

INDEX

TO THE

PRINCIPAL MATTERS CONTAINED IN THIS VOLUME.

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

ACCEPTANCE OF BILLS.

1. The United States instituted a suit against the Bank of the Metropolis, claiming \$27,881.57, the balance, according to the statements of the treasury, due to the United States; the defendant claimed credits amounting to \$23,000, exclusive of interest, which had been presented to the proper accounting officers, for acceptances of the post-office department, of the drafts of mail contractors, and an item of \$611.52 overdraft of an officer of the post-office department, on the Bank of the Metropolis. The drafts of the contractors, accepted by the post-office department, were discounted by the bank, in the way of business; one draft was accepted unconditionally, the other drafts were accepted, "on condition, that the contracts be complied with:" *Held*, that the bank became the holder of the draft unconditionally accepted for valuable consideration; and its right to charge the United States with the amount cannot be defeated by any equities between the drawers and the post-office. *United States v. Bank of the Metropolis*. *377
2. It was no matter, how the account of the drawer of the draft, unconditionally accepted, stood with the post-office department; whether he was a debtor or a creditor; whether the bank knew one or the other. An unconditional acceptance was tendered to the bank for discount, it was not the duty of the bank to inquire how the account stood, or for what purpose the acceptance was made. All it had to look to was the genuineness of the acceptance, and the authority of the officer to give it. *Id.*
3. The rule is, that want of consideration between the drawer and the acceptor is no defence against the rights of a third party who has given a consideration for the bill; and this, even though the acceptor has been defrauded by the drawee, if that be not known to such third party. *Id.*
4. If one purpose making a conditional acceptance only, and commit that acceptance to writing, he should be careful to express the condition therein; he cannot use general terms, and then exempt himself from liability, by relying upon particular facts which have already happened, though they are connected with the conditional acceptance. By express terms, the acceptor might have guarded against any construction, other than that which was intended by, or was the apparent meaning of the words of the acceptance. It matters not what the acceptor meant by a cautious and precise phraseology, if it be not expressed as a condition. *Id.*
5. Nothing out of the condition expressed in the words of the acceptance can be inferred; unless it be in the case where the words used are so ambiguous as to make it necessary that parol evidence should be resorted to, to explain them. *Id.*
6. If two persons deal in relation to the executory contracts of a third, and one of them, being the obligee, induces the other to advance money, "upon condition that his contracts be complied with," and he knows that forfeitures have been already incurred by the obligor, for breaches of his contract, and does not say so, he will not be permitted afterwards to get rid of his liability, by saying, "I cannot pay you, for when I accepted, there

- was already due to me from the drawer of the bills more than I accepted for; you did not choose to make inquiry.".....*Id.*
7. The terms "accepted, when the contracts of the drawer of the bill are complied with," are not retroactive; they do not refer to past transactions, but to the subsequent performance of the contractors.....*Id.*

ADMINISTRATION.

1. An administrator appointed, and deriving his authority from another state, is not liable to be sued in the district of Columbia, in his official character, for assets, lawfully received by him in the district, under, and in virtue of his original letters of administration. *Vaughan v. Northrup* *1
2. Every grant of administration is strictly confined in its authority and operation to the limits of the territory of the government which grants it, and does not, *de jure*, extend to other countries. It cannot confer, as a matter of right, any authority to collect assets of the deceased, in any other state; whatever operation is allowed to it beyond the original territory of the grant, is a mere matter of courtesy, which every nation is at liberty to yield or to withhold, according to its own policy and pleasure, with reference to its own institutions, and the interests of its own citizens.....*Id.*
3. The administrator is exclusively bound to account for all the assets which he receives under and by virtue of his administration, to the proper tribunals of the government under which he derives his authority; the tribunals of other states have no right to interfere with, or control, the application of those assets, according to the *lex loci*. Hence, it has become an established doctrine, that an administrator cannot, in his official capacity, sue for any debts due to his intestate, in the courts of another state, and that he is not liable to be sued in that capacity, in the courts of the latter, by any creditor, for any debt due there by his intestate. .*Id.*
4. Debts due from the government of the United States, have no locality at the seat of government. The United States, in their sovereign capacity, have no particular place of domicile; but possess, in contemplation of law, a ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile..... *Id.*
5. The administrator of a creditor of the government, duly appointed in the state where he was domiciled at his death, has full au-

- thority to receive payment, and give a full discharge of the debt due to his intestate, in any place where the government may choose to pay it; whether it be at the seat of government, or at any other place where the funds are deposited.....*Id.*
6. The act of congress, of June 1822, authorizes any person to whom letters testamentary or of administration have been granted, in the states of the United States, to prosecute claims by suit in the courts of the district of Columbia, in the same manner as if the same had been granted to such persons by the proper authority in the district of Columbia. The power is limited by its terms to the institution of suits; and does not authorize suits against an executor or administrator. The effect of this law was, to make all debts due by persons in the district, not local assets, for which the administrator was bound to account in the courts of the districts; but general assets, which he had full authority to receive, and for which he was bound to account in the courts of the state from which he derived his letters of administration.....*Id.*

ADMIRALTY.

See SALVAGE, 1-4.

AFRICANS OF THE AMISTAD.

1. The Spanish schooner *Amistad*, on the 27th day of June 1839, cleared out from Havana, in Cuba, for Puerto Principe, in the same island, having on board, Captain Ferrer, and Ruiz and Montez, Spanish subjects; Captain Ferrer had on board Antonio, a slave; Ruiz had forty-nine negroes: Montez, had four negroes, which were claimed by them as slaves, and stated to be their property, in passports or documents, signed by the governor-general of Cuba; in fact, these African negroes had been, a very short time before they were put on board the *Amistad*, brought into Cuba, by Spanish slave-traders, in direct contravention of the treaties between Spain and Great Britain, and in violation of the laws of Spain. On the voyage of the *Amistad*, the negroes rose, killed the master, and took possession of the vessel; they spared the lives of Ruiz and Montez, on condition that they would aid in steering the *Amistad* for the coast of Africa, or to some place where negro slavery was not permitted by the laws of the country; Ruiz and Montez deceived the negroes, who were totally ignorant of navigation, and steered the *Amistad* for the United States; and she arrived off Long Island, in the state of New York,

on the 26th of August, and anchored within half a mile of the shore; some of the negroes went on shore, to procure supplies of water and provisions, and the vessel was then discovered by the United States brig Washington. Lieutenant Gedney, commanding the Washington, assisted by his officers and crew, took possession of the Amistad, and of the negroes on shore and in the vessel, brought them into the district of Connecticut, and there libelled the vessel, the cargo and the negroes for salvage; libels for salvage were also presented in the district court of the United States for the district of Connecticut, by persons who had aided, as they alleged, in capturing the negroes on shore, on Long Island, and contributed to the vessel, cargo and negroes being taken into possession by the brig Washington; Ruiz and Montez filed claims to the negroes as their slaves, and prayed that they, and parts of the cargo of the Amistad, might be delivered to them, or to the representatives of the crown of Spain. The attorney of the district of Connecticut filed an information, stating that the minister of Spain had claimed of the government of the United States that the vessel, cargo and slaves should be restored, under the provisions of the treaty between the United States and Spain, the same having arrived within the limits and jurisdiction of the United States, and had been taken session of by a public armed vessel of the United States, under such circumstances as made it the duty of the United States to cause the same to be restored to the true owners thereof; the information asked, that the court would make such order as would enable the United States to comply with the treaty; or if it should appear that the negroes had been brought from Africa, in violation of the laws of the United States, that the court would make an order for the removal of the negroes to Africa, according to the laws of the United States. A claim for Antonio was filed by the Spanish consul, on behalf of the representatives of Captain Ferrer, and claims are also filed by merchants of Cuba, for parts of the cargo of the vessel, denying salvage, and asserting their right to have the same delivered to them under the treaty. The negroes, Antonio excepted, filed an answer denying that they were slaves, or the property of Ruiz or Montez; and denying the right of the court, under the constitution and laws of the United States, to exercise any jurisdiction over their persons; they asserted that they were native free-born Africans, and ought of right to be free; that they had been, in April 1839, kidnapped in Africa, and had been carried in a vessel en-

gaged in the slave-trade, from the coast of Africa to Cuba, for the purpose of being sold; and that Ruiz and Montez, knowing these facts, had purchased them, put them on board the Amistad, intending to carry them to be held as slaves for life, to another part of Cuba, and that on the voyage, they rose on the master, took possession of the vessel, and were intending to proceed to Africa, or to some free state, when they were taken possession of by the United States' armed vessel, the Washington. After evidence had been given by the parties, and all the documents of the vessel and cargo, with the alleged passports, and the clearance from Havana, had been produced, the district court made a decree, by which all claims to salvage of the negroes were rejected, and salvage amounting to one-third of the vessel and cargo was allowed to Lieutenant Gedney, and the officers and crew of the Washington; the claim of the representatives of Captain Ferrer, to Antonio, was allowed; the claims of Ruiz and Montez being included in the claim of the Spanish minister, and of the minister of Spain, to the negroes as slaves, or to have delivered to the Spanish minister, under the treaty, to be sent to Cuba, were rejected; the court decreed that the negroes should be delivered to the president of the United States, to be sent to Africa, pursuant to the act of congress of 3d March 1719. From this decree, the district-attorney of the United States appealed to the circuit court, except so far as the same related to Antonio; the owners of the cargo of the Amistad also appealed from that part of the decree which allowed salvage on their goods; Ruiz or Montez did not appeal, nor did the representatives of the owner of the Amistad. The circuit court of Connecticut, by a *pro formâ* decree, affirmed the decree of the district court, reserving the question of salvage on the merchandise on board the Amistad; the United States appealed from this decree. The decree of the circuit court was affirmed; saving that part of the same which directed the negroes to be delivered to the president of the United States, to be sent to Africa; which was reversed and the negroes were declared to be free. *United States v. The Amistad*... *518

2. The negroes were never the lawful slaves of Ruiz or Montez, or of any other Spanish subject; they were natives of Africa; and were kidnapped there, and unlawfully transported to Cuba, in violation of the laws and treaties of Spain, and of the most solemn edicts and declarations of that government.....*Id.*
3. The language of the treaty with Spain of

- 1795, requires the proprietor "to make due and sufficient proof" of his property; and that proof cannot be deemed either due or sufficient, which is stained with fraud. *Id.*
4. Supposing the African negroes on board the *Amistad* not to be slaves, but kidnapped and free negroes, the treaty with Spain cannot be obligatory upon them; and the United States are bound to respect their rights, as much as those of Spanish subjects. The conflict of rights between the parties, under such circumstances, becomes positive and invariable, and must be decided upon the invariable principles of justice and international law. *Id.*
 5. There is no ground to assert, that the case of the negroes who were on board of the *Amistad* comes within the provisions of the act of congress of 1799, or of any other of the prohibitory slave-trade acts. These negroes were never taken from Africa, or brought to the United States in contravention of these acts. When the *Amistad* arrived, she was in possession of the negroes, asserting their freedom; and in no sense could possibly intend to import themselves into the United States as slaves, or for sale as slaves *Id.*
 6. There is no pretence to say, the negroes of the *Amistad* are "pirates" and "robbers;" as they were kidnapped Africans, who, by the laws of Spain itself, were entitled to their freedom. *Id.*

APPEAL.

1. An appeal was prosecuted by the complainants in the circuit court of Alabama, to the supreme court, and the citation required by the act of congress had not been served on the appellee, and he had no notice of the appeal. In printing the copy of the record of the circuit court, the return of the marshal of the district, stating that the citation to the appellee had not been served, was accidentally omitted. The court, on motion by the counsel for the appellee, declared the decree in the case, made at January term 1840, null and void; revoked the mandate issued to the circuit court of Alabama, and dismissed the appeal. *Ex parte Crenshaw* *119
2. A judgment was entered on a promissory note made by Kelly and others in favor of Lea and others, in the circuit of Alabama; afterwards, Kelly, the appellee, filed a bill on the equity side of the court, for the purpose of being relieved from the judgment at law, obtained against him and two other persons, on the promissory note; the bill alleged fraud in the plaintiffs in the suit, and

- that the complainant had no notice of the suit and had not authorized an appearance, nor filed any plea in the same; the bill prayed for a perpetual injunction of proceedings on the judgment, and for general relief. The injunction was granted, and afterwards, on the appearance of two of the plaintiffs in the suit at law, the circuit court decreed, that on condition that the complainant, Kelly, appear and plead to the merits of the case, waiving the question of jurisdiction, and pay costs of the suit at law, and the proceedings in equity, a new trial be awarded to the complainant. Two of the plaintiffs in the suit at law, who had appeared to the bill, appealed to the supreme court, seeking to reverse this decree: *Held*, that the decree of the circuit court was merely interlocutory; and was not a final decree, for which an appeal could be taken. *Lea v. Kelly*. . . *213
3. A bill was filed by residuary legatees, claiming to receive from the executors their respective proportions of the estate of the testator; on a reference to a master to take an account, the master reported \$7795.27 to be in the hands of the executors, which sum was paid by them into court. The report was referred back to the master, who made his final report, by which he found a further sum in the hands of the executors, exclusive of sundry uncollected debts then outstanding, some bad, and some good; exceptions were filed to this report, which were disallowed by the court. The circuit court decreed, that the report should be accepted and that the complainants should have execution for the sum reported in the hands of the executors; and as to the residue of the debts due the estate, as soon as the same, or part of them, should be collected, the amount should be paid into court for distribution, to be made under the direction of the court: *Held*, that this is an interlocutory, and not a final decree, in the sense of the act of congress; and an appeal from the same could not be taken. *Young v. Smith*. *287

ATTORNEY.

1. An amendment in a case in the admiralty, before the court of appeals, cannot introduce a new subject of controversy; although the most liberal principles prevail in such cases. *The North Carolina*.

BOND.

See CONTRACTS, 1, 5, 6.

BOUNDARIES OF STATES.

1. The state of Rhode Island filed a bill against the Commonwealth of Massachusetts, claim-

ing that the boundary between the two states should be settled by the supreme court, according to the provisions of the original charters of the states, respectively stating that the line which had been agreed upon by the commissioners acting for the states, while colonies, had been agreed to by the commissioners of Rhode Island, under a mistake, and setting forth the charters of both the states, the proceedings of the commissioners, the acts of the legislatures respectively, and many other matters connected with the subject in controversy; to this bill the state of Massachusetts entered a general demurrer. The demurrer was overruled. *Rhode Island v. Massachusetts**234

2. It is one of the most familiar duties of a court of chancery, to relieve against mistake; especially, where it has been produced by the misrepresentations of the adverse party.*Id.*
3. The demurrer of the state of Massachusetts to the bill of Rhode Island, admits the charter lines of both the states to have been three miles south of Charles River; that the place marked, and from which the line was agreed to be run, was seven miles south of the river, instead of three miles, and was fixed on by mistake, and that the commissioners of Rhode Island were led into this error by confiding in the misrepresentations of the commissioners of Massachusetts. Now, if this mistake had been discovered a few days after the agreement was made, and Rhode Island had immediately gone before a tribunal having competent jurisdiction to relieve against a mistake committed by such parties, can there be any doubt, that the agreement would have been set aside, and Rhode Island restored to the true charter line? Agreements thus obtained, cannot deprive the complainant of territory which belonged to her, unless she has forfeited her title to relief, by acquiescence or unreasonable delay.*Id.*
4. In the bill of Rhode Island, claiming to have an adjustment of the boundary between her and the state of Massachusetts, allegations are made to the interference of certain causes which prevented her resorting to measures for relief against a mistake as to the boundary line, alleged to have been established by the commissioners of Rhode Island and Massachusetts. The state of Massachusetts, by the demurrer, admits these facts as stated; and the facts asserted in the bill of Rhode Island must be taken as true; it is, therefore, not necessary to decide whether they are sufficient to excuse the delay. But when it is admitted by the demurrer, that Rhode Island never acquiesced,

but has from time to time made efforts to regain the territory, by negotiations with Massachusetts, and was prevented by the circumstances she mentions, from appealing to the proper tribunals to grant her redress, the court cannot undertake to say, the possession of Massachusetts has been such as to give her a title by prescription; or that the *laches* of Rhode Island has been such as to forfeit her right to the interposition of a court of equity.*Id.*

5. It would be impossible to adopt the same rule of limitations in the case before the court on these pleadings. Here, two political communities are concerned, who cannot act with the same promptness as individuals. Other circumstances in the case interpose objections. The boundary in question was in a wild, unsettled country, and the error in fixing the line not likely to be discovered until the lands were granted by the respective colonies, and the settlements approached the disputed line. And the only tribunal that could relieve, after the mistake was discovered in 1740, was on the other side of the Atlantic, and was not bound to hear the cause and proceed to judgment, except when it suited its own convenience. The same reasons that prevent the bar of limitations, make it equally evident that a possession so obtained and held by Massachusetts, under such circumstances, cannot give a title by prescription.*Id.*

CASES CITED.

1. *Bodley v. Taylor*, 5 Cranch 196; *Polk v. Wendell*, 9 *Ibid.* 93; 5 *Wheat.* 293; *Miller v. Kerr*, 7 *Ibid.* 1; *Hoofnagle v. Anderson*, *Ibid.* 212, cited. *Bush v. Ware*.....*93
2. *Crowell v. Randell*, 10 *Pet.* 398, cited. *Coons v. Gallaher*.....*18
3. *Danforth v. Wear*, 9 *Wheat.* 673; *Patterson v. Jenckes*, 2 *Pet.* 216, cited. *Mitchell v. United States**51
4. *Farrar v. United States*, 5 *Pet.* 374, cited and affirmed. *United States v. Boyd*.....*187
5. *Kane v. Paul*, 14 *Pet.* 33, cited. *Vaughan v. Northrup*.....*1
6. *Livingston v. Story*, 9 *Pet.* 655; 13 *Ibid.* 368; *Poultney v. City of La Fayette*, *Ibid.* 474; *Ex parte Whitney*, *Ibid.* 404, cited; and the principles of these cases affirmed. *Gaines v. Relf*.....*9
7. *Owings v. Tiernan*, 10 *Pet.* 24, cited. *Gwin v. Breedlove*.....*284
8. *Sibbald v. United States*, 12 *Pet.* 488; *United States v. Arredondo*, 6 *Ibid.* 691; *United States v. Fleming*, 8 *Ibid.* 478; *United States v. Huertas*, 9 *Ibid.* 488; *United States*

- v. Arredondo*, 13 *Ibid.* 133, cited. *Buyck v. United States*. *216
9. *Toland v. Sprague*, 12 Pet. 300, cited. *Levy v. Fitzpatrick*. *167
10. *United States v. Arredondo*, 6 Pet. 691; *United States v. Clarke*, 8 *Ibid.* 486; *United States v. Huertas*, 9 *Ibid.* 171, cited. *United States v. Forbes*. *173
11. *United States v. Clarke*, 8 *Ibid.* 454, cited. *United States v. Delespine*. *319
12. *United States v. Dunn*, 6 Pet. 51. *United States v. Bank of the Metropolis*. *367
13. *United States v. Tingey*, 5 Pet. 115; *United States v. Bradley*, 10 *Ibid.* 364, cited. *United States v. Linn*. *290
14. *United States v. Wiggins*, 14 Pet. 334; *United States v. Rodman*, ante, p. 130; *United States v. Percheman*, 7 Pet. 96, cited. *United States v. Delespine*. *319
15. *United States v. Wilkins*, 6 Wheat. 135; *United States v. Ripley*, 7 Pet. 18; *United States v. Macdaniel*, *Ibid.* 1; *United States v. Fillebrown*, *Ibid.* 28. *Gratnot v. United States*. *337
16. *Wilcox v. Jackson*, 13 Pet. 409, cited. *United States v. Fitzgerald*. *407

CHANCERY.

1. In the case of *Livingston v. Story*, which came before this court in 1835 (9 Pet. 655), the court took occasion to examine the various laws of the United States, establishing and organizing the district court of Louisiana, and to decide whether that court had equity powers; and if so, what should be the mode of proceeding in the exercise of such powers. The various cases which had been before the court, involving, substantially, the same question in relation to the states where there were no equity state courts, or laws regulating the practice in equity causes, were referred to; and the uniform decisions of the court have been, that there being no equity state courts, did not prevent the exercise of equity jurisdiction in the courts of the United States; and it was, accordingly, decided, that the district court of Louisiana was bound to proceed in equity causes, according to the principles, rules and usages which belong to the courts of equity, as contradistinguished from courts of common law. *Gaines v. Relf*. *9
2. The supreme court has not the power to compel the circuit court to proceed according to established rules in chancery cases; all that the court can do, is to prevent proceedings otherwise, by reversing them, when brought here on appeal. *Id.*
3. It is one of the most familiar duties of a court of chancery to relieve against mistake;

especially where it has been produced by the misrepresentations of the adverse party. *Rhode Island v. Massachusetts*. *233

See STATUTE OF LIMITATIONS, 1, 2.

COMPENSATION OF PUBLIC OFFICERS.

1. Samuel W. Dickson was appointed a receiver of public money for the Choctaw district, Mississippi, entered on the duties of his office on the 22d November 1833, and continued to hold the office until the 26th July 1836, when he resigned; he received more than \$250,000 of public money, in each year, during the two years of his continuance in office; and also more than \$250,000 during the portion of the year commencing on the 22d November 1835, and ending on the 26th July 1836. He claimed, under the act of congress, relating to the compensation and salaries of receivers, a compensation of one per cent. on the sum of \$250,000 in each year; and also a commission of one per cent. on the money received during the fraction of the year, not exceeding, with the salary of \$500, \$3000, in the fraction of the last year; the United States claimed to limit the commissions and salary to the fiscal year, from January 1st to December 31st, annually; and denied his right to more than a portion of the commissions on the money received by him, limiting the same to the proportion of the year he was in office: *Held*, that the receiver was entitled to charge his commissions on the whole sum received by him in the part of the year he was in office; the same not exceeding, with his salary, the amount of \$3000. *United States v. Dickson*. *141
2. The receiver was entitled to calculate his yearly commission on the amount of public money received by him during a year, commencing from the date of his appointment, instead of calculating it by the fiscal year, which commences with the calendar year, on the first day of January in every year. He had a right to charge the whole yearly maximum of commissions, for the fractional portion of the year in which he resigned. *Id.*
3. The United States instituted a suit against Charles Gratnot to recover a balance alleged to be due by him for money paid to him as "chief engineer in the service of the United States," as shown by two treasury transcripts; the claims of General Gratnot against the United States, as off-sets to the demand against him, which had been exhibited to the accounting officers of the treasury, were for commissions on disbursements of public money at Fortress Monroe and Fort Calhoun,

- being two dollars per day during the times of the disbursements ; and which two dollars per day were charged, separately, for each day ; and for extra services in conducting the civil works of internal improvement carried on by the United States. In the circuit court, the evidence offered to prove the set-off claimed by the defendant, was rejected: *Held*, that unless some law can be shown, establishing clearly and unequivocally the legality of each of the items of set-off, and no such law exists, the refusal of the circuit court to admit the evidence cannot be supported ; it was competent and relevant evidence, and proper for the consideration of the jury, as conducing to the establishment of the facts. *Gratiot v. United States* *336
4. Certain requisitions had been paid to General Gratiot on account of Fort Grand Terre, and other public works, as stated in a transcript of the treasury of the United States ; and it was contended, that this transcript was not evidence in an action against "the chief engineer," as the transcript did not state the money to have been paid to him in that capacity : *Held*, that the balance claimed in this action from the defendant, was upon a transcript from the treasury including those items, which had been charged to him as chief engineer ; and as there was no distinct charge on the transcript objected to, the refusal of the circuit court to sustain the objection was proper *Id.*
 5. The United States possess the general right to apply all sums due to an officer in the service of the United States for pay and emoluments, to the extinguishment of any balances due to them by such officer, on any other account ; whether as a private individual, or an officer of the United States ; it is but the exercise of the common right which belongs to every creditor to apply the unappropriated moneys of his debtor in his hands, in the extinguishment of the debts due by him. *Id.*
 6. It is wholly immaterial, whether the claim to set-off against the United States be a legal or an equitable one ; in either view, it constitutes a good ground of set-off or deduction. It is not sufficient, that these items ought to be rejected, that there is no positive law which expressly provides for, or fixes such allowances ; there are many authorities conferred on the different departments of the government, which, for their due execution, require services and duties which are not strictly appertaining to, or devolved upon, any particular officer, and which require agencies of a discretionary nature. In such cases, the department charged with the execution of the particular authority, business or duty, has always been deemed incidentally to possess the right to employ the proper persons to perform the same, as the appropriate means to carry into effect the required end ; and also the right, where the service or duty is an extra one, to allow the person so employed a suitable compensation. *Id.*
 7. The act of congress of the 16th March 1802, which provided for the organization and establishment of the corps of engineers, never has been supposed to authorize the president of the United States to employ the corps of engineers for any other duty except such as belongs either to military engineering, or to civil engineering. Assuming, that the president possessed the fullest power under the act, to employ from time to time, every officer of the corps in the business of civil engineering, still it must be obvious, that as their pay and emoluments were or would be regulated with reference to their ordinary military and other duties, the power of the president to detach them upon other civil services would not preclude him from contracting to allow such detached officers a proper compensation for any extra services. Such a contract may not only be established by proof of some positive regulation, but may also be inferred from some practice and usage of the war department in similar cases, acting in obedience to the presumed orders of the president. *Id.*
 8. The regulations of the army of the United States, which were sanctioned by the president in 1821, art. 67, and in 1825, art. 67, which allow two dollars per diem, not to exceed two and a half per cent. on the sum disbursed, to the agents for disbursing money at fortifications, do not limit this allowance to the engineer superintending the construction and disbursing the money, as agent for fortifications, to a single per diem allowance of two dollars for all the fortifications for which a distinct appropriation has been made ; when he is employed at the same time upon several fortifications, each requiring separate accounts of the disbursements to be kept, on account of there being distinct and independent appropriations therefor. It would be unreasonable, to suppose, that these regulations intended to give the same amount of compensation to a person disbursing money upon two or more distinct fortifications, that he would be entitled to, if he were disbursing agent for one only ; although his duties might be thus doubled, and even trebled. *Id.*
 9. A claim of set-off was presented for \$37,262.46, for extra services in conducting the affairs connected with the civil works of internal improvement ; *Held*, that, upon its

face, this item has no just foundation in law; and the evidence offered in support of it, if admitted, would not have sustained it. Upon a review of the laws and regulations of the government, applicable to the subject, it is apparent, that the services therein alleged to be performed, were the ordinary special duties appertaining to the office of chief engineer, and which the chief engineer was bound to perform; and without any compensation beyond his salary and emoluments as a brigadier-general of the army of the United States, on account of such service. *Id.*

10. Dr. Minis, a surgeon in the service of the army of the United States, was appointed a military disbursing agent for removing and subsisting the Cherokee Indians; he charged two and a half per cent. on the sum of \$514,237 actually disbursed by him in the course of his agency in 1836-37, the charge was rejected at the treasury, on the authority of a clause in the act of congress of March 3d, 1835, ch. 303. It was contended by the plaintiff in error: 1. That this act of congress did not apply to the case. 2. That from the long-established practice of the government, as well as from the established law of the land, he was entitled to commissions, there being no law, prior to 1839, disallowing commissions on moneys disbursed for the government. 3. That the charge of commissions should be allowed, because the charge is made on disbursements of moneys appropriated during the session of congress of 1836-37, and therefore, neither the act of 1835 nor 1839 were applicable to the claim: *Held*, that the claim was not supported by the laws of the United States; and that no commissions were chargeable to the United States on the moneys disbursed by the agent of the United States for removing and subsisting the Cherokee Indians. The case falls directly within the act of 30th June 1834, ch. 162, for organizing the Indian department; this act authorizes the president of the United States to require any military officer of the United States to execute the duties of Indian agent; and prohibits any other compensation for their services, other than an allowance for actual travelling expenses. *Minis v. United States*.....*423
11. In the act of congress of 3d March 1835, ch. 303, entitled an act making certain additional appropriations for the Delaware Breakwater, &c., a proviso is introduced, "provided that no officer of the army shall receive any per cent. or additional pay, extra allowance or compensation, in any form whatsoever, on account of disbursing any public money appropriated by law, during

the present session, for fortifications, &c., or any other service or duty whatsoever, unless authorized by law." *Held*, that this proviso applied only to the appropriations made for military purposes by that act, and to any which might be made during that session of congress; and was not a general permanent regulation, applicable to all cases of expenditures for the military purposes of the United States, untler the provisions of acts of congress. It would be somewhat novel, to find engrafted upon an act making special and temporary appropriations, any proviso which was to have a general and permanent application to all future appropriations; nor ought such an intention on the part of the legislature to be presumed, unless it is expressed in the most clear and positive terms, and where the language admits of no other reasonable interpretation.....*Id.*

CONSTITUTIONAL LAW.

1. An action was instituted in the circuit court of Louisiana, on a promissory note, given in the state of Mississippi, for the purchase of slaves in that state; the slaves had been imported in 1835-36, as merchandize, or for sale into Mississippi, by a non-resident of that state; the constitution of Mississippi, adopted on the 26th October 1832, declared that the introduction of slaves into that state as merchandize, or for sale, should be prohibited, from and after the first day of May 1833. The parties to the note contended, in the circuit court, that the contract was void; asserting that it was made in violation of the provision of the constitution of Mississippi, which, it was insisted, was operative after May 1st, 1833, without legislative enactment to carry the same into effect: *Held*, that the prohibition of the constitution did not invalidate the contract, but that an act of the legislature of the state was required to carry it into effect; and no law on the subject of the prohibition in the constitution was passed until 1837. *Groves v. Slaughter*.....*449
2. The construction of the provision in the constitution of Mississippi, relative to the introduction of slaves for sale, into that state, has not been so fixed and settled by the courts of Mississippi, as to preclude the supreme court of the United States from regarding it as an open question.....*Id.*
3. The language of the constitution obviously points to something more to be done, and looks to some future time, not only for its fulfilment, but for the means by which it was to be accomplished. The mere grammatical construction ought not to control the

- interpretation, unless it is warranted by the general scope and object of the provision. *Id.*
4. Under the constitution of Mississippi, of 1817, it is declared, that the legislature shall have power to prevent slaves being brought into the state as merchandize; the time and manner in which this was to be done, was left to the discretion of the legislature; and by the constitution of 1832, it is no longer a matter of discretion when this prohibition is to take effect; but the 1st day of May 1833, is fixed on as the time, before which the prohibition shall not operate. But there is nothing in this provision which looks like withdrawing the whole subject from the action of the legislature; on the contrary, there is every reason to believe, from the mere naked prohibition, that it looked to legislative enactments to carry it into full operation; and, indeed, this is indispensable; there are no penalties or sanctions provided in the constitution, for its due and effectual operation. The constitution of 1832 looks to a change of policy on the subject, and fixes the time when the entire prohibition shall take effect; and it is a fair and reasonable conclusion, that it was the only material change from the constitution of 1827 *Id.*
 5. Admitting the constitution is mandatory upon the legislature, and that they have neglected their duty in not carrying it into execution, it can have no effect upon the construction of this article. Legislative provision is essential to carry into effect the object of the prohibition; it requires the sanction of penalties to accomplish this object *Id.*
 6. What would become of the slaves thus introduced, if the construction be such as to give the provision immediate operation? Will they become free immediately, on introduction, or do they become forfeited to the state? These are questions not easily answered; and although these difficulties may be removed by subsequent legislation, yet they are proper circumstances to be taken into consideration, when inquiring into the intention of the convention, in forming the constitution. It is unreasonable, to suppose that if this prohibition was intended to operate, *per se*, without any legislative aid, there would not have been some guards and checks thrown round it, to insure its execution *Id.*
 7. The proviso in this article, that actual settlers shall not be prohibited from bringing in slaves, for their own use, until the year 1845, must, necessarily, be considered as addressed to the legislature, and must be construed as a restriction on their power. The enacting part of the article, "shall be prohibited," is also addressed to the legislature, and is a command to do certain acts. The legislative enactments on this subject strongly fortify the conclusion, that this provision in the constitution was not understood but as directory to the legislature. *Id.*
 8. The enactment of a law, in 1837, to carry the provision of the constitution into effect, by imposing penalties, from and after the passing of the law, shows the sense of the legislature on the subject; and that, in the opinion of the legislature, such a law was necessary. The laying of a tax on slaves brought into the state for sale, after May 1st, 1833, also shows that the provision in the constitution was not considered in operation without some legislative provisions to carry it into effect. *Id.*
 9. To declare all contracts made for the purchase of slaves, introduced as merchandize, or for sale, from the first of May 1833, until the passage of the law of 1837, illegal and void, when there was such an unsettled state of opinion and course of policy pursued by the legislature, would be a severe and rigid construction; and one that ought not to be adopted, unless called for by the most plain and unequivocal language. *Id.*
 10. The court do not mean to say, that if there appeared to have been a fixed and settled course of policy in the state of Mississippi, against allowing the introduction of slaves, as merchandize, or for sale, after the first day of May 1833, a contract made in violation of such policy would not be void. But the court cannot think that principle applies to this case; as, when the sale of the slaves in question was made, there was, certainly, no fixed and settled course of policy which would make void or illegal such contracts. *Id.*

CONSTRUCTION OF STATE STATUTES.

1. A defendant having appeared and pleaded to the action, and at the trial, having withdrawn his plea, the supreme court cannot take notice of any matter of abatement in the writ or declaration. Where the writ stated both of the defendants to be citizens of another state than that of which the plaintiff was a citizen, and one of the defendants had been returned not found by the marshal, under the laws of Alabama, it is not necessary in the declaration to aver the citizenship of the absent defendant. *Smith v. Clapp* *125
2. If any error exists in the calculation of interest in a judgment on a note, on which suit has been brought, the court before whom

the suit was brought, may, by the laws of Alabama, correct the error. *Id.*

See PROMISSORY NOTES, 1-3.

CONSTRUCTION OF TREATY WITH SPAIN.

1. The sixth article of the treaty with Spain, of 1795, continued in full force, in this particular, by the treaty ratified in 1821, seems to have had principally in view, cases where the property of the subjects of either state, had been taken possession of within the territorial jurisdiction of the other, during war. The eighth article provides for cases where the shipping of the inhabitants of either state are forced, through stress of weather, pursuit of pirates, or enemies, or any other urgent necessity, to seek shelter in the ports of the other. There may well be some doubts entertained whether the case of the *Amistad*, in its actual circumstances, falls within the purview of this article. *The Amistad*. *519
2. The ninth article of the treaty provides, that all ships and merchandize, which shall be rescued out of the hands of any pirates and robbers, on the high seas, and shall be brought into some port of either state, shall be delivered to the officers of the port in order to be taken care of, and "restored entire to the proprietary, as soon as due and sufficient proof shall be made concerning the property thereof." To bring the case of the *Amistad* within this article, it is essential to establish: 1. That the negroes, under all the circumstances, fall within the description of merchandize, in the sense of the treaty. 2. That there has been a rescue of them on the high seas, out of the hands of pirates and robbers. 3. That Ruiz and Montez are the true proprietors of the negroes, and have established their title by competent proofs. If those negroes were, at the time, lawfully held as slaves under the laws of Spain, and recognised by those laws as property, capable of being bought and sold, no reason is seen, why this may not be deemed, within the intent of the treaty, to be included under the denomination of merchandize, and ought, as such, to be restored to the claimants; for upon that point, the laws of Spain would seem to furnish the proper rule of interpretation. But admitting that to be the construction of the treaty, it is clear, in the opinion of the court, that neither of the other essential facts and requisites has been established by proof; and the *onus probandi* of both lies upon the claimants, to give rise to the *casus federis*. *Id.*
3. The seventeenth article of the treaty with

Spain which provides for certain passports and certificates, as evidence of property on board of the ships of both states, is, in its terms, applicable only to cases where either of the parties is engaged in war; this article required a certain form of passport to be agreed upon by the parties and annexed to the treaty; it never was annexed; and therefore, in the case of the *Amiable Isabella*, 6 Wheat. 1, it was held inoperative. . . . *Id.*

4. The treaty with Spain never could have been intended to take away the equal rights of all foreigners who should assert their claims to equal justice before the courts of the United States; or to deprive such foreigners of the protection given to them by other treaties, or by the general laws of nations. *Id.*

CONSTRUCTION OF UNITED STATES' STATUTES.

1. The office of a proviso, generally, is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extending to cases not intended by the legislature to be brought within its purview. *Minis v. United States*. *428

See CONTRACT.

CONTRACT.

1. The United States instituted an action of debt against the defendant, William Lynn, and his sureties, to recover a sum of money in the hands of Lynn, he having been appointed a receiver of public moneys at the land-office of the district of Vandalia, on the 12th of February 1835. The first count in the declaration stated, that the defendants had executed, on the first of August 1836, a "writing obligatory, sealed with their seals," to the United States, in the sum of \$100,000, for the faithful performance of the duties of his office by Lynn; and that certain sums of money had been paid into the hands of Lynn, as receiver, which he had failed to account for and pay over to the United States; the second count stated the execution of "an instrument of writing," to the United States, by the defendants, signed by them, by which they promised to pay \$100,000 to the United States, which was to be void and of no effect, in case Linn faithfully executed the duties of the office of receiver of public moneys; and alleging that Linn had received a large sum of money belonging to the United States, which he had

- failed to pay over or account for to the United States. The judges of the circuit court of Illinois were divided in opinion, and the division was certified to the supreme court, upon two questions: 1. Whether the obligation of the defendants, being without seal, was not a bond within the act of congress? 2. Whether such an instrument was good at common law? *Held*, 1. That the obligation, being without seal, was not a bond within the act of congress. 2. That such an instrument was good at common law. *United States v. Lynn**290
2. If the contract, signed by the defendants, was entered into for a lawful purpose, not prohibited by law, and was founded on a sufficient consideration, it is a valid contract, at common law. *Id.*
 3. From the decision of this court, in the case of the *United States v. Tingey*, it follows, that a voluntary contract, or security, taken by the United States for a lawful purpose and upon a good consideration, although not prescribed by any law, is not entirely void. *Id.*
 4. Linn had been appointed receiver of public moneys, before the execution of the instrument declared upon, and was entitled to the emoluments of the office; this was a sufficient consideration appearing on the face of the instrument, to support the promise. A benefit to the promisors, or a damage to the promisee, constitutes a good consideration; A consideration to the principal, was sufficient to bind the sureties. *Id.*
 5. The mere appointment of Linn as receiver of public moneys, was not the consideration of the contract; but the emoluments and benefits resulting from the appointment, formed the consideration. It was a continuing consideration, running with his continuance in office, and existed in full force at the time the instrument was signed. *Id.*
 6. The act of congress under which this instrument was taken, directs that a receiver of public moneys shall, before he enters on the duties of his office, give bond, with approved sureties, for the faithful discharge of the duties of his trust. This statute does not profess to give the precise form of the bond; it is only a general direction to give a bond for the faithful discharge of his trust; there are no negative words in the act, nor anything, by implication or otherwise, to make void a security taken in any other form; nor is there anything, in reason or sound principle, that should lead to such a conclusion. *Id.*
 7. The actual difference between an instrument under seal, and not under seal, is, that in the one case, the seal imports a consideration,

and in the other, it must be proved. There ought to be some very strong grounds to authorize a court to declare a contract absolutely void, which has been voluntarily made, upon a good consideration, and delivered to the party for whose benefit it was intended *Id.*

8. It is a general principle, that one having knowledge of particular facts, upon which he intends to rely to exempt him from a pecuniary obligation about to be contracted with another, of which facts the other is ignorant, and can only learn from him, or from documents in his keeping, that the fact of his knowledge raises the obligation to tell it. *United States v. Bank of the Metropolis**377

DEMURRER.

1. On a demurrer being filed, the rule is, that the party who has committed the first fault shall have judgment against him. *Gorman v. Lenox's Executors* *115
2. The state of Rhode Island filed a bill against the commonwealth of Massachusetts, claiming that the boundary between the two states should be settled by the supreme court, according to the provisions of the original charters of the states, respectively, stating that the line which had been agreed upon by the commissioners acting for the states, while colonies, had been agreed to by the commissioners of Rhode Island, under a mistake, and setting forth the charters of both the states, the proceedings of the commissioners, the acts of the legislatures respectively, and many other matters connected with the subject in controversy. To this bill the state of Massachusetts entered a general demurrer; the demurrer was overruled. *Rhode Island v. Massachusetts* *233

DEPARTMENTS.

1. There are many authorities conferred on the different departments of the government, which, for their due execution, require services and duties which are not strictly appertaining to, or devolved upon, any particular officer, and which require agencies of a discretionary nature; in such cases, the department charged with the execution of the particular authority, business or duty, has always been deemed, incidentally, to possess the right to employ the proper persons to perform the same, as the appropriate means to carry into effect the required end; and also the right, where the service or duty is an extra one to allow the person so employed

a suitable compensation. *Gratiot v. United States*.....*386

DISTRICT JUDGE OF LOUISIANA.

1. It is a matter of extreme regret, that it appears to be the settled determination of the district judge of Louisiana (Judge Lawrence) not to suffer chancery practice to prevail in the circuit court of Louisiana in equity causes, in total disregard of the repeated decisions of this court, and the rules of practice established by the supreme court, to be observed in chancery cases. *Gaines v. Relf*.....*9

DISTRICT OF COLUMBIA.

1. The act of congress, of June 1822, authorizes any person to whom administration has been granted in the states of the United States, to prosecute claims by suits in the district of Columbia, in the same manner as if the same had been granted to such persons by the proper authority in the district of Columbia. The power is limited, by its terms, to the institution of suits; and does not authorize suits against an executor or administrator. The effect of this law was, to make all debts due by persons in the district not local assets, for which the administrator was bound to account in the courts of this district; but general assets, which he had full authority to receive, and for which he was bound to account in the courts of the state from which he derived his letters of administration. *Vaughan v. Northup*.*1

DOWER.

1. Dower is a legal right; and whether it be claimed by suit at law or in equity, the principle is the same. On a joint-tenancy at common law, dower does not attach. *Maybury v. Brien*.....*21
2. No title to dower attaches on a joint seisin of real estate; the mere possibility of the estate being defeated by survivorship, prevents dower.....*Id.*
3. If the husband, being a joint-tenant, convey his interest to another, and thus at once destroy the right of survivorship, and deprive himself of the property, his wife will not be entitled to dower.....*Id.*
4. The time of the delivery of a deed may be proved by parol.....*Id.*
5. By the common law, dower does not attach to an equity of redemption; the fee is vested in the mortgagee, and the wife is not dowable of an equitable seisin.....*Id.*
6. When the husband takes a conveyance in fee, and at the same mortgages the land

back to the grantor, or to a third person, to secure the purchase-money, in whole or in part, dower cannot be claimed as against rights under the mortgage; the husband is not deemed sufficiently or beneficially seised, by an instantaneous passage of the fee in and out of him, to entitle his wife to dower as against the mortgage.....*Id.*

7. It is the well-established doctrine, that of a seisin for an instant, a woman shall not be endowed.....*Id.*

ENGINEER CORPS.

See COMPENSATION OF PUBLIC OFFICERS, 3-9.

ERROR

1. Mortgagees, in Louisiana, filed in the circuit court, their petition, stating the non-payment of the debt due on their mortgage, and that by the laws of Louisiana, the mortgage imports a confession of judgment, and entitled them to executory process, which they prayed for; without any process requiring the appearance of the mortgagors, one of whom resided out of the state, the judge ordered the executory process to issue. Two of the defendants, who were residents in the state, prosecuted a writ of error on this order, to the supreme court of the United States: *Held*, that the order for executory process was not a final judgment of the circuit court, on which a writ of error could issue. *Levy v. Fitzpatrick*.....*167
2. As the debtors were not before the judge, in the circuit court, when he granted, in this case, the order for process, the order for the process could not be regarded as a final judgment, from which a writ of error could be prosecuted, under the 22d section of the judiciary act of 1789. By the laws of Louisiana, three days' notice of a sale under such process was required to be given to the debtors, or the sale would be utterly void; upon that notice, the debtors had a right to come into court and file their petition, and set up, as matter of defence, everything that could be assigned for error in a court of errors; and they could pray for an injunction in the circuit court, to stay the executory process, till the matter of the petition should be heard and determined. In the proceeding on the petition and answer, the whole merits of the case between the parties, including the necessary questions of jurisdiction, could be heard, and a final judgment rendered. Art. 738-9, of the Louisiana code of practice.....*Id.*

See APPEAL.

EVIDENCE.

1. A *certiorari* had been issued by the supreme court to the circuit court, on an allegation of diminution, and the judgment in the replevin suit certified to the supreme court, under the *certiorari*, substantially differed from the judgment described in the declaration on the replevin bond, in a suit in the circuit court, brought after the judgment was rendered. In the circuit court, on the suit on the replevin bond, the judgment was used in evidence, without objection: *Held*, that the judgment was properly given in evidence, to show the amount of damages which the plaintiffs in the replevin suit had sustained; and the defendants in the suit on the replevin bond, had no right to go into any inquiry as to the evidence on which the verdict was rendered. *Gorman v. Lenox's Executors* *115
2. Although public documents of the government, accompanying property, found on board of the private ships of a foreign nation, are to be deemed *prima facie* evidence of the facts which they state, yet they are always open to be impugned for fraud; and whether that fraud be in the original obtaining of those documents, or in the subsequent fraudulent and illegal use of them, where once it is satisfactorily established, it overthrows all their sanctity, and destroys them as proof. Fraud will vitiate any, even the most solemn, transactions; and any asserted title founded upon it, is utterly void. *The Amistad*. *519
3. Nothing is more clear in the laws of nations, as an established rule to regulate their rights, and duties and intercourse, than the doctrine that the ship's papers are *prima facie* evidence of what they state; and that if they are shown to be fraudulent, they are not to be held proof of any valid title whatever; this rule is applied in prize cases; and is just as applicable to the transactions of civil intercourse between nations, in times of peace. *Id.*

See SET-OFF, 1.

EXECUTOR.

1. An executor has not, ordinarily, any power over the real estate; his powers are derived from the will, and he can do no valid act beyond his authority. Where a will contains no special provision on the subject, the land of the deceased descends to his heirs; and this right cannot be divested or impaired, by the unauthorized acts of the executor. *Brush v. Ware*. *93

FLORIDA LAND-CLAIMS.

1. A claim to land in East Florida, founded on a grant by Governor Kindelan, to Robert McHardy, dated November 8th, 1814, confirmed by the supreme court. *United States v. Rodman*. *130
2. The supreme court, in the case of the *United States v. Clarke*, 8 Pet. 48, say, "that if the validity of the grant depends upon its being in conformity with the royal order of Spain of 1790, it cannot be supported;" but immediately proceeds to show, "though the royal order is recited in the grant, that it was, in fact, founded on the meritorious consideration of the petitioner having constructed a machine of great value for sawing timber; the recital of the royal order of 1790, in this grant, is entirely immaterial, and does not affect the instrument:" *Held*, the recital of the royal order, in this case, was quite immaterial. *Id.*
3. The case of the *United States v. Wiggins*, 14 Pet. 325, which decided, that certain proof of the certificate of Aguilar, secretary of East Florida, was sufficient, cited; and the decision on that point affirmed. *Id.*
4. The Spanish governors of Florida had, by the laws of the Indies, power to make large grants to the subjects of the crown of Spain; the royal order of Spain, of 1790, applied to grants to foreigners. These grants, before the cession of Florida to the United States, had been sanctioned for many years by the king of Spain, and the authorities representing him in Cuba, the Floridas and Louisiana. This authority has been frequently affirmed by the supreme court. *Id.*
5. An application was made to the governor of Florida, in 1814, stating services performed by the petitioner for the government of Spain, and the intention of the petitioner to invest his means in the erection of a water saw-mill, and marking the place where the lands were situated, which were asked for. The governor granted the land, referring to the merits and services of the applicant, and in consideration of the advantages which would result to the home and foreign trade by the use proposed to be made of the land: *Held*, that this was not a conditional grant; and that no evidence of the erection of a water saw-mill was required to be given, to maintain its validity, or induce its confirmation. *Id.*
6. John Forbes, by memorial to governor Kindelan, the governor of East Florida, set forth, that in 1799, there had been granted to Pantón, Leslie & Company, for the purpose of pasturage, 15,000 acres of land which they were obliged to abandon, as being of inferior

quality. Forbes, as the successor to these grantees, asked to be permitted to abandon these 15,000 acres, and, in lieu, to have granted to him 10,000 acres, as an equivalent, on Nassau river; the petition averred, that the object was to establish a rice plantation. The petition was referred to "the comptroller," who gave it as his opinion, that the culture of rice should be promoted; Governor Kindelan permitted the abandonment of the 15,000 acres granted before, and in lieu thereof, granted to John Forbes, for the object of cultivating rice, 10,000 acres in the district or banks of the river Nassau. Surveys of 7000 acres of land, at the head of the river "Little St. Marys" or "St. Mary," and 3000 acres in "Cabbage Swamp," were made under this grant; no description of the locality of the land, other than that in the certificate of the survey, was given; nor did the surveys prove, that the land surveyed lay in the district of the river Nassau; no evidence was given of the situation of "Cabbage Swamp." *Held*, that these surveys were not made on the land granted by Governor Kindelan; and according to the decisions of this court, on all occasions, the surveys, to give them validity, must be in conformity with the grants on which they are founded; and to make them the origin of title, they must be of the land described in the grant of the Spanish government.

United States v. Forbes. *172

7. Court of justice can only adjudge what has been granted, and declare that the lands granted by the lawful authorities of Spain are separated from the public domain; but where the land is expressly granted at one place, they have no power, by a decree, to grant an equivalent at another place, and thereby sanction an abandonment of the grant made by the Spanish authorities. The courts of the United States have no authority to divest the title of the United States in the public lands, and vest it in claimants, however just the claim may be to an equivalent for land, the previous grant of which has failed. *Id*.

8. The decree of the superior court of East Florida, by which a grant for 50,000 acres of land, made by Governor White, the Spanish governor of East Florida, dated July 29th, 1802, was rejected, affirmed. *Buyck v. United States*. *219

9. The land had been granted by Governor White, on a petition from the grantee, stating his intention to occupy and improve the same with *bozal* negroes, and native citizens of the United States; and stating that other grants of the same lands had been made, on condition of settlement, which conditions

had not been performed, and such grants were therefore void; the petitioner promised to make the settlement within an early period after the grant; the governor granted the land, referring to the petition; also, with the condition, that the grantee should not cede any part of the land, without the consent of the government; no improvement or settlement was at any time made on the land by the grantee: *Held*, that the government of the United States were not bound, under the Florida treaty, to confirm the grant. . . . *Id*.

10. The description of the portion of land asked for from the Spanish governor, "lands at Musquito, 50,000 acres, south and north of said place," is not sufficiently definite; from such a description, no exception could be made from the public lands acquired by the United States under the Florida treaty. The regulations for granting lands in Florida, by the Spanish authorities, required that grants should be made in a certain place; there were no floating rights of survey out of the place designated in the grant, unless where the land granted could not be got there in its exact quantity, and an equivalent was provided for. *Id*.

11. The laws and ordinances of the government of Spain, in relation to grants of lands by the Spanish government, must be of universal application in the construction of grants. It is essential to the validity of such grants, that the land granted shall be described, so as to be capable of being distinguished from other things of the same kind, or capable of being ascertained by extraneous testimony. *Id*.

12. A claim for a square of four miles of land, under a grant from Don Jose Coppinger, Spanish governor of East Florida, situated at the north head of Indian river, confirmed. *United States v. Heirs of Delespine*. . . . *226

13. The certificate of Don Thomas de Aguilar, secretary of the government and province, of the copy of the grant of the governor, stating the same "to be faithfully drawn from the original in the secretary's office under his charge," was legal evidence of the grant; and was properly admitted as such in support of the same. *Id*.

14. A grant of 10,240 acres of land, by the Spanish governor of Florida, which recited, among other things, that it was made under a royal order of the king of Spain, of 29th March 1815, and which was not in conformity with the grant; but which was made in the exercise of other powers to grant lands, which had been vested in the governor; was not made invalid by the recital of the royal order as the authority for the grant. The grant recited also, that it was made in con-

- sideration of military services, and was also in consideration of the surrender of another grant previously made, which surrender had been accepted by the governor; these were sufficient inducements to the grant. . . . *Id.*
15. A claim for land in East Florida, granted by Governor White to Daniel O'Hara, rejected by the superior court of East Florida, and the decree of that court affirmed. *O'Hara v. United States*. . . . *275
16. Governor White, on the petition of Daniel O'Hara, soliciting a grant of 15,000 acres, made a decree granting "the lands solicited," "at the place indicated," "in conformity with the number of workers which he may have to cultivate them, the corresponding number of acres may be surveyed to him," "and that he will take possession of said land in six months from the date of the grant;" *Held*, that this is a decree not granting 15,000 acres as asked for; but so much at the place where it is asked for as shall be surveyed in conformity with the number of workers the grantee may have to cultivate the land; the quantity could be determined by the regulation of the governor, made the month after the grant, and determining the quantity of land to be surveyed, according to the number of persons in the family of the grantee, slaves included; that the grant was made before the date of the regulation, makes no difference. . . . *Id.*
17. No settlement was made on the lands claimed under the grant. The building of a house on the land, is but evidence of an intention to make a settlement, but was not a settlement; which required the removal of persons or workers to the land and cultivating it. . . . *Id.*
18. No claim for the land can be sustained under a grant, or confirmation of a prior grant, made by a decree of Governor Coppinger, in 1819, as the same was substantially a violation of the treaty with Spain, which confirms only grants made before the 24th January 1819. The prior grant to O'Hara having become void by the non-performance of the conditions annexed to it, the decree of Governor Coppinger in 1818, was an attempt to make a new grant. . . . *Id.*
19. If the grant were not void, from the non-performance of the conditions of settlement annexed to it, the omission to have the land surveyed and returned to the proper office, would make it void, unless the grantee had made a settlement; in which event, a survey would be presumed. The grant was made in the "district of Nassau," &c., this was an indefinite description of the land, as was held in *Buyck v. United States*, decided at this term. . . . *Id.*
20. A grant by the Spanish authorities was made of 92,160 acres of land at New river, in Florida, in 1813; afterwards, the grantee determined to locate the grant on a river seventy miles south of New river; the grantee proposed erecting mills for sawing timber. No survey was made of land at New river, and the grantee claimed to have the grant confirmed, and to locate the same, by survey, at the place last selected; no mills were erected on the lands claimed; nor was anything done by him under the grant, for the purpose of using or improving the land claimed to have been granted: *Held*, that the grant made in 1813, of land at the mouth of New river, imposed no obligation on the government of Spain, at the date of the Florida treaty, in 1819, to confirm the title claimed by the grantee; and that none rested on the government of the United States, as the successor of the government of Spain, to the rights and obligations of Spain. *United States v. Delespine*. . . . *319
21. A concession of lands by the council at St. Augustine, was not authorized by the laws of Spain, relative to the granting and confirming land-titles. . . . *Id.*
22. When a grant of land is indefinite as to its location, or so uncertain as to the place where the lands granted are intended to be surveyed, as to make it impossible to make a survey, under the terms of the grant, with certainty, the grant will not be confirmed. *Id.*
23. The act of congress of 26th May 1830 requires that all claims to lands which have been presented to the commissioners, or to the register and receiver of East Florida, and had not been "finally acted upon," should be adjudicated and settled, as prescribed by the act of 1828. There was no direct limitations as to the time in which a claim should be presented. . . . *Id.*
24. When a petition for the confirmation of a claim to lands in Florida was presented, and was defective, and the court allowed an amended petition to be filed, it would be too strict to say, the original petition was not the commencement of the proceeding, but that the amendment allowed by the superior court should be taken as the date when the claim was first preferred. . . . *Id.*
25. When certain testimonials of title, under a Spanish grant, have been admitted without exception, before the commissioners of the United States for the adjustment of claims to lands in Florida, and before the superior court in Middle Florida, without objection as to the mode and form of their proof; the supreme court, on an appeal, will not interfere with the questions to the sufficiency of the proof, or the authenticity of

the acts relating to the title, which had been admitted by the authorities in Florida, which was the tribunal to judge of the evidence. *Id.*

See MANDATE, 1-3.

FRAUD.

1. Fraud will vitiate any, even the most solemn transactions; any asserted title founded upon it, is utterly void. *The United States v. The Amistad*. *519

HEADS OF DEPARTMENTS.

See POSTMASTER-GENERAL.

INSTRUCTIONS TO THE JURY.

1. When any instructions to the jury are asked of the court, on a trial of a cause, they should be precise and certain to a particular intent, that the point intended to be raised, may be distinctly seen by the court; and that error, if one be made, may be distinctly assigned. *United States v. Bank of the Metropolis*. *577

JURISDICTION.

1. It is not sufficient to give the supreme court jurisdiction, in the case of a writ of error to the supreme court of a state, that the question as to the construction of an act of congress might have been raised and might have been decided, and was involved in the case; it must appear, either in direct terms, or by necessary intendment, that it was in fact brought to the notice of the court, and decided by it. *Coons v. Gallaher*. *18
2. By the 11th section of the judiciary act of 1789, no civil suit shall be brought before the courts of the United States, against an inhabitant of the United States, by any original process, in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ. The construction given to these provisions, by this court, is, that no judgment can be rendered by a circuit court against any defendant, who has not been served with process issued against his person, in the manner pointed out; unless the defendant waive the necessity of such process, by entering his appearance to the suit. *Levi v. Fitzpatrick*. *167

LAND TITLES.

1. According to the principles settled by the supreme court in numerous cases arising on grants, by North Carolina and Georgia, ex-

tending partly over the Indian boundary, the grant is good, as far as it interfered with no prior right of others as to whatever land was within the line established between the state and the Indian territory. *Mitchell v. United States*. *52

2. The executor of an officer in the Virginia line on the continental establishment, obtained a certificate from the executive council of Virginia, as executor, for 4000 acres of land in the Virginia reserve, in the state of Ohio; and afterwards sold and assigned the same. Entries were made, and warrants issued in favor of the assignees, and a survey was made under one of the warrants, in favor of one of the assignees, a *bonâ fide* purchaser, who obtained a patent from the United States for the land. It appeared, that the executor had no right, under the will, to sell the land to which the testator was entitled; the patent was granted in 1818, and the patentee had been in possession of the land from 1808. The heirs of the officer entitled to the land for military services, in 1839, some of them being minors, filed a bill to compel the patentee to convey the land held by him, to them: *Held*, that the patentee was a purchaser with notice of the prior title of the heirs; and that he was bound to make the conveyance asked from him. *Brush v. Ware*. *93
3. No principle is better established, than that a purchaser must look to every part of the title which is essential to its validity. *Id.*
4. The law requires reasonable diligence in a purchaser, to ascertain any defect of title; but when such defect is brought to his knowledge, no inconvenience will excuse him from the utmost scrutiny. He is a voluntary purchaser, and having notice of a fact which casts doubt on the validity of his title, the rights of innocent persons are not to be prejudiced through his negligence. **Id.*

MAIL CONTRACTORS.

See ACCEPTANCE OF BILLS.

MANDATE.

1. Construction of the decree and mandate of the supreme court, at January term 1835, in the case of *Mitchell v. United States*, reported in 9 Pet. 711. *Mitchell v. United States*. *52
2. A claim to the land, up to the walls of the fort of St. Marks, in Florida, and to the land covered by the fort, rejected. *Id.*
3. The superior court of Middle Florida having, in obedience to the mandate of the court, proceeded to make the inquiries directed thereby, decided, that the extent of lands

adjacent to forts in Florida, where such were usually attached to such forts, was determined by a radius of 1500 Castilian *varas* from the salient angles of the covered way, all around the walls; and on there being no covered way, from the extreme line of the ditch. The superior court decreed the extent of the land reserved for the United States, round the fort of St. Marks, in conformity with this opinion; the decree was confirmed, on the appeal of the claimants. *Id.*

4. The case of Sibbald, 12 Pet. 493, and the case in 10 Wheat. 493, cited; and the principles decided and applied, in reference to the construction and execution of the mandate of the supreme court, affirmed. "To ascertain the true intention of the decree and mandate of this court, the decree of the court below, and of this court, must be taken into consideration." "The proceedings in the original suit, are always before the court, so far as to determine any new points between the parties. *Id.*

MASSACHUSETTS.

See BOUNDARIES OF STATES.

MISSISSIPPI.

See CONSTITUTIONAL LAW.

MISTAKE.

See CHANCERY, 3.

PATENTS FOR LANDS.

1. Whatever doubts, on common-law principles, might have existed, on the question whether the court can go behind a patent for lands, and examine the equity, in a bill claiming the land against the patent, in Ohio and Kentucky, this question has been long judicially settled; and this court, following the decisions of those states, have also decided. *Brush v. Ware*. *93
2. A patent appropriates the land called for, and is conclusive against rights subsequently acquired; but when an equitable right, which originated before the date of the patent, whether by the first entry or otherwise, is asserted, it may be examined. *Id.*
3. A patent for land, under the Virginia land-law, as modified by usage and judicial construction in Kentucky and Ohio, conveys the legal title, but leaves all equities oper. . . . *Id.*
4. To make a valid entry, some object of notoriety must be called for; and unless this object be proved to have been generally known in the neighborhood of the land, at the time of the entry, the holder of a warrant

who enters the same land, with full notice of the first entry, will have the better title. And so, if an entry be not specific, as to the land intended to be appropriated, it conveys no notice to the subsequent locator; nor can it be made good, by a subsequent purchase without notice. But with those exceptions, the doctrine of constructive notice has been considered applicable to military titles, as in other cases; and no reason is perceived why this rule should not prevail. From the nature of these titles, and the force of circumstances, an artificial system has been created, unlike any other; which has long formed the basis of title to real estate in a large and fertile district of country; the peculiarities of this system having for half a century received judicial sanctions, must be preserved; but to extend them, would be unwise and unpolitic. *Id.*

PLEADING.

1. Where in a declaration on a bond given to prosecute with effect a writ of replevin, the breach assigned is, "that the suit was not prosecuted with effect," it is sufficient. *Gorman v. Lenox's Executors*. *115

POSTMASTER-GENERAL.

1. The postmaster-general had the same power, and no more, over the credits allowed by his predecessor, if allowed within the scope of his official authority, as given by law to the head of the department; this right in an incumbent of reviewing a predecessor's decisions, extends to mistakes in matters of fact, arising from errors in calculation, and to cases of rejected claims, in which material testimony is afterwards discovered and produced. But if a credit has been given, or an allowance made, by the head of a department, and it is alleged to be an illegal allowance, the judicial tribunals must be resorted to, to construe the law under which the allowance was made; and to settle the right between the United States, and the party to whom the credit was given; it is no longer a case between one officer's judgment, and that of his successor. No statute is necessary to authorize the United States to sue in such a case; the right to sue is independent of statute, and it may be done by the direction of the incumbent of the department. *United States v. Bank of the Metropolis*. *377

POST-OFFICE DEPARTMENT.

See ACCEPTANCE OF BILLS: POSTMASTER-GENERAL.

PRACTICE.

1. By the revised code of Mississippi, 614, any number of breaches may be assigned; and when a demurrer shall be joined in any action, no defect in the pleadings shall be regarded by the court, unless specially alleged as causes of demurrer. A case having come to the superior court, by writ of error from the district of Mississippi, the modes of proceeding in that state govern the pleadings. *United States v. Boyd*. *187
2. A case having been brought up from the circuit court of Mississippi, on a writ of error, and the judgment of the circuit court, on the demurrer, in favor of the defendant, and against the United States, having been reversed by the supreme court, the case will be in the circuit court as if the demurrer had been overruled, and will be subject to additional pleadings, or an amendment of the present pleadings, according to the rules and practice of the circuit court, and on such terms as it may impose. *Id.*
3. Motion by the counsel of the defendant, to docket and dismiss a case in which a writ of error had been sued out of the circuit court, the plaintiff in error having failed to file the writ of error in the supreme court, and to prosecute the same. The counsel for the defendant in error produced the original writ of error, signed by the clerk of the circuit court, and a citation signed by the judges of the circuit court: *Held*, that the substance of the 43d rule of the court was complied with; and the case was docketed and dismissed. The production of the writ of error, with the citation, is the highest evidence that the writ of error has been duly sued out and allowed; the certificate of the clerk of the circuit court, required by the rule, is but *prima facie* evidence. *Amis v. Pearle*. *211
4. A case, on a writ of error to the southern district of Mississippi, was docketed and dismissed on the 9th of February, of the present term, upon motion of the defendant in error, under the 43d rule of the court; and on the 11th of February, a mandate, on a like motion, was ordered to issue to the circuit court, to proceed in the case; which was issued on the next day. On the 6th of March, the plaintiff in error appeared in court by his counsel, and produced and filed with the clerk, the record of the case, and moved to strike off the judgment of dismissal, and to continue the case. The judgment of dismissal under the rule, is a judgment *nisi*, and it may be stricken out at any time during the court, upon motion; unless it appear that the omission to file the record and docket the case, at an earlier

period of the court, has been injurious to the interests of the defendant in error. The motion to reinstate addresses itself to the sound discretion of the court; and care will always be taken, in granting the rule, that no injustice is done to the opposite party. The motion was granted. *Gwin v. Breedlove*. *284

5. Had the record in this case been filed at the time of the motion to dismiss, it is now evident, from the state of the business of the term, that the case could not have been reached and disposed of, during the present session of the court. *Id.*

PROMISSORY NOTES.

1. By a statute of Alabama, it is enacted, that every joint promissory note shall be deemed and construed to have the same effect in law, as a joint and several promissory note; and whenever a writ shall issue against any two or more joint and several makers of a promissory note, it shall be lawful, at any time after the return of the writ, to discontinue such action against any one or more of the defendants, on whom the writ shall not have been executed, and to proceed to judgment against the others. *Smith v. Clapp*. *125
2. This statute converts a joint into a several promise; and enables the holder to maintain an action against any one of the makers. *Id.*
3. By the statutes of Alabama, promissory notes may be assigned by indorsement; and the assignee may maintain an action in his own name on such notes; by the act of 1833, the same rights are given to the holder of notes given to a certain person or bearer, to a fictitious person, or to bearer only; and the assignment of such notes, by delivery only, authorizes a suit by the holder in his own name. The holder of a note payable to A. B. or bearer, may, to avail himself of these provisions of the law, call himself an assignee of the note from A. B.; but the holder of such a note payable to the bearer, is not an assignee within the provision of the judiciary act of 1789. *Id.*

PUBLIC ACCOUNTS.

See COMPENSATION OF PUBLIC OFFICERS, 1, 2.

PUBLIC MONEY.

1. The money appropriated to the payment of the Cherokee Indians, upon their removal, and the cession of their land, was properly public money; and the disbursements thereof were on account of the United States, and for their benefit, in fulfilment of the

obligations of the treaty. *Minis v. United States*.....*423

PUBLIC OFFICERS.

1. The United States proceeded on the official bond of Boyd, a receiver of public moneys for the district of lands subject to sale at Columbus, Mississippi; Boyd had been appointed receiver for four years, from the 27th December 1836; and the bond was for the faithful performance of the duties of his office, and was executed on the 15th of June 1837. The breaches assigned by the United States were, 1st. That after the 27th day of December 1836, Boyd received, in his official capacity, \$59,622, which he failed to pay over to the United States, as he was bound to do by law. 2d. That Boyd, on the 27th day of December 1836, and at divers days between that and the 30th of September 1837, received \$59,622, as receiver, which sum remained in his hands on the 30th day of September 1837; and that he failed to pay the same, pursuant to his instructions from the secretary of the treasury, and the duties of his office, &c. It matters not at what time the moneys had been received by the officer, if received after his appointment; they were held in trust for the United States, and so continued to be held, at and after the date of the bond; and the sureties are liable to the United States. *United States v. Boyd**187

See CONTRACT.

RHODE ISLAND.

See BOUNDARIES OF STATES.

RULES OF COURT.

See PRACTICE, 3.

SALVAGE.

1. The schooner North Carolina, bound from Appalachicola to Charleston, with a cargo of cotton, part on account of the consignees, and part the property of the shipper, struck on a reef about 95 miles from Key West; and the next morning 110 bales of cotton were taken from her by the wrecking schooner Hyder Ally, when she floated; and she sailed with the Hyder Ally to Indian Key, and arrived there the same evening; The Hyder Ally was one of those wrecking schooners in the profits of which Houseman was a participator; he became the consignee of the North Carolina; and salvage being claimed by the master of the Hyder Ally, a reference was made by the master of the North Carolina, and the master of the wrecker, and by an award, 35 per cent. was allowed as salvage; and 102 bales of cotton were put into the stores of Houseman, in part payment of the salvage; \$100 was paid in cash, and a draft for \$600 was given by the master of the North Carolina, in further satisfaction of the salvage, and the commissions of Houseman, with the vessels expenses. Afterwards, the consignees of the cotton sent an agent to Key West, who proceeded, by a libel in his name, as agent, in the superior court of the United States of Monroe county, in Florida, alleging the facts; and by process issued by the court, 72 bales of the cotton of the North Carolina were attached in the hands of Houseman. The court decreed, that the libellant should recover the 72 bales of cotton; and Houseman appealed to the court of appeals; in that court, a supplemental libel was filed by the appellee, claiming damages for the taking and the detention of fifty other bales of cotton, making the whole number of 122 bales, which had gone into the possession of Houseman; the court of appeals gave a decree in favor of the appellee, for the value of 122 bales. The supreme court affirmed the decree as to the 72 bales, and set aside that part of the decree which allowed the value of the 50 bales; leaving the consignees or owners of the 50 bales to proceed in the superior court of East Florida, by a new libel, for the recovery of the same or the value thereof. *The North Carolina*... ..*41
2. There are many cases in which the contract of the master, in relation to the amount of salvage to be paid to the salvors, or his agreement to refer the question to arbitrators, would bind the owners. In times of disaster, it is always his duty to exercise his best judgment, and to use his best exertions for the benefit of both the vessel and cargo; and when, from his situation, he is unable to consult them, or their agent, without an inconvenient and injurious delay, it is in his power to compromise a question of salvage; and he is not bound in all cases to wait for the decision of a court of admiralty. . . . *Id.*
3. So too, when the salvage service has not been important, and the compensation demanded is a small one, it may often be the interest of the owners, that the amount should be settled at once by the master; and the vessel proceed on her voyage, without waiting even a day for the purpose of consulting them. But in all such cases, unless the acts of the master are ratified by the owners, his conduct will be carefully watched

and scrutinized by the court; and his contracts will not be regarded as binding on the parties concerned, unless they appear to have been *bona fide*, and such as a discreet owner, placed in the same circumstances, would probably have made. If he settles the amount by agreement, those who claim under it must show that the salvage allowed was reasonable and just; if he refers it to arbitrators, those who claim the benefit of the award, must show that the proceedings were fair, and the referees worthy of the trust. *Id.*

4. The case is within the jurisdiction of a court of admiralty; it is a question of salvage of a vessel which had been stranded on a reef in the ocean; the points in controversy are, whether salvage is due; and if due, how much; the admiralty is the only court in which such a question can be tried. *Id.*
5. It is well settled in admiralty proceedings, that the agent of absent owners may libel either in his own name, as agent, or in the name of his principals, as he thinks best; that a power of attorney, given subsequent to the libel, is a sufficient ratification of what he had before done in their behalf; and that the consignees of a cargo have a sufficient interest in the cargo, that they may proceed in the admiralty for the recovery not only of their own property, but for that part of it which may be consigned to them. *Id.*
6. The Spanish schooner *Amistad*, proceeding from Havana to Puerto Principe, with a number of negroes who had been recently imported into Cuba from Africa, by slave-traders; was, by the rising of the negroes, taken from the possession of the master and two Spaniards, who claimed to be the owners of the negroes, and for whom they were being carried, to be held slaves for life. The negroes killed the master of the vessel, and ordered the Spaniards to steer the vessel to the coast of Africa; these persons, having deceived the negroes, conducted her off Long Island, where she was taken by the United States' brig *Washington*, and carried into Connecticut. The officers and crew of the *Washington* claimed salvage of the negroes and the vessel and cargo; this was resisted by the representatives of the Spanish government; the claim to salvage of the negroes was disallowed, and one-third of the gross proceeds of the vessel and cargo were given, by the district court, as salvage. The carrying of the *Amistad* and her cargo into Connecticut, by Lieutenant Gedney and the officers and crew of the *Washington*, was a highly meritorious and useful service to the proprietors of the ship and cargo; and such as, by the general principles of the maritime

law, is always deemed a just foundation for salvage. The rate allowed by the court (one-third) does not seem beyond the exercise of a sound discretion, under the very peculiar and embarrassing circumstances of the case. *The Amistad*. *579

SET-OFF.

1. Evidence of set-off between the plaintiffs and the defendants, in a suit on a replevin bond, the set-off not having any application to the demand on the replevin bond, which was given after a distress for rent, and in which judgment for the rent had been given for the avowant, is inadmissible. The evidence was not offered to show that judgment had been satisfied, but that it ought never to have been given. *Gorman v. Lenox's Executors*. *115
2. When the United States, by its authorized officer, becomes a party to negotiable paper, they have all the rights, and incur all the responsibilities of individuals who are parties to such instruments; there is no difference, except that the United States cannot be sued. But if the United States sue, and the defendant holds its negotiable paper, the amount of it may be claimed as a credit, if, after being presented, it has been disallowed by the accounting officers of the treasury; and if the liability of the United States on it be not discharged by some of those causes which discharge a party to commercial paper, it should be allowed by a jury as a credit against a debt claimed by the United States; this is the privilege of the defendant for all equivalent credits, under the act of March 3d, 1797. *United States v. Bank of the Metropolis*. *379
3. It is certainly the treasury of the United States, where its money is directed by law to be kept; but if those whose duty it is to disburse appropriations made by law, employ, or are permitted by law to employ, either for safe-keeping, or more convenient disbursement, other agencies, and it be necessary for the United States to sue for the recovery of the fund, the defendant may claim against the demand for which the action has been brought, any credits to which he may prove himself entitled, if they have been previously presented to the proper accounting officers of the treasury department, and have been rejected. This right was early given to defendants in all suits brought by the United States. *Id.*

See COMPENSATION OF PUBLIC OFFICERS, 5-7.

SLAVES.

See CONSTITUTIONAL LAW.

SLAVE-TRADE.

1. By the laws, treaties and edicts of Spain, the African slave-trade is utterly abolished, the dealing in that trade is deemed a heinous crime, and the negroes thereby introduced into the dominions of Spain, are declared to be free. *The Amistad*. *519

STATUTE OF LIMITATIONS.

1. In cases between individuals, where the statute of limitations would be a bar at law, the same rule is undoubtedly applied in a court of equity; and where the fact appears on the face of the bill, and no circumstances are stated which take the case out of the operation of the act, the defendant may, undoubtedly, take advantage of it by demurrer; and is not bound to plead or answer. *Rhode Island v. Massachusetts*. *233
2. The time necessary to operate as a bar in equity, is fixed at twenty years by analogy to the statute of limitations. *Id.*
3. The state of Rhode Island instituted proceedings for the alteration of the boundary between her territory and that held by Massachusetts; the state of Massachusetts claimed that the boundary line, which the state of Rhode Island sought to disturb, had been settled nearly one hundred years before this claim was prosecuted; the settlement was alleged to have been made by commissioners appointed by both of the states, then colonial governments, and Massachusetts asserted her right to the territory, on the ground of length of possession and the limitation imposed by prescription. It would be impossible to adopt the same rule of limitations in the case before the court on these pleadings; here two political communities are concerned, who cannot act with the same promptness as individuals; other circumstances in the case interpose objections; the boundary in question was in a wild, unsettled country, and the error in fixing the line not likely to be discovered until the lands were granted by the respective colonies; and the settlements approached the disputed line; and the only tribunal that could relieve after the mistake was discovered in 1740, was on the other side of the Atlantic, and was not bound to hear the cause and proceed to judgment, except when it suited its own convenience. The same reasons that prevent the bar of limitations, make it equally evident that a possession so obtained and held by Massachusetts, under such circumstances, cannot give a title by prescription. *Id.*

SUPREME COURT.

1. The supreme court has not the power to compel the circuit court to proceed according to established rules in chancery cases; all that the court can do is to prevent proceedings otherwise, by reversing them, when brought before the supreme court by appeal. *Gaines v. Relf*. *9

SURETY.

1. The liability of a surety is not to extend, by implication, beyond the terms of his contract; this undertaking is to receive a strict interpretation, and not to extend beyond the fair scope of its terms. *United States v. Boyd*. *187

TREASURY OF THE UNITED STATES.

1. The treasury of the United States is where the money of the United States is directed by law to be kept. *United States v. Bank of the Metropolis*. *377

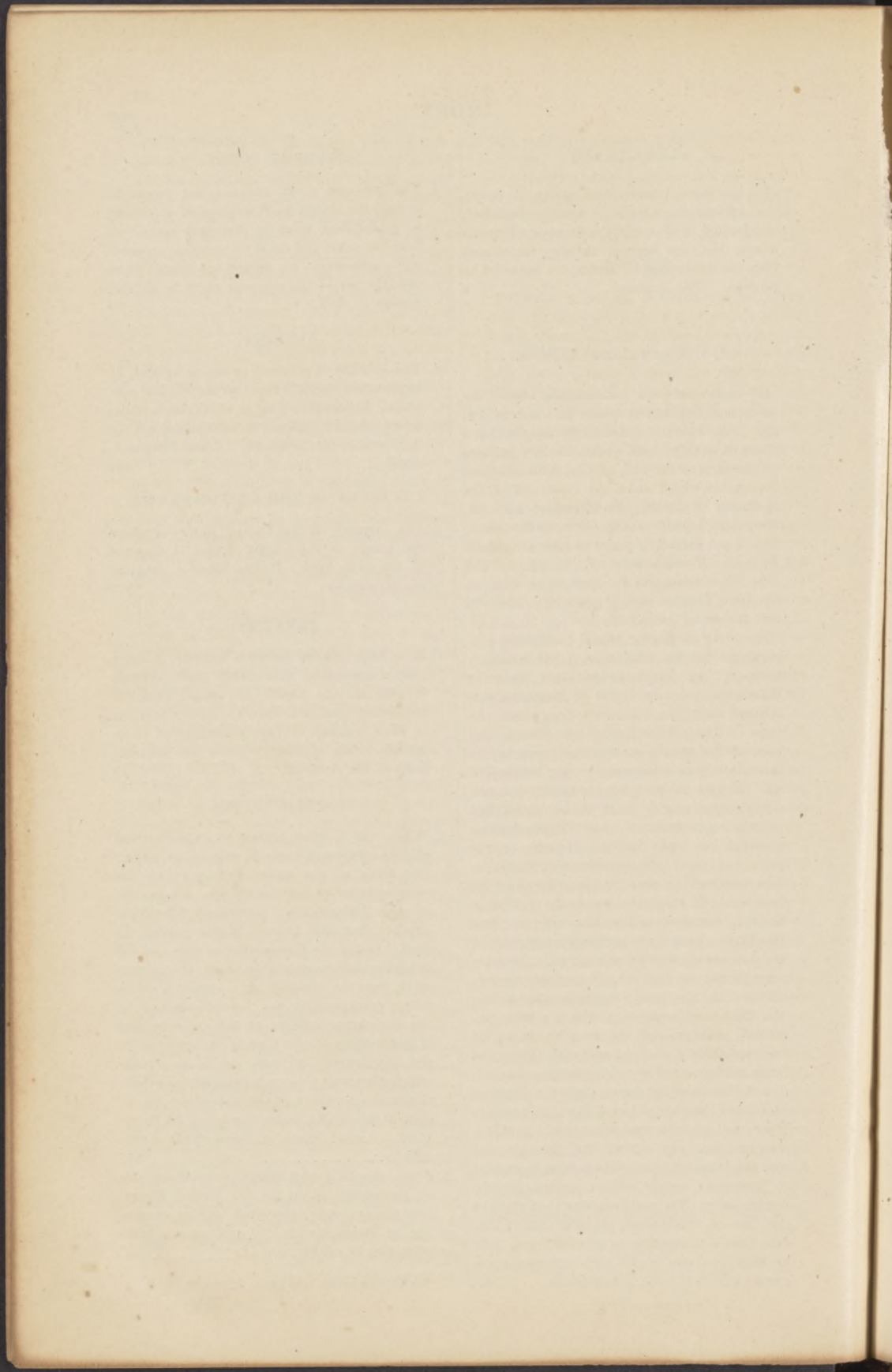
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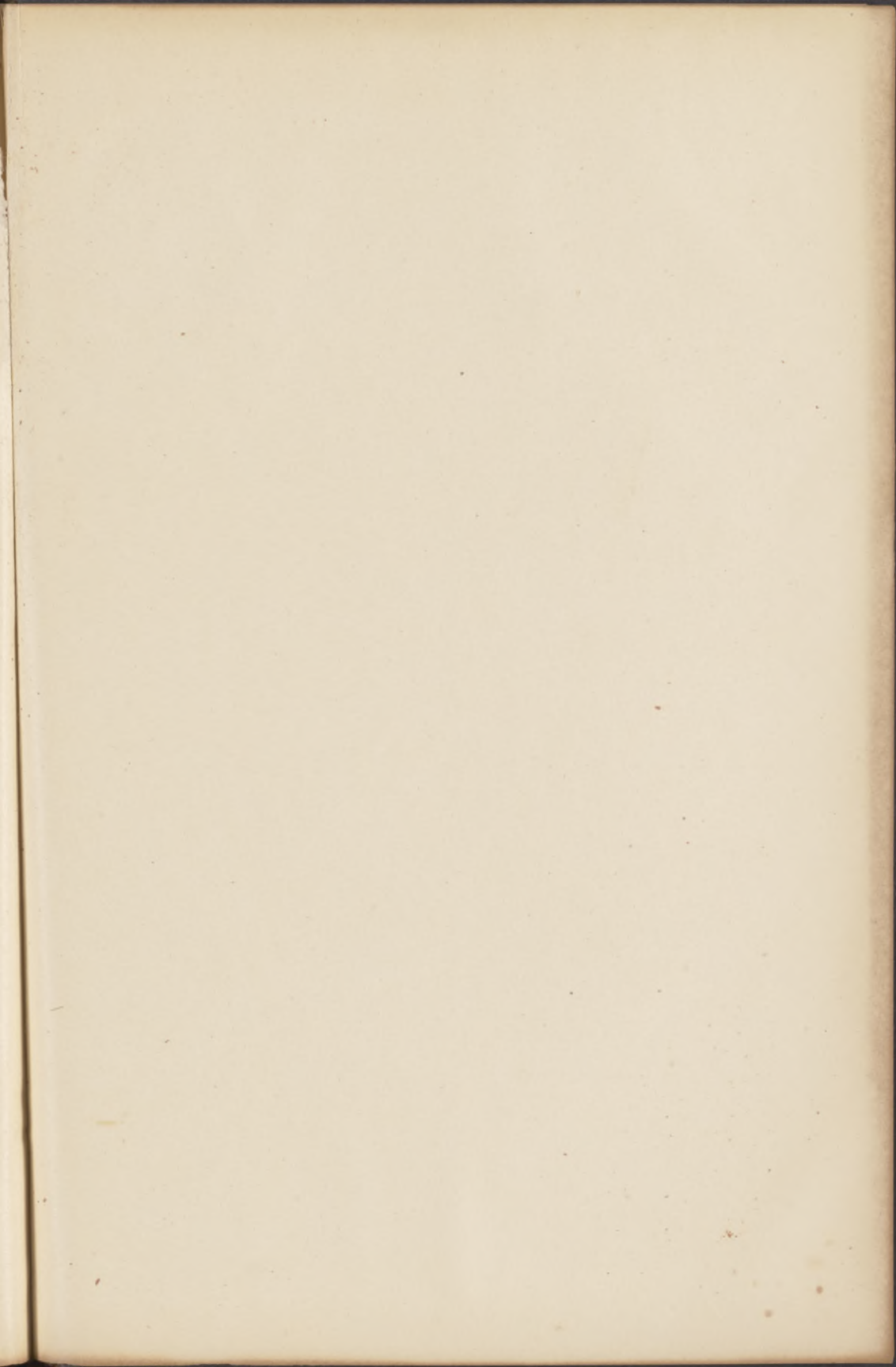
1. In solemn treaties between nations, it never can be presumed, that either state intends to provide the means of perpetrating or protecting frauds; but all the provisions of such treaties are to be considered as intended to be applied to *bonâ fide* transactions. *The Amistad*. *519

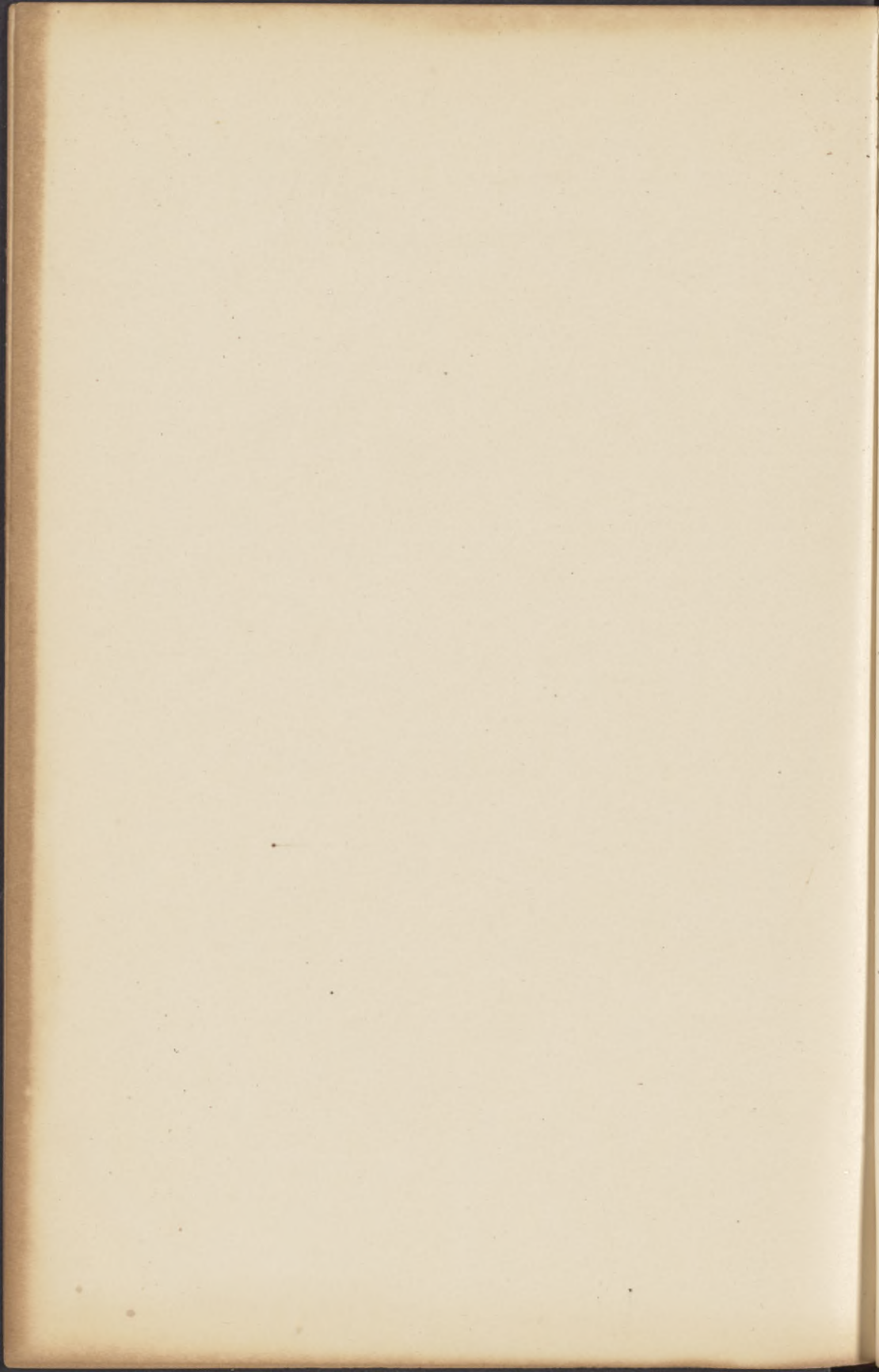
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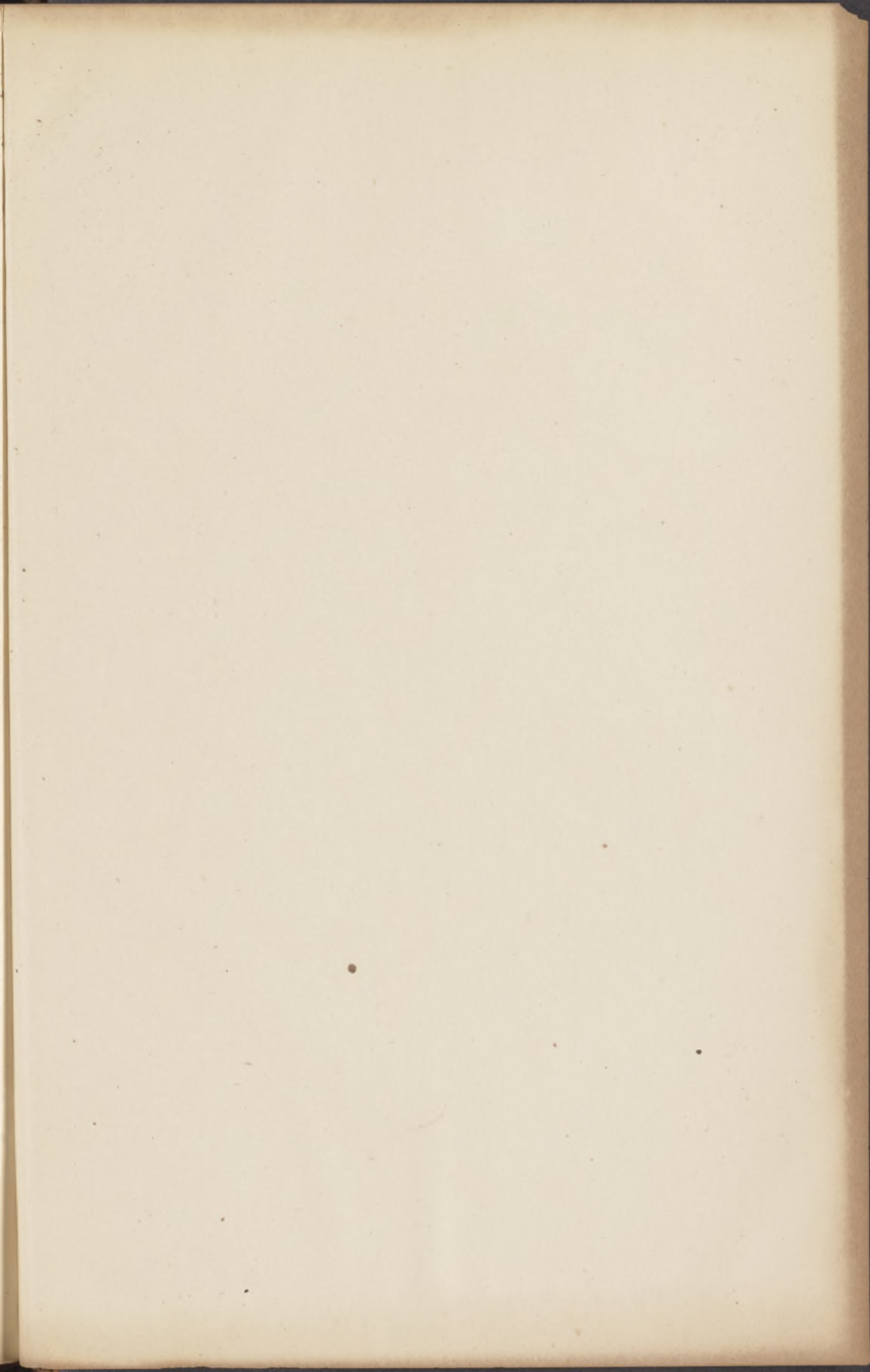
1. When the United States, by its authorized officer, becomes a party to negotiable paper, they have all the rights, and incur all the responsibility of individuals who are parties to such instruments; there is no difference, except that the United States cannot be sued. But if the United States sue, and the defendant holds negotiable paper, the amount of it may be claimed as a credit, if, after being presented it has been disallowed by the accounting officers of the treasury, and if the liability of the United States on it be not discharged by some of those causes which discharge a party to commercial paper; this is the privilege of the defendant for all equivalent credits, under the act of 3d March 1797. *United States v. Bank of the Metropolis*. *377
2. From the daily and almost unavoidable use of commercial paper by the United States, they are as much interested as the community at large can be, in maintaining the principles of commercial law. *Id.*

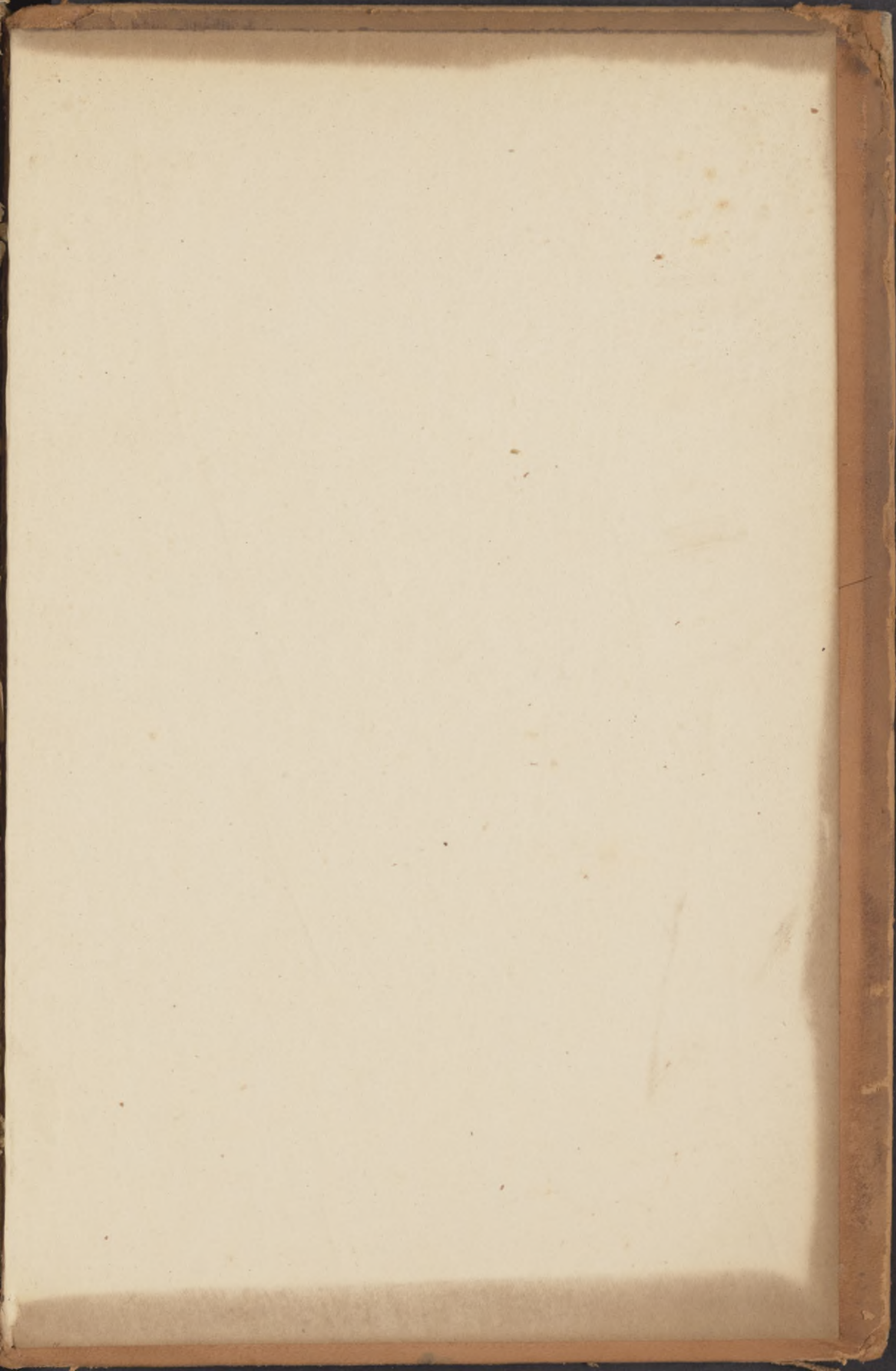
See POSTMASTER-GENERAL : SET-OFF, 3, 4.











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