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APPEAL.
1. A writ of error is not the appropriate mode of bringing up for review, a decree in chancery. It should be brought up by an appeal. *McCollum* v. *Eager*, 61.
2. An appeal will lie only from a final decree; and not from one dissolving an injunction, where the bill itself is not dismissed. *Ib.*
3. No appeal lies from the refusal of the court below to open a former decree. *Brockett et al.* v. *Brockett*, 238.
4. But if the court entertains a petition to open a decree, the time limited for an appeal does not begin to run until the refusal to open it, the same term continuing. *Ib.*
5. Where an appeal is prayed in open court, no citation is necessary. *Ib.*
6. The distinction between writs of error and appeals cannot be overthrown by an agreement of counsel in the court below, that all the evidence in the cause shall be introduced and considered as a statement of facts. *Minor et ux* v. *Tillotson*, 392.
7. Upon a petition so to alter a former mandate of this court, as to direct lands in Florida, which had not been offered for sale under the President's proclamation, to be included within a survey, as well as those lands which had been so offered.—*Held*, That this court has no power to grant the relief prayed. *Ex parte Sibbald*, 455.

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APPEAL BOND.
1. An appeal bond given to the people or to the relator is good, and if forfeited, may be sued upon by either. *Spalding* v. *People of New York*, 66.
2. Where there are many parties in a case below, it is not necessary for them all to join in the appeal bond. It is sufficient if they all appeal, and the bond be approved by the court. *Brockett* v. *Brockett*, 238.

BANKRUPTCY.
1. Under the late Bankrupt act of the United States, the existence of a fiduciary debt, contracted before the passage of the act, constitutes no objection to the discharge of the debtor from other debts. *Chapman* v. *Forsyth*, 202.
2. A factor who receives the money of his principal, is not a fiduciary within the meaning of the act. *Ib.*
3. A bankrupt is bound to state, upon his schedule, the nature of a debt if it be a fiduciary one. Should he omit to do so, he would be guilty of a fraud, and his discharge will not avail him; but if a creditor, in such case, proves his debt and receives a dividend from the estate, he is estopped from afterwards saying that his debt was not within the law. *Ib.*
4. But if the fiduciary creditor does not prove his debt, he may recover it afterwards from the discharged bankrupt, by showing that it was within the exceptions of the act. *Ib.*

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. By the general law-merchant, no protest is required to be made upon the dishonor of any promissory note; but it is exclusively confined to foreign bills of exchange. *Burke* v. *McKay*, 66.
2. Neither is it a necessary part of the official duty of a notary to give notice to an endorser of the dishonor of a promissory note. *Ib.*
3. But a state law or general usage may overrule the general law-merchant in these respects. *Ib.*
4. Where a protest is necessary, it is not indispensable that it should be made by a person who is in fact a notary. *Ib.*
5. Where the endorser has discharged the maker of a note from liability by a release and settlement, a notice of non-payment would be of no use to him, and therefore he is not entitled to it. *Ib.*
6. A statute of Mississippi allows suit to be brought against the maker and payee, jointly, of a promissory note by the endorsee. *Dromgoole* v. *Farmers' and Merchants' Bank of Mississippi*, 241.
7. But an action of this kind cannot be maintained in the courts of the United States, although the plaintiff resides in another state, provided the maker and payee of the note both reside in Mississippi. *Ib.*
8. Where notes are deposited for collection by way of collateral security for an existing debt, the case does not fall within the strict rules of commercial law applicable to negotiable paper. It falls under the general law of agency; and the agents are only bound to use due diligence to collect the debts. *Lawrence* v. *McCalmont*, 427.
9. Where the drawer of a bill has no right to expect the payment of it by the acceptor; where, for instance, the drawer has withdrawn, or intercepted funds which were destined to meet the bill, or its payment was dependent upon conditions which he must have known he had not performed, such drawer cannot be entitled to notice of the non-payment of the bill. *Rhett* v. *Poe*, 457.
10. It becomes a question of law whether due diligence has or has not been used, whenever the facts are ascertained; and therefore there is no error in the direction of a court to the jury that they should infer due diligence from certain facts, where those facts, if found by the jury, amounted in the opinion of the court to due diligence. *Ib.*
11. If the drawer and acceptor are either general partners or special partners in the adventure of which the bill constitutes a part, notice of the dishonor of the bill need not be given to the drawer. *Ib.*
12. The strictness of the rule requiring notice between parties to a bill is much relaxed in cases of collateral security or guarantee in a separate contract; the omission of such strict notice does not imply injury as a matter of course. The guarantor must prove that he has suffered damage by the neglect to make the demand on the maker, and to give notice, and then he is discharged only to the extent of the damage sustained. *Ib.*
13. A bill of exchange drawn by the Secretary of the treasury of the United States upon the French government for money due by a treaty between the two nations, cannot be considered as a bill drawn upon a particular fund in a commercial sense. *Bank of United States* v. *United States*, 711.
14. Such a bill, when taken up *supra protest* for the honor of the bank, becomes again the property of the bank in its original character of holder and payee. *Ib.*
15. Under the law-merchant, the drawer of a foreign bill of exchange is liable, in case of protest, for costs and other incidental charges, and also for re-exchange, whether direct or circuitous. The statute of Maryland allowing fifteen per cent. fixes this amount in lieu of re-exchange, to obviate the difficulty of proving the price of re-exchange. *Ib.*
16. When the bank came into possession of the bill, upon its return, the endorsements were in effect stricken out, and the bank became, in a commercial and legal sense, the holder of the bill. *Ib.*

CAVEAT.

See TITLE, 1.

CHANCERY.

1. Where a party seeks relief which is mainly appropriate to a chancery

CHANCERY—(*Continued.*)
jurisdiction in the Circuit Court of the United States for Louisiana, chancery practice must be followed. *McCollum* v. *Eager*, 61.
2. A writ of error is not the appropriate mode of bringing up for review a decree in chancery. It should be brought up by an appeal. *Ib.*
3. An appeal will lie only from a final decree; and not from one dissolving an injunction, where the bill itself is not dismissed. *Ib.*
4. The decisions and *dicta* of English judges, and the recent publication of the Record Commissioners in England, examined as to the jurisdiction of chancery over charitable devises anterior to the statute of 43 Elizabeth. *Vidal* v. *Girard's Exec.*, 127.
5. Where there are many parties in a case below, it is not necessary for them all to join in the appeal bond. It is sufficient if they all appeal and the bond be approved by the court. *Brockett* v. *Brockett*, 238.
6. No appeal lies from the refusal of the court below to open a former decree. *Ib.*
7. But if the court entertains a petition to open a decree, the time limited for an appeal does not begin to run until the refusal to open it, the same term continuing. *Ib.*
8. Where an appeal is prayed in open court, no citation is necessary. *Ib.*
9. A court of equity will not interfere, where the complainant has a proper remedy at law, or where the complainant claims a set-off of a debt arising under a distinct transaction, unless there is some peculiar equity calling for relief. *Dade* v. *Irwin*, 383.
10. Nor will it interfere where the set-off claimed is old and stale, with regard to which the complainant has observed a long silence, and where the correctness of the set-off is a matter or grave doubt. *Ib.*
11. The principles laid down in the case of *Taylor and others* v. *Savage*, 1 How., 282, examined and confirmed. *Taylor* v. *Savage*, 395.
12. The rights of the parties as they stand when a decree is rendered are to govern, and not as they stood at any preceding time. *Randel* v. *Brown*, 406.
13. The retention of property, after the extinguishment of a lien, becomes a fraudulent possession. *Ib.*
14. A lien cannot arise, where, from the nature of the contract between the parties, it would be inconsistent with the express terms or the clear intent of the contract. *Ib.*
15. It is impossible to lay down any general rule as to what constitutes multifariousness in a bill in equity. Every case must be governed by its own circumstances, and the court must exercise a sound discretion. *Gaines et ux.* v. *Chew at al.*, 619.
16. A bill filed against the executors of an estate, and all those who purchased from them, is not upon that account alone multifarious. *Ib.*
17. Under the Louisiana law, the Court of Probate has exclusive jurisdiction in the proof of wills; which includes those disposing of real as well as personal estate. *Ib.*
18. In England, equity will not set aside a will for fraud and imposition, relief being obtainable in other courts. *Ib.*
19. Although by the general law, as well as the local law of Louisiana, a will must be proved before a title can be set up under it, yet a court of equity can so far exercise jurisdiction as to compel defendants to answer touching a will alleged to be spoliated. And it is a matter for grave consideration, whether it cannot go further and set up the lost will. *Ib.*
20. Where the heir at law assails the validity of the will, by bringing his action against the devisee or legatee who sets up the will as his title, the District Courts of Louisiana are the proper tribunals, and the powers of a Court of Chancery are necessary, in order to discover frauds which are within the knowledge of the defendants. *Ib.*
21. Express trusts are abolished in Louisiana by the law of that state, but that implied trust which is the creature of equity has not been abrogated. *Ib.*
22. The exercise of chancery jurisdiction by the Circuit Court of the United States, sitting in Louisiana, does not introduce any new or foreign principle. It is only a change of the mode of redressing wrongs and protecting rights. *Ib.*

CHANCERY COURT OF MARYLAND.
See JURISDICTION, 3, 4, MARYLAND.
CHARGE TO JURY.
See INSTRUCTIONS.
CHARITIES.
See CHANCERY, 4.
CHEROKEE INDIANS.
1. The tract of country lying on the west of the Tennessee river was not, in 1779, the country of the Cherokee Indians, and was of course subject to be taken up as a part of the waste and unappropriated lands of Virginia. *Porterfield* v. *Clark*, 76.
CHRISTIAN RELIGION.
1. The exclusion of all ecclesiastics from holding or exercising any station or duty in a college, or the limitation of the instruction to be given to the scholars to pure morality, are not so derogatory to the Christian religion, as to make a devise void for the foundation of the college. *Vidal* v. *Girard's Executors*, 127.
COLLATERAL SECURITY.
See BILLS OF EXCHANGE, 8.
COMMERCIAL LAW.
See BILLS OF EXCHANGE AND PROMISSORY NOTES, PIRACY AND PIRATICAL ACTS, BANKRUPTCY, GUARANTEE, PARTNERSHIP.
CONSIDERATION.
See GUARANTEE, 3.
CONSTITUTIONAL LAW.
1. A citizen of one state has a right to sue upon the sheriff's bond of another state, and to use the name of the governor for the purpose, although the parties to the bond are the sheriff and governor, both citizens of the same state, provided the party for whose use the suit is brought is a citizen of a different state from the sheriff. *McNutt* v. *Bland*, 9.
2. A sheriff has no right to discharge a prisoner in custody by process from the Circuit Court, unless such discharge is sanctioned by an act of Congress, or the mode of it adopted as a rule by the Circuit Court of the United States. *Ib.*
3. A marshal and his sureties cannot be made responsible, by a mere motion to the court, for money collected, and twenty-five per cent. damages, where such damages are not recognized by the process acts of Congress. *Gwin* v. *Breedlove*, 28.
4. But the marshal is liable to have judgment entered against himself by motion, and in that motion residence of the parties need not be averred in order to give jurisdiction to the court. *Ib.*
5. A marshal who receives bank-notes in satisfaction of an execution must account to the plaintiff in gold or silver; the Constitution of the United States recognizing only gold and silver as a legal tender. *Ib.*
6. A marshal has no right to receive bank notes in discharge of an execution, unless authorized so to do by the plaintiff. *Griffin et al.* v. *Thompson*, 244.
7. A citizen of one state can sue a corporation which has been created by, and transacts its business in another state, (the suit being brought in the latter state,) although some of the members of the corporation are not citizens of the state in which the suit is brought, and although the state itself may be a member of the corporation. *Louisville, Cincinnati, and Charleston Railroad Co.* v. *Letson*, 497.
8. A corporation created by, and transacting business in a state, is to be deemed an inhabitant of the state, capable of being treated as a citizen for all purposes of suing and being sued, and an averment of the fact of its creation and the place of transacting business, is sufficient to give the Circuit Courts jurisdiction. *Ib.*
9. A law of the state of Illinois, providing that a sale shall not be made of property levied on under an execution, unless it will bring two-thirds of its valuation, according to the opinion of three householders, is unconstitutional and void. *McCracken* v. *Hayward*, 608.
10. The case of *Bronson* v. *Kinzie*, 1 How., 311, reviewed and confirmed. *Ib.*

CORPORATIONS.

1. The corporation of the city of Philadelphia has power, under its charter, to take real and personal estate by deed, and also by devise, inasmuch as the act of 32 and 34 Henry 8, which excepts corporations from taking by devise, is not in force in Pennsylvania. *Vidal et al.* v. *Girard's Exec.*, 128.
2. Where a corporation has this power, it may also take and hold property in trust in the same manner and to the same extent that a private person may do: if the trust be repugnant to, or inconsistent with, the proper purpose for which the corporation was created, it may not be compellable to execute it, but the trust (if otherwise unexceptionable) will not be void, and a court of equity will appoint a new trustee to enforce and perfect the objects of the trust. *Ib.*
3. Neither is there any positive objection in point of law, to a corporation taking property upon a trust not strictly within the scope of the direct purposes of its institution, but collateral to them. *Ib.*
4. Under the general power "for the suppression of vice and immorality, the advancement of the public health and order, and the promotion of trade, industry, and happiness," the corporation may execute any trust germane to those objects. *Ib.*
5. The charter of the city invests the corporation with powers and rights to take property upon trust for charitable purposes, which are not otherwise obnoxious to legal animadversion. *Ib.*
6. The two acts of March and April, 1832, passed by the legislature of Pennsylvania, are a legislative interpretation of the charter of Philadelphia, and would be sufficient hereafter to estop the legislature from contesting the competency of the corporation to take the property and execute the trusts.
7. If the trusts were in themselves valid, but the corporation incompetent o execute them, the heirs of the devisor could not take advantage of such inability; it could only be done by the state in its sovereign capacity, by a *quo warranto*, or other proper judicial proceeding. *Ib.*

See JURISDICTION, 15, 16.

COSTS.

1. Costs in the admiralty are in the sound discretion of the court; and no appellate court should interfere with that discretion, unless under peculiar circumstances. *Harmony et al.* v. *United States*, 210.
2. Although not *per se* the proper subject of an appeal, yet they can be taken notice of incidentally, as connected with the principal decree. *Ib.*

CUSTOM AND USAGE.

See BILLS OF EXCHANGE, 3.

DEVISE.

1. Where it appears, from the context of a will, that a testator intended to dispose of his whole estate, and to give his residuary legatee a substantial beneficial interest, such legatee will take real as well as personal estate, although the word "devisee" be not used. *Burwell* v. *Cawood*, 560.

DUE DILIGENCE.

See BILLS OF EXCHANGE, 8, 10; JURY, 2.

EQUITY.

See CHANCERY.

ERROR.

See WRIT OF ERROR.

ESTATE FOR LIFE.

What words constitute it, as distinguished from a fee-simple conditional. *Shriver's Lessee* v. *Lynn*, 43.

EXECUTION.

See CONSTITUTIONAL LAW, 2–6.

EXECUTORS AND ADMINISTRATORS.

1. In actions by or against personal representatives, the necessity of a profert of letters of administration depends upon the local laws of a state. *Mathewson's Adm.* v. *Grant's Adms.*, 263.

FACTORS.

1. Under the late bankrupt act of the United States, the existence of a fiduciary debt, contracted before the passage of the act, constitutes no objec-

FACTORS—(*Continued.*)
tion to the discharge of the debtor from other debts. *Chapman* v. *Forsyth et al.*, 202.
2. A factor, who receives the money of his principal, is not a fiduciary within the meaning of the act. *Ib.*
FIDUCIARY DEBTS.
See BANKRUPTCY, 1–4.
FLORIDA.
See JURISDICTION, 13; LANDS, PUBLIC, 12.
FRAUD.
1. An action for money had and received will lie against a person who has received the proceeds of a lottery ticket which he had fraudulently caused to be drawn as a prize. *Catts* v. *Phalen and Morris*, 376.
GRANTS.
See LANDS, PUBLIC.
GUARANTEE.
1. Whether a guarantee is a continuing one or not. *Lawrence* v. *McCalmont*, 426.
2. The principles laid down in the case of *Bell* v. *Bruen*, 1 How., 169, 186, which should govern the construction of commercial guaranties, reviewed and confirmed. *Ib.*
3. A valuable consideration, however small or nominal, if given or stipulated for in good faith, is, in the absence of fraud, sufficient to support an action on any parol contract, and this is equally true as to contracts of guarantee as to others. *Ib.*
4. The question, whether or not the guarantor had sufficient notice of the failure of the principals to pay the debt, was a question of fact for the jury. *Ib.*
5. The strictness of the rule requiring notice between parties to a bill or note, is much relaxed in cases of collateral security or of guarantee in a separate contract; the omission of such strict notice does not imply injury as a matter of course. The guarantor must prove that he has suffered damage by the neglect to make the demand on the maker, and to give notice, and then he is discharged only to the extent of the damage sustained. *Rhett* v. *Poe*, 457.
HABEAS CORPUS.
1. The original jurisdiction of this court does not extend to the case of a petition by a private individual, for a *habeas corpus* to bring up the body of his infant daughter, alleged to be unlawfully detained from him. *Ex parte Barry*, 65.
ILLINOIS.
See CONSTITUTIONAL LAW, 9.
IMPRISONMENT FOR DEBT.
1. A sheriff has no right to discharge a prisoner in custody by process from the Circuit Court, unless such discharge is sanctioned by an act of Congress, or the mode of it adopted as a rule by the Circuit Court of the United States. *McNutt* v. *Bland*, 9.
INSTRUCTIONS.
1. A court is not bound to grant an instruction prayed for, when it is merely a recital of general or abstract principles, and not accompanied by, or founded upon, a statement of the testimony. *Rhett* v. *Poe*, 457.
JUDICIAL SALE.
1. Under the statute of Maryland, passed in 1785, (1 Maxcy's Laws, ch. 72,) the chancellor can decree a sale of land upon the application of only a part of the heirs interested; and as he had jurisdiction, the record must be received as conclusive of the rights adjudicated. *Shriver's Lessee* v. *Lynn et al.*, 43.
2. The decree of the chancellor must be construed to conform to the sale prayed for in the petition, and authorized by the will; and a sale beyond that is not rendered valid by a final ratification. *Ib.*
3. A sale ordered by a court, in a case where it had not jurisdiction, must be considered as inadvertently done, or as an unauthorized proceeding; and, in either branch of the alternative, as a nullity. *Ib.*
JURISDICTION.
1. A citizen of one state has a right to sue on the sheriff's bond of another

JURISDICTION—(*Continued.*)
state, and to use the name of the governor for the purpose, although the governor and sheriff are citizens of the same state, provided the party for whose use the suit is brought is a citizen of a different state from the sheriff. *McNutt* v. *Bland*, 9.
2. A sheriff has no right to discharge a prisoner in custody by process from the Circuit Court, unless such discharge is sanctioned by an act of Congress, or the mode of it adopted as a rule by the Circuit Court of the United States. *Ib.*
3. A sale ordered by a court in a case where it had not jurisdiction, must be considered as inadvertently done, or as an unauthorized proceeding; and, in either branch of the alternative, as a nullity. *Shriver's Lessee* v. *Lynn*, 43.
4. But where the court had jurisdiction, the record must be received as conclusive of the rights adjudicated. *Ib.*
5. The original jurisdiction of this court does not extend to the case of a petition by a private individual, for a *habeas corpus* to bring up the body of his infant daughter alleged to be unlawfully detained from him. *Ex parte Barry*, 65.
6. Where the plaintiff in the court below claims $2000 or more, and the ruling of the court is for a less sum, he is entitled to a writ of error. *Knapp* v. *Banks*, 73.
7. But the defendant is not entitled to such writ where the judgment against him is for a less sum than $2000 at the time of the rendition thereof. *Ib.*
8. A statute of Mississippi allows suit to be brought against the maker and payee jointly, of a promissory note, by the endorsee. *Dromgoole* v. *Farmers' and Mechanics' Bank of Mississippi*, 241.
9. But an action of this kind cannot be maintained in the courts of the United States, although the plaintiff resides in another state, provided the maker and payee both reside in Mississippi. *Ib.*
10. By a law of Michigan, passed in 1818, the County Courts had power, under certain circumstances, to order the sale of the real estate of a deceased person for the payment of debts and legacies. It was for that court to decide upon the existence of the facts which gave jurisdiction; and the exercise of the jurisdiction warrants the presumption that the facts which were necessary to be proved were proved. *Grignon's Lessee* v. *Astor*, 319.
11. A distinction exists between courts of limited and of general jurisdiction: in the former the record must show that the jurisdiction was rightfully exercised; in the latter it will be presumed that it existed, where the record is silent. *Ib.*
12. This court has jurisdiction, under the twenty-fifth section of the Judiciary act, in a Missouri land cause, where the title is not to be determined by Spanish laws alone, but where the construction of an act of Congress is involved to sustain the title. *Chouteau* v. *Eckhart*, 344.
13. This court has not the power so to alter a former mandate of the court as to direct lands in Florida, which had not been offered for sale, under the President's proclamation, to be included within a survey, as well as those lands which had been so offered. *Ex parte Sibbald*, 455.
14. A citizen of one state can sue a corporation which has been created by, and transacts its business in, another state (the suit being brought in the latter state), although some of the members of the corporation are not citizens of the state in which the suit is brought, and although the state itself may be a member of the corporation. *Louisville, Cincinnati, and Charleston Railroad Co.* v. *Letson*, 497.
15. A corporation created by, and transacting business in a state, is to be deemed an inhabitant of the state, capable of being treated as a citizen for all purposes of suing and being sued; and an averment of the fact of its creation and the place of its residence is sufficient to give the Circuit Courts jurisdiction. *Ib.*

See PRACTICE.

JURY.
1. The question, whether or not the guarantor had sufficient notice of the failure of the principals to pay the debt, is a question of fact for the jury. *Lawrence* v. *McCalmont*, 427.

JURY—(*Continued.*)
2. It becomes a question of law whether due diligence has or has not been used, with regard to the collection of a bill of exchange, whenever the facts are ascertained; and therefore there is no error in the direction of a court to a jury that they should infer due diligence from certain facts, where those facts, if found by the jury, amounted, in the opinion of the court, to due diligence. *Rhett* v. *Poe*, 457.
3. The exact time of the birth of a petitioner for freedom is a fact for the jury; and a prayer to the court which would have excluded the consideration of that fact was properly refused. *Adams* v. *Roberts*, 486.
See INSTRUCTIONS.
KENTUCKY.
See LANDS, PUBLIC, 2; LIMITATIONS.
LACHES.
See STALE DEMANDS.
LANDS, PUBLIC.
1. The tract of country lying on the west of the Tennessee river, was not Cherokee country, in 1779, but was liable to be taken up, under the laws of Virginia, as waste and unappropriated land. *Porterfield* v. *Clark*, 76.
2. The Kentucky act of 1809, applied to the Chickasaw country on the west of the Tennessee river, as far as treaties would permit; and upon the extinguishment of the Indian title, this act, together with all the other laws, was extended over the country. *Ib.*
3. A confirmation of a grant of land in Missouri, under the act of 1836 to the original claimant and his legal representatives, enures by way of estoppel, to his assignee. *Stoddard* v. *Chambers*, 284.
4. To bring a case within the second section of the act of 1836, so as to avoid a confirmation, the opposing location must be shown to have been made under a law of the United States. *Ib.*
5. The holder of a New Madrid certificate had a right to locate it only on public lands which had been authorized to be sold. If it was located on lands which were reserved from sale at the time of issuing the patent, the patent is void. *Ib.*
6. There was no reservation from sale of the land claimed under a French or Spanish title between May, 1829, and July, 1832. A location under a New Madrid certificate, upon any land claimed under a French or Spanish title, not otherwise reserved, made in this interval, would have been good. *Ib.*
7. If two patents be issued by the United States for the same land, and the first in date be obtained fraudulently or against law, it does not carry the legal title. *Ib.*
8. A patent is a mere ministerial act, and if it be issued for land reserved from sale by law, it is void. *Ib.*
9. A title to land becomes a legal title when a claim is confirmed by Congress. Such confirmation is a higher evidence of title than a patent, because it is a direct grant of the fee, which had been previously in the United States. *Grignon's Lessee* v. *Astor*, 319.
10. The obligation of perfecting titles under Spanish concessions, which was assumed by the United States in the Louisiana treaty, was a political obligation, to be carried out by the legislative department of the government. Congress, in confirming or rejecting claims, acted as the successor of the intendant-general; and both exercised, in this respect, a portion of sovereign power. *Chouteau* v. *Eckhart*, 344.
11. The act of Congress, passed on the 13th of June, 1812, confirming the titles and claims of certain towns and villages to village lots and commons, gave a title which is paramount to a title held under an old Spanish concession, confirmed by Congress in 1836. *Ib.*
12. This court has not the power so to alter a former mandate of the court, as to direct lands in Florida, which had not been offered for sale under the President's proclamation, to be included within a survey, as well as those lands which had been so offered. *Ex parte Sibbald*, 455.
13. Where a treaty with the Indians provides that reservations of land shall be made for two different classes of persons, and that the President shall have the power to make selections for the orphan children of the In-

LANDS, PUBLIC—(*Continued.*)
dians, he cannot select a reservation made by any of the two classes first mentioned. *Sally Ladiga* v. *Roland et al.*, 581.
14. A grandmother, living with her grandchildren, is the head of a family, and entitled to a reservation ; and if the President selects this reservation, his act is a nullity. *Ib.*
15. It is the settled doctrine of the judicial department of the government, that the treaty of 1819 with Spain ceded to the United States no territory west of the river Perdido. It had already been acquired under the Louisiana treaty. *Pollard's Lessee* v. *Files*, 591.
16. In the interval between the Louisiana treaty and the time when the United States took possession of the country west of the Perdido, the Spanish government had the right to grant permits to settle and improve by cultivation, or to authorize the erection of establishments for mechanical purposes. *Ib.*
17. These incipient concessions were not disregarded by Congress, but are recognised in the acts of 1804, 1812 and 1819; and, as claims, are within the act of 1824. *Ib.*
18. That act (of 1824) gave a title to the owners of old water-lots, in Mobile, only where an improvement was made on the east side of Water street, and made by the proprietor of the lot on the west side of that street. Such person could not claim as riparian proprietor, or where his lot had a definite limit on the east. *Ib.*

LIEN.
1. A lien cannot arise, where, from the nature of the contract between the parties, it would be inconsistent with the express terms or the clear intent of the contract. *Randel* v. *Brown*, 406.

LIMITATIONS.
1. The courts in Kentucky having decided that an entry was required to give title on a military warrant, this court decides that the legislative grant of Virginia to her officers and soldiers would not, of itself, prevent the statute of limitations of Kentucky from attaching. *Porterfield* v. *Clark*, 76.

LOTTERIES.
1. A person who receives the prize money, in a lottery, for a ticket which he had caused to be fraudulently drawn as a prize, is liable to the lottery contractors in an action for money had and received for their use. So far as he is concerned, the law annuls the pretended drawing of the prize ; and he is in the same situation as if he had received the money of the contractors by means of any other false pretence. *Catts* v. *Phalen*, 376.

LOUISIANA.
See CHANCERY, 1, 17—22; LANDS, PUBLIC, 10, 11, 15.

MARSHALS.
1. A statute of the state of Mississippi, passed on the 15th of February, 1828, provided that if a sheriff should fail to pay over to a plaintiff money collected by execution, the amount collected, with 25 per cent. damages, and 8 per cent. interest, might be recovered against such sheriff and his sureties, by motion before the court to which such execution was returnable. *Gwin* v. *Breedlove*, 29.
2. A marshal and his sureties cannot be proceeded against jointly, in this summary way, but they must be sued as directed by the act of Congress. *Ib.*
3. But the marshal himself was always liable to an attachment, under which he could be compelled to bring the money into court; and by the process act of Congress, of May, 1828, was also liable, in Mississippi, to have a judgment entered against himself by motion. *Ib.*
4. This motion is not a new suit, but an incident of the prior one ; and hence, residence of the parties in different states need not be averred in order to give jurisdiction to the court. *Ib.*
5. Such parts only of the laws of a state as are applicable to the courts of the United States are adopted by the process act of Congress ; a penalty is not adopted, and the 25 per cent. damages cannot be enforced. *Ib.*
6. A marshal who receives bank-notes in satisfaction of an execution, when the return has not been set aside at the instance of the plaintiff, or

MARSHALS—(*Continued.*)
amended by the marshal himself, must account to the plaintiff in gold or silver; the Constitution of the United States recognizing only gold and silver as a legal tender. *Ib.*
7. A marshal has no right to receive bank-notes in discharge of an execution unless authorized to do so by the plaintiff. If he does receive such papers, the court, in the exercise of its power to correct the irregularities of its officer, will refuse a motion of the defendant to have satisfaction entered on the judgment, and refuse also to quash a second *fieri facias*. *Griffin et al.* v. *Thompson*, 244.
8. If the marshal receives bank-notes in discharge of an execution, and the plaintiff sanctions it, either expressedly or impliedly, he is bound by it, and a motion to quash the return ought to be refused. *Buckhannan et al.* v. *Tinnin et al.*, 258.

MARYLAND.
1. Under a statute of Maryland, passed in 1785, the chancellor can decree a sale of land upon the application of only a part of the heirs interested; and as he had jurisdiction, the record must be received as conclusive of the rights adjudicated. *Shriver's Lessee* v. *Lynn*, 43.
2. The decree of the chancellor must be construed to conform to the sale prayed for in the petition, and authorized by the will; and a sale beyond that is not rendered valid by a final ratification. *Ib.*

MICHIGAN.
See JURISDICTION, 10.

MISSISSIPPI.
Statutes of Mississippi construed. *McNutt* v. *Bland*, 9; *Gwin* v. *Breedlove*, 29.
See BILLS OF EXCHANGE, 6, 7; JURISDICTION, 8.

MISSOURI.
See JURISDICTION, 12; LANDS, PUBLIC, 3–8.

MULTIFARIOUSNESS.
See CHANCERY, 15, 16.

NEW MADRID CERTIFICATES.
1. The holder of a New Madrid certificate had a right to locate it only on "public lands which had been authorized to be sold." If it was located on lands which were reserved from sale at the time of issuing the patent, the patent is void. *Stoddard et al.* v. *Chambers*, 284.
2. There was no reservation from sale of the land claimed under a French or Spanish title between the 26th of May, 1829, and the 9th of July, 1832. A location under a New Madrid certificate, upon any land claimed under a French or Spanish title, not otherwise reserved, made in this interval, would have been good. *Ib.*

OFFICIAL BONDS.
See CONSTITUTIONAL LAW, 1.

PARTIES.
1. An appeal bond given to the people or to the relator is good, and if forfeited, may be sued upon by either. *Spalding* v. *People of New York*, 66.

PARTNERSHIP.
1. Although, by the general rule of law, every partnership is dissolved by the death of one of the partners, where the articles of co-partnership do not stipulate otherwise, yet either one may, by his will, provide for the continuance of the partnership after his death: and in making this provision he may bind his whole estate or only that portion of it already embarked in the partnership. *Burwell* v. *Cawood et al.*, 560.
2. But it will require the most clear and unambiguous language, demonstrating in the most positive manner that the testator intended to make his general assets liable for all debts contracted in the continued trade after his death, to justify the court in arriving at such a conclusion. *Ib.*
3. A jury cannot, as a matter of direction from the court, presume the existence of a deed from one of the members of a firm to the firm, upon secondary evidence that from the books of the partnership it appeared that various acts of ownership over the property were exercised by the firm. *Hanson et al.* v. *Eustace's Lessee*, 653.

PATENTS FOR LANDS.
See LANDS, PUBLIC, 7, 8.

PENNSYLVANIA.

1. The jurisdiction of Chancery over charitable devises, as it existed in England, prior to the statute 43 Elizabeth, was part of the common law in force in Pennsylvania, although no court having equity powers existed capable of enforcing such trusts. *Vidal* v. *Girard's Exec.*, 127.

PIRACY AND PIRATICAL ACTS.

1. Under the act of Congress of 1819, any armed vessel may be seized which shall have attempted or committed any piratical aggression, &c., and the proceeds of the vessel, when sold, divided between the United States and the captors, at the discretion of the court. *Harmony et al.* v. *United States*, 210.
2. It is no matter whether the vessel be armed for offence or defence, provided she commits the unlawful acts specified. *Ib.*
3. To bring a vessel within the act it is not necessary that there should be either actual plunder or an intent to plunder: if the act be committed from hatred, or an abuse of power, or a spirit of mischief, it is sufficient. *Ib.*
4. The word "piratical" in the act is not to be limited in its construction to such acts as by the laws of nations are denominated piracy, but includes such as pirates are in the habit of committing. *Ib.*
5. A piratical aggression, search, restraint, or seizure is as much within the act as a piratical depredation. *Ib.*
6. The innocence or ignorance on the part of the owner, of these prohibited acts will not exempt the vessel from condemnation. *Ib.*
7. The condemnation of the cargo is not authorized by the act of 1819. Neither does the law of nations require the condemnation of the cargo for petty offences, unless the owner thereof co-operates in, and authorizes the unlawful act. An exception exists in the enforcement of belligerent rights. *Ib.*
8. Where the innocence of the owners was established, it was proper to throw the costs upon the vessel which was condemned, to the exclusion of the cargo which was liberated. *Ib.*

PRACTICE.

See APPEAL BOND, CONSTITUTIONAL LAW.

1. An appeal bond given to the people or to the relator is good, and, if forfeited, may be sued upon by either. *Spalding* v. *People of New York*, 66.
2. Where the plaintiff in the court below claims $2,000 or more, and the ruling of the court is for a less sum, he is entitled to a writ of error. *Knapp* v. *Banks*. 73.
3. But the defendant is not entitled to such writ where the judgment against him is for a less sum than $2,000 at the time of the rendition thereof. *Ib.*
4. An execution, issued in the court below, after a writ of error has been sued out, a bond given, and a citation issued, all in due time, may be quashed either in the court below or this court, these things operating as a stay of execution. *Stockton and Moore* v. *Bishop*, 74.
5. A title may be tried in Virginia, Kentucky, and Tennessee, as effectually upon a *caveat* as in any other mode; and the parties, as also those claiming under them, are estopped by the decision. *Porterfield* v. *Clark*, 76.
6. No appeal lies from the refusal of the court below to open a former decree. *Brockett* v. *Brockett*, 238.
7. But if the court entertains a petition to open a decree, the time limited for an appeal does not begin to run until the refusal to open it, the same term continuing. *Ib.*
8. When an appeal is prayed in open court, no citation is necessary. *Ib.*
9. A marshal has no right to receive bank-notes in discharge of an execution, unless authorized to do so by the plaintiff. *Griffin* v. *Thompson*, 244.
10. If the marshal does receive such papers, the court, in the exercise of its power to correct the irregularities of its officers, will refuse a motion of the defendant to have satisfaction entered on the judgment, and refuse also to quash a second *fieri facias*. *Ib.*
11. If the marshal receives bank-notes in the discharge of an execution, and the plaintiff sanctions it either expressedly or impliedly, he is bound by it, and a motion to quash the return ought to be refused. *Buckhannan et al.* v. *Tinnin*, 258.

PRACTICE—(*Continued.*)
12. A court may strike out an order arresting a judgment, and may suffer the verdict to be amended within a reasonable time. *Matheson's Adm.* v. *Grant's Adm.*, 263.
13. The necessity of a profert of letters of administration depends upon the local laws of a state. *Ib.*
14. Where the declaration alleges a partnership, and the jury find a general verdict, they must be presumed to have found that fact; and proof that the chose in action was endorsed in blank is sufficient to sustain a declaration counting upon an administration. The plaintiff has a right to elect the character in which he sues. *Ib.*
15. A question of amendment of the declaration is a question for the discretion of the court below. *Ib.*
16. An action for money had and received will lie, when brought by lottery contractors, against a person who has caused a ticket to be fraudulently drawn as a prize. *Catts* v. *Phalen and Morris*, 376.
17. The distinction between writs of error and appeals cannot be overthrown by an agreement of counsel in the court below, that all the evidence in the cause shall be introduced and considered as a statement of facts. *Minor et ux.* v. *Tillotson*, 392.
18. Where there are two defendants, and one of them dies after the commencement of the term of the Supreme Court, judgment may be entered against both as of a day prior to the death, *nunc pro tunc.* If the death shall have occurred before the commencement of the term, and the cause of action survives, judgment will be entered against the survivor upon a suggestion on the record of the death. *McNutt* v. *Bland*, 28.
19. Where the Circuit Court, by a rule, adopts the process pointed out by a state law, there must be no essential variance between them. Such a variance is a new rule, unknown to any act of Congress or the state law professedly adopted. *McCracken* v. *Hayward*, 608.
20. A refusal to produce books and papers under a notice, lays the foundation for the introduction of secondary evidence of their contents, but affords neither presumptive nor *prima facie* evidence of the fact sought to be proved by them. *Hanson et al.* v. *Eustace's Lessee*, 653.
21. A jury cannot, as a matter of direction from the court, presume the existence of a deed from one of the members of a firm to the firm, upon secondary evidence that from the books of the partnership it appeared that various acts of ownership over the property were exercised by the firm. *Ib.*
22. Nor are the jury at liberty, in such a case, to consider a refusal to furnish books and papers, as one of the reasons upon which to presume a deed; and an instruction from the court which permits them to do so, is erroneous. *Ib.*

PRESUMPTIONS.
See JURISDICTION, 10, 11; PRACTICE, 21, 22.

PROTEST.
1. By the general law merchant, no protest is required to be made upon the dishonor of any promissory note; but it is exclusively confined to foreign bills of exchange. *Burke* v. *McKay*, 66.
2. Neither is it a necessary part of the official duty of a notary, to give notice to the endorser of the dishonor of a promissory note. *Ib.*
3. But a state law or general usage may overrule the general law merchant in these respects. *Ib.*
4. Where a protest is necessary, it is not indispensable that it should be made by a person who is in fact a notary. *Ib.*
5. Where the endorser has discharged the maker of a note from liability by a release and settlement, a notice of non-payment would be of no use to him, and therefore he is not entitled to it. *Ib.*

PUBLIC LANDS.
See LANDS, PUBLIC.

QUESTIONS OF LAW AND FACT.
See BILLS OF EXCHANGE, 10; GUARANTEE, 4; SLAVES, 3.

RIPARIAN RIGHTS.
See LANDS, PUBLIC, 18.

SET-OFF.
1. A court of equity will not interfere, where the complainant has a proper remedy at law, or where the complainant claims a set-off of a debt arising under a distinct transaction, unless there is some peculiar equity calling for relief. *Dade* v. *Irwin's Exec.*, 383.
2. Nor will it interfere where the set-off claimed is old and stale, with regard to which the complainant has observed a long silence, and where the correctness of the set-off is a matter of grave doubt. *Ib.*

SHERIFFS.
1. By a law of the state of Mississippi, sheriffs are required to give bond to the governor for the faithful performance of their duty. *McNutt* v. *Bland et al.*, 9.
2. A citizen of another state has a right to sue upon this bond; the fact that the governor and party sued are citizens of the same state, will not oust the jurisdiction of the Circuit Court of the United States, provided the party, for whose use the suit is brought, is a citizen of another state. *Ib.*
3. Under the resolution passed by Congress in 1789, relating to the use of state jails, and the law of Mississippi passed in 1822, a sheriff has no right to discharge a prisoner in custody by process from the Circuit Court, unless such discharge is sanctioned by an act of Congress, or the mode of it adopted as a rule by the Circuit Court of the United States. *Ib.*

SLAVES.
1. An inhabitant of Washington county, in the District of Columbia, cannot purchase a slave in Alexandria county, and carry him into Washington county for sale. If he does, the slave will become entitled to his freedom. *Rhodes* v. *Bell*, 397.
2. When the record does not show whether or not the two attesting witnesses to a deed of manumission in Virginia were present in court at the time when the grantor acknowledged it, and the deed itself is forty years old, it would be error in the court to instruct the jury that the petitioner was not entitled to freedom. *Adams* v. *Roberts*, 486.
3. The exact time of the birth of the petitioner was a fact for the jury; and a prayer to the court which would have excluded the consideration of that fact was properly refused. *Ib.*

STALE CLAIMS.
See CHANCERY, 10.

STATUTES OF LIMITATION.
See LIMITATIONS.

TITLE.
1. A title may be tried in Virginia, Kentucky, and Tennessee, upon a *caveat*. *Porterfield* v. *Clark*, 76.
2. A deed of land in Missouri, in 1804, attested by two witnesses, purporting to have been executed in the presence of a syndic, presented to the commissioners of the United States in 1811, and again brought forward as the foundation of a claim before the commissioner in 1835, must be considered as evidence for a jury. *Stoddard* v. *Chambers*, 284.
3. A confirmation under the act of 1836, to the original claimant and his legal representatives, inured by way of estoppel to his assignee. *Ib.*
4. A title to land becomes a legal title when a claim is confirmed by Congress. Such confirmation is a higher evidence of title than a patent, because it is a direct grant of the fee, which had been previously in the United States. *Grignon's Lessee* v. *Astor*, 319.
5. The act of Congress, passed in 1812, confirming the claims of certain towns and villages to village lots and commons, gave a title which is paramount to a title held under an old Spanish concession, confirmed by Congress in 1836. *Chouteau* v. *Eckhart*, 345.

TRUST.
See BANKRUPTCY.
1. The corporation of the city of Philadelphia, having power under its charter to take real and personal estate by deed and by devise, can also take it in trust. *Vidal* v. *Girard's Exec.*, 127.
2. Nor is there any positive objection, in point of law, to a corporation taking property upon a trust not strictly within the scope of the direct purposes of its institution, but collateral to them. *Ib.*

TRUST—(*Continued.*)
2. The trusts mentioned in the will of Stephen Girard are of an eleemosynary nature, and charitable uses, in a judicial sense. *Ib.*
4. Express trusts are abolished in Louisiana by the law of that state, but that implied trust which is the creature of equity has not been abrogated. *Gaines et ux.* v. *Chew et al.*, 619.

VIRGINIA.
1. An act of the legislature of Virginia, passed in May, 1779, "establishing a land office, and ascertaining the terms and manner of granting waste and unappropriated lands," contained, among other exceptions, the following, viz., "no entry or location of land shall be admitted within the country and limits of the Cherokee Indians." *Porterfield* v. *Clark*, 76.
2. The tract of country lying on the west of the Tennessee river was not then the country of the Cherokee Indians, and of course not within the exception. *Ib.*
3. A title may be tried upon a *caveat*. *Ib.*
4. Whatever lands in Virginia were not within the exceptions of the act of 1779, were subject to appropriation by Treasury warrants. *Ib.*
5. The legislative grant of Virginia to her officers and soldiers would not, of itself, prevent the statute of limitations of Kentucky from attaching. *Ib.*

WILLS.
1. The following words in a will, viz.: "I give and bequeath unto my brother, E. M. during his natural life, 100 acres of land. In case the said E. M. should have heirs lawfully begotten of him in wedlock, I then give and bequeath the 100 acres of land aforesaid, to him, the said E. M., his heirs and assigns forever; but should he, the said E. M., die without an heir so begotten, I give, bequeath, devise, and desire, that the 100 acres of land aforesaid, be sold to the highest bidder, and the money arising from the sale thereof, to be equally divided amongst my six children," give to E. M. only an estate for life, and not a fee-simple conditional. *Shriver's lessee* v. *Lynn et al.*, 43.
2. Where it appears, from the context of a will, that a testator intended to dispose of his whole estate, and to give his residuary legatee a substantial, beneficial interest, such legatee will take real as well as personal estate, although the word "devisee" be not used. *Burwell* v. *Cawood et al.*, 560.
3. Under the Louisiana law, the Court of Probate has exclusive jurisdiction in the proof of wills; which includes those disposing of real as well as personal estate. *Gaines et ux.* v. *Chew et al.*, 619.
4. In England, equity will not set aside a will for fraud and imposition, relief being obtainable in other courts. *Ib.*
5. Although by the general law, as well as the local law of Louisiana, a will must be proved before a title can be set up under it, yet a court of equity can so far exercise jurisdiction as to compel defendants to answer, touching a will alleged to be spoliated. And it is a matter for grave consideration, whether it cannot go further and set up the lost will. *Ib.*
6. Where the heir at law assails the validity of the will, by bringing his action against the devisee or legatee who sets up the will as his title, the District Courts of Louisiana are the proper tribunals, and the powers of a Court of Chancery are necessary, in order to discover frauds which are within the knowledge of the defendants. *Ib.*

See PARTNERSHIP, 1, 2.

WRIT OF ERROR.
1. Where the plaintiff in the court below claims $2,000 or more, and the ruling of the court is for a less sum, he is entitled to a writ of error. *Knapp* v. *Banks*, 73.
2. But the defendant is not entitled to such writ where the judgment against him is for a less sum than $2,000 at the time of the rendition thereof. *Ib.*
3. An execution, issued in the court below, after a writ of error has been sued out, a bond given, and a citation issued, all in due time, may be quashed either in the court below or this court—these things operating as a stay of execution. *Stockton et al.* v. *Bishop*, 74.
4. The question of amendment is a question of discretion in the court below, upon its own review of the facts. This court has no right or

WRIT OF ERROR.—(*Continued.*)
authority, upon a writ of error, to examine the question; it belonged appropriately and exclusively to the court below. *Matheson's Adm.* v. *Grant's Adm.*, 264.
5. The distinction between writs of error and appeals cannot be overthrown by an agreement of counsel in the court below, that all the evidence in the cause shall be introduced and considered as a statement of facts. *Minor et ux.* v. *Tillotson*, 392.