INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

The references are to the STAR (*) pages.

ABATEMENT.

1. After pleading the general issue, it is too late to take advantage of a defect in the writ, or a variance between the writ and declaration. *McKenna* v. *Fisk*, 241.

ACCOUNTS.

1. In matters of account, where they are not barred by the act of limitations, courts of equity refuse to interfere, after a considerable lapse of time, from considerations of public policy, and from the difficulty of doing entire justice, when the original transactions have become obscure by time, and the evidence may be lost. *McKnight* v. *Taylor*, 161.
2. When there have been, for several years, mutual and extensive dealings between two banks, and an account current kept between them, in which they mutually credited each other with the proceeds of all paper remitted for collection, when received, and charged all costs of protests, postage, &c.; accounts regularly transmitted from the one to the other and settled upon these principles; and upon the face of the paper transmitted, it always appeared to be the property of the respective banks, and to be remitted by each of them upon its own account; there is a lien for a general balance of account upon the paper thus transmitted, no matter who may be its real owner. *Bank of the Metropolis* v. *New England Bank*, 234.
3. When the accounts of a collector are returned to the Treasury quarterly, and the date of the commencement and expiration of his term of office is on some intermediate day between the beginning and end of the quarter, a re-statement and Treasury transcript of his account up to the end of his term is legal evidence in a suit against the sureties. *United States* v. *Irving et al.*, 250.
4. Such a re-statement does not falsify the general accounts, but arranges the items of debits and credits so as to exhibit the transactions of the collector during the four years for which the sureties were responsible. *Ib.*
5. The amount charged to the collector at the commencement of his second term is only *prima facie* evidence against the sureties. *Ib.*
6. But payments into the Treasury of moneys accruing and received in the second term, should not be applied to the extinguishment of a balance apparently due at the end of the first term. Payments made in the subsequent term, of moneys received on duty bonds, or otherwise, which remained charged to the collector as of the preceding official term, should be so applied. *Ib.*
7. The settlement of quarterly accounts at the Treasury, running on in a continued series, is not conclusive. The officers of the Treasury cannot, by any exercise of their discretion, enlarge or restrict the obligation of the collector's bond. Much less can they, by the mere fact of keeping an account current in which debits and credits are entered as they occur, and without any express appropriation of payments, affect the rights of sureties. *Ib.*

ACTION.

See TRESPASS, 1—4.

ADMINISTRATOR.
See EXECUTORS AND ADMINISTRATORS.
ADMIRALTY.
See COLLISION.
ALABAMA.
See SURETY, 1.
ANCHORAGE.
See COLLISION, 5—7.
APPEAL.
1. It is not clear that a complainant who has appealed from a decree in his favor, in the hope of obtaining a larger sum, can, pending the appeal, issue execution upon the decree of the court below. *Taylor et al.*, v. *Savage*, 282.
APPROPRIATION OF PAYMENTS.
See SURETY, 6, 7.
ASSUMPSIT.
1. The action of assumpsit for the use and occupation of lands and houses, existed in Virginia anterior to the cession of the District of Columbia to the United States. *Lloyd* v. *Hough*, 153.
2. But this action is founded upon contract, either express or implied, and will not lie where the possession has been acquired and maintained under a different or adverse title, or where it was tortious and makes the holder a trespasser. *Ib.*
BANKRUPTCY.
1. Upon questions adjourned from the District to the Circuit Court under the "Act to establish a uniform system of bankruptcy throughout the United States," the district judge cannot sit as a member of the Circuit Court, and, consequently, the points adjourned cannot be brought before this court by a certificate of division. *Nelson* v. *Carland*, 265.
2. Nor will an appeal or writ of error lie from the decision of the Circuit Court; and it is conclusive upon the district judge. *Ib.*
3. The bankrupt act declared to be constitutional by the Circuit Court of Kentucky. *Note to Judge Catron's dissentient opinion.* *Ib.*
BANKS.
See COMMERCIAL LAW, 5.
1. Whenever a banker has advanced money to another, he has a lien on all the paper securities which are in his hands for the amount of his general balance, unless such securities were delivered to him under a particular agreement. *Bank of the Metropolis* v. *New England Bank*, 234.
BEQUESTS.
See LEGACIES.
BONDS.
See SURETY.
CASES CERTIFIED.
1. Upon questions adjourned from the District to the Circuit Court under the "Act to establish a uniform system of bankruptcy throughout the United States," the district judge cannot sit as a member of the Circuit Court, and, consequently, the points adjourned cannot be brought before this court by a certificate of division. *Nelson* v. *Carland*, 265.
CHANCERY.
1. If the owner of land recognizes a sale of it, although made by a person who had no authority to sell, there is a privity of contract between the owner and the purchaser, which a court of equity will enforce. *Buchannon et al.* v. *Upshaw*, 56.
2. But the owner is entitled to all the advantages of the sale thus recognized. *Ib.*
3. A perpetual injunction will be decreed in such case, to prohibit the owner of the legal title from prosecuting his ejectment. *Ib.*
4. A deed, absolute on the face of it, is yet sometimes treated as a mortgage. *Morris* v. *Nixon et al.*, 118.
5. Where a bill substantially charges that there is a fraudulent attempt to hold property under a deed, absolute on the face of it, but intended as a security for money loaned, evidence will be admitted to ascertain the truth of the transaction. *Ib.*
6. Where there is proof of parties meeting upon the footing of borrowing

CHANCERY—(*Continued.*)
and lending, with an offer to secure the lender by a mortgage upon particular property, if a deed of the property, absolute on the face of it, be given to the lender, and the lender also take a bond from the borrower, equity will interpret the deed to be a security for money loaned, unless the lender shall show, by proofs, that the borrower and himself subsequently bargained upon another footing than a loan. *Ib.*

7. Where a loan is an inducement for the execution of a deed which is absolute on the face of it, though the loan is not recited as the consideration of the deed, or as any part of it, if the lender or grantee in the deed treats it subsequently as the consideration, or a part of it, equity will declare the deed to be a security for money loaned. *Ib.*
8. *It seems* that the answer of one defendant in equity is not evidence in behalf of another defendant. *Ib.*
9. If, in equity, it is admitted or proved that one of the documents in a transaction was not intended to be what it purports, it subjects other documents in the same transaction to suspicion. *Ib.*
10. A fact tried and decided by a court of competent jurisdiction cannot be contested again between the same parties; and there is no difference in this respect between a verdict and judgment at common law and a decree of a court of equity. *Bank of the United States* v. *Beverly*, 134.
11. But an answer in Chancery setting up, as a defence, the dismission of a former bill filed by the same complainants, is not sufficient unless the record be exhibited. *Ib.*
12. A disposition by a testator of his personal property to purposes other than the payment of his debts, with the assent of creditors, is in itself a charge on the real estate, subjecting it to the payment of the debts of the estate, although no such charge is created by the words of the will. *Ib.*
13. Lapse of time is no defence where there is an unexecuted trust to pay debts, which this court, in 1836, decided to be unpaid in point of fact. *Ib.*
14. There must be conscience, good faith, and reasonable diligence, to call into action the powers of a court of equity. *McKnight* v. *Taylor*, 161.
15. In matters of account, where they are not barred by the act of limitations, courts of equity refuse to interfere, after a considerable lapse of time, from considerations of public policy, and from the difficulty of doing entire justice, when the original transactions have become obscured by time, and the evidence may be lost. *Ib.*
16. A court of equity, which never is active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his rights for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence. When these are wanting, the court is passive and does nothing; laches and neglect are always discountenanced; and therefore, from the beginning of this jurisdiction, there was always a limitation of suit in this court. *Bowman et al.* v. *Wathen et al.*, 189.
17. Every new right of action, in equity, that accrues to a party, whatever it may be, must be acted upon, at the utmost, within twenty years. *Ib.*
18. And though the claimant may have been embarrassed by the frauds of others, or distressed, it is not sufficient to take the case out of the rule. *Ib.*
19. Where the complainants have long slept upon their rights, this court must remain passive and can do nothing; and this is equally true, whether they knew of an adverse possession, or, through negligence and a failure to look after their interests, permitted the title of another to grow into full maturity. *Ib.*
20. Where a decree is passed by the court below against an executor, being the defendant in a chancery suit, and before an appeal is prayed the executor is removed by a court of competent jurisdiction, and an administrator *de bonis non* with the will annexed, is appointed, all further proceedings, either by execution or appeal, are irregular, until the administrator be made a party to the suit. *Taylor et al.* v. *Savage*, 282.
21. If an execution be issued before the proper parties are thus made, it is unauthorized and void; and no right of property will pass by a sale under it. *Ib.*

CHANCERY—(*Continued.*)
22. The administrator cannot obtain redress by application to this court, but must first be made a party in the court below. This may be done at the instance of either side. *Ib.*
23. After he is thus made a party, he may stay proceedings by giving bond, or the complainants may enforce the decree, if the bond be not given in time. *Ib.*
24. It is not clear that a complainant, who has appealed from a decree in his favor in the hope of obtaining a larger sum, can, pending the appeal, issue execution upon the decree of the court below. *Ib.*

COLLECTORS.
See SURETY, 2—7.

COLLISION.
1. When a collision of vessels occurs in an English port, the rights of the parties depend upon the provisions of the British statutes then in force; and if doubts exist as to their true construction, this court will adopt that which is sanctioned by their own courts. *Smith et al* v. *Condry*, 28.
2. By the English statutes as interpreted in their courts, the master or owner of a vessel, trading to or from the port of Liverpool, is not answerable for damages occasioned by the fault of the pilot. *Ib.*
3. The actual damage sustained by the party at the time and place of injury, and not probable profits at the port of destination, ought to be the measure of value in damages, in cases of collision as well as in cases of insurance. *Ib.*
4. By whose fault the accident happened, is a question of fact for the jury, to be decided by them upon the whole of the evidence. *Ib.*
5. If a ship be at anchor, with no sails set, and in a proper place for anchoring, and another ship, under sail, occasions damage to her, the latter is liable. *Strout et al.* v. *Foster et al.*, 89.
6. But if the place of anchorage be an improper place, the owners of the vessel which is injured must abide the consequences of the misconduct of the master. *Ib.*
7. In this case, the anchored vessel was in the thoroughfare of the pass of the Mississippi river. *Ib.*

COMMERCIAL LAW.
1. A letter of guarantee, written in the United States, and addressed to a house in England, must be construed according to the laws of that country. *Bell et al.* v. *Bruen*, 169.
2. Extrinsic evidence may be used to ascertain the true import of such an agreement, and its construction is matter of law for the court. *Ib.*
3. In bonds, with conditions for the performance of duties, preceded by recitals, the undertaking, although general in its terms, is limited by the recital. *Ib.*
4. Commercial letters are not to be construed upon the same principles as bonds, but ought to receive a fair and reasonable interpretation according to the true import of the terms; to what is fairly to be presumed to have been the understanding of the parties; and the presumption is to be ascertained from the facts and circumstances accompanying the entire transaction. *Ib.*
5. Where there have been, for several years, mutual and extensive dealings between two banks, and an account current kept between them, in which they mutually credited each other with the proceeds of all paper remitted for collection, when received, and charged all costs of protests, postage, &c.; accounts regularly transmitted from the one to the other, and settled upon these principles; and upon the face of the paper transmitted, it always appeared to be the property of the respective banks, and to be remitted by each of them upon its own account, there is a lien for a general balance of account upon the paper thus transmitted, no matter who may be its real owner. *Bank of the Metropolis* v. *The New England Bank*, 234.

CONSTITUTIONAL LAW.
1. A person in custody under a *capias ad satisfaciendum* issued under the authority of the Circuit Court of the United States, cannot legally be discharged from imprisonment by a state officer, acting under a state insolvent law. *Duncan* v. *Darst et al.*, 301.

CONSTITUTIONAL LAW—(*Continued.*)
2. A state law, passed subsequently to the execution of a mortgage, which declares that the equitable estate of the mortgagor shall not be extinguished for twelve months after a sale under a decree in chancery, and which prevents any sale, unless two-thirds of the amount at which the property has been valued by appraisers shall be bid therefor, is within the clause of the tenth section of the first article of the Constitution of the United States, which prohibits a state from passing a law impairing the obligation of contracts. *Bronson* v. *Kinzie et al.*, 311.

CURTESY.
See TENANCY BY THE CURTESY.

DAMAGES.
See COLLISION, 3.

DECLARATIONS.
See EVIDENCE, 5, 6; MARRIAGE, 1, 2.

DEMURRER.
See PLEADING, 5.

DISABILITIES.
See LIMITATION OF ACTIONS, 1, 2.

DISTRIBUTION.
1. In the distribution of the estate of a deceased person, an assignment, to one of the distributees, of a mortgage which is for a greater sum than his distributive share, does not make him responsible to the executors for the difference between his share and the nominal amount of the mortgage, in case the mortgaged premises sell for less than the amount of his share, where the distributee has, with proper diligence, and in good faith, subjected the mortgaged property to sale, and has not bound himself absolutely for the nominal sum secured by the mortgage. *Hammond's Admr.* v. *Lewis' Exr.*, 14.

DOCUMENTARY EVIDENCE.
See EVIDENCE, 4, 7; MARRIAGE, 3.

EJECTMENT.
1. In an action of ejectment, if the plaintiff count upon a lease to himself from a person whom the evidence shows to have been dead at the time, it is bad. *Connor* v. *Bradley et ux.* 211.
2. It is a settled rule at common law, that where a right of re-entry is claimed on the ground of forfeiture for non-payment of rent, there must be proof of a demand of the precise sum due, at a convenient time before sunset, on the day when the rent is due, upon the land, in the most notorious place of it, even though there be no person on the land to pay. *Ib.*
3. In proceeding under the statute of 4 Geo. 2, it must be alleged and proved, that there was no sufficient distress upon the premises on some day or period between the time at which the rent fell due and the day of the demise; and if the time when, according to the proofs, there was not a sufficient distress upon the premises, be subsequent to the day of the demise, it is bad. *Ib.*

EQUITY.
See CHANCERY.

ERROR.
1. The court will not express an opinion upon a matter of defence which was not brought to the consideration of the court below. *Bell et al.* v. *Bruen*, 169.
2. Whether or not a record contains a bill of exceptions or statement of facts by the court, according to the practice in Louisiana, by which any question of law is brought up for revision in such a form as to enable this court to decide upon it; and whether or not there is a mass of various and conflicting testimony in relation to facts, upon which no jurisdiction can be exercised upon a writ of error; are questions to be decided only upon the final hearing of the cause. *Minor et ux.* v. *Tillotson*, 287.
3. The court will not go into this inquiry upon a motion to dismiss the writ of error, before the cause is taken up for argument. *Ib.*

EVIDENCE.
1. Where a bill substantially charges that there is a fraudulent attempt to

EVIDENCE—(*Continued.*)
hold property under a deed, absolute on the face of it, but intended as a security for money loaned, evidence will be admitted to ascertain the truth of the transaction. *Morris* v. *Exec. of Nixon*, 118.
2. A letter of guarantee written in the United States, and addressed to a house in England, must be construed according to the laws of that country. *Bell et al.* v. *Bruen*, 169.
3. Extrinsic evidence may be used to ascertain the true import of such an agreement, and its construction is matter of law for the court. *Ib.*
4. The dockets and records of a court, showing that money had been received by the marshal or his deputies, under executions, are good evidence in a suit against his securities. The acts of the court must, in the first instance, be presumed to be regular, and in conformity with settled usage; and are conclusive until reversed by a competent authority. *Williams* v. *United States*, 290.
5. The declarations of a deceased member of a family that the parents of it never were married, are admissible in evidence whether his connection with that family was by blood or marriage. *Jewell's Lessee* v. *Jewell*, 219.
6. The acts and declarations of the parties being given in evidence on both sides, on the question of marriage, an advertisement announcing their separation, and appearing in the principal commercial newspaper of the place of their residence immediately after their separation, is part of the *res gesta*, and admissible in evidence. Whether or not it was inserted by the party, and if it was, what were his motives, are questions of fact for the jury. *Ib.*
7. If a written contract between the parties be offered in evidence, the purport of which is to show that the parties lived together on another basis than marriage, and the opposite party either denies the authenticity of the paper or alleges that it was obtained by fraud; the question, whether there was a marriage or not, is still open to the jury upon the whole of the evidence. *Ib.*
8. It is legal evidence that the President specially authorized and directed, in writing, the secretary of the Treasury to make advances of public money, and that such paper was destroyed when the Treasury building was burned. It is sufficient, if the witness states his belief that it was so destroyed. *Williams* v. *United States*, 290.

EXECUTION.
1. Where a decree is passed by the court below against an executor, being the defendant in a chancery suit, and before an appeal is prayed the executor is removed by a court of competent jurisdiction, and an administrator *de bonis non* with the will annexed, is appointed, all further proceedings, either by execution or appeal, are irregular, until the administrator be made a party to the suit. *Taylor et al.* v. *Savage*, 282.
2. If an execution be issued before the proper parties are thus made, it is unauthorized and void; and no right of property will pass by a sale under it. *Ib.*
3. The administrator cannot obtain redress by application to this court, but must first be made a party in the court below. This may be done at the instance of either side. *Ib.*
4. After he is thus made a party, he may stay proceedings by giving bond, or the complainants may enforce the decree, if the bond be not filed in time. *Ib.*

EXECUTORS AND ADMINISTRATORS.
See CHANCERY, 20—24.
1. If an executor, in distributing an estate, assigns to one of the distributees a mortgage which is for a greater amount than his share, the distributee is not bound to make up the difference in case the mortgaged property sells for less than the amount of the mortgage. *Hammond's Adm.* v. *Lewis, Ex. of Washington*, 14.
2. A disposition by a testator of his personal property to purposes other than the payment of his debts, with the assent of creditors, is in itself a charge on the real estate, subjecting it to the payment of the debts of the estate, although no such charge is created by the words of the will. *Bank of the United States* v. *Beverly*, 134.

FLORIDA.
See LANDS, PUBLIC, 1—4.
FORECLOSURE.
See CONSTITUTIONAL LAW, 2.
FORMER ADJUDICATION.
1. A fact tried and decided by a court of competent jurisdiction, cannot be contested again between the same parties ; and there is no difference in this respect between a verdict and judgment at common law and a decree of a court of equity. *Bank of the United States* v. *Beverly*, 134.
2. But an answer in Chancery setting up, as a defence, the dismission of a former bill filed by the same complainants, is not sufficient unless the record be exhibited. *Ib.*
GRANTS.
See LANDS, PUBLIC.
GUARANTEE.
See COMMERCIAL LAW, 1—4.
HEARSAY EVIDENCE.
See MARRIAGE, 1, 2.
IMPRISONMENT FOR DEBT.
1. A person in custody under a *capias ad satisfaciendum* issued under the authority of a Circuit Court of the United States, cannot legally be discharged from imprisonment by a state officer acting under a state insolvent law. *Duncan* v. *Darst et al.* 301.
INFRINGEMENT.
See PATENT RIGHTS.
INTEREST.
1. In the settlement of an account between the owner of land and the holder, interest begins to run against the latter from the time when the owner asserted his title to the land. *Buchannon et al* v. *Upshaw*, 56.
JURY.
1. In case of a collision of vessels, the question, by whose fault the accident happened, is a question of fact for the jury to decide upon the whole of the evidence. *Smith et al.* v. *Condry*, 28.
2. Extrinsic evidence may be used to ascertain the true import of an agreement of guarantee, and its construction is matter of law for the court. *Bell et al.* v. *Bruen*, 169.
3. An advertisement announcing the separation of persons who had been living together as man and wife, being allowed to be given in evidence under the circumstances of the case, the question whether or not it was inserted by the party, and if so, what were his motives, are questions of fact for the jury. *Jewell's Lessee* v. *Jewell*, 219.
4. If a written contract between the parties be offered in evidence, the purport of which is to show that the parties lived together on another basis than marriage, and the opposite party either denies the authenticity of the paper, or alleges that it was obtained by fraud, the question whether there was a marriage or not is still open to the jury upon the whole of the evidence. *Ib.*
LACHES.
See CHANCERY, 13—19 ; LIMITATION OF ACTIONS, 4—12.
LANDLORD AND TENANT.
1. It is a settled rule at common law, that where a right of re-entry is claimed on the ground of forfeiture for nonpayment of rent, there must be proof of a demand of the precise sum due, at a convenient time before sunset, on the day when the rent is due, upon the land, in the most notorious place of it, even though there is no person on the land to pay. *Connor* v. *Bradley et al.* 211.
2. In proceeding under the statute of 4 Geo. 2, it must be alleged and proved, that there was no sufficient distress upon the premises on some day or period between the time at which the rent fell due and the day of the demise ; and if the time when, according to the proofs, there was not a sufficient distress upon the premises, be subsequent to the day of the demise, it is bad. *Ib.*
LANDS, PUBLIC.
1. The certificate of the secretary of the Spanish governor of Florida is *prima facie* evidence of the existence of a grant of land. *United States* v. *Acosta*, 24.

LANDS, PUBLIC—(*Continued.*)
2. The Spanish governor had authority to issue such a grant. *Ib.*
3. In the case of a grant made before the 24th of January, 1818, it is valid, although the survey was not made until after that day, provided the survey was made before the exchange of flags. *Ib.*
4. It is not a good objection to such a grant that the metes and bounds were not set forth. *Ib.*
5. A grant of land, "bounded east by the river Mobile," covers the ground between high water and low water marks. *City of Mobile* v. *Emanuel*, 95.

LAW OF PLACE.
See LOCAL LAW.

LEGACIES.
1. A bequest of freedom to a slave, under the laws of Maryland, stands on the same principles with a bequest over to a third person. A bequest of freedom to a slave is a specific legacy. *Williams* v. *Ash*, 1.

LETTERS PATENT.
See PATENT RIGHTS.

LIEN.
See BANKS.

LIMITATION OF ACTIONS.
1. The statute of limitation of Virginia, passed in 1785, barred the right of entry, unless suit was brought within twenty years next after the cause of action accrued. The savings are infancy, coverture, &c., and such persons are barred if they do not bring their action within ten years next after their disabilities shall be removed. *Mercer's lessee* v. *Seldon*, 37.
2. Disabilities which bring a person within the exceptions of the statute cannot be piled one upon another; but a party, claiming the benefit of the proviso, can only avail himself of the disability existing when the right of action first accrued. *Ib.*
3. What constitutes an adverse possession. *Ib.*
4. The legal right of an owner of land, although he has recognized a sale of it, is not destroyed by lapse of time, or his right to bring an ejectment barred, provided he has, in the mean time, brought suit upon the securities which he took when he recognized the sale. *Buchannon et al.* v. *Upshaw*, 56.
5. Lapse of time is no defence where there is an unexecuted trust to pay debts, which a court of competent jurisdiction has decided to be unpaid in point of fact. *Bank of United States* v. *Beverly*, 134.
6. There must be conscience, good faith, and reasonable diligence, to call into action the powers of a court of equity. *McKnight* v. *Taylor*, 161.
7. In matters of account, where they are not barred by the act of limitations, courts of equity refuse to interfere after a considerable lapse of time, from considerations of public policy, and from the difficulty of doing entire justice, when the original transactions have become obscured by time, and the evidence may be lost. *Ib.*
8. A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands where the party has slept upon his rights for a great length of time. *Bowman et al.* v. *Wathen et al.*, 189.
9. Therefore, from the beginning of this jurisdiction, there was always a limitation of suit in this court. *Ib.*
10. Every new right of action, in equity, that accrues to a party, whatever it may be, must be acted upon, at the utmost, within twenty years. *Ib.*
11. Though the claimant may have been embarrassed by the frauds of others, or distressed, it is not sufficient to take the case out of the rule. *Ib.*
12. And it is the same whether the party knew of an adverse possession, or, through negligence and a failure to look after their interests, permitted the title of another to grow into full maturity. *Ib.*

LOCAL LAW.
1. Where a collision of vessels occurs in an English port, the rights of the parties depend upon the provisions of the British statutes then in force; and if doubts exist as to their true construction, this court will adopt that which is sanctioned by their own courts. *Smith et al.* v. *Condry*, 28.

LOCAL LAW—(*Continued.*)
2. A letter of guarantee written in the United States, and addressed to a house in England, must be construed according to the laws of that country. *Bell et al.* v. *Bruen*, 169.
3. The law of the State of Alabama, which authorizes securities to require of the creditor forthwith to put the bond in suit against the principal, and absolves the security unless the creditor commences suit against the principal, does not include a case where the parties (principal and security) unite in a joint and several sealed bill. *Ellis et al.* v. *Jones, Admr. of Taylor*, 197.

MARRIAGE.
1. The declarations of a deceased member of a family that the parents of it never were married, are admissible in evidence whether his connection with that family was by blood or marriage. *Jewell's lessee* v. *Jewell*, 219.
2. The acts and declarations of the parties being given in evidence on both sides on the question of marriage, an advertisement announcing their separation, and appearing in the principal commercial paper of the place of their residence, immediately after their separation, is part of the *res gesta*, and admissible in evidence. Whether or not it was inserted by the party, and if it was, what were his motives, are questions of fact for the jury. *Ib.*
3. If a written contract between the parties be offered in evidence, the purport of which is to show that the parties lived together on another basis than marriage, and the opposite party either denies the authenticity of the paper, or alleges that it was obtained by fraud, the question, whether there was a marriage or not, is still open to the jury upon the whole of the evidence. *Ib.*
4. The court, being equally divided, were unable to express an opinion upon the following questions, viz. 1. Whether, "if, before any sexual connection between the parties, they, in the presence of her family and friends, agreed to marry, and did afterwards live together as man and wife," it was a legal marriage, and the tie indissoluble even by mutual consent; and, 2. Whether, "if the contract be made *per verba de præsenti*, and remains without cohabitation, or if made *per verba de futuro*, and be followed by consummation," it amounts to a valid marriage, which the parties (being competent as to age and consent) cannot dissolve, and is equally as binding as if made in *facie ecclesiæ*. *Ib.*

MARYLAND.
1. A bequest of freedom to a slave, under the laws of Maryland, stands on the same principles with a bequest over to a third person. Such a bequest is a specific legacy. *Williams* v. *Ash*, 1.

MORTGAGE.
1. Where a mortgage is assigned by an executor to a distributee of an estate, and the property sells for less than the nominal amount, the distributee is not responsible for the difference, in case he has acted with good faith and diligence. *Hammond's Ad.* v. *Lewis, Ex. of Washington*, 14.
2. A state law, passed subsequently to the execution of a mortgage, which declares that the equitable estate of the mortgagor shall not be extinguished for twelve months after a sale under a decree in chancery, and which prevents any sale unless two-thirds of the amount at which the property has been valued by appraisers shall be bid therefor, is within the clause of the tenth section of the first article of the Constitution of the United States, which prohibits a state from passing a law impairing the obligation of contracts. *Bronson* v. *Kinzie et al.*, 311.

NOLLE PROSEQUI.
1. A plaintiff may, in an action in form *ex delicto* against several defendants, enter a *nolle prosequi* against one of them. But in actions in form *ex contractu*, unless the defence be merely in the personal discharge of one of the defendants, a *nolle prosequi* cannot be entered as to one defendant without discharging the other. *United States* v. *Linn et al.*, 104.

OFFICIAL BONDS.
See SURETY, 2–8.

PAROL EVIDENCE.
See EVIDENCE, 1–3, 8.

PATENT RIGHTS.

1. If a person employed in the manufactory of another, whilst receiving wages, makes experiments at the expense and in the manufactory of his employer; has his wages increased in consequence of the useful result of the experiments; makes the article invented and permits his employer to use it, no compensation for its use being paid or demanded; and then obtains a patent: these facts will justify the presumption of a license to use the invention. *McClurg et al.* v. *Kingsland et al.* 202.
2. Such an unmolested and notorious use of the invention prior to the application for a patent, will bring the case within the provisions of the 7th section of the act of 1839, c. 88. *Ib.*
3. The assignees of a patent-right take it subject to the legal consequences of the previous acts of the patentee. *Ib.*
4. The 14th and 15th sections of the act of 1836, c. 357, prescribe the rules which must govern on the trial of actions for the violations of patent rights; and these sections are operative, so far as they are applicable, notwithstanding the patent may have been granted before the passage of the act of 1836. *Ib.*
5. The words, "any newly invented machine, manufacture, or composition of matter," in the 7th section of the act of 1839, have the same meaning as "invention," or "thing patented." *Ib.*

PILOTS.

See COLLISION, 2.

PLEADING.

1. A plaintiff may, in an action in form *ex delicto* against several defendants, enter a *nolle prosequi* against one of them. But in actions in form *ex contractu*, unless the defence be merely in the personal discharge of one of the defendants, a *nolle prosequi* cannot be entered as to one defendant without discharging the other. *United States* v. *Linn*, 104.
2. A plea, alleging merely that seals were affixed to a bond without the consent of the defendant, without also alleging that it was done with the knowledge, or by the authority or direction of the plaintiffs, is not sufficient. *Ib.*
3. A plea, which has on the face of it two intendments, ought to be construed most strongly against the party who pleads it. *Ib.*
4. A party who claims under an instrument which appears on its face to have been altered, is bound to explain the alteration; but not so, when the alteration is averred by the opposite party, and it does not appear upon the face of the instrument. *Ib.*
5. Where the plea is bad and the demurrer is to the plea, the court, having the whole record before them, will go back to the first error. *Ib.*
6. Where the date of a surety bond is subsequent to the appointment of the principal to office, the declaration should allege that the money collected by the principal remained in his hands at the time when the surety bond was executed. *Ib.*
7. The action of *assumpsit* for the use and occupation of lands and houses existed in Virginia anterior to the cession of the District of Columbia to the United States. *Lloyd* v. *Hough*, 153.
8. But this action is founded upon contract, either express or implied, and will not lie where the possession has been acquired and maintained under a different or adverse title, or where it was tortious, and makes the holder a trespasser. *Ib.*
9. The court will not express an opinion upon a matter of defence which was not brought to the consideration of the court below. *Bell et al.* v. *Bruen*, 169.
10. The law of the state of Alabama which authorizes securities to require of the creditor forthwith to put the bond in suit against the principal, and absolves the security unless the creditor commences suit and uses due diligence to collect the debt from the principal, does not include a case where the parties (principal and surety) unite in a joint and several sealed bill. *Ellis et al.* v. *Jones, Admr. of Taylor*, 197.
11. In an action of ejectment, if the plaintiff count upon a lease to himself from a person whom the evidence shows to have been dead at the time, it is bad. *Connor* v. *Bradley et ux.*, 211.

PLEADING—(*Continued.*)

12. It is a settled rule at common law, that where a right of re-entry is claimed on the ground of forfeiture for nonpayment of rent, there must be proof of a demand of the precise sum due, at a convenient time before sunset, on the day when the rent is due, upon the land, in the most notorious place of it, even though there be no person on the land to pay. *Ib.*
13. In proceeding under the statute of 4 Geo. 2, it must be alleged and proved that there was no sufficient distress upon the premises on some day or period between the time at which the rent fell due and the day of the demise; and if the time when, according to the proofs, there was not a sufficient distress upon the premises, be subsequent to the day of the demise, it is bad. *Ib.*
14. After pleading the general issue, it is too late to take advantage of a defect in the writ, or a variance between the writ and declaration. *McKenna* v. *Fisk*, 241.
15. Actions of trespass, except those for injury to real property, are transitory in their character. *Ib.*
16. Where the writ mentions a trespass with force and arms upon the storehouse of the plaintiff and a seizure and destruction of goods, it covers a transitory as well as a local action. *Ib.*
17. In transitory actions, a venue is laid to show where the trial is to take place. It is a legal fiction, devised for the furtherance of justice, and cannot be traversed. *Ib.*
18. In such actions, such a venue is good without stating where the trespass was in fact committed, with a *scilicet* of the county where the action is brought. *Ib.*
19. In the absence of statutory provisions, the courts in the District of Columbia must apply the principles of the common law to such actions, the pleadings, and the proofs. *Ib.*

PRACTICE.

See CHANCERY; PLEADING.

1. Whether or not a record contains a bill of exceptions or statement of facts by the court, according to the practice in Louisiana, by which any question of law is brought up for revision in such a form as to enable this court to decide upon it; and whether or not there is a mass of various and conflicting testimony in relation to facts, upon which no jurisdiction can be exercised upon a writ of error; are questions to be decided only upon the final hearing of the cause. *Minor et ux.* v. *Tillotson*, 287.
2. The court will not go into this inquiry upon a motion to dismiss the writ of error, before the case is taken up for argument. *Ib.*
3. The dockets and records of a court, showing that money has been received by the marshal or his deputies under executions, are good evidence in a suit against his securities. *Williams* v. *United States*, 290.

PRESIDENT OF THE UNITED STATES.

1. The act of Congress passed January 31, 1823, prohibiting the advance of public money in any case whatsoever to the disbursing officers of government, except under the special direction of the President, does not require the personal and ministerial performance of this duty, to be exercised in every instance by the President under his own hand. *Williams* v. *The United States*, 290.
2. Such a practice, if it were possible, would absorb the duties of the various departments of the government in the personal action of the one chief executive officer, and be fraught with mischief to the public service. *Ib.*
3. The President's duty, in general, requires his superintendence of the administration, yet he cannot be required to become the administrative officer of every department and bureau, or to perform in person the numerous details incident to services, which, nevertheless, he is, in a correct sense, by the Constitution and laws required and expected to perform. *Ib.*
4. It is legal evidence that the President specially authorized and directed, in writing, the Secretary of the Treasury to make such advances, and that such paper was destroyed, when the Treasury building was burned. It is sufficient if the witness states his belief that it was so destroyed. *Ib.*

PRIVITY OF CONTRACT.
1. If the owner of land recognize a sale of it made by a person who had no authority to sell, there is a privity of contract between the owner and the purchaser, which equity will enforce. *Buchannon et al.* v. *Upshaw*, 56.

PUBLIC LANDS.
See LANDS, PUBLIC.

SLAVES.
1. A slave is capable of receiving a bequest of freedom upon the happening of a contingency which is not too remote. Such a bequest is a specific legacy. *Williams* v. *Ash*, 1.
2. Mrs. T. Greenfield, of Prince George's county, Maryland, bequeathed to her nephew, Gerard T. Greenfield, certain slaves, with a proviso in her will, "that he shall not carry them out of the state of Maryland, or sell them to any one; in either of which events, I will and desire the said negroes shall be free for life." After the decease of the testatrix, in 1839, G. T. Greenfield sold one of the slaves, and a petition for freedom was thereupon filed in the Circuit Court of Washington county. The legatee continued to reside in Prince George's county, for two years after the decease of the testatrix, during which time the apellee was sold by him, and he afterwards removed to the state of Tennessee, where he had resided before the death of the testatrix. The Circuit Court instructed the jury, that by the sale, the petitioner became free. *Held*, that the instructions of the Circuit Court were correct. *Ib.*
3. The bequest of the testatrix of the slave to her nephew, under the restrictions imposed by the will, was not a restraint on alienation inconsistent with the right to the property bequeathed to the legatee. It was a conditional limitation of freedom, and took effect the moment the negro was sold. *Ib.*

STATE COURTS.
See CONSTITUTIONAL LAW, 1.

STATUTES OF LIMITATION.
See LIMITATION OF ACTIONS.

SURETY.
See COMMERCIAL LAW, 1—4.
1. The law of the state of Alabama, passed in 1821, chap. 26, sec. 5, which authorizes securities to require of the creditor forthwith to put the bond in suit against the principal, and absolves the security unless the creditor commences suit, and uses due diligence to collect the debt from the principal, does not include a case where the parties (principal and security) unite in a joint and several sealed bill. *Ellis et al.* v. *Jones, Admr. of Taylor*, 197.
2. Where a collector is continued in office for more than one term, but gives different sureties, the liability of the sureties is to be estimated just as if a new person had been appointed to fill the second term. *United States* v. *Irving et al.* 250.
3. When the accounts of a collector are returned to the Treasury quarterly, and the date of the commencement and expiration of his term of office is on some intermediate day between the beginning and end of the quarter, a restatement and Treasury transcript of his account up to the end of his term, is legal evidence in a suit against the sureties. *Ib.*
4. Such a restatement does not falsify the general accounts, but arranges the items of debits and credits so as to exhibit the transactions of the collector during the four years for which the sureties were responsible. *Ib.*
5. The amount charged to the collector at the commencement of his second term is only *prima facie* evidence against the sureties. *Ib.*
6. But payment into the Treasury of moneys accruing and received in the second term should not be applied to the extinguishment of a balance apparently due at the end of the first term. Payments made in the subsequent term of moneys received on duty bonds or otherwise, which remained charged to the collector as of the preceding official term, should be so applied. *Ib.*
7. The settlement of quarterly accounts at the Treasury, running on in a continued series is not conclusive. The officers of the Treasury cannot,

SURETY—(*Continued.*)
by any exercise of their discretion, enlarge or restrict the obligation of the collector's bond. Much less can they, by the mere fact of keeping an account current, in which debits and credits are entered as they occur, and without any express appropriation of payments, affect the rights of sureties. *Ib.*
8. The dockets and records of a court, showing that money had been received by the marshal or his deputies, under executions, are good evidence in a suit against his sureties. *Williams* v. *United States*, 290.
TENANCY BY THE CURTESY.
1. The general rule of law is, that there must be an entry during coverture, to enable the husband to claim a tenancy by the curtesy. *Mercer's lessee* v. *Selden*, 57.
TREASURY DEPARTMENT and TREASURY TRANSCRIPT.
See PRESIDENT OF THE UNITED STATES; SURETY, 2—7.
TRESPASS.
1. Actions of trespass, except those for injury to real property, are transitory in their character. *McKenna* v. *Fisk*, 241.
2. Where the writ mentions a trespass with force and arms upon the storehouse of the plaintiff and a seizure and destruction of goods, it covers a transitory as well as a local action. *Ib.*
3. In transitory actions, a venue is laid to show where the trial is to take place. It is a legal fiction, devised for the furtherance of justice, and cannot be traversed. *Ib.*
4. In such actions, such a venue is good without stating where the trespass was in fact committed, with a *scilicet* of the county in which the action is brought. *Ib.*
5. In the absence of statutory provisions, the courts in the District of Columbia must apply the principles of the common law to such actions, the pleadings, and the proofs. *Ib.*
TRUSTS.
See CHANCERY, 13.
USE AND OCCUPATION.
See ASSUMPSIT.
VENUE.
See PLEADING, 15—19.
VESSELS.
See COLLISION.
VIRGINIA.
See ASSUMPSIT; LIMITATION OF ACTIONS, 1—3.
WILLS.
1. A disposition by a testator of his personal property to purposes other than the payment of his debts, with the assent of creditors, is in itself a charge on the real estate, subjecting it to the payment of the debts of the estate, although no such charge is created by the words of the will. *Bank of United States* v. *Beverly*, 134.
WRIT OF ERROR.
See ERROR.