. *Stimpson*..... *448

8. To entitle a party to examine a witness in a patent cause, the purpose of whose testimony is to disprove the right of the patentee to the invention, by showing its use prior to the patent, by others, the provisions of the patent act of 1836, relative to notice, must be strictly complied with..... *Id.*

9. It is incumbent on those who insist upon the right to put particular questions to a witness, to establish that right beyond any reasonable doubt, for the very purpose stated by them; and they are not afterwards at liberty to desert that purpose, and to show the pertinency or relevancy of the evidence for any other purpose not then suggested to the court..... *Id.*

10. A party has no right to cross-examine any witness, except as to facts and circumstances connected with the matters stated in his direct examination. If he wishes to examine him on other matters, he must do so by making the witness his own; and calling him as such, in the subsequent progress of the cause. A party cannot, by his own omission to take an objection to the admission of improper evidence, brought out on a cross-examination, found a right to introduce testimony in chief, to rebut it or explain it..... *Id.*

11. Parol evidence, bearing upon written contracts and papers, ought not to be admitted in evidence, without the production of such written contracts or papers; so as to enable both the court and the jury to see, whether or not the admission of the parol evidence, in any manner, will trench upon the rule that parol evidence is not admissible to vary or contradict written contracts or papers. *Id.*

12. As a general rule, and upon general principles, the declarations and conversations of the plaintiff are not admissible evidence in favor of his own rights; this is, however, but a general rule, and admits and requires various exceptions. There are many cases in which a party may show his declarations comport with acts in his own favor, as a part of the *res gestæ;* there are other cases in which his material declarations have been admitted..... *Id.*

13. In an action for an assault and battery and wounding, the declarations of the plaintiff to his internal pains, aches, injuries and symptoms, to the physician attending him, are admissible, for the purpose of showing the nature and extent of the injuries done to him. In many cases of inventions, it is hardly possible in any other manner to ascertain the precise time and exact origin of the invention... *Id.*

14. The conversations and declarations of a patentee, merely affirming that, at some former period, he had invented a particular machine, may well be objected to; but his conversations and declarations, stating that he had made an invention, and describing its details, and explaining its operations, are properly deemed an assertion of his right, at that time, as an inventor, to the extent of the facts and details which he then makes known, although not of their existence at an anterior time. Such declarations, coupled with a description of the nature and objects of the invention, are to be deemed a part of the *res gestæ*, and legitimate evidence that the invention was then known and claimed by him; and thus its origin may be fixed at least as early as that period..... *Id.*

15. If the rejection of evidence is a matter resting in the sound dincretion of the court, it cannot be assigned as error..... *Id.*

16. Testimony was not offered by a defendant, or stated by him as matter of defence, in the stage of the cause when it is usually introduced according to the practice of the court; it was offered, after the defendant's counsel

had stated, in open court, that they had closed their evidence; and after the plaintiff, in consequence of that declaration, had discharged his own witness. The circuit court refused to admit the testimony; *Held*, that this decision was proper.....*Id.*

17. A deed was executed in Glasgow, Scotland, by which land in Ohio, which had been patented by the United States to David Buchanan, was conveyed to Walter Sterling; the deed recited that it was made in pursuance of a decree of the circuit court of the United States for the district of Virginia; no exemplification of the decree was offered in support of the deed. The court held, that as Buchanan was the patentee of the land, although he made the deed in pursuance of the decree of the circuit court of Virginia, the decree could add nothing to the validity of the conveyance, and therefore, it was wholly unnecessary to produce an exemplification of the decree; the deed was good without the decree. *Games* v. *Dunn*..*322
18. The possession of a deed, regularly executed, is *primâ facie* evidence of its delivery; under ordinary circumstances no other evidence of the delivery of a deed than the possession of it, by the person claiming under it is required.....*Id.*
19. The recital in a deed, by the grantor, that he, David Carrick Buchanan, was the patentee of the land conveyed under the name of David Buchanan, is *primâ facie* evidence of the fact stated. The law knows but one Christian name, and the omission, or insertion of the middle name, or of the initial letter of that name, is immaterial; and it is competent for the party to show that he is known as well without as with the middle name.....*Id.*

See Parol Evidence: Sales for Taxes, 2.

EXCHANGE.

1. A paper was executed by R. R. K., of New Orleans, stating that the grantor, for and in consideration of a certain lot of ground (describing it), conveyed and transferred unto J. B. and S. B., all his right, title and interest in a certain tract or parcel of land (describing it), hereby warranting and defending unto the said J. B. and S. B., all his right and title in the same, and unto all persons claiming under them. The paper, called under the laws of Louisiana "an act of sale," was signed by R. R. K., J. B. and S. B., and a notary of New Orleans; and was deposited in the office of the notary. This was not an "exchange of property," according to the laws of Louisiana; and J. B. and S. B. did not, by accepting the transfer of property made by the same, and signing the paper, incur the two obligations imposed on all vendors by the civil code of Louisiana, that of delivering and that of warranting the lot of ground sold to R. R. K.; and did not thereby become liable for the value of the property stated in the said "act of sale" to have been given for the property conveyed thereby. *Preston* v. *Keene*.....*133
2. Exchange, according to the civil code of Louisiana, imports a reciprocal contract; which, by art. 1758 of that code, is declared, when the parties expressly enter into mutual agreements .....*Id.*
3. An exchange is an executed contract; it operates, *per se*, as a reciprocal conveyance of the thing given and of the thing received. The thing given or taken in exchange must be specific, and so distinguishable from all other things of the like kind as to be clearly known and identified. Under the civil law of Louisiana, the exchanger who is evicted, has a choice either to sue for damages, or for the thing he gave in exchange; but he must first be evicted, before his cause of action can accrue.....*Id.*

EXECUTIVE DEPARTMENTS.

See Heads of Departments, 1–5.

EXECUTORS AND ADMINISTRATORS.

1. Where there are two executors in a will, it is clear, that each has a right to receive the debts due to the estate, and all other assets which shall come into his hands; and he is answerable for the assets he receives; this responsibility results from the right to receive, and the nature of the trust. A payment of the sums received by him to his co-executor, will not discharge him from his liability to the estate; he is bound to account for all assets which come into his hands, and to appropriate them according to the directions of the will. *Edmonds* v. *Crenshaw*.*166
2. Executors are not liable to each other; but each is liable to the *cestuis que trust* and devisees, to the full extent of the funds received by him.....*Id.*
3. The removal of an executor from a state in which the will was proved, and in which letters-testamentary were granted, does not discharge him from his liability as executor; much less does it release him from his liability for assets received by him and paid over to his co-executor.....*Id.*
4. Whatever property or money is lawfully recovered by the executor or administrator, after the death of his testator or intestate,

in virtue of his representative character, he holds as assets of the estate; and he is liable therefor, in such representative character, to the party who has a good title thereto. The want of knowledge, or the possession of knowledge, on the part of the administrator, as to the rights and claims of other persons, upon the money thus received, cannot alter the rights of the party to whom it ultimately belongs. *De Valengin* v. *Duffy*..... *282

5. The owner of property or of money received by an administrator, may resort to the administrator, in his personal character, and charge him, *de bonis propriis*, with the amount thus received; he may do this, or proceed against him as executor or administrator, at his election. But whenever an executor or administrator, in his representative character, lawfully receives money or property, he may be compelled to respond to the party entitled, in that character; and will not be permitted to throw it off, after he has received the money, in order to defeat the plaintiffs' action..... *Id.*
6. Letters-testamentary to the estate of Edward Coursault, a merchant who had died at Baltimore, were granted to Gabriel Paul, one of the executors named in the will; the other executor, Aglae Coursault, the wife of Edward Coursault, did not qualify as executrix, nor did she renounce the execution of the will. Afterwards, on the application of Aglae Coursault, stating she was executrix of Edward Coursault, accompanied with a power of attorney, given to her by Gabriel Paul, the qualified executor, who had removed to Missouri, the commissioners under the treaty of indemnity with France, awarded to the estate of Edward Coursault a sum of money, for the seizure and confiscation of the Good Friends and cargo, by the French government. During the pendency of the claim before the commissioners, Aglae Coursault died; and letters of administration, with the will annexed, were, on the oath of Thomas Dunlap, that the widow and executrix of Edward Coursault was dead, granted by the orphans' court of the county of Washington, in the district of Columbia, to the plaintiff in error, Elias Kane, a resident in Washington; the sum awarded by the commissioners was paid to Elias Kane, by the government of the United States. Gabriel Paul, the executor of Edward Coursault, brought an action against Elias Kane, for the money paid to him: *Held*, that he was entitled to recover the same; the letters-testamentary granted in Maryland, entitled the executors of Edward Coursault to recover, without his having the letters of administration granted by the orphans' court of Washington repealed or revoked. *Kane* v. *Paul*..... *33
7. At common law, the appointment of an executor vests the whole personal estate in the person appointed executor, which he holds as trustee for the purposes of the will; and he holds the legal title in all the chattels of the testator; for the purpose of administering them, he is as much the proprietor of them as was the testator; the ordinary cannot transfer those chattels to any other person, by granting administration of them. *Id.*
8. The act of congress of the 24th June 1812, gives to an executor or administrator, appointed in any state of the United States, or in the territories, a right to recover from any individual in the district of Columbia, effects or money belonging to the testator or the intestate, in whatever way the same may have been received; if the law does not permit him to retain it on account of some relations borne to the testator or to his executor, which defeats the rights of the executor or administrator; letters-testamentary or letters of administration obtained in either of the states or territories of the Union, give a right to the person having them to receive and give discharges for such assets, without suit, which may be in the hands of any person within the district of Columbia. The right to receive from the government of the United States, either in the district of Columbia, or in the state where letters have been granted, any sum of money which the government may owe to the testator or intestate, at the time of his death, or which may become due thereafter, or which may accrue to the government as trustee for a testator or intestate, in any way, or at any time, is given by that act. A *bonâ fide* payment of a debt to the administrator, which was due to the estate, is a legal discharge to the debtor, whether the administration be void or voidable..... *Id.*
9. The certificate of the register of wills, annexed to the proceedings of the orphans' court of Maryland, granting letters-testamentary to the executor, showed, that the will had been proved, and that the letters-testamentary had been granted. This is proof that the person holding the letters-testamentary is executor, so far as the law requires it to be proved, in an action of *assumpsit*, upon a cause of action which arose in the time of the testator or of the executor. On the plea of the general issue, in such an action, and even in a case where that plea raises the question of right of title in the executor, the certificate of probate and qualification meets the requisition. A

judicial examination into their validity can only be gone into upon a plea in abatement, after *oyer* has been craved and granted; and then, upon issue joined, the plaintiff's title, as executor or administrator, may be disputed, by showing any of those causes which make the grant void *ab initio*, or that the administration had been revoked..... *Id.*

10. The declaration, in an action by an executor, for the recovery of money received by the defendant, after the decease of the testator, may be in the name of the plaintiff, as executor, or in his own name, without stating that he is executor. The distinction is, that when an executor sues on a cause of action which occurred in the lifetime of his testator, he must declare in the *detinet*, that is, in his representative capacity only; but when the cause of action accrues after the death of the testator, if the money, when recovered, will be assets, the executor may declare in his representative character, or in his own name..... *Id.*

FACTOR.

1. In the case of a factor who sells the goods of his principal in his own name, upon a credit, and dies before the money is received, if it is afterwards paid to the administrator, in his representative character, the creditor would be entitled to consider it as assets in his hands; and to charge him in the same character in which he received it. The debtor, that is to say, the party who purchased from the factor, without any knowledge of the true owner, and who paid the money to the administrator, under the belief that the goods belonged to the factor, is unquestionably discharged by this payment; yet he cannot be discharged, unless he pays it to one lawfully authorized to receive it, except only in his representative character. *De Valengin* v. *Duffy*..... *282

2. An action was instituted against the consignees of two hundred bales of cotton, shipped by the direction of the owner to Liverpool, on which the owner had received an advance, by an acceptance of his bills on New York; which acceptance was paid by bills drawn on the consignees of the cotton in Liverpool; some time after the shipment of the cotton, the owner wrote to the consignees in Liverpool, expressing his "wishes" that the cotton should not be sold until they should hear further from him; in answer to this letter, the consignees said, "your wishes in respect to the cotton are noted accordingly." No other provision than from the sale of the cotton for the payment of the advance, was made by the consignor, when the same was shipped; and no instructions for its reservation from the sale were given, when the shipment was made. Immediately after the acceptance of the bill drawn against the cotton, on the consignees in Liverpool, they sold the same for a profit of about ten per cent. on the shipment; cotton rose in price in Liverpool to more than fifty per cent. profit on the invoice, between the acceptance of the bill of exchange, and the arrival of the same at maturity. The shipper instituted an action against the consigneesfor the recovery of the difference between the actual sales and the sum the same would have brought had it been sold at the subsequent high prices at Liverpool. *Brown* v. *McGran*.... *479

3. There can be no reasonable doubt, that in particular circumstances, a wish expressed by a consignor to a factor, may amount to a positive command..... *Id.*

4. In the case of a simple consignment of goods, without any interest in the consignee, or any advance or liability incurred on account thereof, the wishes of the consignor may fairly be presumed to be orders; and the "noting the wishes accordingly," by the consignees, an assent to follow them. But very different considerations apply, where the consignee is one clothed with a special interest and a special property, founded upon advances and liabilities..... *Id.*

5. Whenever a consignment is made to a factor, for sale, the consignor has a right, generally, to control the sale thereof, according to his own pleasure, from time to time, if no advances have been made, or liabilities incurred, on account thereof; and the factor is bound to obey his orders; this arises from the ordinary relation of principal and agent. If, however the factor makes advances, or incurs liabilities on account of the consignment, by which he acquires a special property in the goods, then the factor has a right to sell so much of the consignment as may be necessary to reimburse such advances, or meet such liabilities; unless there be some agreement between himself and the consignor which contracts or varies this right.... *Id.*

6. If, contemporaneously with the consignment, and advances or liabilities, there are orders given by the consignor, which are assented to by the factor, that the goods shall not be sold, before a fixed time, in such a case, the consignment is presumed to be received subject to such order; and the factor is not at liberty to sell the goods to reimburse his advances, until after that time has elapsed. So, when orders are given, not to sell below a fixed price; unless the consignor shall, after due notice and request, refuse to provide other means to reimburse the factor.

In no case, will the factor be at liberty to sell the consignment, contrary to the orders of the consignor, although he has made advances or incurred liabilities thereon; if the consignor stands ready and offers to reimburse and discharge such advances and liabilities..... *Id.*

7. When a consignment is made generally, without any specific orders as to the time and mode of sales, and the factor makes advances or incurs liabilities on the footing of such consignment, the legal presumption is, that the factor is intended to be clothed with the ordinary rights of factors, to sell, in the exercise of a sound discretion, at such time and in such manner as the usage of trade and his general duty require, and to reimburse himself for his liabilities, out of the proceeds of the sale; and the consignor has no right, by any subsequent orders, given after advances have been made, or liabilities incurred by the factor, to suspend or control this right of sale; except so far as respects the surplus of the consignment, not necessary for the reimbursement of such advances or liabilities..... *Id.*
8. If a sale of cotton, in Liverpool, by a factor, has been made on a particular day, tortiously, and against the orders of the owner, the owner has a right to claim damages for the value of the cotton, on the day the sale was made, as for a tortious conversion. If the sale of the cotton by the factor was authorized on a subsequent day, and the cotton has been sold against orders, before that day, the damages to which the owner may be entitled will be regulated by the price of cotton on that day. But the rate of damages is not to be obtained from the prices of cotton at any time between the day when the cotton was sold, against the orders of the owner, and the day on which the sale was authorized by him..... *Id.*

FLORIDA LAND-CLAIMS.

1. A grant of land by Estrada, the governor of East Florida, was made on the 1st of August 1815, to Elizabeth Wiggins, on her petition, stating, that "owing to the diminution of trade, she will have to devote herself to the pursuits of the country;" the grant was made for the quantity of land apportioned by the regulations of East Florida, to the number of the family of the grantee; it was regularly surveyed by the surveyor-general, according to the petition and grant; no settlement or improvement was ever made by the grantee, nor by any one acting for her, on the property. In 1831, Elizabeth Wiggins presented a petition to the superior court of East Florida, praying for a confirmation of the grant; and in July 1838, the court gave a decree in favor of the claimant; on an appeal to the supreme court of the United States, the decree of the superior court of East Florida was reversed. The court held, that by the regulations established on the 25th November 1818, by Governor Coppinger, the grant had become void, because of the non-improvement, and the neglect to settle the land granted. *United States* v. *Wiggins*..... *344
2. The existence of a foreign law, especially when unwritten, is a fact to be proved like any other, by appropriate evidence..... *Id.*
3. A copy of a decree by the governor of East Florida, granting land to a petitioner, while Spain had possession of the territory, certified by the secretary of the government to have been faithfully made from the original in the secretary's office, is evidence in the courts of the United States. By the laws of Spain, prevailing in the province at that time, the secretary was the proper officer to give copies; and the law trusted him for this particular purpose, so far as he acted under its authority; the original was confined to the public office..... *Id.*
4. The eighth article of the Florida treaty stipulates, that "grants of land made by Spain, in Florida, after the 24th of January 1818, shall be ratified and confirmed to the persons in possession of the land, to the same extent that the same grants would be valid, if the government of the territory had remained under the dominion of Spain. The government of the United States may take advantage of the non-performance of the conditions prescribed by the law relative to grants of land; if the treaty does not provide for the omission..... *Id.*
5. In the cases of Arredondo, 6 Pet. 691, and Percheman, 7 Ibid. 51, it was held, that the words in the Florida treaty, "shall be ratified and confirmed," in reference to perfect titles, should be construed, "are" ratified and confirmed. The object of the court, in these cases, was, to exempt them from the operation of the eighth article, for that they were perfect titles by the laws of Spain when the treaty was made; and when the soil and sovereignty of Florida were ceded by the second article, private rights of property were, by implication, protected. By the law of nations, the rights to property are secured, when territories are ceded; and to reconcile the eighth article of the treaty with the law of nations, the Spanish side of the article was referred to in aid of the American side. The court held, that perfect titles "stood confirmed" by the treaty; and must be so

recognised by the United States, in our courts..... .....*Id.*
6. Perfect titles to lands, made by Spain, in the territory of Florida, before the 24th January 1818, are intrinsically valid, and exempt from the provision of the eighth article of the treaty; and they need no sanction from the legislative or judicial departments of the United States..... *Id.*
7. The eighth article of the Florida treaty was intended to apply to claims to land, whose validity depended on the performance of conditions, in consideration of which the concessions had been made; and which must have been performed before Spain was bound to perfect the titles. The United States were bound, after the cession of the country, to the same extent that Spain had been bound before the ratification of the treaty, to perfect them by legislation and adjudication..... .... *Id.*
8. A grant of land by the government of Florida, made before the cession of Florida to the United States by Spain, confirmed: every point involved in the case having been conclusively settled by the court in their former adjudications in similar cases. *United States* v. *Waterman*.....*478

FRAUD.

1. If there be any one ground upon which a court of equity affords relief, it is an allegation of fraud, proved or admitted. *Atkins* v. *Dick*..... *114
2. Courts of equity will permit independent agreements which go to show a deed, on its face absolute, was intended only as a mortgage, to be set up against the express terms of the deed, only on the ground of fraud; considering it a fraudulent attempt in the mortgagee, contrary to his own express agreement, to convert a mortgage into an absolute deed. It is equally a fraud on the part of a debtor, to attempt to convert his contract as principal, into that of a surety only. *Sprigg* v. *Bank of Mount Pleasant*.....*201

HABEAS CORPUS.

See Holmes *v.* Jennison, *540.

HEADS OF DEPARTMENTS.

1. On the 3d of March 1837, congress passed an act giving to the widow of any officer who had died in the naval service of the United States, authority to receive, out of the navy pension fund, half the monthly pay to which the deceased officer would have been entitled under the acts regulating the pay in the navy, in force on the 1st day of January 1835. On the same day, a resolution was adopted by congress, giving to Mrs. Decatur, widow of Captain Stephen Decatur, a pension for five years, out of the navy pension fund, and in conformity with the act of 30th June 1834, and the arrearages of the half-pay of a post-captain, from the death of Commodore Decatur, to the 30th June 1834; the arrearages to be invested in trust for her, by the secretary of the treasury. The pension and arrearages, under the act of 3d March 1837, were paid to Mrs. Decatur, on her application to Mr. Dickerson, the secretary of the navy, under a protest by her, that by receiving the same she did not prejudice her claim under the resolution of the same date; she applied to the secretary of the navy, for the pension and arrears, under the resolution, which were refused by him; afterwards, she applied to Mr. Spaulding, who succeeded Mr. Dickerson as secretary of the navy, for the pension and arrears, which were refused by him. The circuit court of the county of Washington, in the district of Columbia, refused to grant a *mandamus* to the secretary of the navy, commanding him to pay the arrears, and to allow the pension under the resolution of March 3d, 1837: *Held*, that the judgment of the circuit court was correct. *Decatur* v. *Paulding* *497
2. In the case of Kendall *v.* United States, 12 Pet. 527, it was decided by the supreme court, that the circuit court for Washington county, in the district of Columbia, had the power to issue a *mandamus* to an officer of the federal government, commanding him to do a ministerial act..... *Id.*
3. In general, the official duties of the head of one of the executive departments, whether imposed by act of congress or by resolution, are not mere ministerial duties; the head of an executive department of the government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discreation; he must exercise his judgment in expounding the laws and resolutions of congress, under which he is, from time to time, required to act; if he doubts, he has a right to call on the attorney-general to assist him with his counsel; and it would be difficult to imagine, why a legal adviser was provided by law for the heads of departments, as well as for the president, unless their duties were regarded as executive, in which judgment and discretion were to be exercised..... *Id.*
4. If a suit should come before the supreme court, which involved the construction of any of the laws imposing duties on the heads of the executive departments, the court certainly

would not be bound to adopt the construction given by the head of a department; and if they supposed his decision to be wrong, they would, of course, so pronounce their judgment. But the judgment of the court upon the construction of a law, must be given in a case in which they have jurisdiction, and in which it is their duty to interpret the act of congress, in order to ascertain the rights of the parties in the cause before them. The court could not entertain an appeal from the decision of one of the secretaries, nor revise his judgment, in any case where the law authorized him to exercise his discretion or judgment; nor can it, by *mandamus*, act directly upon the officer, or guide and control his judgment or discretion in the matters committed to his care, in the ordinary discharge of his official duties. The interference of the court with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief; and this power was never intended to be given to them. . *Id.*

5. The principles stated and decided in the case of Kendall *v.* United States, 12 Pet. 610, 614, relative to the exercise of jurisdiction by the circuit court of the district of Columbia, where the acts of officers of the executive departments of the United States may be inquired into for the purpose of directing a *mandamus* to such officers, affirmed..... ..... *Id.*

ILLEGITIMACY.

See Local Law, 5–7.

INDIAN TITLE.

See North Carolina Land Titles, 1, 2.

INJUNCTION.

1. A bill for an injunction was filed, alleging that the parties who had obtained a judgment at law for the amount of the bill of exchange, of which the complainant was indorser, had, before the suit was instituted, obtained payment of the bill from a subsequent indorser, out of the funds of the drawer of the bill, obtained by the subsequent indorser from one of the drawees. It was *held*, that it was not necessary to make the subsequent indorser, who was alleged to have made the payment, a party to the injunction bill. *Atkins* v. *Dick*..... ...*114

2. In such a bill, an allegation that the amount due on the bill of exchange was paid, is sufficient; without stating the value or nature of the effects out of which the payment was made..... *Id.*

INSOLVENT LAWS.

1. The constitutional and legal rights of a citizen of the United States, to sue in the circuit courts of the United States, do not permit an act of insolvency, completely executed under the authority of a state, to be a good bar against a recovery upon a contract made in another state. *Suydam* v. *Broadnax*..... *67

INSURANCE.

1. Insurance was made, to the amount of $8000, on the ship Paragon, for one year; the policy contained the usual risks, and, among others, that of the perils of the sea; the assured claimed for a loss by collision with another vessel, without any fault of the master or crew of the Paragon; and also insisted on a general average and contribution. The Paragon was in part insured; and in November 1836, in the year during which the policy was in operation, she sailed from Hamburg, in ballast, for Gottenburg, for a cargo of iron, for the United States; while proceeding down the Elbe, with a pilot on board, she came in contact with a galliot, and sank her; she lost her bow sprit, jib-boom and anchor, and was otherwise damaged, and put into Cuxhaven, a port at the mouth of the Elbe, and in the jurisdiction of Hamburg. The captain of the galliot libelled the Paragon, alleging that the loss of his vessel was caused by the carelessness or fault of those on board the Paragon; upon the hearing of the cause, the court decided, that the collision was not the result of the fault or carelessness of either side; and that, therefore, according to the marine law of Hamburg, the loss was a general average loss, and to be borne equally by both parties; that is, that the Paragon was to bear one-half of the expense of her own repairs, and to pay one-half of the value of the galliot; and that the galliot was to bear the loss of the half of her own value, and to pay one-half of the repairs of the Paragon; the result of this decree was, that the Paragon was to pay $2600, being one-half of the value of the galliot ($3000), after deducting one-half of her own repairs, being $400. The owners of the Paragon, having no funds in Hamburg, the master was obliged to raise the money on bottomry; there being no cargo on board the Paragon, and no freight earned, the Paragon was obliged to bear the

whole loss: *Held*, that the assured was entitled to recover. *Peters* v. *Warren Insurance Company*..... *99

2. A loss by collision, without any fault on either side, is a loss by the perils of the sea, within the protection of the policy of insurance; so far as the injury and repairs done to the Paragon itself extended, the underwriters were liable for all damages..... *Id.*

3. The rule, that underwriters are liable only for losses arising from the proximate cause of the loss, and not for losses arising from a remote cause, not immediately connected with the peril, is correct, when it is understood and applied in its true sense; and as such, it has been repeatedly recognised in the supreme court ..... *Id.*

4. The law of insurance, as a practical science, does not indulge in niceties; it seeks to administer justice according to the fair interpretation of the intention of the parties; and deems that to be a loss within the policy, which is a natural and necessary consequence of the peril insured against..... *Id.*

5. If there be any commercial contract which, more than any other, requires the application of sound common sense and practical reasoning in the exposition of it, and in the uniformity of the application of rules to it, it is certainly a policy of insurance..... *Id.*

6. It has been held by learned foreign writers on the law of insurance, that whenever the thing insured becomes by law directly chargeable with any expense, contribution or loss, in consequence of a particular peril; the law treats the peril, for all practical purposes, as the proximate cause of such expense, contribution or loss. This they hold, upon the general principles of law, applicable to the contract of insurance; in the opinion of the supreme court, this is the just sense and true interpretation of the contract..... *Id.*

7. In all foreign voyages, the underwriters, necessarily, have it in contemplation that the vessel insured must, or at least may be, subjected to the operation of the laws of the foreign ports which are visited; those very laws may, in some cases, impose burdens, and in some cases, give benefits, different from our laws; and yet there are cases under policies of insurance, where it is admitted, the foreign law will govern the rights of the parties, and not the domestic law; such is the known case of general average, settled in a foreign port according to the local law, although it may differ from our own law. *Id.*

JAIL LIMITS.

See CONSTRUCTION OF UNITED STATES STATUTES, 1–3.

JUDGMENT.

1. Where a deed of trust was executed to secure the payment of certain notes, and a judgment obtained on the notes, the judgment does not operate as an extinguishment of the right of the holders of the note to call for the execution of the trust; although the act of limitations might apply to the judgment. *Bank of the Metropolis* v. *Guttschlick*..... *19

See PRACTICE.

JURISDICTION.

1. The artificial being, a corporation aggregate, is not, as such, a citizen of the United States, yet the courts of the United States will look beyond the mere corporate character, to the individuals of whom it is composed; and if they were citizens from a different state than the party sued, they are competent to sue in the courts of the United States; but all the corporators must be citizens of a different state from the party sued. The same principle applies to the individuals composing a corporation aggregate, when standing in the attitude of defendants, which does when they are in that of plaintiffs. *Commercial and Railroad Bank* v. *Slocomb*..... *60

2. The act of congress, passed February 28th, 1839, entitled "an act in amendment of the acts representing the judicial system of the United States," did not contemplate a change in the jurisdiction of the courts of the United States, as regards the character of the parties, as prescribed by the judiciary act of 1789, as that act has been expounded by the supreme court of the United States: which is, that each of the plaintiffs must be capable of suing, and each of the defendants capable of being sued..... *Id.*

3. The 11th section of the act to establish the judicial courts of the United States, carries out the constitutional right of a citizen of one state to sue a citizen of another state in the circuit courts of the United States; and gives to the circuit courts "original cognisance, concurrent with the courts of the several states, of all suits of a civil nature, at common law and in equity." It was certainly intended to give to suitors, having a right to sue in the circuit court, remedies co-extensive with that right; these remedies would not be so, if any proceedings under an act of state legislation, to which the plaintiff was not a party, exempting a person of such state from suit, could be pleaded to abate a suit in the circuit court. *Suydam* v. *Broadnax*..... *67

4. An action was brought by foreign attach-

ment, in the court of common pleas of Warren county, Pennsylvania, in the name of a citizen of Pennsylvania, for the use of the Lumberman's Bank at Warren, Pennsylvania, against a citizen of New York; the suit was on a note given by the defendant to the plaintiff, to be paid "in the office-notes of the Lumberman's Bank at Warren;" some of the stockholders of the Lumberman's Bank at Warren were citizens of the state of New York. The defendant appeared to the action, by counsel, and having given bond with surety to the court of common pleas, removed the cause to the circuit court of the United States for the western district of Pennsylvania; a motion was made in the circuit court to remand the cause to the court of common pleas of Warren county, the circuit court having no jurisdiction of the cause, on the ground, that the real party in the suit was the Lumberman's Bank at Warren, an aggregate corporation, some of the stockholders of the bank being citizens of the state of New York. It was *held*, that the circuit court had jurisdiction of the case. *Irvine* v. *Lowry*.....*293

5. The decisions of the supreme court have been uniform, and as declared at the present term in the case of the Commercial and Railroad Bank *v.* Slocomb, that the courts of the United States cannot exercise jurisdiction, when some of the stockholders in a corporation established in one state are citizens of another state, of which the party sued by the corporation is a citizen.....*Id.*
6. Action of ejectment in the state court of Alabama, for a lot of ground in the city of Mobile; the plaintiff claimed the title to the lot, under an act of congress, and the decision of the state court was against the right and title so set up and claimed; a writ of error was prosecuted to the supreme court of Alabama. It was *held*, that this case was embraced by the 25th section of the judiciary act of 1789, which gives this court jurisdiction to revise the judgment of the state court in such cases. *Pollard's Heirs* v. *Kibbe* *353
7. In the state of Vermont, George Holmes was confined under a warrant, issued by the governor of that state, directing the sheriff of the county of Washington to "convey and deliver him to William Brown, the agent of Canada, or to such person or persons as, by the laws of said province, may be authorized to receive the same, at some convenient place, on the confines of this state, and of the said province of Lower Canada; to the end that the said George Holmes may be thence conveyed to the district of Quebec, and be there dealt with as to law and justice appertains." The warrant stated, that George Holmes was in the custody of the sheriff, by reason of a charge of felony, sustained by indictment found by the grand jurors of the district of Quebec, in the province of Lower Canada; and that the said George Holmes, on the 31st day of January 1838, at the parish of St. Louis of Kamouraska, in the said district, did feloniously kill and murder one Louis Paschal Achille Tache; "and whereas, the said George Holmes not being a citizen of the state of Vermont, but a citizen of the said province of Lower Canada, and the offence whereof he stands charged as aforesaid, having been committed within the jurisdiction of the said province, it is fit and expedient, that he, the said George, be made amenable to the laws of the said province, for the offence aforesaid." A writ of *habeas corpus* was, on the petition of George Holmes, issued by the supreme court of Vermont; and on the return thereof by the sheriff, stating the warrant of the governor to be the cause of his detention, he was remanded by the court; Holmes prosecuted a writ of error to the supreme court of the United States. The writ of error was dismissed, the court being equally divided on the question, whether the supreme court had jurisdiction of this case. *Holmes* v. *Jennison*..... *540

LANDLORD AND TENANT.

1. It is a general rule, that a tenant shall not dispute his landlord's title; but this rule is subject to certain exceptions; if a tenant disclaims the tenure, and claims the fee in his own right, of which the landlord has notice, the relation of landlord and tenant is put an end to, and the tenant becomes a trespasser; and he is liable to be turned out of possession, though the period of his lease is not expired. *Walden* v. *Bodley*....*156
2. The same relation as that of landlord and tenant subsists between a trustee and a *cestui que trust*, as it regards the title....*Id*

LAND TITLES.

See Construction of United States' Statutes, 4–7: North Carolina Land Titles.

LEAD MINES.

See Public Lands.

LEASE.

1. The legal understanding of a lease for years, is a contract for the possession and profits of lands for a determinate period, with the recompense of rent; it is not necessary that

the rent should be in money; if reserved in kind, it is rent, in contemplation of law. *United States* v. *Gratiot*..... *526

LIMITATION OF ACTIONS.

1. An act was instituted by the Bank of Alexandria, in the county of Alexandria, against the defendants, residents in the county of Washington, in the same district, for money loaned; the suit was brought in the county of Washington. The defendants pleaded the statute of limitations of Maryland, which prevails in that part of the district of Columbia, and which limits such actions to three years, from the date of the contract; the plaintiff replied, that he was "beyond seas;" claiming the benefit of the exception in the statute in favor of persons "beyond seas." *Bank of Alexandria* v. *Dyer*..*141
2. The words "beyond seas," in the statute of limitations of Maryland, are manifestly borrowed from the English statute of limitations of James I., c. 21; and it has always been held, that they ought not to be interpreted according to their literal meaning; but ought to be construed as equivalent to the words, "without the jurisdiction of the state." According to this interpretation, a person residing in another state of the Union was "beyond seas," within the meaning of the act of assembly; and therefore, excepted from its operation, until he should come within the limits of Maryland. This statute is in force in Washington county, in the district of Columbia; and this court will give it the same construction it has received in the courts of Maryland..... *Id.*
3. The counties of Washington and Alexandria, together, constitute the territory of Columbia, and are united under one territorial government; they have been formed by the acts of congress into one separate political community; the counties which constitute it resemble different counties in the same state; and do not stand towards one another in the relation of distinct and separate governments. Residents of the county of Alexandria were not "beyond seas," in respect to the county of Washington..... *Id.*

LOCAL LAW.

1. A paper was executed by R. R. K., of the city of New Orleans, stating that the grantor, for and in consideration of, a certain lot or parcel of land (describing it), conveyed and transferred to J. B. and S. B., all his right, title and interest in a certain tract or parcel of land (describing it), hereby warranting and defending unto the said J. B. and S. B., all his right and title in the same, and unto all persons claiming under them. The paper called under the laws of Louisiana, "an act of sale," was signed by R. R. K., J. B., S. B. and a notary of New Orleans; and was deposited in the office of the notary. This was not "an exchange," according to the laws of Louisiana; and J. B. and S. B. did not, by accepting the transfer of the property made by the same, and signing the paper, incur the two obligations imposed on all vendors by the civil code—that of delivering, and that of warranting, the lot of ground sold to R. R. K.; and did not thereby become liable for the value of the property stated in the said "act of sale" to have been given for the property conveyed thereby. *Preston* v. *Keene*..... ...*133
2. Exchange, according to the civil code of Louisiana, imports a reciprocal contract; which, by art. 1758 of that code, is declared to be a contract where the parties expressly enter into mutual agreements..... *Id.*
3. An exchange is an executed contract; it operates, *per se*, as a reciprocal conveyance of the thing given, and of the thing received. The thing given or taken in exchange must be specific, and so distinguishable from all things of the like kind as to be clearly known and identified. Under the civil code of Louisiana, the exchanger who is evicted, has a choice either to sue for damages, or for the thing he gave in exchange; but he must first be evicted, before his cause of action can accrue..... .....*Id.*
4. Construction of the act of the legislature of Maryland, passed December session 1825, entitled "an act relating to illegitimate children," which provides, that "the illegitimate child or children of any female, and the issue of any such child or children," are declared capable in law "to take and inherit both real and personal estate from their mother and from each other, and from the descendants of each other, as the case may be, in like manner as if born in lawful wedlock." *Brewer* v. *Blougher*..... *178
5. J. S., who had several children, who were the children of an incestuous connection, conveyed a tract of land in the state of Maryland to one of those children; the grantee died intestate and without issue, seised in fee of the land; two brothers and one sister of this incestuous intercourse survived him: *Held*, that under the act of Maryland, "relating to illegitimate children," they inherited the estate of their deceased brother.... *Id.*
6. It is undoubtedly the duty of the court to ascertain the meaning of the legislature from the words used in the statute, and the subject-matter to which it relates; and to

restrain its operation within narrower limits than its words import, if the court are satisfied that the literal meaning of its language would extend to cases which the legislature never designed to include in it. According to the principles of the common law, an illegitimate child is *filius nullius*, and can have no father known to the law; and when the legislature speaks, in general terms, of children of that description, without making any exceptions, the court is bound to suppose they design to include the whole class... *Id.*

LOUISIANA.

See CONSTRUCTION OF UNITED STATES STATUTES, 4–7.

MANDAMUS.

1. On the 3d of March 1837, congress passed an act giving to the widow of any officer who had died in the naval service of the United States, authority to receive, out of the navy pension fund, half the monthly pay to which the deceased officer would have been entitled, under the acts regulating the pay in the navy, in force on the 1st day of January 1835. On the same day, a resolution was adopted by congress, giving to Mrs. Decatur, widow of Captain Stephen Decatur, a pension for five years, out of the navy pension fund, and in conformity with the act of 30th June 1834, and the arrearages of the half-pay of a post-captain, from the death of Commodore Decatur to the 30th June 1834; the arrearages to be vested in trust for her by the secretary of the treasury. The pension and arrearages, under the act of 3d March 1837, were paid to Mrs. Decatur, on her application to Mr. Dickerson, the secretary of the navy, under a protest by her, that by receiving the same, she did not prejudice her claim under the resolution of the same date; she applied to the secretary of the navy for the pension and arrears, under the resolution, which were refused by him; afterwards, she applied to Mr. Paulding, who succeeded Mr. Dickerson as secretary of the navy, for the pension and arrears, which were refused by him. The circuit court of the county of Washington, in the district of Columbia, refused to grant a *mandamus* to the secretary of the navy, commanding him to pay the arrears, and to allow the pension under the resolution of March 3d 1837: *Held*, that the judgment of the circuit court was correct. *Decatur* v. *Paulding*.....*497
2. In the case of Kendall *v.* United States, 12 Pet. 544, it was decided by the supreme court, that the circuit court for Washington county, in the district of Columbia, had the power to issue a *mandamus* to an officer of the federal government, commanding him to do a ministerial act..... .....*Id.*

See HEADS OF DEPARTMENTS.

MANDATE.

1. The mandate of the supreme court to the circuit court must be its guide in executing the judgment or decree on which it issued; the mandate is the judgment of the supreme court, transmitted to the circuit court; and where the direction contained in it is precise and unambiguous, it is the duty of the circuit court to carry it into execution, and not to look elsewhere for authority to change its meaning. But when the circuit court are referred to testimony to ascertain the amount to be decreed, and are authorized to take more evidence on the point, it may sometimes happen, that there will be some uncertainty and ambiguity in the mandate; and in such a case, the court below have, unquestionably, the right to resort to the opinion of the supreme court, delivered at the time of the decree, in order to assist them in expounding it. *West* v. *Brashear*....*51

MARSHALS' AND SHERIFFS' SALES.

1. A sale of land by the sheriff, under the laws of Maryland, seized under a *fieri facias*, transfers the legal estate to the vendee, by operation of law, and does not require a sheriff's deed to give it validity; but as sheriffs' sales of lands are within the statute of frauds, some memorandum in writing of the sales is required to be made. It is immaterial, when the return to the execution is made, provided it is before the recovery in an ejectment for the land sold, as the sale must be proved by written evidence; the sale passes the title, and the vendee takes it from the day of the sale; the evidence may, therefore, be procured, before or at the trial. *Remington* v. *Linthicum*.....*84
2. If property is seized under a *fieri facias*, before the return-day of the writ, the marshal may proceed to sell, at any time afterwards, without any new process from the court; as a special return on the *fieri facias* is one of the necessary modes of proving the sale, the marshal must be authorized to make the indorsement after the regular return-term, in case where the sale was made afterwards.... ..... *Id.*
3. The return to a *fieri facias*, if written on the writ, should be so full as to contain the name of the purchaser, and the price paid

for the property, or it would not be a sufficient memorandum of the sale, within the statute of frauds; nor can an imperfect return of a sale be made complete, by a reference to the private memorandum-book kept by the marshal of his sales; as it was not a sufficient memorandum of a sale, within the statute. *Id.*

MASSACHUSETTS.

See Boundaries of States: Chancery and Chancery Practice, 5–11: Supreme Court.

NAMES.

1 The law knows of but one Christian name, and the omission or insertion of the middle name, or of the initial letter of that name, is immaterial; and it is competent for the party to show, that he is known as well without as with the middle name. *Games* v. *Dunn*..... *322

NORTH CAROLINA LAND TITLES.

1. Ejectment for 49,000 acres of land in the state of North Carolina, claimed by the plaintiffs, under a grant from the state, dated 20th July 1796, to William Cathcart, founded on entries made in the office of the entry-taker, in the county of Buncombe, in the state of North Carolina, after the 3d of February 1795, within the limits of the country. The land lay wholly within the limits of the territory specially described and set forth in the fifth section of the act of 1783, entitled an act for opening the land-office of the state of North Carolina. The claim of the plaintiffs in the ejectment was resisted, on the ground, that the grant under which the plaintiffs claimed, was, at the time of its emanation, wholly within the territory allotted to the Cherokee Indians, and was null and void; as such entries and grants were prohibited by the sixth section of the act. It was held, that the title under which the plaintiffs claimed, was invalid. *Latimer* v. *Poteet*..... *4
2. The Indian title being a right of occupancy, the state of North Carolina had the power to grant the fee in those lands, subject to this right..... *Id.*

PAROL EVIDENCE.

1. It is equally well settled in courts of equity, as in courts of law, as a rule of evidence, that parol evidence is inadmissible to contradict or substantially vary the legal import of a written agreement; and this is founded on the soundest principles of reason and policy, as well as authority. *Sprigg* v. *Bank of Mount Pleasant*..... *201

See Evidence.

PARTIES.

See Corporations, 4: Injunction: Specific Performance, 4.

PATENTS.

1. On the 26th September 1835, a second patent was granted, the original patent, granted in 1831, having been surrendered and cancelled on account of a defective specification; the second patent being for fourteen years from the date of the original patent; the second patent was in the precise form of the original, except the recital of the fact, that the former patent was cancelled, "on account of a defective specification," and the statement of the time the second patent was to begin to run. It was objected, that the second patent should not be admitted in evidence, on the trial of the case, because it did not contain any recitals that the pre-requisites of the act of congress of 1836, authorizing the renewal of patents, had been complied with: *Held*, that this objection could not, in point of law, be maintained. The patent was issued under the great seal of the United States, was signed by the president, and countersigned by the secretary of state; it is a presumption of law, that all public officers, and especially such high functionaries, perform their proper official duties, until the contrary is proved. Where an act is to be done, or patent granted, upon evidence and proofs to be laid before a public officer, upon which he is to decide, the fact that he has done the act, in granting the patent, is *primâ facie* evidence that the proofs have been regularly made, and were satisfactory. No other tribunal is at liberty to re-examine or controvert the sufficiency of such proofs, when the law has made the officer the proper judge of their sufficiency and competency. *Philadelphia and Trenton Railroad Co.* v. *Stimpson* *448
2. Patents for lands, equally with patents for inventions, have, in courts of justice, been deemed *primâ facie* evidence that they have been regularly granted, whenever they have been produced under the great seal of the government, without any recitals or proofs that the pre-requisites of the acts under which they have been issued have been duly observed. In cases of patents, the United

States have gone one step farther; and as the patentee is required to make oath that he is the true inventor, before he can obtain a patent, the patent has been deemed *primâ facie* evidence that he has made the invention..... *Id.*

3. To entitle a party to examine a witness, in a patent cause, the purpose of whose testimony is to disprove the right of the patentee to the invention, by showing its use by others, prior to the patent, the provisions of the patent act of 1836, relative to notice, must be strictly complied with..... *Id.*

4. The conversations and declarations of a patentee, merely affirming that, at some former period, he had invented a machine, may well be objected to; but his conversations and declarations, stating that he had made an invention, and describing its details, and explaining its operations, are properly deemed an assertion of his right, at that time, as an inventor, to the extent of the facts and details which he then makes known, although not of their existence at an anterior time. Such declarations, coupled with a description of the nature and objects of the invention, are to be deemed a part of the *res gestæ*, and are legitimate evidence that the invention was then known and claimed by him; and thus its origin may be fixed, at least, as early as that period..... *Id.*

PENAL STATUTES.

See CONSTRUCTION OF STATUTES: SLAVE TRADE.

PERJURY.

1. The defendant was indicted for perjury, in falsely taking and swearing "the owners' oath, in cases where goods have been actually purchased;" as prescribed by the fourth section of the supplementary collection law, of the first of March 1823; the perjury was charged to have been committed in April 1837, at the custom-house in New-York, on the importation of certain woollen goods in the ship Sheridan. The indictment charged the defendant with having intentionally suppressed the true cost of the goods, with intent to defraud the United States. 2. Charging the perjury in swearing to the truth of the invoice produced by him at the time of the entry of the goods, the invoice being false, &c. It appeared by the evidence, that the goods mentioned in the entry had been bought by the defendant from John Wood, his father, of Saddleworth, England; no witness was produced by the United States, to prove that the value or cost of the goods was greater than that for which they were entered at the custom-house in New York; the evidence of this, offered by the prosecution was, the invoice-book of John Wood, and thirty-five original letters from the defendant to John Wood, between 1834 and 1837, showing a combination between John Wood and the defendant, to defraud the United States, by invoicing and entering goods at less than their actual cost; that this combination comprehended the goods imported in the Sheridan; and that the goods received by that ship had been entered by the defendant, he knowing that they had cost more than the prices at which he had entered them. This evidence was objected to on the part of the defendant, as not competent proof to convict the defendant of the crime of perjury; and that if an inference of guilt could be derived from such proof, it was an inference from circumstances, not sufficient, as the best legal testimony, to warrant a conviction: *Held*, that in order to a conviction, it was not necessary, on the part of the prosecution, to produce a living witness; if the jury should believe, from the written testimony, that the defendant made a false and corrupt oath, when he entered the goods. *United States* v. *Wood* *430

2. The cases in which a living witness to the *corpus delicti* of the defendant, in a prosecution for perjury, may be dispensed with, are: All such where a person charged with a perjury by false swearing to a fact directly disproved by documentary or written testimony, springing from himself, with circumstances showing the corrupt intent: In cases where the perjury charged is contradicted by a public record, proved to have been well known to the defendant, when he took the oath, the oath only being proved to have been taken: In cases where the party is charged with taking an oath, contrary to what he must necessarily have known to be the truth; and the false swearing can be proved by his own letters, relating to the fact sworn to, or by other written testimony existing and being found in the possession of the defendant, and which has been treated by him as containing the evidence of the fact recited in it..... *Id.*

3. The letters of the defendant, showing his knowledge of the actual cost of the goods which had been falsely entered by him, are the best evidence which can be given; this evidence is good, under the general principle, that a man's own acts, conduct and declarations, when voluntary, are always admissible in evidence against him. If the letters of the defendant showed that the invoice-book of the vendor of the goods, containing an invoice of the goods enumerated in the invoice

to which the defendant had sworn the owners' oath, in which book the goods were priced higher in the sale of them to the defendant, recognised the book as containing the true invoice, his admission supersedes the necessity of other proof to establish the real price given by him for the goods; and the letters and invoice-book, in connection, preponderate against the oath taken by the defendant, making a living witness to the *corpus delicti* charged in the indictment, unnecessary..... *Id.*

PLEAS AND PLEADING.

1. Action on an agreement in writing, by which Guttschlick had purchased a lot of ground in the city of Washington, from the Bank of the Metropolis, for which he had paid a part of the purchase-money, and given a note for the residue: by the contract, the Bank of the Metropolis, through its president and cashier, was pledged to convey the lot in fee-simple to Guttschlick, when the whole purchase-money was paid. The declaration in each count averred the payment of the note, and the failure of the bank to convey; to three special counts in the declaration, there was no conclusion; to the fourth count, for money had and received, there was a general conclusion. It was held by the court, that whatever might have been the effect of the want of a conclusion to three counts, upon a special demurrer, the 32d section of the judiciary act of 1789 would cure the defect, if admitted to be one. *Bank of the Metropolis* v. *Guttschlick* *19
2. An allegation that a party made, accepted, indorsed or delivered a bill of exchange is sufficient, although the defendant did not do either of those acts himself; provided he authorized the doing of them..... *Id.*
3. An averment in a declaration set forth that the plaintiff had been turned out of possession of a lot of ground, but did not state that the eviction was by due course of law; the breach alleged in the count was, that the defendant had refused, on demand, to convey the lot. The court held the averment of eviction to be mere surplusage..... *Id.*
4. The action was *assumpsit* against a bank on a contract, under the seals of the president and cashier: *Held*, that the action was well brought; it makes no difference, in an action of *assumpsit* against a corporation, whether the agent was appointed under the seal or not; or whether he puts his own seal to a contract which he makes in behalf of the corporation..... *Id.*
5. An action was brought in the circuit court of Mississippi, against the Commercial and Railroad Bank of Vicksburg, Mississippi, by parties who were citizens of the state of Louisiana; the defendants pleaded in abatement, by attorney, that they were an aggregate corporation, and that two of the stockholders resided in the state of Mississippi. The affidavit to the plea was sworn to by the cashier of the bank, before the "deputy-clerk;" it was not entitled as of any term of the court; the plaintiffs demurred to the plea: *Held*, that the appearance of the defendants in the circuit court, by attorney, was proper; and that if any exceptions existed to this form of the plea, they should have urged to the receiving of it, when it was offered, and were not cause of demurrer: *Held*, that the circuit court of Mississippi had no jurisdiction of the case. *Commercial and Railroad Bank* v. *Slocomb*..... *60

See ACTION, 2.

POLICY OF INSURANCE.

1. If there be any commercial contract which, more than any other, requires the application of sound common sense, and practical reasoning, in the exposition of it, and in the uniformity of the application of rules to it, it is certainly a policy of insurance. *Peters* v. *Warren Insurance Company*..... *99

POTOMAC COMPANY.

See CHESAPEAKE AND OHIO CANAL COMPANY.

PRACTICE.

1. In a *scire facias* to revive a judgment in ejectment, where it is stated, that the term recovered is yet unexpired, this is sufficient; it is not required, that the term as laid in the declaration, and that facts showing its continuance, should be stated. *Walden* v. *Craig*..... *147
2. When the court have given leave, on motion, to extend the term in a demise, and the amendment is specific, it is not necessary to interline it in the declaration; if leave to amend the declaration had been given generally, and the amendments had not been interlined, it would be different ..... *Id.*
3. In Kentucky, there is no law which limits a revival of judgments; and at law, lapse of time can only operate by way of evidence. From lapse of time, and favorable circumstances, the existence of a deed may be presumed, or that an obligation has been discharged; but this presumption always arises under pleadings which would render the facts presumed proper evidence. A demurrer to a *scire facias* raises only questions of law

on the facts stated in the writ of *scire facias;* no evidence is heard by the court on the demurrer; and consequently, there is no presumption against the judgment on which the writ issued, from lapse of time.....*Id.*

4. The marshal, in his return to a *scire facias* to revive a judgment in ejectment, stated, that two of the defendants were dead. This return does not become matter of record, like the fact of service of the writ, stated in the return, and cannot be taken advantage of by demurrer; a plea in abatement is the proper method of taking advantage of the decease of those of the defendants who were dead; on this plea, the plaintiff could have taken issue, and have had the facts ascertained by a jury.....*Id.*
5. To a *scire facias* to revive a judgment in ejectment, it is not necessary to make the executors or administrators of deceased defendants parties; the subject-matter in dispute being land, over which they have no control. The law is well settled, that where a defendant in ejectment dies, the judgment must be revived against both his heirs and the terre-tenants.....*Id.*
6. Service of process or notice is necessary to enable a court to exercise jurisdiction in a case; and if jurisdiction be taken in a case in which there has been no process or notice, the proceeding is a nullity. But this is only where original jurisdiction is exercised; and not a decision of a collateral question, in a case where the parties are before the court.....*Id.*
7. After judgment, the parties are still in court, for all the purposes of giving effect to it; and in the action of ejectment, the court having power to extend the demise, after judgment, the defendant may be considered in court, on a motion to amend, as well as on any other motion or order which may be necessary to carry into effect the judgment. In no correct sense, is this power of amendment similar to the exercise of an original jurisdiction between parties on whom process has not been served.....*Id.*

PROCESS.

1. The statute of May 19th, 1828, entitled, "an act further to regulate process in the courts of the United States," which proposes only to regulate the mode of proceeding in civil suits, does not divest the public of any right, does not violate any principle of public policy, but on the contrary, makes provision in accordance with the policy which the government has indicated by many acts of previous legislation, to conform to state laws, in giving to persons imprisoned under execution, the privilege of jail-limits, embracing executions at the suit of the United States. *United States* v. *Knight*.....*302

See PRACTICE, 1, 4–6.

PROMISSORY NOTES.

1. An action was instituted in the circuit court of Mississippi, on a promissory note, dated at and payable in New York; the declaration omitted to state the place at which the note was payable, and that a demand of payment had been made at that place. The court held, that to maintain an action against the drawer of a promissory note or bill of exchange, payable at a particular place, it is not necessary to aver in the declaration, that the note, when due, was presented at the place for payment, and was not paid; but the place of payment is a material part of the description of the note, and must be set out in the declaration. *Covington* v. *Comstock*.....*43
2. A note to be paid "in the office notes of a bank," is not negotiable by the usage or custom of merchants; not being a promissory note by the law-merchant, the statute of Anne, or the kindred act of assembly of Pennsylvania, it is not negotiable by indorsement; and not being under seal, it is not assignable by the act of assembly of Pennsylvania on that subject, relating to bonds. No suit could be brought upon it, in the name of the indorser; the legal interest in the instrument continues in the person in whose favor it has been drawn, whatever equity another may have to claim the sum due on the same; and he only is the party to a suit at law on the instrument. *Irvine* v. *Lowry*.....*293
3. Action on a promissory note for $2000, made for the purpose of being discounted at the branch bank, at Mobile, payable to the cashier of the bank or bearer, and upon which was written an order to credit the person to whom the note was sent, to be by him offered for discount to the bank, for the use of the makers, the order being signed by all the makers of the note. The bank refused to discount the note, and it was marked with a pencil mark, in the manner in which notes are marked by the bank which are offered for discount. The agent of the makers, to whom the note was intrusted to be offered for discount, put it into circulation, after indorsing it; having disposed of it for $1200, for his own benefit, without the knowledge of the makers; and communicated to the purchaser of the note, that it had been offered for discount and rejected

by the bank; the note was afterwards given to other persons in part payment of a previous debt, and credit for the amount was given in the account with their debtors. Tne form of the note was that required by the bank when notes are discounted, and had not been used before it had been so required by the bank. The circuit court instructed the jury, that the plaintiff was not entitled to recover from the makers of the note: *Held*, that the instruction was correct. *Fowler* v. *Brantley*.....*318

4. The known custom of the bank, and its ordinary modes of transacting business, including the prescribed forms of notes offered for discount, entered into the contract of those giving notes for the purpose of having them discounted at the bank; and the parties to the note must be understood as having agreed to govern themselves by such customs and modes of doing business; and this, whether they had actual knowledge of them or not; it was the especial duty of all those dealing with the note to ascertain them, if unknown. This is the established doctrine of the supreme court, as laid down in Renner *v.* Bank of Columbia, 9 Wheat. 581; in Mills *v.* Bank of the United States, 11 Ibid. 431; and in the Bank of Washington *v.* Triplett, 1 Pet. 32.....*Id.*

5. A note over-due, or a bill dishonored, are circumstances of suspicion, to put those dealing for it afterwards on their guard; and in whose hands it is open to the same defences it was in the hands of the holder, when it fell due; after maturity, such paper cannot be negotiated.....*Id.*

PUBLIC LANDS.

1. The United States instituted an action on a bond given by the defendants, conditioned that certain of the obligors, who had taken from the agent of the United States, under the authority of the president of the United States, a license for smelting lead-ore, bearing date September 1st, 1834, should fully execute and comply with the terms and conditions of a license for purchasing and smelting lead-ore, at the United States' lead-mines, on the upper Mississippi river, in the state of Illinois, for the period of one year. The defendants demurred to the declaration, and the question was presented to the circuit court of Illinois, whether the president of the United States had power, under the act of congress of 3d of March 1807, to make a contract for purchasing and smelting lead-ore, at the lead-mines of the United States, on the Upper Mississippi; this question was certified from the circuit to the supreme court of the United States: *Held*, that the president of the United States had power, under the act of congress of 3d of March 1807, to make the contract on which this suit was instituted. *United States* v. *Gratiot*..*529

2. The power over the public lands is vested in congress by the constitution, without limitation, and has been considered the foundation on which the territorial governments rest. *Id.*

3. The words "dispose of" the public lands, used in the constitution of the United States, cannot, under the decisions of the supreme court, receive any other construction than that congress has the power, in its discretion, to authorize the leasing of the lead-mines on the public lands, in the territories of the United States. There can be no apprehension of any encroachments upon state rights, by the creation of a numerous tenantry within the borders of the states, from the adoption of such measures..... *Id.*

4. The authority given to the president of the United States, to lease the lead-mines, is limited to a term not exceeding five years; this limitation, however, is not to be construed as a prohibition to renew the leases, from time to time, if he thinks proper so to do. The authority is limited to a short period, so as not to interfere with the power of congress, to make other dispositions of the mines, should they think the same necessary..... *Id.*

5. The legal understanding of a lease for years, is a contract for the possession and profits of land for a determinate period, with the recompense of rent; it is not necessary that the rent should be in money; if reserved in kind, it is rent, in contemplation of law..*Id.*

6. The law of 1807, authorizing the leasing of the lead-mines, was passed, before Illinois was organized as a state; she cannot now complain of any disposition or regulation of the lead-mines, previously made by congress; she surely cannot claim a right to the public lands, within her limits.....*Id.*

RHODE ISLAND.

See BOUNDARIES OF STATES: CHANCERY AND CHANCERY PRACTICE, 5–11: SUPREME COURT.

SALES OF REAL ESTATE.

1. The rule that the purchaser of property shall prepare and tender a deed of conveyance of the property to the vendor, to be executed by him, although prevailing in England, does not seem to have been adopted in some of the states of the United States; in Ohio, the rule does not prevail. The local practice

ought certainly to prevail, and to constitute the proper guide in the interpretation of the terms of a contract. *Taylor* v. *Longworth*..... *172

SALES FOR TAXES.

1. The supreme court of Ohio has required a claimant under a tax-title to show, before his title can be available, a substantial compliance with the requisites of the law. *Games* v. *Dunn*..... *322
2. A deed of lands sold for taxes cannot be read in evidence, without proof that the requisites of the law which subjected the land to taxes had been complied with; there can be no class of laws more strictly local in their character, and which more directly concern real property, than laws imposing taxes on lands, and subjecting the lands to sale for unpaid taxes; they not only constitute a rule of property, but their construction by the courts of the state should be followed by the courts of the United States, with equal, if not with greater, strictness than any other class of laws..... *Id.*

SCIRE FACIAS.

See PRACTICE.

SECRETARY OF THE NAVY.

See HEADS OF DEPARTMENTS.

SLAVE-TRADE.

1. The schooner Butterfly, carrying the flag of the United States, and documented as a vessel of the United States, and having the usual equipments of vessels engaged in the slave-trade, sailed from Havana, towards the coast of Africa, on the 27th July 1829; she was captured by a British brig of war, and sent into Sierra Leone, on suspicion of being Spanish property. At the time of the capture, Isaac Morris was in command of the vessel, and was described in the ship's papers, and described himself, as a citizen of the United States; the vessel was sent by the British authorities at Sierra Leone to be dealt with by the authorities of the United States: *Held*, that to constitute the offence denounced in the second section of the act of 10th May 1800, it was not necessary that there should have been an actual transportation or carrying of slaves in the vessel of the United States, in which the party indicted served. 2. The voluntary service of an American citizen on board a vessel of the United States, in a voyage commenced with the intent that the vessel should be employed in the slave-trade, from one foreign place to another, is an offence against the second section of the law, although no slaves had been transported in such vessel, or received on board of her. 3. To constitute the offence under the third section of the act, it was not necessary that there should be an actual transportation of slaves in a foreign vessel on board of which the party indicted served. 4. The voluntary service of an American citizen on board a foreign vessel, in a voyage commenced with intent that the vessel should be employed and made use of in the transportation of slaves, from one foreign country to another, is, in itself, and where no slaves have been transported in such vessel, or received on board of her, an offence under the third section of the act. *United States* v. *Morris*..... *464

SPANISH LAND GRANTS.

See CONSTRUCTION OF UNITED STATES STATUTES, 4–7: FLORIDA LAND-TITLES.

SPECIFIC PERFORMANCE.

1. A decree for a specific performance of a contract was refused, because a definite and certain contract was not made, and because the party who claimed the performance had failed to make it definite and certain on his part, by neglecting to communicate, by return of mail conveying to him the proposition of the vendor, his acceptance of the terms offered. *Carr* v. *Duval*..... *77
2. If it be doubtful, whether an agreement has been concluded, or is a mere negotiation, chancery will not decree a specific performance..... *Id.*
3. Specific performance of a contract by T., for the sale by him of a lot of ground in the city of Cincinnati, was asked, by a bill filed in the circuit court for the district of Ohio, by L.; the complainant in the bill had purchased the lot, and had paid, according to the contract, the proportion of the purchase-money payable to T.; by the contract, a deed, with a general warranty, was to have been given by the vendor, within three months, on which a mortgage for the balance of the purchase-money was to have been executed by the purchaser; this deed was never given nor offered. The purchaser went into possession of the lot, improved it by building valuable stores upon it, and sold a part of it; a subsequent agreement was made with the vendor, as to the rate of interest to be paid on the balance of the purchase-money; the purchase was made in 1814, and the interest, as agreed upon, was

regularly paid until 1822, when it was withheld. In 1822, the vendor instituted an action of ejectment for the recovery of the property, and he obtained possession of the same in 1824; in 1819, the purchaser was informed that one Chambers and wife had a claim on the lot, which was deemed valid by counsel; and in 1823, a suit for the recovery of the lot was instituted by Chambers and wife against T. L. and others, which was depending until after 1829. In 1825, this bill was filed, claiming from T. a conveyance of the property, under the contract of 1814, on the payment of the balance of the purchase-money and interest. The circuit court decreed a conveyance; and the decree was affirmed by the supreme court. *Taylor* v. *Longworth*.....*173

4. After the filing of the original bill, amended bill and answers, the circuit court considered that C., who held a part of the lot purchased by L., should be made a party complainant; and he came in and submitted to such decree as might be made between the original parties: *Held*, that this was regular.... *Id.*
5. There is no doubt, that time may be the essence of a contract for the sale of property; it may be made so by the express stipulations of the parties, or it may arise by implication, from the very nature of the property, or the avowed objects of the seller or the purchaser. And even when time is not, thus, either expressly or impliedly, of the essence of the contract, if the party seeking a specific performance has been guilty of gross *laches*, or has been inexcusably negligent in performing the contract on his part, or if there has, in the intermediate period, been a material change in circumstances, affecting the rights, interests or obligations of the parties, in all such cases, courts of equity will refuse to decree any specific performance, upon the plain ground, that it would be inequitable and unjust. But, except under circumstances of this sort, or of an analogous nature, time is not treated by courts of equity as of the essence of the contract; and relief will be given to the party who seeks it, if he has not been grossly negligent, and comes within a reasonable time, although he has not complied with the strict terms of the contract; but in all such cases, the court expects the party to make out a case free from all doubts, and to show that the relief which he asks is, under all the circumstances, equitable; and to account in a reasonable manner for his delay and apparent omission of duty..... *Id.*

STATUTES OF LIMITATION.

See LIMITATION OF ACTIONS.

SUPREME COURT.

1. Under the 25th section of the judiciary act of 1789, three things are necessary to give the supreme court jurisdiction of a case brought up by writ of error or appeal: 1. The validity of a statute of the United States, or of an authority exercised under a state, must be drawn in question. 2. It must be drawn in question on the ground that it is repugnant to the constitution, treaties and laws of the United States. 3. The decision of the state court must be in favor of its validity. *Commonwealth Bank of Kentucky* v. *Griffith*.....*56
2. When the decision of a state court is against the validity of a state statute, as contrary to the constitution of the United States, a writ of error does not lie to the supreme court on such judgment..... *Id.*
3. By a rule of the supreme court, the practice of the English courts of chancery is the practice of the courts of equity of the United States. *Rhode Island* v. *Massachusetts* *210
4. In a case in which two sovereign states of the United States are litigating a question of boundary between them, in the supreme court of the United States, the court have decided, that the rules and practice should govern in conducting a suit to a final issue..... *Id.*
5. The judgment of the supreme court of the United States, in a case brought by writ of error to a court of a state, must be confined to the error alleged in the decision of the state court, upon the construction of the act of congress before the state court. *Pollard's Heirs* v. *Kibbe*..... *353

SURETY.

1. Extending the time of payment of a bond, or a mere delay in enforcing it, will not discharge a surety, unless some agreement has been made, injurious to the interest of the surety. *Sprigg* v. *Bank of Mount Pleasant*..... *201
2. It is a sound and well-settled principle of law, that sureties are not to be made liable beyond their contract; and any agreement with the creditor which varies essentially the terms of the contract, without the assent of the surety, will discharge him from responsibility; but this principle cannot apply, where the surety has, by his own act, exchanged his character of surety for that of principal; and then applies to a court of equity to reinstate him to his character of surety, in violation of his own express contract..... *Id.*

TAXES.

See SALES FOR TAXES.

TREATIES.

1. Construction of the treaties with the Cherokee Indians, relative to lands within the boundary; and the acts of the legislature of the state of North Carolina, relative to the occupation and entry of lands within the Indian boundary. *Lattimer* v. *Poteet*....*4
2. It will not be denied, that the parties to a treaty are competent to determine any dispute respecting its limits; in no mode can a controversy of this nature be so satisfactorily determined as by the contracting parties. If their language in the treaty be wholly indefinite, or the natural objects called for uncertain or contradictory, there is no power but that which formed the treaty which can remedy such defects..... *Id.*
3. It is a sound principle of law, and applies to the treaty-making power of the government of the United States, whether exercised with a foreign nation or an Indian tribe, that all questions of boundary may be settled by the parties to the treaty; and to the exercise of that high function of the government, within its constitutional powers, neither the rights of a state or an individual can be interposed..... *Id.*

See CONSTRUCTION OF UNITED STATES' STATUTES, 4–8: FLORIDA LAND-CLAIMS.

TREATY WITH FRANCE.

1. The powers and duties of the commissioners under the treaty of indemnity with France, were the same as those which were exercised under the treaty with Spain, by which Florida was ceded to the United States; as decided in the cases of Comegys *v.* Vasse, 1 Pet. 212, and Sheppard *v.* Taylor, 5 Ibid. 710. There is a difference in the words used in the treaty and act of congress, when defining the powers of the board of commissioners; but they mean the same thing. The rules by which the board, acting under the French treaty, is directed to govern itself in deciding the cases that come before it, and the manner in which it is constituted and organized, show the purposes for which it was created. It was established for the purpose of deciding what claims were entitled to share in the indemnity provided by the treaty; and they, of course, awarded the amount to such person as appeared from the papers before them to be the rightful claimant. But there is nothing in the frame of the law establishing the board, nor in the manner of constituting and organizing it, which would lead to the inference that larger powers were intended to be given than those conferred on the commissioners under the Florida treaty. *Freval* v. *Bache*..... *95

TRUSTS.

1. In case of a deed of trust, executed to secure a debt, unless in case of some extrinsic matter of equity, a court of equity never interferes to delay or prevent a sale, according to the terms of the trust; and the only right of the grantor in the deed, is the right to any surplus which may remain of the money for which the property sold. *Bank of the Metropolis* v. *Guttschlick*.....*19
2. When a trust is created for the benefit of a third party, though without his knowledge at the time, he may affirm the trust, and enforce its execution..... *Id.*
3. Where a deed of trust is executed to secure the payment of certain notes, and a judgment obtained on the notes, the judgment does not operate as an extinguishment of the right of the holders of the note to call for the execution of the trust; although the act of limitations might apply to the judgment..... *Id.*
4. The same relation as that of landlord and tenant subsists between a trustee and a *cestui que trust*, as it regards title to the estate. *Walden* v. *Bodley*..... *156

WRIT OF ERROR.

1. It is the settled doctrine of the supreme court of the United States, that a writ of error does not lie from the circuit court, on the refusal of a motion to quash an execution; such refusal not being a final judgment, under the 22d section of the judiciary act of 1789. *Evans* v. *Gee*.....*1
2. Under the 25th section of the judiciary act of 1789, three things are necessary to give the supreme court jurisdiction of a case brought up by writ of error or appeal. 1. The validity of a statute of the United States, or of an authority exercised under a state, must be drawn in question. 2. It must be drawn in question on the ground that it is repugnant to the constitution, treaties or laws of the United States. 3. The decision of the state court must be in favor of its validity. *Commonwealth Bank of Kentucky* v. *Griffith*..... *56
3. When the decision of a state court is against the validity of a state statute, as contrary to the constitution of the United States, a writ of error does not lie to the supreme court upon such a judgment..... *Id.*