# INDEX

TO THE

## MATTERS CONTAINED IN THIS VOLUME.

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### ACKNOWLEDGMENT OF DEEDS.

1. The constitution of Mississippi declares, that clerks of the circuit court, probate, and other inferior courts, shall be elected by the electors of the county for two years; the legislature of Mississippi, by statute, declared, that when, from sickness or other unavoidable causes, the clerk of the probate court should be unable to attend the court, the judge of probate might appoint a person to act as clerk *pro tempore*, who should take an oath faithfully to execute the duties of the office, &c. Deeds of trusts and mortgages are declared to be void against creditors and purchasers, unless they shall be acknowledged or proved, and delivered to the clerk of the proper court to be recorded; and they shall be valid only from the time they are so delivered to the clerk. Robert P. Haden was elected clerk of the court of probate, for the county of Lowndes; and during the two years for which he was so elected, he went to the state of Tennessee on business; and being absent when the court of probate sat, William P. Puller was, by the judge of the court of probate, appointed to clerk *pro tempore*, and having taken the oath of office, he executed the duties of clerk during the session of the court, and afterwards, until the return of the regularly-elected clerk. After the adjournment of the court, a deed of trust, duly executed, by which certain personal property was conveyed for the benefit of creditors, was delivered to William P. Puller, and was by him entered for record; an execution was levied on the property thus conveyed, by a creditor of the party who had executed the deed; the regularity of the recording of the deed was denied, on the ground, that the clerk of the probate court *pro tempore*, had no authority to receive the deed of trust for record, after the adjournment of the court of probate: *Held*, that the clerk *pro tempore* was authorized to record the deed of trust, under the constitution and law of Mississippi. *Cocke* v. *Halsey*....*71

### AMENDMENT.

1. The defendant in the circuit court of Mississippi, was sued and declared against, as the administrator of Algernon S. Randolph; he entered his appearance to the suit, and, in person, filed a plea in abatement, averring that he was not administrator of Algernon S. Randolph, and that he was the only executor of Algernon S. Randolph; the plaintiff moved to amend the writ and declaration, by striking out administrator, &c., and inserting executor; leave was granted, and the amendment was made: *Held*, that there was no error in the circuit court in giving leave to amend. *Randolph* v. *Barrett*..... *138
2. The power of the circuit court to authorize amendments, when there is anything in the record to amend by, is undoubted; in this case, the defendant admitted by his plea that he was the person liable to the suit of the plaintiff; but averred that he was executor and not administrator; whether he acted in one character or the other, he held the assets of the testator or intestate, in trust for the creditors; and when his plea was filed, it became part of the record, and furnished matter by which the pleadings might be amended..... .....*Id.*
3. Such amendment is not only authorized by

the ordinary rules of amendment, but also by the statute of the United States of 1789, § 32..... *Id.*

4. An action was brought in the circuit court of Louisiana, against the sheriff of New Orleans, to recover the value of a steamboat sold by the sheriff, under an execution, as the property of Wilkinson, one of the defendants in the execution, Buchanan, the plaintiff, alleging, that the steamboat was his property. The defendant, in his answer, alleged, that the sale of the steamboat by Wilkinson to Buchanan was fraudulent; and that it was made to defraud the creditors of Wilkinson; before the jury was sworn, the court, on the motion of the counsel for the plaintiff, struck out all that part of the defendant's answer which alleged fraud in the sale from Wilkinson to Buchanan: *Held,* that there was error in this order of the court. *Hozey* v. *Buchanan* ..... *215

APPEAL.

1. The acts of congress, relating to judicial proceedings in the territory of Florida, give the right of appeal to the supreme court of the United States, in cases of equity, of admiralty and maritime jurisdiction, and prize or no prize; but cases at law are to be brought up by writ of error, as provided for by the judiciary act of 1789. It has always been held, that a case at law cannot, under the act of 1803, be brought to the supreme court by appeal. *Parish* v. *Ellis*. ..... *451
2. In many of the states and territories, the ancient common-law remedy for the purpose of obtaining an allotment of dower, as well as the remedies for other legal rights, have been changed for others more convenient and suitable to our situation and habits; yet they are regarded as cases at law, although they are not carried according to the forms of the common law..... *Id.*
3. The appellants were the original defendants; after the decree of the circuit court, an appeal was claimed by all the defendants, and allowed by the court; a part of the defendants, who had originally claimed the appeal, before any further proceedings, abandoned it; and the residue of them, excepting Todd, had, since the appeal was held, abandoned it, and Todd only entered his appearance in the supreme court; the record stood in the names of all the appellants. A motion was made to dismiss the appeal, for irregularity and want of jurisdiction; on the ground, that it could not be maintained in behalf of Todd alone. The court refused to dismiss the appeal. *Todd* v. *Daniel*.. *521
4. The proper rule, in cases of this sort, where there are various defendants, seems to be that all the defendants affected by a joint decree (although it may be otherwise, where the defendants have separate and distinct interests, and the decree is several, and does not jointly affect all) should be joined in the appeal; and if any of them refuse or decline, upon notice and process (in the nature of a summons, and severance in a writ of error), to be issued in the court below, to become parties to the appeal, then that the other defendants should be at liberty to prosecute the appeal for themselves and upon their own account, and the appeal as to the others be pronounced to be deserted, and the decree of the court below as to them be proceeded in and executed..... *Id.*

ARBITRAMENT AND AWARD.

1. It was agreed between McA. and H., that McA. should withdraw entries of 10,000 acres, part of 11,666 acres, which had been located for the use of H., and should relocate the same elsewhere; and that the 10,000 acres, the entries of which had been withdrawn, and the 10,000 acres relocated elsewhere by McA., should be valued by two disinterested persons, one to be chosen by by each party, and if the two could not agree on the value of the land or any part thereof, they should choose a third person, who should agree on the value of the land, and that H. should have so much of the land relocated, as should amount to the value of the land for which the locations had been renewed; and also to the value of $2000 in addition to the value of the 10,000 acres. The two persons appointed could not agree as to the value of part of the land, and they nominated a third person; of the three persons thus appointed, two only agreed as to the value of part of the land. It is an unreasonable construction of this agreement, that it was so framed as that it not only might fail to accomplish the very object intended, but that in all probability it must fail, and become entirely nugatory, as the third man was not to be called in until the two had disagreed; it is a more reasonable construction, to consider the third man as an umpire to decide between the two that should disagree; this would insure the accomplishment of the object the parties had in view. The valuation by the two appraisers was within the submission. *Hobson* v. *McArthur*..... *182
2. Where there is an original delegation of power to three persons, for a mere private purpose, all must agree; or the authority has not been pursued..... *Id.*

## ARMY.

1. An action was brought by the United States against Captain Eliason, for a balance due by him as disbursing officer at Fortress Calhoun; the defendant claimed an allowance as commissions on the disbursement of large sums of money, under the orders of the war department, in 1834, and the years included up to 1838, under the regulations of the war department, contained in the army regulations printed in 1821, "at the rate of two dollars *per diem*, during the continuance of such disbursement, provided the whole amount of emoluments shall not exceed two and a half per cent. on the sum expended." *United States* v. *Eliason*.....*291
2. By a subsequent regulation of the war department of 14th March 1835, adopted in consequence of the provisions of an act of congress of 3d March 1835, all extra compensation, of every kind, for which provision had not been made by law, was disallowed. The defendant's intestate claimed that the provisions of the act of March 3d, 1835, were applicable only to the disbursing of public money appropriated by law during the session of congress in which that act was passed: *Held*, that the order of the war department of 14th March 1835, took away all right to the extra allowances claimed under the prior army regulations..... *Id.*
3. The power of the executive to establish rules and regulations for the government of the army is undoubted; the power to establish, necessarily, implies the power to modify or to repeal, or to create anew. The secretary of war is the regular constitutional organ of the president for the administration of the military establishment of the nation; and rules and orders, publicly promulgated through him, must be received as the acts of the executive, and as such are binding upon all within the sphere of his legal and constitutional authority..... *Id.*

## ASSIGNMENT.

1. A debtor may lawfully apply his property to the payment of the debts of such creditors as he may chose to prefer, and he may elect the time when it is to be done, so as to make it effectual; such preference must necessarily operate to the prejudice of creditors not provided for, and cannot furnish any evidence of fraudulent intention. *Tompkins* v. *Wheeler*.....*106
2. When a deed of assignment is absolute upon its face, without any condition whatever attached to it, and is for the benefit of the grantees, the presumption of the law is that the grantees accepted the deed..... *Id.*
3. The delivery of a deed of assignment for the benefit of creditors to the clerk, to be recorded, may be considered as a delivery to a stranger, for the use of the creditors, there being no condition annexed to the assignment, making it an escrow..... *Id.*
4. After the assignment, the creditors for whose benefit the same was made, neglected to appoint an agent or trustee to execute it, and the property assigned remained in the hands of the assignor; the property consisted principally of *choses in action*, which the assignor went on to collect, and divided the proceeds among the creditors, under the assignment; no one of the creditors was dissatisfied; and at any time the creditors could have taken the property out of the hands of the assignor: *Held*, that leaving the property in the hands of the assignor, under these circumstances, did not affect the assignment, nor give a right to a creditor not preferred by it to set it aside..... *Id.*
5. M. was discharged by the insolvent laws of Pennsylvania, after having made, according to the requirements of the law, an assignment of "all his estate, property and effects, for the benefit of his creditors; after his discharge, he presented a petition to congress for compensation for extra services performed by him as United States gauger, before his petition for his discharge by the insolvent law; as gauger, he had received the salary allowed by law; but the services for which compensation was asked, were performed in addition to those of gauger, by regauging wines, which had become necessary by an act of congress reducing the duties charged upon them; congress passed an act, giving him a sum of money for those extra services: *Held*, that the assignee, under the insolvent laws, was entitled to receive from the treasury of the United States the amount so allowed. *Milner* v. *Metz*...*221

## BILLS OF EXCHANGE.

1. Action in the circuit court of New York on a bill of exchange, accepted in New York, instituted by the holder, a citizen of the state of Maine; the acceptance and indorsement of the bill were admitted, and the defence was rested on allegations that the bill had been received in payment of a pre-existent debt, and that the acceptance had been given for lands which the acceptor had purchased from the drawer of the bill, to which lands the drawer had no title, and that the quality of the lands had been mis-

represented, and the purchaser imposed upon by the fraud of the drawer, and those who were co-owners of the land, and co-operators in the sale; the bill accepted had been received *bonâ fide*, and before it was due. There is no doubt, that a *bonâ fide* holder of a negotiable instrument, for a valuable consideration, without any notice of the facts which implicate its validity as between the antecedent parties, if he takes it under an indorsement made before the same becomes due, holds the title unaffected by those facts; and may recover thereon, although, as between the antecedent parties, the transaction may be without any legal validity. *Swift* v. *Tyson*..... *1

2. The holder of negotiable paper, before it is due, is not bound to prove that he is a *bonâ fide* holder for a valuable consideration, without notice; for the law will presume that, in the absence of all rebutting proof; and therefore, it is incumbent on a defendant to establish, by way of defence, satisfactory proofs of the contrary, and thus to overcome the *primâ facie* title of the plaintiff..... *Id.*

3. B. & McK., merchants at New Orleans, were the factors of P. & Co. of Huntsville, Alabama, and made advances on cotton shipped to them; in August 1834, P. & Co. were indebted to B. & McK., $1315; and Williams, the agent of B. & McK., agreed with P. & Co., that B. & McK. would advance $18,000 on bills to be drawn between the 20th of April and the 31st July 1835, by P. & Co., and any two of six persons named, among whom were Horton and Terry, two of the defendants in the suit. Before July 31st, 1835, several shipments of cotton were made to B. & McK., by P. & Co., and several bills were drawn by them, jointly with Horton and Terry, and by others without them; all of which were accepted by B. & McK. These bills, with the advances before made, amounted to $29,795, and the proceeds of the shipments were $22,460; B. & McK. applied these proceeds to the liquidation of the bills drawn by P. & Co., to the exclusion of those drawn by them jointly with Horton and Terry; and as these bills exceeded the proceeds of the cotton, they brought an action on a bill drawn June 4th, 1835, by P. & Co., and Horton and Terry, amounting to $3000. The circuit court instructed the jury, that if they believed from the evidence, that, at the maturity of the bill, B. & McK. had sufficient funds of P. & Co. to pay the bill, and Horton and Terry to be accommodation drawers, and sureties only, then, in the absence of any instructions from P. & Co., in regard to the application of the funds, B. & McK. were bound to apply them to pay the bill and could not hold them to pay a bill drawn on them by P. & Co. only, which had been accepted by them, and was not then due: *Held*, that the instructions of the circuit court were correct. *Brandeth* v. *Phillips*..... *121

4. When a factor makes advances, or incurs liability, on a consignment of goods, if there be no special agreement, he may sell the property, in the exercise of a sound discretion, according to general usage, and reimburse himself out of the proceeds of the sale, and the consignor had no right to interfere. The lien of the factor for advances and liabilities incurred, extends not only to the property consigned, but, when sold, to the proceeds in the hands of the vendee, and the securities therefor in the hands of the factor..... *Id.*

5. The acceptors of the bill of exchange having, when the bill became due, funds of the drawers in their hands, sufficient to pay the same, the liability of the accommodation drawers was as completely discharged, on payment of the bill, as that of the principals..... *Id.*

## CASES CITED.

1. Arredondo's Case, 6 Pet. 706; Percheman's Case, 7 Ibid. 71; Sibbald's Case, 10 Ibid. 321. *United States* v. *Clarke*..... *228
2. Comegys *v.* Vasse, 1 Pet. 196; United States *v.* Macdaniel, 7 Ibid. 1; United States *v.* Fillebrown, 7 Ibid. 50; Emerson *v.* Hall, 13 Ibid. 409. *Milner* v. *Metz*..... *221
3. Faw *v.* Robertson's Executors, 3 Cranch 178; Tucker *v.* Oxley, 5 Ibid. 34; Kennedy *v.* Brent, 6 Ibid. 187; Brent *v.* Chapman, 5 Ibid. 358; Shankland *v.* Corporation of Washington, 5 Ibid. 390; Inglee *v.* Coolidge, 2 Wheat. 363; Miller *v.* Nichols, 4 Ibid 311. *United States* v. *Eliason*..... *291
4. Marbury *v.* Brooks, 7 Wheat. 566, 11 Ibid. 76. *Tompkins* v. *Wheeler*..... *100
5. Minor *v.* Mechanics' Bank of Alexandria, 1 Pet. 46. *Amis* v. *Smith*..... *303
6. New Orleans *v.* United States, 10 Pet. 662. *Watkins* v. *Holman*..... *25
7. Percheman's Case, 7 Pet. 51; Kingsley's Case, 12 Ibid. 476; Arredondo's Case, 6 Ibid. 741; Forbes's Case, 15 Ibid. 182; Buyck's Case, Ibid. 215; O'Hara's Case, Ibid. 275; Delespine's Case, Ibid. 319. *United States* v. *Miranda*..... *153
8. Thompson *v.* Tolmie, 2 Pet. 157; United States *v.* Arredondo, 6 Ibid. 720; Voorhees *v.* United States' Bank, Ibid. 473; Philadelphia and Trenton Railroad Company *v.* Stimpson, 14 Ibid. 458. *Cocke* v. *Halsey*..... *71

9. Wiggins's Case, 14 Pet. 334; Sibbald's Case, Ibid. 196. *United States* v. *Hanson*...*196
10. The questions presented to this court on the writ of error being the same with those in Bradstreet *v.* Thomas, 12 Pet. 174, the judgment of the circuit court in favor of the defendant in error, was reversed. *Bradstreet* v. *Potter*.....*317

## CHANCERY.

1. Courts of chancery, acting *in personam*, may well decree the conveyance of land in any other state, and may enforce their decree by process against the defendant; but neither the decree itself, nor any conveyance under it, except by the person in whom the title is vested, can operate beyond the jurisdiction of the court. *Watkins* v. *Holman*.....*25
2. It is not perceived, why a court of law should regard a resulting trust more than any other equitable right: and any attempt to give effect to those rights at law, through the instrumentality of a jury, must lead to confusion and uncertainty; equitable and legal jurisdictions have been wisely separated; and the soundest maxims of jurisprudence require each to be exercised in its appropriate sphere..... *Id.*
3. A decree of perpetual injunction on suits instituted on the common-law side of the circuit court of the district of Columbia, reversed, and the bill dismissed; the accounts between the parties having been erroneously adjusted in the circuit court. *Nixdorff* v. *Smith*.....*132
4. The court, under the prayer in a bill in chancery for general relief, will grant such relief only as the case stated in the bill and sustained by the proof will justify. *Hobson* v. *McArthur*.....*182
5. On the dissolution of a partnership, in 1822, it was agreed, with the out-going partners, H. and B., that the debts due to the partnership should be collected by the remaining partners, K. and McI., and the debts due by the partnership should be paid by them, and a fixed sum should be paid to H. and B., when a sufficient sum was collected for that purpose, beyond the amount of the debts due by the firm. In 1827, K. and McI. having gone on, under this agreement, to collect the debts due to, and pay the debts due by the partnership, H. and B. filed a bill in the circuit court of the South Carolina district, against K. and McI., charging that there was a surplus of the partnership effects, after paying all the debts, sufficient to pay them the sum which, by the agreement made on the dissolution of the partnership, was to be paid to them, and claiming certain Bridge-bills, which were to be delivered to them; and praying for an account. The circuit court, after proceeding in the case, the accounts having been frequently before a master, and after evidence had been taken, made a decree in favor of H. and B., for a certain sum of money, &c., and the defendants appealed to the supreme court; it was contended by the appellants, that the circuit court, sitting in chancery, had no jurisdiction beyond that of compelling a discovery of the amount which K. and McI. had received under the agreement; and that if anything was found due to H. and B., they were bound to resort to their action at law on the covenant entered into at the dissolution of the partnership, to recover it. This is a clear case for relief as well as for discovery in chancery; H. and B. were entitled to an account; and if, upon that account, anything was found to be due to them, they were, upon well-settled chancery principles, entitled to relief also. *Kelsey* v. *Hobby*... ...*269
6. According to the ordinary proceedings of a court of chancery, the court should pass upon each item of an account reported by a master, when the amount actually received by a party is in controversy; this is necessary to enable the appellate court to pass its judgment on the items allowed or disallowed in the inferior court. But in a case where the remaining partners had received the sum claimed from them, beyond the debts they had agreed to pay, it mattered not how much more they had received; and such a case does not require a statement of the exact amount; the evidence, and accounts, and exceptions, being all in the record brought into the appellate court, the court can determine whether the sum mentioned is proved to have been collected or not.. *Id.*
7. There is no propriety in requiring technical and formal proceedings, when they tend to embarrass and delay the administration of justice, unless they are required by some fixed principles of equity law or practice, which the court would not be at liberty to disregard..... ..... *Id.*
8. The defendants had disclaimed the ownership of certain lots which were described in the bill, and of which they were charged with being owners; the circuit court dismissed the bill as to these lots: *Held*, that this was proper; there was no probable cause for retaining this part of the bill, to obtain an account from the respondents; obviously, no claim existed that could be made available for the complainants, in regard to this portion of the property. *Harpending* v. *Dutch Church*.....*456

See LIMITATION OF ACTIONS.

## CITY OF MOBILE.

See City of Mobile *v.* Eslava, *234; City of Mobile *v.* Hallett, *260; Watkins *v.* Holman, *25.

## CONSTITUTION.

1. It will, probably, be found, when we look to the character of the constitution of the United States itself, the objects which it seeks to attain, the powers which it confers, the duties which it enjoins, and the rights which it secures; as well as the known historical fact, that many of its provisions were matters of compromise of opposing interests and opinions; that no uniform rule of interpretation can be applied, which may not allow, even if it does not positively demand, many modifications, in its actual application to particular clauses. Perhaps, the safest rule of interpretation, after all, will be found to be, to look to the nature and objects of the particular powers, duties and rights, with all the light and aids of contemporary history, and to give the words of each just such operation and force, consistent with their legitimate meaning, as to fairly secure and attain the ends proposed. *Prigg* v. *Commonwealth of Pennsylvania*.....*539

## CONSTITUTIONALITY OF STATE LAWS.

1. An act was passed by the legislature, in 1840, by which certain lands held under conveyances from the president and trustees of the Ohio University, at Athens, were directed to be assessed and taxed for county and state purposes; a bill was filed by the purchasers of the land, against the tax-collector, praying that he should be perpetually enjoined from enforcing the payment of the taxes, because the lands had been exempted by a statute of Ohio, of 1804, which the bill alleged entered into the conditions of sale, under which the complainants held the land; it was insisted, that the act of 1840 violated the contract with the purchasers, and was void, being contrary to the clause of the constitution of the United States which prohibits the states from passing any law violating the obligation of contracts; the supreme court of Ohio dismissed the bill of the complainants. The ordinance of 1787, by which a large section of country in Ohio was sold to a company, gave two complete townships of land for the purposes of a university; in 1804, an act of the legislature of Ohio established the university, on the foundation of the fund granted by congress, and vested the land in the corporation of the university; the act directed the manner in which the land was to be leased, reserving rent to the corporation; and the 17th section directed, that the land appropriated and vested by the act, should be exempted from all state taxes. In 1826, the legislature authorized all the university land, not incumbered with leases, or which had not been re-entered by the trustees of the university, or to which they had regained their title, to be sold in fee-simple, for the benefit of the university; the complainants purchased the lands held by them, under this statute, and took deeds in fee; no exemption from taxes being contained in the statute, nor in their deeds: *Held*, that the lands having been purchased under the act of 1826, and not being held under the act of 1804, were subject to taxation; all the purchasers held under the act of 1826, and could not go behind it; and their lands were subject like other persons', to be taxed by the state. *Armstrong* v. *Treasurer of Athens County*.....*28
2. The case of the New Jersey *v.* Wilson, 7 Cranch 164, cited and affirmed. In that case, the land had, for a sufficient consideration, been given by the state to a certain Indian tribe, and was declared to be for ever exempt from taxes; the Indians, with the consent of the state, sold the land, and the purchaser of the Indian title obtained the land, with the exemption from taxes granted by the state..... *Id.*
3. A captain of the United States revenue-cutter, on Erie station, in Pennsylvania, was rated and assessed for county taxes, as an officer of the United States, for his office: *Held*, that he was not liable to be rated and assessed for his office under the United States, for county rates and levies. *Dobbins* v. *Commissioners of Erie County*.....*435
4. The question presented in the case before the courts of Pennsylvania was, whether the office of captain of the revenue-cutter of the United States was liable to be assessed for taxes, under the laws of Pennsylvania. The validity of the laws of Pennsylvania, imposing such taxes, was in question in the case, on the ground, that the laws were repugnant to the constitution and laws of the United States; and the court decided in favor of the validity of the law. The supreme court of the United States has jurisdiction on a writ of error in such a case..... *Id.*
5. Taxation is a sacred right, essential to the existence of government; an incident of sovereignty; the right of legislation is co-extensive with the incident to attach it upon all persons and property within the jurisdiction of a state. But in our system, there

are limitations upon that right; there is a concurrent right of legislation in the states, and the United States, except as both are restrained by the constitution of the United States; both are restrained by express prohibitions in the constitution; and the states, by such as are reciprocally implied, when the exercise of the right by a state conflicts with the perfect execution of another sovereign power delegated to the United States. That occurs, when taxation by a state acts upon the instruments, and emoluments and persons, which the United States may use and employ as necessary and proper means to execute their sovereign power. The government of the United States is supreme within its sphere of action; the means necessary and proper to carry into effect the powers in the constitution are in congress.....*Id.*

6. The compensation of an officer of the United States is fixed by a law made by congress; it is in its exclusive discretion to declare what shall be given; it exercises the discretion and fixes the amount; and confers upon the officer the right to receive it when it has been earned. Any law of a state imposing a tax upon the office, diminishing the recompense, is in conflict with the law of the United States which secures the allowance to the officer.....*Id.*

## CONSTRUCTION OF STATE LAWS.

See ESCAPE: REAL ESTATE, 1.

## CONSTRUCTION OF UNITED STATES' STATUTES.

1. The act of congress of 26th May 1824, entitled "an act granting certain lots of ground to the corporation of the city of Mobile, and to certain individuals of the said city," relinquished the rights of the United States, whatever they were, in the lot in question, to the proprietor of the front lot. *Watkins* v. *Holman*.....*25

2. The act of the legislature of Alabama, which authorized Sarah Holman, resident in Boston, the administratrix of Oliver Holman, to sell the estate of which Holman died seised in the city of Mobile, was a valid act; and the deed made under that statute, according to its provisions, was legal and operative, and was authorized by the constitution of Alabama.....*Id.*

3. A lot of ground, part of the ground on which Fort Charlotte had been erected, in the city of Mobile, before the territory was acquired from Spain by the United States, had been sold under an act of congress of 1818; the lot had been laid out according to a plan by which a street, called Water street, was run along the margin of Mobile river; and the street was extended over part of the site of Fort Charlotte; the lot was situated west of Water street; but when sold by the United States, its eastern line was below high-water mark of the river. The purchaser of this lot improved the lot lying in front of it, east of Water street, having filled it up at a heavy expense, thus reclaiming it from the river, which at high-water had covered it; when the lot east of Water street was purchased, the purchaser could not pass along the street, except with the aid of logs and other timber; Water street was, in 1823, filled up at the cost of the city of Mobile; taxes and assessments, for making side-walks along Water street, were paid to the city of Mobile, by the owner of the lot; the city of Mobile had brought suit for taxes, and had advertised the lot for sale, as the property of a tenant under a purchaser of the lot. On the 26th of May 1824, congress passed an act which declared, in the first section, that all the right and claim of the United States to the lots known as the Hospital and Bakehouse lots, containing about three-fourths of an acre of land, in the state of Alabama; and all the right and claim of the United States to all the lots not sold or confirmed to individuals, either by that or any former act, and to which no equitable title existed, in favor of any individual under that or any other act, between high-water mark and the channel of the river, and between Church street and North Boundary street, in front of the city of Mobile, should be vested in the corporation of the city of Mobile for the use of the city for ever; the second section provided, "that all the right and claim of the United States to so many of the lots east of Water street, and between Church street and North Boundary street, now known as water lots, as are situated between the channel of the river and the front of the lots, known under the Spanish government as water lots, in the said city of Mobile, whereon improvements have been made, be and the same are hereby vested in the several proprietors and occupants of each of the lots heretofore fronting on the river Mobile," &c. The city of Mobile claimed from the defendant in error, the lot held by him, under the purchase from the United States, and the improvements before described; asserting that the same vas vested in the city by the first section of the act of 1824: *Held*, that, under the provisions of the second section of the act, the defendant in error claiming under the purchase made under the act of 1818, and under

the act of 1824, was entitled to the lot. *City of Mobile* v. *Eslava*.....*234

4. The right relinquished by the United States was to the water lots, "lying east of Water street, and between Church street and North Boundary street, now known as water lots, as are situated between the channel of the river and the front of the lots, known under the Spanish government as water lots, in the said city of Mobile, whereon improvements have been made." The improvements refer to the water and not to the front lots; a reasonable construction of the act requires the improvements to have been made or owned by the proprietor of the front lot, at the time of the passage of the act; being proprietor of the front lot, and having improved the water lot opposite and east of Water street, constitute the conditions on which the right under the statute vests... *Id.*

5. A grant by the Spanish government, confirmed by the United States, was made of a lot of ground, in the city of Mobile, running fom a certain boundary eastwardly to the river Mobile; the land adjacent to this lot, and extending from high-water mark to the channel of the river, in front of the lot, was held by the grantee as appurtenant to the fast land above high-water mark. The city of Mobile instituted an action to recover the same, asserting a title to it under the act of congress of 26th May 1824, granting certain lots of ground to the corporation of the city of Mobile, and to certain individuals in the said city: *Held*, that this lot was within the exceptions of the act of 1824; and no right to the same was vested in the city of Mobile by the act. *City of Mobile* v. *Hallett*..*261

## CONTRACT.

1 The defendants in error, merchants in New York, agreed with the plaintiffs in error, H. & G., merchants in New Orleans, that indorsed notes should be given by H. & G., for a certain sum, being the amount due by H. & G. to B. & Co., and other notes or drafts of H. & G., payable in New York, which indorsed notes were to be deposited in the hands of L., to be delivered to B. & Co., on their performing their agreement with H. & G.; part of which was to take up certain drafts and notes given by H. & G., payable in New York. The notes, indorsed according to the agreement, were drawn and delivered to L.; B. & Co. performed all their contract, excepting the payment of a draft for $2000, and a note for $1568.74, which, from inability, they did not pay; and the same were returned to New Orleans, and were there paid, with damages and interest, by H. & G., at a great loss and inconvenience. The notes deposited with L. amounted to upwards of $7000, beyond the draft for $2000, and the note for $1568.74; B. & Co. filed a petition, according to the Louisiana practice, praying for a decree by which the indorsed notes in the hands of L. should be delivered to them, equal to the balance due to them; the district judge gave a decree in favor of B. & Co., in conformity with the petition: *Held*, that the decree was erroneous; and the court reversed the same, and ordered the case to be remanded, and the petition to be dismissed with costs, by the circuit court of Louisiana. *Hyde* v. *Booraem*.....*169

2. The contract between B. & Co. and H. & G. was, what the French law, the basis of that of Louisiana, calls a commutative contract, involving mutual and reciprocal obligations; where the acts to be done on one side form the consideration for those to be done on the other.....*Id.

3. Upon principles of natural justice, if acts are to be done at the same time, neither party to such a contract could claim a fulfilment thereof; unless he had first performed, or was ready to perform, all the acts required on his own part.....*Id.*

4. When the entire fulfilment of the contract is contemplated as the basis of the arrangement, the contract, under the laws of Louisiana, is treated as indivisible; and neither party can compel the other to a specific performance, unless he complies with it *in toto*.....*Id.*

5. When the contract contained in a deed has been varied or substituted by the subsequent acts or agreements of the parties, thereby giving rise to new relations between them, the remedies, originally arising out of the deed, may be varied in conformity with them. An action upon the deed would not be insisted upon, or permitted, because the rights and obligations of the parties to the suit would depend on a state of things by which the deed had been put aside. *Fresh* v. *Gilson*.....*327

## COSTS.

1. The rule as to costs has been established by the 47th rule of this court. In all cases of reversal of any judgment or decree in the supreme court, except where the reversal is for want of jurisdiction, costs will be allowed for the plaintiffs in error or appellants, as the case may be, unless otherwise ordered by the court. *Bradstreet* v. *Potter*.....*317

## COURTS.

1. In every instance in which a tribunal has decided upon a matter within its regular jurisdiction, its decision must be presumed proper, and is binding until reversed by a superior tribunal; and cannot be affected, nor the rights of persons dependent upon it be impaired, by any collateral proceeding. *Cocke* v. *Halsey*.....*71

## DECISIONS OF STATE COURTS.

1. The 34th section of the judiciary act of 1789, which declares, "that the laws of the several states, except where the constitution, treaties or statutes of the United states shall otherwise recognise or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply," has uniformly been supposed by the supreme court to be limited in its application to state laws strictly local: that is to say, to the positive statutes of the state, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intra-territorial in their nature and character. The section does not extend to contracts or other instruments of a commercial nature; the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence. *Swift* v. *Tyson*.....*1
2. So far as the decisions of the state courts of Mississippi settle rules of property, they will be properly respected by the supreme court; but when the effect of a state decision is only to regulate the practice of courts, and to determine what shall be a judgment, the supreme court cannot consider themselves bound by such decisions, upon the ground that the laws upon which they are made are local in their character. *Amis* v. *Smith*.....*303
3. The decision of a state court upon letters-patent by which the province was originally granted by the king of Great Britain, under which the proprietors of New Jersey held the province, is unquestionably entitled to great weight. If the words of the letters-patent had been more doubtful, *quære?* if the decision of a state court on their construction, made with great deliberation and research, ought to be regarded as conclusive. *Martin* v. *Waddell*.....*368
4. *Quære?* Whether on a question which depends not upon the meaning of instruments formed by the people of a state or by their authority, but upon letters-patent granted by the British crown, under which certain rights are claimed by the state, on one hand, and by private individuals, on the other, if the supreme court of the state of New Jersey had been of opinion, that upon the face of the charter, the question was clearly in favor of the state, and that the proprietors holding under the letters-patent had been deprived of their just rights by the erroneous judgment of the state court, it could be maintained, that the decision of the court of the state on the construction of the letters-patent bound the supreme court of the United States .....*Id.*

## DUTIES.

See SEIZURE.

## ENROLMENT OF VESSELS.

1. By the act of congress, relating to the enrolment of ships and vessels, it is not required, to make a bill of sale of a vessel valid, that it shall be enrolled in the custom-house; the enrolment seems not to be necessary by the law, to make the title valid, but to entitle the vessel to the character and privileges of an American vessel. *Hozey* v. *Buchanan*.....*218
2. A bill of sale of a vessel, accompanied by possession, does not constitute a good title in law; such an instrument, so accompanied, is *primâ facie* evidence of right; but, in order to constitute a full right under the bill of sale, the transfer should be *bonâ fide*, and for a valuable consideration.....*Id.*

## ESCAPE.

1. Action for an escape against the sheriff of Madison county, he having received into his custody, as a prisoner, the defendant in an action in the circuit court of Mississippi, taken under execution, and having suffered and permitted him to escape. The declaration set out the judgment obtained by the plaintiffs against Scott, the defendant in the circuit court, the execution, the arrest of Scott, and his delivery to Long, as the sheriff, who received him into his custody, under the execution, and detained him until, without leave or license of the plaintiffs in the execution, and against their will, he suffered and permitted him to escape and go at large, &c. To this declaration, the defendant pleaded, that he did not owe the sum of money demanded in the declaration, "in

manner and form as complained against him;" and the jury found, that the defendand Long "doth owe the debt in the declaration mentioned, in manner and form as therein alleged," and assessed damages for the detention thereof, at $1016.96; upon which the court gave judgement for $6356, and $1016.96 damages, and costs: *Held*, the judgment of circuit court was correct, under the provision of the statute of Mississippi of 7th June 1822; the jury were not required in the action to find specially that the prisoner escaped with the consent, and through the negligence of the sheriff; the plea alleged, that the defendant did not owe the sum of money demanded, "in manner and form as the plaintiff complained against him;" this plea put in issue every material averment in the declaration; on this issue, on the most strict and rigid construction, the jury have expressly found all that is required to be found by the requirements of the act. *Long* v. *Palmer*.....*65

2. If the sheriff suffers or permits a prisoner to escape, this, both in common parlance and legal intendment, is an escape with the consent of the sheriff.....*Id.*

3. The object of the act is to make the sheriff responsible for a voluntary or negligent escape, and that this shall be found by the jury; and, if this appears from the record, by express finding, or by the necessary conclusion of the law, it is sufficient.....*Id.*

## ESTATES OF DECEDENTS.

1. On the death of the ancestor, the land owned by him descends to his heirs; they hold it subject to the payment of the debts of the ancestor, in those states where it is liable to such debts; the heirs cannot alien the land to the prejudice of creditors; in fact, and in law, they have no right to the real estate of their ancestors, except that of possession, until the creditors shall be paid. *Watkins* v. *Holman*.....*25

2. No objection is perceived to the power of the legislature to subject the lands of a deceased person to the payment of his debts, to the exclusion of the personal property. The legislature regulates descents, and the conveyance of real estate; to define the rights of debtor and creditor, is their common duty, the whole range of remedies lies within their province.....*Id.*

## EVIDENCE.

1. A volume of state papers, published under the authority of an act of congress, and containing the authentication required by the act, is legal evidence; in the United States, in all public matters, the journals of congress and of the state legislatures are evidence, and also the reports which have been sanctioned and published by authority; this publication does not make that evidence, which intrinsically is not so; but it gives, in a most authentic form, certain papers and documents. The very highest authority attaches to state papers published under the sanction of congress. *Watkins* v. *Holman*.....*25

2. The owner of property, alleged to have been stolen on board an American vessel, on the high seas, is a competent witness to prove the ownership of the property stolen, on an indictment against a person charged with the offence, under the "act for the punishment of certain crimes against the United States," passed 30th April 1790. The fine imposed on the person who shall be convicted of the offence of stealing on the high seas, on board a vessel of the United States, is part of the punishment in furtherance of public justice, rather than an indemnity or compensation to the owner. From the nature of an indictment, and the sentence thereon, the government alone has the right to control the whole proceedings, and execution of the sentence; even after verdict, the government may not choose to bring the party up for sentence; and if sentence is pronounced, and the fine is imposed, the owner has no authority to interfere in the collection of it, any more than the informer or prosecutor; and the fine, therefore, must be deemed receivable by the government, and the government alone. *United States* v. *Murphy*.....*203

3. In cases of necessity, where a statue can receive no execution, unless the party interested be a witness, there he must be allowed to testify, for the statute must not be rendered ineffectual by the impossibility of proof.....*Id.*

4. In cases where, although the statute giving the party or the informer a part of the penalty or forfeiture, contains no direct affirmation that he shall, nevertheless, be a competent witness, yet the court will infer it, by implication, from the language of the statute, or its professed objects .....*Id.*

5. Liability for the acts of others may be created, either by a direct authority given for their performance, or it may flow from their adoption, or in some instances, from acquiescence in those acts. But presumptions can stand only whilst they are compatible with the conduct of those to whom it may be sought to apply them; and must still more give place, when in conflict with clear, dis-

tinct and convincing proof. *Fresh* v. *Gilson*.....*327

6. The circuit court of the district of Columbia admitted as evidence, a statement by one witness, of what had been testified by another, on the trial of a cause to which the plaintiff in the cause and against whom the evidence was to operate, was not a party: *Held*, that this was error.....*Id.*

7. Wherever the rights of a party, founded upon a deed, are dependent on the terms and conditions of that deed, the instrument thus creating and defining those rights must be resorted to; and must regulate, moreover, the modes by which they are to be enforced at law. These identical rights cannot be claimed as being derived from a different and inferior source; if the deed be in force, all who claim by its provisions must resort to it.....*Id.*

## FACTOR.

See BILLS OF EXCHANGE, 1–3.

## FLORIDA LAND-CLAIMS.

1. Breward petitioned the governor of East Florida, intending to establish a saw-mill to saw lumber on St. John's river, for a grant of five miles square of land, or its equivalent; 10,000 acres to be in the neighborhood of the place designated, and the remaining 6000 acres in Cedar Swamp, on the west side of St. John's river, and in Cabbage Hammock, on the east side of the river. The governor granted the land asked for, on the condition that the mill should be built, and the condition was complied with; on the 27th of May 1817, the surveyor-general surveyed 7000 acres under the grant, including Little Cedar creek, and bounded on three sides by Big Cedar creek, including the mill. This grant and survey were confirmed. *United States* v. *Breward*.....*143

2. Three thousand acres were laid off on the northern part of the river St. John's and east of the Royal Road, leading from the river to St. Mary's, four or five miles from the first survey; this survey having been made at a place not within the grant, was void; but the court held, that grantee was to be allowed to survey under the grant 3000 acres adjoining the survey of 7000 acres, if so much vacant land could be found; and that patents for the same should issue for the land, if laid out in conformity with the decree of the court in this case.....*Id.*

3. In 1819, 2000 acres were surveyed in Cedar Swamp, west of the river St. John's, at a place known by the name of Sugar Town: this survey was confirmed.....*Id.*

4. Four thousand acres, by survey, dated April 1819, in Cabbage Hammock, were laid out by the surveyor-general: this survey was confirmed.....*Id.*

5. By the 8th article of the Florida treaty, all grants of lands made before the 24th of January 1824, by his Catholic Majesty, were confirmed; but all grants made since the time when the first proposal by his majesty for the cession of the country was made, were declared and agreed by the treaty to be void. The survey of 5000 acres having been made at a different place from the land granted, would, if confirmed, be a new appropriation of so much land, and void, if it had been ordered by the governor of Florida; and of course, it is void, having nothing to uphold it but the act of the surveyor-general. 10 Pet. 309, cited.....*Id.*

6. In the superior court of East Florida, the counsel for the claimant offered to introduce testimony in regard to the survey of 3000 acres; and the counsel of the United States withdrew his objections to the testimony; the admission of the evidence did not prove the survey to have been made; proof of the signature of the surveyor-general, to the return of survey made the survey *primâ facie* evidence. Wiggins's Case, 14 Pet. 346, cited.....*Id.*

7. The proof of the signature of Aguilar to the certificate of a copy of the grant by the governor of East Florida, authorized its admission in evidence; but this did not establish the validity of the concession; to test the validity of the survey, it was necessary to give it in evidence; but the survey did not give a good title to the land.....*Id.*

8. The United States have a right to disprove a survey made by the surveyor-general, if the survey on the ground does not correspond to the land granted.....*Id.*

9. On a petition from Pedro Miranda, stating services performed by him for Spain, Governor White, the governor of East Florida, on 26th November 1810, made a grant to him of eight leagues square, or 368,640 acres of land, on the waters of Hillsborough and Tampa bays, in the eastern district of Florida. No survey was made under this grant, while Florida remained a province of Spain; nor was any attempt made to occupy or survey the land, until after the cession of Florida to the United States; in 1821 it was alleged, that a survey was made by a surveyor of East Florida: *Held*, that the grant was void; no land having been severed from the public domain, previous from the 24th January 1818, and because the calls of the grant were too

indefinite for locality to be given to them. *United States* v. *Miranda*.....*153

10. The settled doctrine of the supreme court, in respect to Florida grants, is, that grants embracing a wide extent of country, or with a large area of natural or artificial boundaries, and which granted lands were not surveyed before the 24th of January 1818, and which are without such designation as will give a place of beginning for a survey, are not lands withdrawn from the mass of vacant lands ceded to the United States in Florida, and are void; as well on that account as for being so uncertain that locality cannot be given to them..... *Id.*

11. On the 6th of April 1816, a grant was made by the governor of Florida of five miles square, or 16,000 acres of land, on condition that a mill should be built. The grant of 6000 acres was for land on Doctor's Branch, where the mill was intended to be erected; the 10,000 acres were granted on the north-east side on the lagoon of Indian river; the 6000 acres were surveyed in 1809, on Doctor's Branch, and the mill was built. The survey under this grant was confirmed. *United States* v. *Low*.....*162

12. The survey of 10,000 acres was made in February 1820, by the surveyor-general of Florida, "north-westwardly of the head of Indian river and west of the prairies of the stream called North creek, which empties itself at the head or pond of said river." The official return of the surveyor-general has acceded to it the force of a deposition; the land granted could only be surveyed at the place granted; if elsewhere, it would have been a new appropriation, and therefore void, and contrary to the eighth article of the treaty with Spain..... *Id.*

13. According to the strict ideas of conforming a survey to a location, in the United States, the survey of 10,000 acres should be located adjoining the natural object called for, there being no other to aid and control the general call; and therefore, the head of the lagoon would necessarily have formed one boundary; but it is obvious, more latitude was allowed in the province of Florida, under the goverment of Spain. The surveyor-general having returned that the survey was made according to the grant, in the absence of other contradictory proof, the claim was confirmed..... *Id.*

14. A grant of five miles square, or 16,000 acres of land, was made by the Spanish governor of East Florida, at the mouth of the river Santa Lucia; the petition for the grant stated various merits and losses of the petitioner, and asked the grant of five miles square, for the construction of a water saw-mill; the grant was given for the purposes mentioned, and "also paying attention to the services and other matters set forth in the petition." No survey under the grant was made by the surveyor-general of Florida; but a survey was made by a private surveyor; the survey did not follow the calls of the grant, and no proof was given that it was mede at the place mentioned in the grant; the survey and plat were not made according to the established rules relative to surveys to be made by the surveyor-general under such grants; nor was the plat made with the proportion of land on the river, required by the regulations. The superior court of Florida held, that the grant having been made in consideration of services rendered by the grantee, as well as for a water saw-mill, it was valid, without the erection of the mill; but the survey was altogether void, and of no effect. The decree of the superior court of Florida, by which the grant and survey were confirmed, was remanded to the superior court; that court to order the 16,000 acres granted, to be surveyed according to the principles stated in the opinion of the supreme court. It has often been held, that the authorities of Spain had the power to grant the public domain, in accordance with their own ideas of the merits and considerations presented by the grantee; and that the powers of the supreme court of the United States extend only to the inquiry, whether, in fact, the grant had been made, and its legal effect when made, in cases where the law by implication introduced a condition, or it was peculiar in its provisions. No special ordinance of Spain introduces conditions into mill-grants. *United States* v. *Hanson*.....*196

15. The certificate of a private surveyor, that he had permission from the governor of the territory, to make a survey of the land granted, is no evidence of the fact; there is a marked and wide difference in the effect of the certificate of the surveyor-general and of a private individual, who assumes to certify without authority..... *Id.*

16. Instructions of 1811, as to the duties of the surveyor-general, in making surveys under grants, by the governors of the public lands of Spain..... *Id.*

17. A grant by a Spanish governor of Florida, meant not, as in the states of the United States, a perfect title; but an incipient right, which, when surveyed, required confirmation by the governor. The duty of confirmation by the acts of congress, is deputed to the courts of justice of the United States, in execution of the treaty with Spain..... *Id.*

18. The same credence that was accorded to the return of the surveyor-general, by the Spanish government, is due to it by the courts of the United States; plats and certificates, because of the official character of the surveyor-general, have accorded to them the force and character of a deposition. . *Id.*

19. A grant of 15,000 acres by the Spanish governor of East Florida, in consideration of important services performed on behalf of the government of Spain, to George Atkinson, confirmed by the supreme court. By the 8th article of the Florida treaty, no grants of land, made after the 24th of January 1818, were valid; nor could a survey be valid on lands other than those authorized by the grant; still, the power to survey, in conformity to the concessions, existed up to the change of flags. *United States* v. *Clarke*. . . . . *228

20. Spain had the power to make grants, founded on any consideration, and subject to any restrictions, within her dominions. If a grant was binding on that government, it is so on the United States, the successor of Spain; all the grants of land made by the lawful authorities of the king of Spain, before the 24th of January 1818, were, by the treaty, ratified and confirmed to the owners of the lands. . . . . *Id.*

21. The grant to Atkinson was for the land he mentioned in his petition, or for any other lands that were vacant; three surveys were made of lands, within the quantity granted, not at the place specially mentioned in the grant, but at other places: *Held*, that these surveys were valid, notwithstanding that they were made at different places. . . . . *Id.*

## FORTHCOMING BONDS.

1. The statute of Mississippi, taking away the right to a writ of error in the case of a forthcoming bond forfeited, can have no influence whatever in regulating writs of error to the circuit courts of the United States; a rule of court adopting the statute as a rule of practice would, therefore, be void. *Amis* v. *Smith*. . . . . *303

2. Regarding the forthcoming bond as part of the process of execution, a refusal to quash the bond is not a judgment of the court, and much less a final judgment; and therefore, no writ of error lies in such a case. . . . . *Id.*

## FUGITIVES FROM LABOR.

1. It is historically well known, that the object of the clause in the constitution of the United States, relating to persons owing service and labor in one state, escaping into other states, was, to secure to the citizens of the slave-holding states the complete right and title of ownership in their slaves, as property, in every state in the Union into which they might escape from the state where they were held in servitude. The full recognition of this right and title was indispensable to the security of this species of property in all the slave-holding states; and indeed, was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted, that it constituted a fundamental article, without the adoption of which the Union could not have been formed. Its true design was, to guard against the doctrines and principles prevailing in the non-slave-holding states, by preventing them from intermeddling with or obstructing or abolishing the rights of the owners of slaves. *Prigg* v. *Commonwealth of Pennsylvania*. . . . . *539

2. The owner of a fugitive slave has the same right to seize and take him, in a state to which he has escaped or fled, that he had in the state from which he escaped; and it is well known, that this right to seizure or recapture is universally acknowledged in all the slave-holding states. The court has not the slightest hesitation in holding, that under and in virtue of the constitution, the owner of the slave is clothed with the authority in every state of the Union, to seize and recapture his slave, wherever he can do it, without any breach of the peace, or illegal violence; in this sense, and to this extent, this clause in the constitution may properly by said to execute itself, and to require no aid from legislation, state or national. . . . . *Id.*

3. The constitution does not stop at a mere annunciation of the rights of the owner to seize his absconding or fugitive slave, in the state to which he may have fled; if it had done so, it would have left the owner of the slave, in many cases, utterly without any adequate redress. . . . . *Id.*

4. The constitution declares, that the fugitive slave shall be delivered up, on claim of the party to whom service or labor may be due. It is exceedingly difficult, if not impracticable, to read this language, and not to feel that it contemplated some further remedial redress than that which might be administered at the hand of the owner himself; "a claim" is to be made . . . . . *Id.*

5. "A claim," in a just juridical sense, is a demand of some matter as of right, made by one person upon another, to do or to forbear to do, some act or thing, as a matter of duty. It cannot well be doubted, that the constitution requires the delivery of the

fugitive "on the claim" of the master; and the natural inference certainly is, that the national government is clothed with the appropriate authority and functions to enforce it. The fundamental principle applicable to all cases of this sort would seem to be, that where the end is required, the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is intrusted.....*Id.*

6. The clause relating to fugitive slaves is found in the national constitution, and not in that of any state; it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the constitution. On the contrary, the natural if not the necessary, conclusion is, that the national government, in the absence of all positive provisions to the contrary, is bound, through its own proper departments, legislative, executive or judiciary, as the case may require, to carry into effect all the right and duties imposed upon it by the constitution.....*Id.*
7. A claim to a fugitive slave is a controversy in a case "arising under the constitution of the United States," under the express delegation of judicial power given by that instrument. Congress, then, may call that power into activity, for the very purpose of giving effect to the right; and if so, then it may prescribe the mode and extent to which it shall be applied; and how, and under what circumstances, the proceedings shall afford a complete protection and guarantee of the right.....*Id.*
8. The provisions of the sections of the act of congress of 12th February 1793, on the subject of fugitive slaves, as well as relative to fugitives from justice, cover both the subjects; not because they exhaust the remedies, which may be applied by congress to enforce the rights, if the provisions shall be found, in practice, not to attain the objects of the constitution; but because they point out all the modes of attaining those objects which congress have as yet deemed expedient and proper. If this be so, it would seem, upon just principles of construction, that the legislation of congress, if constitutional, must supersede all state legislation upon the same subject; and by necessary implication, prohibit it; for, if congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere; where congress have an exclusive power over a subject, it is not competent for state legislation to interfere.....*Id.*
9. The clause in the constitution of the United States, relating to fugitives from labor, manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no state law or regulation can in any way qualify, regulate, control or restrain. Any state law or regulation, which interrupts, limits, delays or postpones the rights of the owner to the immediate command of his service or labor, operates, *pro tanto*, a discharge of the slave therefrom. The question can never be, how much he is discharged from; but whether he is discharged from any, by the natural or necessary operation of the state laws or state regulations; the question is not one of quantity or degree, but of withholding or controlling the incidents of a positive right.....*Id.*
10. The constitutionality of the act of congress relating to fugitives from labor, has been affirmed by the adjudications of the state tribunals, and by those of the courts of the United States. If the question of the constitutionality of the law were one of doubtful construction, such long acquiescence in it, such contemporaneous expositions of it, and such extensive and uniform recognitions would, in the judgment of the court, entitle the question to be considered at rest. Congress, the executive, and the judiciary have, upon various occasions, acted upon this as a sound and reasonable doctrine. Stuart *v.* Laird, 1 Cranch 299; Martin *v.* Hunter, 1 Wheat. 204; and Cohens *v.* Virginia, 6 Ibid. 264, cited.....*Id.*
11. The provisions of the act of 12th February 1793, relative to fugitive slaves, is clearly constitutional in all its leading provisions; and indeed, with the exception of that part which confers authority on state magistrates, is free from reasonable doubt or difficulty. As to the authority so conferred on state magistrates, while a difference of opinion exists, and may exist on this point, in different states, whether state magistrates are bound to act under it, none is entertained by the court, that state magistrates may, if they choose, exercise the authority, unless prohibited by state legislation.....*Id.*
12. The power of legislation in relation to fugitives from labor, is exclusive in the national legislature.....*Id.*
13. The right to seize and retake fugitive slaves, and the duty to deliver them up, in whatever state of the Union they may be found, is, under the constitution, recognised as an absolute positive right and duty, per-

vading the whole Union with an equal and supreme force; uncontrolled and uncontrollable by state sovereignty or state legislation. The right and duty are co-extensive and uniform in remedy and operation throughout the whole Union; the owner has the same security, and the same remedial justice, and the same exemption from state regulations and control, through however many states he may pass with the fugitive slave in his possession, *in transitû* to his domicil ..... *Id.*

14. The act of the legislature of Pennsylvania upon which the indictment against Edward Prigg, for carrying away a fugitive slave, is founded, is unconstitutional and void. It purports to punish, as a public offence against the state, the very act of seizing and removing a slave by his master, which the constitution of the United States was designed to justify and uphold ..... *Id.*

GUARANTEE.

1. In the construction of all written instruments, to ascertain the intention of the parties in the great object of the court, and this is especially the case in acting upon guarantees. Generally, all instruments of suretyship are construed strictly, as mere matters of legal right; the rule is otherwise, where they are founded on a valuable consideration. *Mauran* v. *Bullus* ..... *528

INSOLVENT DEBTORS.

See ASSIGNMENT, 1–4.

INSTRUCTIONS OF THE COURT.

1. In trials at law, while it is invariably true, that questions of the weight of the evidence belong exclusively to the jury, it is equally true, that whenever instructions upon evidence are asked from the court to the jury, it is the right and duty of the former to judge of the relevancy, and by necessary implication, to some extent, upon the certainty and definiteness of the evidence proposed. Irrelevant, impertinent or immaterial statements, a court cannot be called upon to admit, as the ground-work of instructions; it is bound to take care that the evidence on which it shall be called upon to act is legal, and that it conduces to the issue on behalf of either the plaintiff or the defendant. *Roach* v. *Hulings* ..... *319

INSURANCE AGAINST FIRE.

1. Action on a policy of insurance on the "Glenco Cotton Factory," against loss or damage by fire; the policy was dated the 27th day of September 1838, and was to endure for one year; it contained a clause by which it was stipulated by the assured, that if any other insurance on the property had been made, and had not been notified to the insurers, and mentioned in or indorsed on the policy, the insurance should be void; and if afterwards any insurance should be made on the property, and the assured should not give notice of the same to the insurers, and have the same indorsed on the policy, or otherwise acknowledged by the insurers in writing, the policy should cease; and in case any other insurance on the property, prior or subsequent to that policy should be made, the assured should not, in case of loss, be entitled to recover more than the portion of the loss should bear to the whole amount insured on the property; the interest of the assured in the property not to be assignable, unless by consent of the assurers, manifested in writing; and if any sale or transfer of the property, without such consent, was made, the policy to be void and of no effect. On all the policies of insurance made by the insurance company, there was a printed notice of the conditions on which the insurance was made. The declaration alleged, that Carpenter was the owner of the property insured, and was interested in the same to the whole amount insured by the policy; and that the property had been destroyed by fire. The facts of the case showed, that the property had been mortgaged for a part of the purchase-money, and the policy of insurance was held for the benefit of the mortgagor; another insurance was made by another insurance company, but this was not communicated in writing to the Providence Washington Insurance company; nor was the same assented to by them, nor was the memorandum thereof made on the policy. No doubt can exist, that the mortgagor and the mortgagee may each separately insure his own distinct interest in property against loss by fire; but there is this important distinction between the cases; that where the mortgagee insures solely on his own account, it is but an insurance of his debt; and if his debt be afterwards paid or extinguished, the policy ceases from that time to have any operation; and even if the premises insured are subsequently destroyed by fire, he has no right to recover for the loss, for he sustains no damage thereby; neither can the mort gagor take advantage of the policy, for he has no interest whatsoever therein: on the other hand, if the premises are destroyed by fire, before any payment or extinguishment of the mortgage, the underwriters are bound

to pay the amount of the debt to the mortgagee, if it does not exceed the insurance; upon such payment, the underwriters are entitled to an assignment of the debt from the mortgagee, and may recover the same from the mortgagor; the payment of the insurance is not a discharge of the debt, but only changes the creditor. *Carpenter* v. *Providence Washington Insurance Company*.....*495

2. When the insurance is made by the mortgagor, he will, notwithstanding the mortgage or other incumbrance, be entitled to recover the full amount of his loss, not exceeding the insurance, since the whole loss is his own; the mortgagee can only insure to the amount of his debt; whereas, the mortgagor can insure to the full value of the property, notwithstanding any incumbrances thereon.....*Id.*

3. An assignment of a policy, by the assured, only covers such interest in the premises as he may have had at the time of the insurance, and at the time of the loss. If a loss takes place after the policy has been assigned, the assignee alone is entitled to recover. The rights of the assignee, under the policy, cannot be more extensive than the rights of the assignor. Columbian Insurance Company *v.* Lawrence, 10 Peters 507, 512; 2 Ibid. 25, 49, cited.....*Id.*

4. Policies of insurance against fire are not deemed in their nature incidents to the property insured, but they are mere special agreements with the person insuring, against such loss or damage as they may sustain; and not the loss or damage that any other person, having an interest as grantee, or mortgagee, or creditor, or otherwise, may sustain by reason of the subsequent destruction by fire....*Id.*

5. The public have an interest in maintaining the validity of the clauses in a policy of insurance against fire; they have a tendency to keep premiums down to the lowest rates, and to uphold institutions of this sort, so essential to the present state of the country for the protection of the vast interests embarked in manufactures, and on consignments of goods in warehouses.....*Id.*

6. Questions on a policy of insurance are of general commercial law, and depend upon the construction of a contract of insurance, which is by no means local in its character, or regulated by any local policy or customs.....*Id.*

7. The circuit court charged the jury, that at law, whatever might be the case in equity, mere parol notice of another insurance on the same property was not a compliance with the terms of the policy; and that it was necessary, in the case of such prior policy, that the same should not only be notified to the company, but should be mentioned in or indorsed on the policy; otherwise, the insurance was to be void and of no effect: *Held*, that this instruction of the circuit court was correct; it never can be properly said, that the stipulation in the policy is complied with, when there was no such mention or indorsement as it positively requires; without which, it declares, that the policy shall be void and of no effect.....*Id.*

## INTEREST.

See PRACTICE, 3.

## JURISDICTION.

1. A promissory note was drawn by Hugh M. Keary and Patrick F. Keary, dated at Pinkneyville, Mississippi, in favor of Charles A. Lacoste, payable twelve months after date, at the Planters' Bank of Natchez; the note was indorsed by Charles A. Lacoste to the Farmers' Bank of Memphis, Tennessee. The note having been protested for non-payment, the Farmers' Bank of Memphis instituted a suit in the circuit court of Mississippi, against the makers and indorser, alleging that they were citizens of Tennessee, and that the defendants were citizens of Mississippi; the action was against the makers and indorser of the note; they being joined in the suit in pursuance of a statute of Mississippi of 1837, which required that in all actions on bills of exchange and promissory notes, the plaintiff should be compelled to sue the drawers and indorsers, resident in the state in the county where the drawers live, in a joint action; this statute had been adopted by the judge of the district court of Mississippi, in the absence of the judge of the supreme court assigned to that circuit, by a rule of court; and in conformity with the rule, this suit was instituted. The defendants pleaded to the jurisdiction of the court, on the ground, that the makers and payee of the note were, when it was made, citizens of Mississippi; and this plea being overruled on demurrer, the circuit court, on the failure of the drawers to plead over, and the failure of Lacoste to appear, gave a judgment for the plaintiff: *Held*, this action could not be sustained in the circuit court, jointly, against the makers and indorser of the note. The statute of Mississippi is not in force or effect in the courts of the United States; the sole authority to regulate the practice of the courts of the United States being in congress. *Keary* v. *Farmers' and Merchants' Bank of Memphis*.....*90

2. The law of Mississippi is repugnant to the provisions of the act of congress giving jurisdiction to the courts of the United States; and organizing the courts of the United States..... *Id.*
3. No suit against the makers of the note could be maintained in the circuit court; the 11th section of the judiciary act of 1789 allows suits on promissory notes to be brought in the courts of the United States, in cases only where the suit could have been brought in such court, if no assignment had been made. The makers and payee of the note having been citizens of Mississippi, the circuit court had no jurisdiction of a suit against the makers. Between Lacoste, the indorser, and the plaintiffs below, it was different; for on his indorsement to citizens of another state, he was liable to a suit by them in the circuit court. But the joining of those who could not be sued in the circuit court, with the indorser, made the whole action erroneous; the action was founded on distinct and independent contracts..... *Id.*
4. An action was instituted in the circuit court of Jefferson county, in the state of Kentucky, by a citizen of that state, under an act of the legislature of Kentucky, against a citizen of the state of Pennsylvania, to recover damages, alleging the same in the declaration to be $1000, for having taken on board of the steamboat Guyandotte, commanded by him, a slave belonging to the plaintiff, from the shore of Indiana, on the voyage of the steamboat, proceeding up the Ohio river from Louisville to Cincinnati. The act of the legislature of Kentucky subjects the master of a steamboat to the penalties created by the law, who shall take on board the steamboat under his command, a slave, from the shore of the Ohio, opposite to Kentucky, in the same manner as if he had been taken on board from the shores or rivers within the state. On entering his appearance, the defendant claimed to remove the cause to the circuit court of the United States for the district of Kentucky, he being a citizen of Pennsylvania, and the plaintiff a citizen of Kenrucky; and offered to comply with the requisitions of the judiciary act of 1789; the court refused to allow the removal of the cause; deciding that it did not appear to its satisfaction, that the damages exceeded $500. The case went on to trial, and the jury gave a verdict for the plaintiff for $650; and on a writ of error to the court of appeals of Kentucky, the judgment of the circuit court on the verdict was affirmed; before the court of appeals, the plaintiff in error excepted to the jurisdiction of the court of Jefferson county, and also to the constitutionality of the law of Kentucky on which the suit was founded: *Held*, that the decision of the court of appeals was erroneous; and the judgment of that court was reversed. *Gordon* v. *Longest*..*97
5. It has often been decided, that the sum in controversy in a suit, is the damages claimed in the declaration; if the plaintiff recover less than $500, it cannot affect the jurisdiction of the court; a greater sum having been claimed in his writ; but in such case, the plaintiff does not recover his costs; and, at the discretion of the court, he may be adjudged to pay costs..... *Id.*
6. The damages claimed by the plaintiff in his suit give jurisdiction to the court; whether it be an original suit in the circuit court of the United States, or brought there by petition from a state court..... *Id.*
7. The judge of the state court to which an application is made for the removal of a cause into a court of the United States, must exercise a legal discretion as to the right claimed to remove the cause. The defendant being entitled to a right to have the cause removed under the law of the United States, on the facts of the case, the judge of the state court has no discretion to withhold that right..... *Id.*
8. The application to remove the cause having been made in proper form, and no objection having been made to the facts on which it was founded, it was the duty of the state court "to proceed no further in the cause;" and every step subsequently taken in the exercise of a jurisdiction in the case, whether in the same court, or in the court of appeals, was *coram non judice*..... *Id.*
9. One great object in the establishment of the courts of the United States, and regulating their jurisdiction, was to have a tribunal in each state, presumed to be free from local influence, and to which all who were non-residents or aliens might resort for legal redress; and this object would be defeated, if a state judge, in the exercise of his discretion, may deny to the party entitled to it, a removal of the cause..... *Id.*
10. The high court of errors and appeals of the state of Mississippi, on a writ of error to the circuit court of Washington county, Mississippi, confirmed a judgment of the circuit court, by which a title to land set up under an act of congress of the United States was held valid; thus construing the act of congress in favor of the party claiming a right to the land, under the act. The party against whom the decision of the court of appeals was given, prosecuted a writ of error to the supreme court of the United States; the writ of error was dismissed, the court having no jurisdiction. *Fulton* v. *McAffee*....*149

11. In order to give the supreme court of the United States jurisdiction in such cases, it is not sufficient, that the construction of the act of congress on the validity of the act on which the claim was founded, was drawn in question; it must appear also, that the decision was against the right claimed. The power of the supreme court is carefully defined and restricted by the judiciary act of 1789; and it is the duty of this court not to transcend the limits of the jurisdiction conferred upon it ..... *Id.*

12. In order to give the supreme court jurisdiction, under the 25th section of the judiciary act of 1784, which authorizes the removal of a case, by writ of error or appeal, from the highest court of a state to the supreme court of the United States, in certain cases, it must appear on the record itself, to be one of the cases enumerated in that section, and nothing out of the record certified to this court can be taken into consideration. This must be shown: 1st, Either by express averment, or by necessary intendment, in the pleadings in the case; or 2d, By the directions given by the court, and stated in the exceptions; or 3d, When the proceedings are according to the law of Louisiana, by the statement of facts, and of the decision, as is usually made in such cases by the court; or 4th, It must be entered on the record of the proceedings of the appellate court, in cases where the record shows that such a point may have arisen and been decided, that it was in fact raised and decided; and this entry must appear to have been made by order of the court, or by the presiding judge, by order of the court, and certified by the clerk as part of the record in the state court; or 5th, In proceedings in equity, it may be stated in the body of the final decree of the state court, from which the appeal is taken to this court; or 6th, It must appear from the record, that the question was necessarily involved in the decision, and that the state court could not have given the judgment or decree which they passed, without deciding it. *Armstrong* v. *Treasurer of Athens County* ..... *281

13. The circuit courts of the United States have not cognisance of any suit to recover the contents of any promissory note or other *chose in action*, in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents, if no assignment had been made; except in cases of foreign bills of exchange. *Gibson* v. *Chew* ..... *31

14. The supreme court has not jurisdiction on a writ of error to the supreme court of a state, in which the judgment of the court was not, necessarily, given on a point, which was presented in the case, involving the constitutionality of an act of the legislature of the state of Illinois, asserted to violate a contract. *Mills* v. *Brown* ..... *525

## LANDLORD AND TENANT.

1. The relation of landlord and tenant in no-wise exists between vendor and vendee; and this is especially the case, where a conveyance has been executed. *Watkins* v. *Holman* ..... *25

## LEGISLATION.

1. Congress have, on various occasions, exercised powers which were necessary and proper as means to carry into effect rights expressly given, and duties expressly enjoined by the constitution. The end being required, it has been deemed a just and necessary implication, that the means to accomplish it are given also; or, in other words, that the power flows as a necessary means to accomplish the end. *Prigg* v. *Commonwealth of Pennsylvania* ..... *537

## LIMITATION OF ACTIONS.

1. A bill was filed in the circuit court of the southern district of New York, by the heirs of John Haberdinck, claiming certain real estate, in the city of New York, and an account of the rents and profits thereof; the estate having been devised, in 1696, to the ministers, elders and deacons of the Reformed Protestant Dutch Church of the city of New York; to this bill, the respondents, among other matters, pleaded, that they had been in actual adverse possession of the premises for forty years next before the filing of the bill: *Held*, that if the complainant by his bill, or the respondent by his plea, sets forth facts, from which it appears than the complainant, by the statute of the state, has no standing in court, and for the sake of repose and the common good of society, is not permitted to sue him adversarily; it is the rule of the court not to proceed further, and dismiss the bill. *Harpending* v. *Dutch Church* ..... *456

2. In pleading the statute of limitations to a bill in chancery, it is not necessary that there should be an express reference to the statute of the state in which the proceeding is instituted. The court is judicially bound to take notice of the statutes of limitation, when the facts are stated and relied on as a bar to further proceedings, if they are found sufficient ..... *Id*

8. After the lapse of twenty years from the commencement of adverse possession of the property claimed, the defendants had a title as undoubted as if they had produced a deed in fee-simple from the true owners, of that date, and all inquiry into their title or its incidents was effectually cut off..... *Id.*
4. The supreme court of the United States are bound to conform to the decisions of the state courts, in relation to the construction of the statute of limitations of the state in which the controversy has arisen; such is the settled doctrine of the supreme court. Green *v.* Neal, 6 Pet. 291, cited..... *Id.*
5. No distinction is made by the courts of the state of New York, as to the application of the statute of limitations, between a religious corporation, claiming to hold under the statute of limitations of the state, in regard to capacity to hold by force of the statute; therefore, none can be taken by the supreme court of the United States..... *Id.*
6. The statute of New York is in substance the same as that of 21 Jac. I. That such a possession as is set forth in the plea in this case is protected by the statute, has been the settled doctrine of the courts of that state for more than thirty years, if it ever were doubted..... *Id.*
7. The second part of the plea of the defendants averred, that all the parts of the land sold had been conveyed, and the moneys received by the defendants, more than forty years before the plea was filed. This is deemed a conclusive bar; the bill seeks the money, and six years barred the relief; this being a concurrent remedy with the action at law..... *Id.*

NEW JERSEY.

1. Ejectment for one hundred acres of land, covered with water, in Raritan bay, in the township of Perth Amboy, in the state of New Jersey; the land claimed lay beneath the navigable waters of the Raritan river and bay, where the tide ebbs and flows; and the principal right in dispute was the property in the oyster fisheries, in the public rivers and bays of East New Jersey. The claim was made under the charters of Charles II. to his brother, the Duke of York, in 1664 and 1674, for the purpose of enabling him to plant a colony on the continent of America; the land in controversy was within the boundaries of the charters, and in the territory which now forms the state of New Jersey; the territory in the grant, by succeeding conveyances, became vested in the proprietors of East Jersey, who conveyed the premises in controversy to the defendant in error. The proprietors, by the terms of the grant to them, were originally invested with all the rights of government and property which were conferred on the Duke of York; afterwards, in 1702, the proprietors surrendered to the crown all the powers of government, retaining their rights of private property. The defendant in error claimed the exclusive right to take oysters in the place granted to him, by virtue of his title under the proprietors; the plaintiffs in error, as the grantees of the state of New Jersey, under a law of that state, passed in 1824, and a supplement thereto, claimed the exclusive right to take oysters in the same place. The point in dispute between the parties depended upon the construction and legal effect of the letters-patent to the Duke of York, and of the deed of surrender subsequently made by the proprietors. *Martin* v. *Waddell*.....*367
2. The right of the king of Great Britain to make this grant to the Duke of York, with all of its prerogatives and powers of government, cannot at this day be questioned... *Id.*
3. The English possessions in America were not claimed by right of conquest, but by right of discovery; according to the principles of international law, as then understood by the civilized powers of Europe, the Indian tribes in the new world were regarded as mere temporary occupants of the soil; and the absolute rights of property and dominion were held to belong to the European nations by which any portion of the country was first discovered..... *Ib.*
4. The grant to the Duke of York was not of lands won by the sword, nor were the government and laws he was authorized to establish intended for a conquered people..... *Id.*
5. The country granted by King Charles II. to the Duke of York, was held by the king in his public and regal character, as the representative of the nation; and in trust for them. The discoveries made by persons acting under the authority of the government were for the benefit of the nation; and the crown, according to the principles of the British constitution, was the proper organ to dispose of the public domain. Johnson *v.* McIntosh, 8 Wheat. 595, cited..... *Id.*
6. When the revolution took place, the people of each state became themselves sovereign; and in that character, held the absolute right to all their navigable waters, and the soils under them, for their own common use, subject only to the rights since surrendered by the constitution to the general government. A grant, therefore, made by their authority, must be tried and determined by different principles from those which apply to grants of the British crown, where the title is held

by a single individual in trust for the whole nation.....*Id.*

7. The dominion and property in navigable waters, and the lands under them, being held by the king as a public trust, the grant to an individual of an exclusive fishery in any portion of it, is so much taken from the common fund intrusted to his care for the common benefit. In such cases, whatever does not pass by the grant remains in the crown for the benefit and advantage of the whole community; grants of that description are, therefore, construed strictly; and it will not be presumed that the king intended to part from any portion of the public domain, unless clear and special words are used to denote it.....*Id.*

8. The rivers, bays and arms of the sea, and all the prerogative rights within the limits of the charter of King Charles, undoubtedly passed to the Duke of York, and were intended to pass, except those saved in the letters-patent.....*Id.*

9. The questions upon this charter are very different; it is not a deed conveying private property, to be interpreted by the rules applicable to cases of that description; it was an instrument upon which was to be founded the institutions of a great political community; and in that light, it should be regarded and construed.....*Id.*

10. The object in view of the letters-patent appears on their face; they were made for the purpose of enabling the Duke of York to establish a colony upon the newly-discovered continent, to be governed, as nearly as circumstances would permit, according to the laws and usages of England; and in which the duke, his heirs and assigns, were to stand in the place of the king, and administer the government according to the principles of the British constitution; and the people who were to plant this colony, and to form this political body over which he was to rule, were subjects of Great Britain, accustomed to be governed according to its usages and laws.....*Id.*

11. The land under the navigable waters, within the limits of the charter, passed to the grantee, as one of the royalties incident to the powers of government, and were to be held by him, in the same manner, and for the same purposes, that the navigable waters of England and the soils under them are held by the crown. The policy of England, since *magna charta* (for the last six hundred years), has been carefully preserved; to secure the common right of piscary for the benefit of the public; it would require plain language in the letters-patent to the Duke of York, to persuade the court, that the public and common right of fishing in navigable waters, which has been so long and so carefully guarded in England, and which was preserved in every other colony founded on the Atlantic borders, was intended in this one instance to be taken away; there is nothing in the charter that requires this conclusion....*Id.*

12. The surrender by the proprietors to Queen Anne, in 1702, was of "all the powers, authorities and privileges of and concerning the government of the province;" and the right in dispute in this case was one of these privileges; no words are used for the purpose of withholding from the crown any of its ordinary and well-known prerogatives. The surrender, according to its evident object and meaning, restored them in the same plight and condition in which they originally came to the hands of the Duke of York; when the people of New Jersey took possession of the reins of government, and took into their own hands the power of sovereignty the prerogatives and regalities which before belonged either to the crown or the parliament, became immediately and rightfully vested in the state.....*Id.*

## OFFICES.

1. Taxes for state purposes cannot be imposed on the salaries or fees allowed by the laws of the United States to officers in the service of the United States. *Dobbins* v. *Commissioners of Erie County*.....*435

See CONSTITUTIONALITY OF STATE LAWS.

## PATENTS.

1. The plaintiffs, in the circuit court, claimed damages for the infringement of their patent for "a new and useful improvement in the construction of a plough;" the claim of the patentees was for the combination of certain parts of the plough, not for the parts separately. The circuit court charged the jury, that unless it was proved, that the whole combination was substantially used in the defendant's ploughs, it was not a violation of the plaintiff's patent; although one or more of the parts specified in the letters-patent might be used in combination by the defendant; the plaintiffs, by their specification and summing up, treated the parts described as essential parts of their combination, for the purpose of brace and draft; and the use of either alone by the defendant would not be an infringement of the combination patented: *Held*, that the instructions of the circuit court were correct. *Prouty* v. *Ruggles*.....*336

2. The patent is for a combination, and the improvement consists in arranging different portions of the plough, and combining them together in the manner stated in the specification, for the purpose of producing a certain effect; none of the parts referred to are new, and none are claimed as new; nor is any portion of the combination, less than the whole, claimed as new, or stated to produce any given result. The end in view is proposed to be accomplished by the union of all, arranged and combined together in the manner described; and this combination, composed of all the parts mentioned in the specification, and arranged with reference to each other, and to other parts of the plough, in the manner therein described, is stated to be the improvement, and was the thing patented. The use of any two of these parts only, or of two combined with a third, which is substantially different in the form, or in the manner of its arrangement and connection with the others, is, therefore, not the thing patented; it is not the same combination, if it substantially differs from it in any of its parts.....*Id.*

POLICE POWER.

1. The police power of the states extends over all subjects within the territorial limits of the states, and has never been conceded to the United States; it is wholly distinguishable from the right and duty secured by the provision of the constitution relating to fugitive slaves; which is exclusively derived from the constitution, and obtains its whole efficiency therefrom. *Prigg* v. *Commonwealth of Pennsylvania*.....*539

2. The states, in virtue of their general police power, possess full jurisdiction to arrest and restrain runaway slaves, and to remove them from their borders, and otherwise to secure themselves against their depredations and evil example, as they certainly may do in cases of idlers, vagabonds and paupers. The right of the owners of fugitive slaves are in no just sense interfered with or regulated by such a course, and in many cases they may be promoted by the exercise of the police power; such regulations can never be permitted to interfere with or obstruct the just rights of the owner to reclaim his slave, derived from the constitution of the United States, or with the remedies prescribed by congress to aid and enforce the same....*Id.*

POSSESSION.

1. A mere intruder on land is limited to his actual possession; and the rights of a riparian proprietor do not attach to him. *Watkins* v. *Holman*.....*25

PRACTICE.

1. If a contract be joint and several, and the defendants sever in their pleas, whatever may have been the doubts and conflicting opinions of former times, as to the effect of a *nolle prosequi* in such a case, it has never been held, that a simple discontinuance of a suit amounts to a *retraxit;* or that it in any manner worked a bar to the repetition of the plaintiff's action. *Amis* v. *Smith*.....*303

2. By a statute of Mississippi, all promises, contracts and liabilities of copartners, are to be deemed and adjudged joint and several; and in all suits on contracts in writing, made by two or more persons, it is lawful to declare against any one or more of them. This is such a severance of the contract, as puts it in the power of the plaintiff to hold any portion of them jointly, and the others severally, bound by the contract; and there is no obligation on the part of the plaintiff to put the defendants in such condition, by their pleadings, as to compel each to contribute his portion for the benefit of the others..*Id.*

3. On a joint and several bond, suit must be brought against all the obligors jointly, or against each one severally, because each is liable for the whole; but a joint suit cannot be maintained against a part, omitting the rest. Whatever may be the defects, or illegality of the final process, no error can be assigned in the supreme court, on a writ of error, for that cause; the remedy, according to the modern practice, is by motion in the court below, to quash the execution. If the question of the right to include the interest on the judgment, in the execution, were properly before the court, no reason could be seen, why interest on a judgment, which is secured by positive law, is not as much a part of the judgment as if expressed in it.....*Id.*

4. The provisions of the third section of the act of congress of 19th May 1828, adopted the forthcoming bond in Mississippi, as a part of the final process of that state, at the time of the passage of the act. "A final process" is understood by the court to be all the writs of execution then in use in the state courts of Mississippi, which were properly applicable to the courts of the United States; and the phrase, "the proceedings thereupon," are understood to mean the exercise of all the duties of the ministerial officers of the state, prescribed by the laws of the state, for the purpose of obtaining the fruits of judgments — among those are

the provisions of the laws relating to forthcoming bonds, which must be regarded as a part of the final process.....*Id.*

5. The proceeding which produced the forthcoming bond, was purely ministerial; the judicial mind was in no way employed in its production. It does not, then, possess the attributes of a judgment; and ought, therefore, to be treated in this court as final process, or, at least, as part of the final process.....*Id.*

6. The jury, in rendering their verdict, failed to respond separately to the distinct issues they were sworn to try; the defendant had pleaded three pleas: 1. Covenants performed: 2. Payment: 3. Set-off, greater in amount than the claim of the plaintiff: on these three pleas, the jury gave a general verdict of damages in favor of the plaintiff, on which judgment was entered; in the circuit court, no exception was taken to the verdict; the counsel for the plaintiff contended that this was error in the circuit court, which was properly to be corrected in the supreme court. Objections of this character, that are neither taken at the usual stage of the proceedings, nor prominently presented on the face of the record, but which may be sprung upon a party, after an apparent waiver of them by his adversary, and still more, after a trial on the merits, can have no claim to the favor of the court, but should be entertained in obedience only to the strict requirements of the law. The three issues were joined on affirmative allegations by the defendant, and the verdict was for the plaintiff on these issues; admitting that this verdict is not affirmatively responsive to these issues, it virtually answers and negatives them all; for if all or either of them had been true, the verdict was untrue. Should the judgment, then, be arrested, this would be done neither from a necessity to guard the merits of the controversy, nor from the principles of sound inductive reasoning; but solely in obedience to an artificial and technical rule, which, however it may be founded in wisdom, and promotive of good, in general, yet, like all other rules, is capable of producing evil when made to operate beyond the objects of its creation. *Roach* v. *Hulings*.....*319

7. The third section of the act of congress of 1789, to establish the judicial courts of the United States, which provides that no summary writ, return of process, judgment or other proceedings in civil cases, in the courts of the United States, shall be abated, arrested or quashed, for any defect or want of form, &c., although it does not include verdicts, *eo nomine*, does include judgments; and the language of the provision, "writ, declaration, judgment or other proceedings in civil causes;" and further, "such writ, declaration, pleading, process, judgment or other proceeding whatsoever," is sufficiently comprehensive to embrace every conceivable step to be taken in a cause, from the emanation of the writ down to the judgment. Both the verdict and the judgment in this case are within the terms and intent of the statute, and ought to be protected thereby.....*Id.*

8. If any particular practice has prevailed in the state courts, as to the manner of entering upon the record the finding of the jury, it is a mere matter of practice as to the form of taking and entering the verdict of the jury; and cannot be binding upon the courts of the United States. *Long* v. *Palmer*.....*65

9. So far as the acts of congress have adopted the forms of process, and modes of proceedings and pleadings in the state courts, or have authorized the courts thereof to adopt them, and they have actually adopted them, they are obligatory; and no further. But no court of the United States is authorized to adopt by rule any provisions of state laws which are repugnant to, or incompatible with, the positive enactments of congress, upon the jurisdiction, or practice, or proceedings of such courts. *Keary* v. *Farmers' and Merchants' Bank of Memphis*.....*89

See FORTHCOMING BONDS, 1–2.

## PROBABLE CAUSE.

See SEIZURE, 5.

## PROCESS.

1. No rule, under the third section of the act of 1828, which authorizes the courts of the United States to alter final process, so far as to conform it to any changes which may be adopted by state legislation and state adjudications, made by a district judge, will be recognised by the supreme court as binding, except those made by the district courts, exercising circuit court powers. *Amis* v. *Smith*.....*303

## REAL ESTATE.

1. Real estate, in Alabama, was conveyed by an administratrix, by a deed executed under a license given by the supreme court of Massachusetts, under a statute of that state, all the proceedings preliminary to the deed having been in conformity with the law of the state of Massachusetts and the decree of the supreme court; there was no law of the state of Alabama authorizing the conveyance

The court said, no principle is better settled, that the disposition of real estate, whether by deed, descent or by any other mode, must be governed by the laws of the state where the land is situated. *Watkins* v. *Holman* *25

REFERENCE AND AWARD.

See ARBITRAMENT AND AWARD, 1–3.

RELEASE.

1. During the pendency of a suit in chancery in the circuit court of South Carolina, one of the complainants, H., being in New York, where he had gone on other matters than those connected with the suit, was arrested by the defendant, in a suit at common law, for a claim which was in controversy in the suit in chancery, and which could have been adjusted in the chancery suit; and was required to give special bail for his appearance to the suit before a court in New York. Much difficulty arose in procuring special bail; and having called at the counting-house of K., one of the plaintiffs in the suit, on the subject of the suit, he there executed a release of all claims in the chancery suit, and acknowledged accounts presented to him to be correct, by which the claims in the chancery suit in South Carolina were admitted to be adjusted; the suit at common law was then discontinued. The defendants in the circuit court of South Carolina afterwards filed the release, and moved to dismiss the bill; which motion was opposed, on the ground, that the release was obtained by duress; the parties went on to take testimony as to the circumstances under which the release was given: *Held*, that there could be no objection taken to the introduction of the release in this form, under the circumstances of the case; the release having been admitted, without exception, no objection could afterwards be made to the manner in which it was introduced; it had the same effect that it would have had upon a cross-bill, or supplemental answer; and the complainant had the same opportunity of impeaching it. *Kelsey* v. *Hobby*..... *269
2. If the accounts between the parties are impeached, and a release has been obtained, executed by one of the parties in a case depending before a court of chancery, the release will not prevent the court from looking into the settlement; and the release in such a case is entitled to no greater force in a court of equity than the settlement of the account on which it was given..... *Id.*
3. If a release is executed, and a settlement is made of a particular item in an account for which suit has been brought, and in which the party has been arrested, the settlement having been confined to the claim for the damages for which the suit was brought, the mere circumstance of the defendant being detained by the process issued to recover the amount claimed, would be no objection to the validity of the agreement and release. But if, while under detention for want of special bail, a release was obtained of other matters than those embraced in the suit, and much more important in amount, and which had been insisted on for years, in the suit previously instituted, then, in the course of proceeding; neither the circumstances under which the release was taken, and the account connected with it settled, nor the contents of the papers, entitle them to any consideration in a court of equity..... *Id.*

RIPARIAN OWNERS.

1. A mere intruder on lands is limited to his actual possession, and the rights of riparian property does not attach to him. *Watkins* v. *Holman*..... *2

SECRETARY AT WAR.

See ARMY.

SEIZURE.

1. It is of no consequence whatsoever, what were the original grounds of a seizure, whether founded or not; if the goods were, in point of law, subject to forfeiture. The United States are not bound down by the acts of the seizors to the causes which influenced them in making it, nor by any irregularity on their part in conducting it, if the seizure can be maintained as founded on an actual forfeiture at the time of the seizure. It was rightly held in the district court, that no question arose on the issues which the jury were to try, except upon the causes of forfeiture alleged in the information. *Wood* v. *United States*..... *342
2. Evidence of fraud deducible from the other invoices of goods was offered in the case: *Held*, that the question was one of fraudulent intent, or not, and upon questions of that sort, where the intent of the party is the matter in issue, it has always been allowable, as well in criminal as in civil cases, to introduce evidence of other acts and doings of the party, of a kindred character, in order to illustrate his intent or motive in the particular act directly in judgment. If the invoice of the goods were fraudulently made

by a false valuation to evade or defraud the revenue, the fact that they were entered, and the duties paid or secured at the custom-house at New York upon these invoices, was no bar to the information for the forfeiture of the goods to the United States. It never can be permitted, that a party who perpetrates a fraud upon the custom-house, and thereby enters his goods upon false invoices and false valuations, and gets a regular delivery thereof, upon the payment of such duties as such false invoices and false valuations require, can avail himself of that very fraud to defeat the purposes of justice... *Id.*

3. The 66th section of the revenue collection act of 1799, ch. 128, remains in full force..... *Id.*
4. There must be a positive repugnancy between the new and old laws for the collection of the revenue, before the old law can be considered as repealed: and even then, the old law is repealed by implication only, *pro tanto*, to the extent of the repugnancy... *Id.*
5. The addition of other powers to custom house officers to carry into effect the object of the former laws, and sedulously introduced to meet the case of a palpable fraud, should not be considered as repealing former laws; there ought to be a manifest and total repugnancy in the provisions of the later laws, to lead to the conclusion that they abrogated, and were designed to abrogate, the former laws..... *Id.*
6. The burden of proof, in the absence of fraud in the entry of the goods, was thrown upon the claimant; there was probable cause for seizure shown. Probable cause must, under the 71st section of the act of 1799, in connection with the circumstances of this case, mean reasonable ground of presumption that the charge is or may be well founded..... *Id.*

SLAVERY.

1. By the general law of nations, no nation is bound to recognise the state of slavery as to foreign slaves within its territorial dominions, when it is opposed to its own policy and institutions, in favor of the subjects of other nations where slavery is recognised; if it does it, it is a matter of comity, and not as a matter of international right; the state of slavery is deemed to be a mere municipal regulation, founded upon and limited to, the range of the territorial laws. *Prigg* v. *Commonwealth of Pennsylvania*.....*539

SUPREME COURT.

1. The supreme court has no authority, as an appellate court, upon a writ of error, to revise the evidence in the court below, in order to ascertain whether the judge rightly interpreted the evidence, or drew right conclusions from it; that is the proper province of the jury; or of the judge himself, if the trial by jury is waived, and it is submitted to his personal decision; the court can only re-examine the law, so far as he has pronounced it, upon a state of facts; and not merely upon the evidence of facts found in the record, in the making of a special verdict, or an agreed case. If either party in the court below is dissatisfied with the ruling of the judge in a matter of law, that ruling should be brought before the supreme court, by an appropriate exception in the nature of a bill of exceptions; and should not be mixed up with the supposed conclusions in matters of fact. *Hyde* v. *Booraem* .....*169
2. It is the duty of the supreme court to preserve the supremacy of the laws of the United States, which they cannot do without disregarding all state laws, and state decisions which conflict with those of the United States. *Amis* v. *Smith*.....*303
3. The counsel for the plaintiff and defendant in error having applied to the court to hear the case upon other points presented in the briefs of the plaintiff and the defendant, in order to obtain the judgment of the court upon these points, for the direction of the circuit court on the further trial of the cause, the court said: The court cannot give any opinion upon points not properly before it, those points not being in the bill of exceptions filed in the record to the ruling of the circuit court; the proper functions of a court, on a writ of error, is to pass judgment upon the points excepted to in the opinion of the court below; and not to decide the law of the case in anticipation of its trial in the circuit court. *Bradstreet* v. *Potter*..... *317
4. The supreme court will not, when requested by the counsel for plaintiffs and defendants in error, in a case in which it has not jurisdiction to affirm or reverse the judgment of the court from which the same has been brought by a writ of error to a state court, examine into the questions in the case and decide upon them; consent will not give jurisdiction. When the act of congress has so carefully and cautiously restricted the jurisdiction conferred upon this court, over the judgments and decrees of the state tribunals, the court will not exercise jurisdiction in a different spirit. *Mills* v. *Browne*. *425

See JURISDICTION.

TAXES.

1. Taxation is a sacred right, essential to the existence of government; an incident of sovereignty; the right of legislation is co-extensive with the incident, to attach it upon all persons and property within the jurisdiction of a state; but in our system, there are limitations upon that right. There is a concurrent right of legislation in the states, and the United States, except as both are restrained by the constitution of the United States; both are restrained by express prohibitions in the constitution; and the states, by such as are reciprocally implied, when the exercise of the right by a state conflicts with the perfect execution of another sovereign power delegated to the United States; that occurs when taxation by a state acts upon the instruments, and emoluments, and persons which the United States may use and employ as necessary and proper means to execute their sovereign power. The government of the United States is supreme within its sphere of action; the means necessary and proper to carry into effect the powers in the constitution are in congress. *Dobbins* v. *Commissioners of Erie County*..... *435

See CONSTITUTIONALITY OF STATE STATUTES.

TENANTS IN COMMON.

1. One tenant in common may hold adversely to, and bar his co-tenant. *Harpending* v. *Dutch Church*.....*455

WRIT OF ERROR.

1. In the district of Columbia, a writ of error lies to the decision of the circuit court, upon an agreed case; the same principle has been applied in cases brought before the supreme court from other parts of the United States. *United States* v. *Eliason*.....*291

See PRACTICE, 3.

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