

INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

The references are to the STAR (*) pages.

ADMIRALTY.

1. An agreement of consortium between the masters of two vessels engaged in the business known by the name of wrecking, is a contract capable of being enforced in an admiralty court, against property or proceeds in the custody of the court. *Andrews v. Wall et al.*, 568.
2. The case of *Ramsay v. Allegre*, 12 Wheat., 611, commented on, and explained. *Ib.*
3. Such an agreement extends to the owners and crews, and is not merely personal between the masters. *Ib.*
4. If made for an indefinite period, it does not expire with the mere removal of one of the masters from his vessel, but continues until dissolved upon due notice to the adverse party. *Ib.*
5. Where there is no other evidence than the answer of its having been a part of the original agreement, that such removal should dissolve the contract, the evidence is not sufficient. *Ib.*
6. Whenever proceeds are rightfully in the possession and custody of the admiralty, it is an inherent incident to the jurisdiction of that court to entertain supplemental suits by the parties in interest to ascertain to whom those proceeds rightfully belong, and to deliver them over to the parties who establish the lawful ownership thereof. *Ib.*

APPEAL.

1. After a case has been decided upon its merits, and remanded to the court below, if it is again brought up on a second appeal, it is then too late to allege that the court had not jurisdiction to try the first appeal. *Washington Bridge Co. v. Stewart*, 413.
2. The Supreme Court has no power to review its decisions, whether in a case at law or in equity. A final decree in chancery is as conclusive as a judgment at law. *Ib.*
3. An affirmance by a divided court, either upon a writ of error or appeal, is conclusive upon the rights of the parties. *Ib.*
4. Where this court has affirmed the title to lands in Florida, and referred, in its decree, to a particular survey, it would not be proper for the court below to open the case for a re-hearing, for the purpose of adopting another survey. *Chaires v. United States*, 611.
5. The court below can only execute the mandate of this court. It has no authority to disturb the decree, and can only settle what remains to be done. *Ib.*

ASSIGNMENT.

1. The legal title to stock held in corporations situated in Louisiana, does not pass under a general assignment of property, until the transfer is completed in the mode pointed out by the laws of Louisiana, regulating those corporations. *Black v. Zacharie*, 483.
2. But the equitable title will pass, if the assignment be sufficient to transfer it by the laws of the state in which the assignor resides, and if the laws of the state where the corporations exist do not prohibit the assignment of equitable interests in stock. Such an assignment will bind all persons who have notice of it, *Ib.*

ASSIGNMENT—(Continued.)

3. The laws of Louisiana do not prohibit the assignment of equitable interests in the state by residents of other states. *Ib.*
4. Personal property has no locality. The law of the owner's domicile is to determine the validity of the transfer or alienation thereof, unless there is some positive or customary law of the country where it is found to the contrary. *Ib.*

ASSUMPSIT.

Since the passage of the act of Congress of March 3, 1839, chap. 82, which requires collectors of the customs to place to the credit of the treasurer of the United States all money which they receive for unascertained duties, or for duties paid under protest, an action of assumpsit for money had and received will not lie against the collector for the return of such duties so received by him. *Cary v. Curtis*, 236.

ATTACHMENT.

The laws of Louisiana, allowing attachments for debts not yet due, relate only to absconding debtors. *Black v. Zacharie*, 483.

BANKRUPTS AND BANKRUPTCY.

1. In Kentucky, the creditor obtains a lien upon the property of his debtor by the delivery of a *fi fa.* to the sheriff; and this lien is as absolute before the levy as it is afterwards. *Savage's Assignee v. Best*, 111.
2. Therefore, a creditor is not deprived of this lien by an act of bankruptcy on the part of the debtor committed before the levy is made, but after the execution is in the hands of the sheriff. *Ib.*
3. This court has no revising power over the decrees of the District Court sitting in bankruptcy; nor is it authorized to issue a writ of prohibition to it in any case except where the District Court is proceeding as a court of admiralty and maritime jurisdiction. *Ex parte Christy*, 292.
4. The District Court, when sitting in bankruptcy, has jurisdiction over liens and mortgages existing upon the property of a bankrupt, so as to inquire into their validity and extent, and grant the same relief which the state courts might or ought to grant. *Ib.*
5. The control of the District Court over proceedings in the state courts upon such liens, is exercised, not over the state courts themselves, but upon the parties, through an injunction or other appropriate proceeding in equity. *Ib.*
6. The design of the Bankrupt Act was to secure a prompt and effectual administration of the estate of all bankrupts, worked out by the courts of the United States, without the assistance of state tribunals. *Ib.*
7. The phrase in the 6th section, "any creditor or creditors who shall claim any debt or demand under the bankruptcy," does not mean only such creditors who come in and prove their debts, but all creditors who have a present subsisting claim upon the bankrupt's estate, whether they have a security or mortgage therefor or not. *Ib.*
8. Such creditors have a right to ask that the property mortgaged shall be sold, and the proceeds applied towards the payment of their debts; and the assignee, on the other hand, may contest their claims. *Ib.*
9. In the case of a contested claim, the District Court has jurisdiction, if resort be had to a formal bill in equity or other plenary proceeding; and also jurisdiction to proceed summarily. *Ib.*
10. The principles established in the case of *Ex parte the City Bank of New Orleans* in the matter of *Christy, assignee of Walden*, renewed and confirmed. *Norton's Assignee v. Boyd*, 426.
11. But this court does not decide, whether or not the jurisdiction of the District Court over all the property of a bankrupt, mortgaged or otherwise, is exclusive, so as to take away from the state courts in such cases. *Ib.*
12. Where the defendant below became a bankrupt, this court will not award a supersedeas to stay an execution, because the assignee of the bankrupt has his remedy in the Circuit Court. *Black v. Zacharie*, 483.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

See COMMERCIAL LAW.

CHANCERY.

1. In cases of trust, where the trustee has violated his trust by an illegal conversion of the trust property, the *cestui que trust* has a right to follow the property into whosoever hands he may find it, not being a

CHANCERY—(Continued.)

bona fide purchaser for a valuable consideration, without notice. *Oliver v. Piatt*, 333.

2. Where a trustee has, in violation of his trust, invested the trust property or its proceeds in any other property, the *cestui que trust* has his option, either to hold the substituted property liable to the original trust, or to hold the trustee himself personally liable for the breach of the trust. *Ib.*
3. The option, however, belongs to the *cestui que trust* alone and is for his benefit, and not for the benefit of the trustee. *Ib.*
4. If the trustee, after such an unlawful conversion of the trust property, should re-purchase it, the *cestui que trust* may, at his option, either hold the original property subject to the trust, or take the substituted property in which it has been invested, in lieu thereof. And the trustee, in such a case, has no right to insist that the trust shall, upon the re-purchase, attach exclusively to the original trust property. *Ib.*
5. Where the trust property has been unlawfully invested, with other funds of the trustee, in other property, the latter, in the hands of the trustee, is chargeable *pro tanto* to the amount or value of the original trust property. *Ib.*
6. What constitutes a notice of a trust? *Ib.*
7. An agent, employed by a trustee in the management of the trust property, and who thereby acquires a knowledge of the trust, is, if he afterwards becomes possessed of the trust property, bound by the trust, in the same manner as the trustee. *Ib.*
8. Where, upon the face of the title-papers, the purchaser has full means of acquiring complete knowledge of the title from the references therein made to the origin and consideration thereof, he will be deemed to have constructive notice thereof. *Ib.*
9. A co-proprietor of real property, derived under the same title as the other proprietors, is presumed to have full knowledge of the objects and purposes and trusts attached to the original purchase, and for which it is then held for their common benefit. *Ib.*
10. A purchaser by a deed of quit claim without any covenant of warranty, is not entitled to protection in a court of equity as a purchaser for a valuable consideration, without notice; and he takes only what the vendor could lawfully convey. *Ib.*
11. A warranty, either lineal or collateral, is no bar to an heir who does not claim the property to which the warranty is attached by descent, but as a purchaser thereof. *Ib.*
12. Whether a bill in equity is open to the objection of multifariousness or not, must be decided upon all the circumstances of the particular case. No general rule can be laid down upon the subject; and much must be left to the discretion of the court. *Ib.*
13. The objection of multifariousness can be taken by a party to the bill only by demurrer, or plea, or answer, and cannot be taken at the hearing of the cause. But the court itself may take the objection at any time—at the hearing or otherwise. The objection cannot be taken by a party in the appellate court. *Ib.*
14. Lapse of time is no bar to a subsisting trust in real property. The bar does not begin to run until knowledge of some overt act of an adverse claim or right set up by the trustee is brought home to the *cestui que trust*. The lapse of any period less than twenty years will not bar the *cestui que trust* of his remedy in equity, although he may have been guilty of some negligence, where the suit is brought against his trustee, who is guilty of the breach of trust, or others claiming under him with notice. *Ib.*
15. Where exceptions are taken to a master's report, it is not necessary for the court formally to allow or disallow them on the record. It will be sufficient, if it appears from the record, that all of them have been considered by the court, and allowed or disallowed, and the report reformed accordingly. *Ib.*
16. There is no principle of the common law which forbids individuals from associating together to purchase lands of the United States on joint account at a public sale. *Ib.*
17. The Supreme Court has no power to review its decisions, whether in a

CHANCERY—(Continued.)

- case at law or in equity. A final decree in chancery is as conclusive as a judgment at law. *Washington Bridge Co. v. Stewart*, 413.
18. In case of controversy, a court of equity is the proper tribunal to prevent an injurious act by a public officer, for which the law might give no adequate redress, or to avoid a multiplicity of suits, or to prevent a cloud from being cast over the title. *Carroll v. Safford*, 441.
 19. The legal title to stock held in corporations, situated in Louisiana, does not pass under a general assignment of property, until the transfer is completed in the mode pointed out by the laws of Louisiana, regulating those corporations. *Black v. Zacharie*, 483.
 20. But the equitable title will pass, if the assignment be sufficient to transfer it by the laws of the state in which the assignor resides, and if the laws of the state where the corporations exist do not prohibit the assignment of equitable interests in stock. Such an assignment will bind all persons who have notice of it. *Ib.*
 21. The laws of Louisiana do not prohibit the assignment of equitable interests in the state by residents of other states. *Ib.*
 22. Personal property has no locality. The law of the owner's domicile is to determine the validity of the transfer or alienation thereof, unless there is some positive or customary law of the country where it is found to the contrary. *Ib.*
 23. When an issue is directed by a court of chancery, to be tried by a court of law, and in the course of the trial at law, questions are raised and bills of exceptions taken, these questions must be brought to the notice and decision of the court of chancery which sends the issue. *Brockett v. Brockett*, 691.
 24. If this is not done, the objections cannot be taken in an appellate court of chancery. *Ib.*
 25. If the chancery court below refers matters of account to a master, his report cannot be objected to in the appellate court, unless exceptions to it have been filed in the court below in the manner pointed out in the seventy-third chancery rule of this court. *Ib.*
 26. A defendant in ejectment cannot protect himself by setting up the record in a prior chancery suit between the same parties, by which the plaintiff in the ejectment had been ordered to convey all his title to the defendant in the ejectment, but in consequence of the party being beyond the jurisdiction of the court, no such conveyance had been made. *Lessee of Hickey v. Stewart*, 750.
 27. And this is so, although the Court of Chancery, in following up its decree, had legally issued a *habere facias possessionem*, and put the defendant in ejectment in possession of the land. *Ib.*
 28. An equitable title is no defence in a suit brought by the United States, to recover possession of land. An imperfect title derived from Spain, before the cession, cannot be supported against a party claiming under a grant from the United States. *United States v. King et al.*, 773.

COLLATERAL SECURITY.

See COMMERCIAL LAW, 1-4.

COMMERCIAL LAW.

1. Every subsequent security, given for a loan originally usurious, however remote or often renewed, is void. *Walker v. Bank of Washington*, 62.
2. Where there was an application to a bank for a discount upon a note, to be secured collaterally, and the party applying drew checks upon the bank which were paid before the note was actually discounted; and the bank treated the note, when discounted, as having been so on the day of its date, instead of a subsequent day on which its proceeds were carried to the credit of the party, it was held not to be usury. *Ib.*
3. The court below was right in refusing an instruction to the jury that, upon such evidence, they might presume usury as a fact. *Ib.*
4. In cases of a written contract, the question of usury is exclusively for the decision of the court. *Ib.*
5. This court adheres to the rule laid down in *Walton v. Shelly*, 1 T. R., 296, sustained as it has been by the decisions of this court in *The Bank of the United States v. Dunn*, 6 Pet., 57; *The Bank of the Metropolis v. Jones*, 8 Id., 12, and *Scott v. Lloyd*, viz., that a party to a negotiable

COMMERCIAL LAW—(Continued.)

- paper, having given it value and currency by the sanction of his name, shall not afterwards invalidate it by showing, upon his own testimony, that the consideration on which it was executed was illegal. *Henderson v. Anderson*, 73.
6. When a creditor, residing in Louisiana, drew bills of exchange upon his debtor, residing in South Carolina, which bills were negotiated to a third person and accepted by the drawee, the creditor had no right to lay an attachment upon the property of the debtor, until the bills had become due, were dishonored, and taken up by the drawer. *Black v. Zacharie*, 483.
 7. By the drawing of the bills a new credit was extended to the debtor for the time to which they ran. *Ib.*
 8. The laws of Louisiana, allowing attachments for debts not yet due, relate only to absconding debtors, and do not embrace a case like the above. *Ib.*
 9. The legal title to stock held in corporations situated in Louisiana, does not pass under a general assignment of property, until the transfer is completed in the mode pointed out by the laws of Louisiana regulating those corporations. *Ib.*
 10. But the equitable title will pass, if the assignment be sufficient to transfer it by the laws of the state in which the assignor resides, and if the laws of the state where the corporations exist do not prohibit the assignment of equitable interests in stock. Such an assignment will bind all persons who have notice of it. *Ib.*
 11. The laws of Louisiana do not prohibit the assignment of equitable interests in the state, by residents of other states. *Ib.*
 12. Personal property has no locality. The law of the owner's domicil is to determine the validity of the transfer or alienation thereof, unless there is some positive or customary law of the country where it is found, to the contrary. *Ib.*
 13. Where a general objection is made, in the court below, to the reception of testimony, without stating the grounds of the objection, this court considers it as vague and nugatory; nor ought it to have been tolerated in the court below. *Camden v. Doremus*, 515.
 14. Where at the time of the endorsement and transfer of a negotiable note, an agreement was made that the holder should send it for collection to the bank at which it was, on its face, made payable, and in the event of its not being paid at maturity, should use reasonable and due diligence to collect it from the drawer and prior endorsers before resorting to the last endorser, the holder is bound to conditions beyond those which are implied in the ordinary transfer and receipt of commercial instruments. *Ib.*
 15. Evidence of the general custom of banks to give previous notice to the payer, of the time when notes will fall due, was properly rejected, unless the witness could testify as to the practice of the particular bank at which the note was made payable. *Ib.*
 16. A presentment and demand of payment of the note, at maturity, within banking hours, at the bank where the note was made payable, was a sufficient compliance with the contract to send it to the bank for collection. *Ib.*
 17. The record of a suit brought by the holder against the maker and prior endorsers was proper evidence of reasonable and due diligence to collect the amount of the note from them; and it was a proper instruction, that if the jury believed that the prior endorsers had left the state and were insolvent, the holder of the note was not bound to send executions to the counties where these endorsers resided at the institution of the suit. *Ib.*
 18. The diligent and honest prosecution of a suit to judgment with a return of *nulla bona*, has always been regarded as one of the extreme tests of due diligence. *Ib.*
 19. And the ascertainment, upon correct and sufficient proofs, of entire and notorious insolvency, is recognized by the law as answering the demand of due diligence, and as dispensing with the more dilatory evidence of a suit. *Ib.*

COMMERCIAL LAW—(Continued.)

20. If the holder cannot obtain a judgment against the maker for the whole amount of the note, in consequence of the allowance of a set-off as between the maker and one of the prior endorser, this is no bar to a full recovery against the last endorser, provided the holder has been guilty of no negligence. *Ib.*
21. Whenever, by express agreement of the parties, a sub-agent is to be employed by an agent to receive money for the principal; or where an authority to do so may fairly be implied from the usual course of trade, or the nature of the transaction; the principal may treat the sub-agent as his agent, and when he has received the money, may recover it in an action for money had and received. *Wilson & Co. v. Smith*, 763.
22. If, in such case, the sub-agent has made no advances and given no new credit to the agent on account of the remittance of the bill, the sub-agent cannot protect himself against such an action by passing the amount of the bill to the general credit of the agent, although the agent may be his debtor. *Ib.*

COMPROMISE ACT.

1. The act of Congress of March 2d, 1833, commonly called the Compromise Act, did not, prospectively, repeal all duties upon imports after the 30th of June, 1842. *Aldridge et al. v. Williams*, 9.
2. Repealing only such parts of previous acts as were inconsistent with itself, it left in force, after the 30th of June, 1842, the same duties which were levied on the 1st of June, 1842. *Ib.*
3. Duties were directed by the act of 1833 to be levied according to a home valuation, "under such regulations as may be prescribed by law." This phrase embraces all regulations lawfully existing at the time the home valuation went into operation, whether made before or after the passage of the act of 1833. *Ib.*
4. And the regulations established in the 7th and 8th sections of the act of 1832 are sufficient for the correct performance of the duty. *Ib.*
5. The regulations prescribed by the Secretary of the Treasury, under a power given to him by the 9th section of the act of 1832, are also "regulations prescribed by law."

CONSTITUTIONAL LAW.

See JURISDICTION.

1. A public officer, acting from a sense of duty in a matter where he is required to exercise discretion, is not liable to an action for an error of judgment. *Kendall v. Stokes, et al.*, 87.
2. The charter of a bank is a franchise, which is not taxable, as such, if a price has been paid for it, which the legislature accepted. *Gordon v. Appeal Tax Court*, 133.
3. But the corporate property of the bank is separable from the franchise, and may be taxed, unless there is a special agreement to the contrary. *Ib.*
4. The legislature of Maryland, in 1821, continued the charters of several banks to 1845, upon condition that they would make a road and pay a school tax. This would have exempted their franchise, but not their property, from taxation. *Ib.*
5. But another clause in the law provided, that upon any of the aforesaid banks accepting of and complying with the terms and conditions of the act, the faith of the state was pledged not to impose any further tax or burden upon them during the continuance of their charters under the act. *Ib.*
6. This was a contract relating to something beyond the franchise, and exempted the stockholders from a tax levied upon them as individuals, according to the amount of their stock. *Ib.*
7. Under the acts of Congress ceding to Pennsylvania that part of the Cumberland road which is within that state, and the acts of Pennsylvania accepting the surrender, a carriage, whenever it is carrying the mail, must be held to be laden with the property of the United States, within the true meaning of the compact, and consequently exempted from the payment of tolls. *Searight v Stokes*, 151.
8. But this exemption does not apply to any other property conveyed in the same vehicle, nor to any person travelling in it, unless he is in the service of the United States, and passing along in pursuance of orders from the proper authority. *Ib.*

CONSTITUTIONAL LAW—(Continued.)

9. Nor can the United States claim an exemption for more carriages than are necessary for the safe, speedy, and convenient conveyance of the mail. *Ib.*
10. The stipulation contained in the 6th section of the act of Congress, passed on the 2d of March, 1819, for the admission of the state of Alabama into the union, viz.: "that all navigable waters within the said state shall for ever remain public highways, free to the citizens of said state, and of the United States, without any tax, duty, impost, or toll therefor, imposed by said state," conveys no more power over the navigable waters of Alabama, to the government of the United States, than it possesses over the navigable waters of other states under the provisions of the Constitution. *Pollard's Lessee v Hagan*, 212.
11. And it leaves as much right in the State of Alabama over them as the original states possess over navigable waters within their respective limits. *Ib.*
12. The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states respectively; and the new states have the same rights, sovereignty, and jurisdiction over this subject as the original states. *Ib.*
13. The United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory of which Alabama, or any of the new states, were formed, except for temporary purposes, and to execute the trusts created by the acts of the Virginia and Georgia legislatures, and the deeds of cession executed by them to the United States, and the trust created by the treaty of the 30th April, 1803, with the French republic, ceding Louisiana. *Ib.*
14. Upon the admission of Alabama into the union, the right of eminent domain, which had been temporarily held by the United States, passed to the state. Nothing remained in the United States but the public lands. *Ib.*
15. The United States now hold the public lands in the new states by force of the deeds of cession and the statutes connected with them, and not by any municipal sovereignty which it may be supposed they possess or have received by compact with the new states for that particular purpose. *Ib.*
16. That part of the compact respecting the public lands, is nothing more than the exercise of a constitutional power vested in Congress, and would have been binding on the people of the new states, whether they consented to be bound or not. *Ib.*
17. Under the Florida treaty the United States did not succeed to those rights which the King of Spain had held by virtue of his royal prerogative, but possessed the territory subject to the institutions and laws of its own government. *Ib.*
18. By the acts of Congress under which Alabama was erected a territory and a state, the common law was extended over it to the exclusion of all other law, Spanish or French. *Ib.*
19. The treaty of 1795 was not a cession of territory by Spain to the United States, but the recognition of a boundary line, and an admission, by Spain, that all the territory on the American side of the line was originally within the United States. *Ib.*
20. The United States have never admitted that they derived title from the Spanish government to any portion of territory included within the limits of Alabama; for, by the treaty of 1795, Spain admitted that she had no claim to any territory above the thirty-first degree of north latitude, and the United States derived its title to all below that degree from France, under the Louisiana treaty. *Ib.*
21. It results from these principles that the right of the United States to the public lands, and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant land in Alabama which was below usual high water-mark at the time Alabama was admitted into the union. *Ib.*
22. The state of Maryland, in 1836, passed a law directing a subscription of \$3,000,000 to be made to the capital stock of the Baltimore and Ohio Railroad Company, with the following proviso, "That if the said

CONSTITUTIONAL LAW—(Continued.)

- company shall not locate the said road in the manner provided for in this act, then, and in that case, they shall forfeit \$1,000,000 to the state of Maryland for the use of Washington county.
23. In March, 1841, the state passed another act repealing so much of the prior act as made it the duty of the company to construct the road by the route therein prescribed, remitting and releasing the penalty, and directing the discontinuance of any suit brought to recover the same.
 24. The proviso was a measure of state policy, which it had a right to change, if the policy was afterwards discovered to be erroneous, and neither the commissioners, nor the county, nor any one of its citizens acquired any separate or private interest under it, which could be maintained in a court of justice. *State of Maryland v. Baltimore and Ohio Railroad Company*, 534.
 25. It was a penalty, inflicted upon the company as a punishment for disobeying the law; and the assent of the company to it, as a supplemental charter, is not sufficient to deprive it of the character of a penalty. *Ib.*
 26. A clause of forfeiture in a law is to be construed differently from a similar clause in an engagement between individuals. A legislature can impose it as a punishment, but individuals can only make it a matter of contract. Being a penalty imposed by law, the legislature had a right to remit. *Ib.*
 27. A law of the state of Indiana, passed after an execution was issued, requiring that property should be appraised and not sold unless it brought a certain amount, could not avoid the deed of the sheriff in a case where the property was sold without appraisal. *Gantly's Lessee v. Ewing*, 707.
 28. Under the acts of Congress and of the state of Ohio, relating to the surrender and acceptance of the Cumberland road, a toll charged upon passengers travelling in the mail stages, without being charged also upon passengers travelling in other stages, is against the contract, and void. *Neil, Moore & Co. v. The State of Ohio*, 720.
 29. It rests altogether in the discretion of the postmaster-general, to determine at what hours the mail shall leave particular places and arrive at others, and to determine whether it shall leave the same place only once a day or more frequently. *Ib.*
 30. It is not, therefore, the mere frequency of the departure of carriages, carrying the mail, that constitutes an abuse of the privilege of the United States, but the unnecessary division of the mail bags amongst a number of carriages in order to evade the payment of tolls. *Ib.*

CONSTRUCTION OF STATUTES.

1. The court, in construing an act, will not consider the motives, or reasons, or opinions, expressed by individual members of Congress, in debate, but will look, if necessary, to the public history of the times in which it was passed. *Aldridge et al v. Williams*, 9.

See DUTIES, LEAD MINES, CONSTITUTIONAL LAW, BANKRUPTCY, MARINE CORPS, LANDS—PUBLIC.

2. The mere construction of a will by a state court, does not, as the construction of a statute of the state, constitute a rule of decision for the courts of the United States. If such construction by a state court had been long acquiesced in, so as to become a rule of property, this court would follow it. *Lane v. Vick*, 464.
3. A clause of forfeiture in a law is to be construed differently from a similar clause in an engagement between individuals. A legislature can impose it as a punishment, but individuals can only make it a matter of contract. *State of Maryland v. Baltimore and Ohio Railroad Company*, 534.
4. Being a penalty imposed by law, the legislature has a right to remit it. *Ib.*
5. Statutes *in pari materia* should be taken into consideration in construing a law. If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute. *United States v. Freeman*, 556.
6. And if it can be gathered from a subsequent statute *in pari materia* what meaning the legislature attached to the words of a former statute, this will amount to a legislative declaration of its meaning, and will govern the construction of the first statute. *Ib.*

CONSTRUCTION OF STATUTES—(Continued.)

7. The meaning of the legislature may be extended beyond the precise words used in the law, from the reason or motive upon which the legislature proceeded, from the end in view, or the purpose which was designed; the limitation of the rule being that to extend the meaning to any case, not included within the words, the case must be shown to come within the same reason upon which the law-maker proceeded, and not a like reason. *Ib.*
8. In affirmative statutes, such parts of the prior as may be incorporated into the subsequent statute, as consistent with it, must be considered in force. *Davies v Fairbairn*, 636.
9. If a subsequent statute be not repugnant in all its provisions to a prior one, yet if the later statute clearly intended to prescribe the only rules which should govern, it repeals the prior one. *Ib.*
10. Under the application of these rules, the law of Virginia, passed in 1776, authorizing the mayor of a city to take the acknowledgment of a feme covert to a deed, is not repealed by the act of 1785, or that of 1796. *Ib.*
11. The act of Congress of the 29th April, 1816, confirming certain claims to land to the extent of a league square, restricted it to that quantity, and cannot be construed as confirming the residue. *United States v. King et al.*, 773.

CORPORATIONS.

1. The legal title to stock held in corporations situated in Louisiana does not pass under a general assignment of property, until the transfer is completed in the mode pointed out by the laws of Louisiana, regulating those corporations. *Black v. Zacharie*, 483.
2. But the equitable title will pass, if the assignment be sufficient to transfer it by the laws of the state in which the assignee resides, and if the laws of the state where the corporations exist do not prohibit the assignment of equitable interests in stock. Such an assignment will bind all persons who have notice of it. *Ib.*

CUSTOMS.

See COMPROMISE ACT; DUTIES.

DEBTOR AND CREDITOR.

See BANKRUPTS.

DEVISE.

1. Newit Vick made the following devises, viz. :

"2dly. I will and bequeath unto my beloved wife, Elizabeth Vick, one equal share of all my personal estate, as is to be divided between her and all of my children, as her own right, and at her own disposal during her natural life; and also, for the term of her life on earth, the tract of land at the Open Woods on which I now reside, or the tracts near the river, as she may choose, reserving two hundred acres however, on the upper part of the uppermost tract, to be laid off in town lots at the discretion of my executrix and executors.

"3dly. I will and dispose to each of my daughters, one equal proportion with my sons and wife, of all my personal estate as they come of age or marry; and to my sons, one equal part of said personal estate as they come of age, together with all of my lands, all of which lands I wish to be appraised, valued, and divided when my son Westley arrives at the age of twenty-one years, the said Westley having one part, and my son William having the other part of the tracts unclaimed by my wife, Elizabeth; and I bequeath to my son Newit, at the death of my said wife, that tract which she may prefer to occupy. I wish it to be distinctly understood, that that part of my estate which my son Hartwell has received shall be valued, considered as his, and as a part of his portion of my estate.

"I wish my executors, furthermore, to remember, that the town lots now laid off, and hereafter to be laid off, on the aforementioned two hundred acres of land, should be sold to pay my just debts, or other engagements, in preference to any other of my property, for the use and benefit of all my heirs."

From the provisions of the will it appears not to have been the intention of the testator to include the town lots in the devise of his lands to his sons.

DEVISE—(*Continued.*)

- But these town lots must be sold, after the payment of debts, for the use and benefit of all the heirs of the testator. *Lane v. Vick*, 464.
2. Where a testator devised certain property to his infant daughter, to be delivered over to her when she should arrive at the age of eighteen years, and the daughter, at the age of sixteen, married the executor who had the principal management of the estate, and possession of the property devised, he must be considered as holding it as executor, and not as husband. *Price v. Sessions*, 624.
 3. The executors had no power to deliver the property to the daughter, or to her guardian, or to her husband, before the happening of the contingency mentioned in the will. *Ib.*
 4. The law of the state of Mississippi, providing that a wife should retain such property in her own right, notwithstanding her coverture, having gone into operation before the daughter arrived at the age of eighteen years, the distribution to her must be considered to have been made under that law. *Ib.*
 5. The property, therefore, cannot be held responsible for the husband's debts. *Ib.*

DISCOUNTS.

See COMMERCIAL LAW, 2.

DUTIES.

See COMPROMISE ACT.

1. An act of Congress imposing a duty upon imports must be construed to describe the article upon which the duty is imposed, according to the commercial understanding of the terms used in the law in our own markets at the time when the law was passed. *Curtis v. Martin*, 106.
2. The duty, therefore, imposed by the act of 1832 upon cotton bagging, cannot properly be levied upon an article which was not known in the market as cotton bagging in 1832, although it may subsequently be called so. *Ib.*
3. When an importer means to contest the payment of duties, it is not necessary for him to give a written notice thereof to the collector. *Swartwout v. Gihon*, 110.
4. The question of notice is a fact for the jury, and it makes no difference, for the purposes for which it is required, whether it is written or verbal. *Ib.*
5. It is the right of an officer of the customs to seize goods which are suspected to have been introduced into the country in violation of the revenue laws, not only in his own district, but also in any other district than his own. *Taylor et. al v. The United States*, 197.
6. And it is wholly immaterial who makes the seizure, or whether it was irregularly made or not, or whether the cause assigned originally for the seizure be that for which the condemnation takes place, provided the adjudication is for a sufficient cause. *Ib.*
7. In the trial of such a case the officers of the customs who made the seizure are competent witnesses. *Ib.*
8. A bill of lading, entry, and owner's oath concerning other goods than those seized, may be admitted as a link in the chain of evidence to show a privy between the parties to commit a fraud upon the revenue. *Ib.*
9. When a witness on the part of the United States stated, that his firm were importers of cloths, and was asked, upon a cross-examination, to state the extent of their importations, to which he answered, "formerly we imported large quantities of woollens; for three or four years past we have imported but a few packages annually," it was a proper question on the part of the United States, "whether there was any thing in the state of the market which caused the alteration?" *Ib.*
10. It was also a proper question, whether other goods than those seized were lying in the custom-house at New York, under circumstances from which the jury might infer a connivance between parties inconsistent with fair dealing. *Ib.*
11. An invoice of other goods entered at another port, but marked like those seized, was also properly admitted as strengthening the evidence of the true ownership of packages with this mark. *Ib.*
12. To rebut the proof of a general usage of an allowance of five per cent. for

DUTIES—(Continued.)

- measurement, other invoices were properly introduced in which there was no such allowance. *Ib.*
13. Where a witness was introduced to prove such usage, and had verified his own invoices, it was admissible to read a letter which had been addressed to the witness and was annexed to one of the invoices. *Ib.*
 14. Revenue-laws, for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in a strict sense, penal acts, although they impose a penalty. But they ought to be so construed as most effectually to accomplish the intention of the legislature in passing them, instead of being construed with great strictness in favor of the defendant. *Ib.*
 15. Concealment and under-valuation of goods are good grounds, amongst others, for a decision of the court, that probable cause of prosecution existed. *Ib.*
 16. The 68th section of the act of 1799 reaches cases where, by a false and fraudulent under-valuation, less than the amount of duties required by law has been paid as well as those where no duties at all have been paid. *Ib.*
 17. Since the passage of the act of Congress of March 3d, 1839, ch. 82, § 2, which requires collectors of the customs to place to the credit of the treasurer of the United States all money which they receive for unascer- tained duties or for duties paid under protest, an action of assumpsit for money had and received will not lie against the collector for the return of such duties so received by him. *Cary v. Curtis*, 236.
 18. In what other modes the claimant can have access to the courts of justice, this court is not called upon in this case to decide. *Ib.*

EQUITY.

1. Before a case can be dismissed under the 21st rule, regulating equity practice, there must exist, in the technical sense, a plea or demurrer on the part of the defendant, which the plaintiff shall not have replied to or set down for hearing before the second term of the court after filing the same. *Poultney v. City of Lafayette*, 81.
2. The complainant, if he chooses, may go to the hearing, on bill and answer. *Ib.*
3. In case of controversy, a court of equity is the proper tribunal to prevent an injurious act by a public officer, for which the law might give no adequate redress, or to avoid a multiplicity of suits, or to prevent a cloud from being cast over the title. *Carroll v. Safford*, 441.
4. Whether a bill in equity is open to the objection of multifariousness or not, must be decided upon all the circumstances of the particular case. No general rule can be laid down upon the subject; and much must be left to the discretion of the court. *Oliver v. Piatt*, 333.
5. The objection of multifariousness can be taken by a party to the bill only by demurrer, or plea, or answer, and cannot be taken at the hearing of the cause. But the court itself may take the objection at any time—at the hearing or otherwise. The objection cannot be taken by a party in the appellate court. *Ib.*
6. Lapse of time is no bar to a subsisting trust in real property. The bar does not begin to run until knowledge of some overt act of an adverse claim or right set up by the trustee is brought home to the *cestui que trust*. The lapse of any period less than twenty years will not bar the *cestui que trust* of his remedy in equity, although he may have been guilty of some negligence, where the suit is brought against his trustee, who is guilty of the breach of trust, or others claiming under him with notice. *Ib.*

ERROR.

1. Where a general objection is made, in the court below, to the reception of testimony, without stating the grounds of the objection, this court considers it as vague and nugatory; nor ought it to have been tolerated in the court below. *Camden v. Doremus*, 515.
2. This court has not jurisdiction, under the 25th section of the Judiciary Act, of a question whether an ordinance of the corporate authorities of New Orleans does or does not impair religious liberty. *Permoli v. First Municipality*, 589.

ERROR—(Continued.)

3. The Constitution of the United States makes no provision for protecting the citizens of the respective states in their religious liberties; this is left to the state constitutions and laws. *Ib.*
4. If the citation be signed by the clerk, and not by a judge of the Circuit Court, or a justice of the Supreme Court, the case will, on motion, be dismissed. *United States v. Hodge*, 534.

EVIDENCE.

1. When a party to negotiable paper has given it value and currency by the sanction of his name, he shall not afterwards invalidate it, by showing, upon his own testimony, that the consideration on which it was executed was illegal. *Henderson v. Anderson*, 73.
2. In the trial of a cause for the seizure of goods for the violation of the revenue laws, the officers who made the seizure are competent witnesses. *Taylor et al. v. The United States*, 197.
3. A bill of lading, entry, and owner's oath concerning other goods than those seized, may be admitted as a link in the chain of evidence to show a privity between the parties to commit a fraud upon the revenue. *Ib.* See DUTIES.
4. Where a general objection is made, in the court below, to the reception of testimony, without stating the grounds of the objection, the court consider it as vague and nugatory; nor ought it to have been tolerated in the court below. *Camden v. Doremus*, 515.

EXECUTION.

1. In Kentucky, the creditor obtains a lien upon the property of his debtor by the delivery of a *fi. fa.* to the sheriff; and this lien is as absolute before the levy as it is afterwards. *Savage's Assignee v. Best*, 111.
2. Therefore, a creditor is not deprived of this lien by an act of bankruptcy on the part of the debtor committed before the levy is made, but after the execution is in the hands of the sheriff. *Ib.*
3. A law of the state of Indiana, directing "that real and personal estate, taken in execution, shall sell for the best price the same will bring at public auction and outcry, except that the fee-simple of real estate shall not be sold to satisfy any execution or executions, until the rents and profits for the term of seven years of such real estate shall have been first offered for sale at public auction and outcry; and if such rents and profits will not sell for a sum sufficient to satisfy such execution or executions, then the fee-simple shall be sold," is not merely directory to the sheriff, but restrictive of his power to sell the fee-simple. *Gantly's Lessee v. Ewing*, 707.
4. If he sells the fee-simple without having previously offered the rents and profits, his deed is void. *Ib.*
5. A marshal is not authorized by law to receive any thing, in discharge of an execution, but gold and silver, unless the plaintiff authorizes him to receive something else. *McFarland v. Gwin*, 717.
6. The case of *Griffin et al. v. Thompson*, 2 How., 244, reviewed and confirmed. *Ib.*
7. A marshal, like a sheriff, is bound, after the expiration of his term of office, to complete an execution which has come to his hands during his term; and an execution is never completed until the money is made and paid over to the plaintiff, if it is practicable to make it. *Ib.*

EXECUTORS AND ADMINISTRATORS.

See PRACTICE, DEVISE.

FEME COVERT.

1. Where property devised to a woman who afterwards married, was held not to be responsible for her husband's debts. *Price v. Sessions*, 624.

HABEAS CORPUS.

1. Neither the Supreme Court, nor any other court of the United States, or judge thereof, can issue a *habeas corpus* to bring up a prisoner, who is in custody under a sentence or execution of a state court, for any other purpose than to be used as a witness. *Ex parte Dorr*, 103.

JURISDICTION.

See ADMIRALTY.

1. The Circuit Court of the United States has jurisdiction where a promissory note is made by a citizen of one state payable to another citizen

JURISDICTION—(Continued.)

- of the same state or bearer, and the party bringing the suit is a citizen of a different state; although upon the face of the note it was expressed to be for the use of persons residing in the state in which the maker and payee lived. *Bonaffe v. Williams*, 574.
2. Where the citizenship of the parties gives jurisdiction, and the legal right to sue is in the plaintiff, the court will not inquire into the residence of those who may have an equitable interest in the claim. *Ib.*
 3. This court has not jurisdiction, under the 25th section of the Judiciary Act, of a question whether an ordinance of the corporate authorities of New Orleans does or does not impair religious liberty. *Permoli v. First Municipality*, 589.
 4. The Constitution of the United States makes no provision for protecting the citizens of the respective states in their religious liberties; this is left to the state constitutions and laws. *Ib.*
 5. The act of February 20th, 1811, authorizing the people of the territory of Orleans to form a constitution and state government, contained, in the third section thereof, two provisos; one in the nature of instructions how the constitution was to be formed, and the other reserving to the United States the property in the public lands, their exemption from state taxation, and the common right to navigate the Mississippi. *Ib.*
 6. The first of these provisos was fully satisfied by the act of 1812, admitting Louisiana into the union, "on an equal footing with the original states." The conditions and terms referred to in the act of admission referred solely to the second proviso, involving rights of property and navigation. *Ib.*
 7. The act of 1805, ch. 83, extending to the inhabitants of the Orleans territory, the rights, privileges and advantages secured to the North Western territory by the ordinance of 1787, had no further force after the adoption of the state constitution of Louisiana, than other acts of Congress, organizing the territorial government, and standing in connection with the ordinance. They are none of them in force unless they were adopted by the state constitution. *Ib.*
 8. The treaty by which Louisiana was ceded to the United States recognized complete grants, issued anterior to the cession, and a decision of a state court against the validity of a title set up under such a grant, would be subject to reversal by this court under the 25th section of the Judiciary Act. *McDonogh v. Millaudon*, 693.
 9. But if the state court only applies the local laws of the state to the construction of the grant, it is not a decision against its validity, and this court has no jurisdiction. *Ib.*
 10. Congress, in acting upon complete grants, recognized them as they stood; and the act of 11th May, 1820, confirming such as were recommended for confirmation by the register and receiver, had no reference to any particular surveys. *Ib.*
 11. A decision of a state court, therefore, which may be in opposition to one of these surveys, is not against the validity of a title existing under an act of Congress, and this court has no jurisdiction in such a case. *Ib.*
 12. The doctrine of this court in 1 Pet., 340, reviewed and confirmed, viz., "that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court where the proceedings of the former are relied on, and brought before the latter by the party claiming the benefit of such proceeding." *Lessee of Hickey v. Stewart*, 750.
 13. Where a matter in dispute is below the amount necessary to give jurisdiction to this court, the writ of error must be dismissed, on motion. *Winston v. The United States*, 771.
 14. Where a bill was filed on the equity side of the court below, to enjoin the marshal from levying an execution upon certain property, which execution was for a less sum than two thousand dollars, an appeal from a decree dismissing the bill will not lie to this court, although the entire value of the property may be more than two thousand dollars. *Ross v. Prentiss*, 771.
 15. The jurisdiction of the court does not depend upon the amount of any contingent loss or damage which one of the parties may sustain by a decision against him, but upon the amount in dispute between them. *Ib.*

LANDS, PUBLIC.

See CONSTITUTIONAL LAW, LEAD MINES.

1. Under the act of 1815, a New Madrid certificate could be located upon lands before they were offered at public sale under a proclamation of the President, or even surveyed by the public surveyor. *Barry v. Gamble*, 32.
2. The act of 1822 recognized locations of this kind, although they disregarded the sectional lines by which the surveys were afterwards made. *Ib.*
3. Under the acts of 1805, 1806, and 1807, it was necessary to file the evidences of an incomplete claim under French or Spanish authority, which bore date anterior to the 1st of October, 1800, as well as those which were dated subsequent to that day; and in cases of neglect, the bar provided in the acts applied to both classes. *Ib.*
4. A title resting on a permit to settle and warrant of survey, dated before the 1st of October, 1800, without any settlement or survey having been made, was an incomplete title, and within these acts. *Ib.*
5. And although the acts of 1824 and 1828 removed the bar as it respected the United States, yet, having excepted such lands as had been sold or otherwise disposed of by the United States, and saved the rights or title of adverse claimants, these acts protected a new Madrid claim which had been located whilst the bar continued. *Ib.*
6. In making an entry of land, where mistakes occur which are occasioned by the impracticability of ascertaining the relative positions of the objects called for, the court will correct those mistakes so as to carry out the intentions of the locator. *Croghan's Lessee v. Nelson*, 187.
7. There is no principle of the common law which forbids individuals from associating together to purchase lands from the United States on joint account, at a public sale. *Oliver v. Piatt*, 333.
8. When the purchaser of land from the United States has paid for it, and received a final certificate, it is taxable property, according to the statutes of Michigan, although a patent has not yet been issued. *Carroll v. Safford*, 441.
9. Taxation upon lands so held is not a violation of the ordinance of 1787, as an "interference with the primary disposition of the soil by Congress," nor is it "a tax on the lands of the United States." The state of Michigan could rightfully impose the tax. *Ib.*
10. It was competent for the state to assess and tax such lands at their full value, as the absolute property of the holder of the final certificate, and in default of payment, to sell them as if he owned them in fee. *Ib.*
11. In case of controversy, a court of equity is the proper tribunal to prevent an injurious act by a public officer, for which the law might give no adequate redress, or to avoid a multiplicity of suits, or to prevent a cloud from being cast over the title. *Ib.*
12. Where this court has affirmed the title to lands in Florida, and referred in its decree to a particular survey, it would not be proper for the court below to open the case for a re-hearing, for the purpose of adopting another survey. *Chaires v. United States*, 611.
13. The court below can only execute the mandate of this court; it has no authority to disturb the decree, and can only settle what remains to be done. *Ib.*
14. The act of the 26th of May, 1830, providing for the final settlement of land claims in Florida, must be construed to contain the same limitation of time within which claims were to be presented, as that provided by the act of 23d of May, 1828. *United States v. Marvin*, 620.
15. That limitation was one year. The courts of Florida, therefore, had no right to receive a petition for the confirmation of an incomplete concession after the 26th of May, 1831. *Ib.*
16. The case in 15 Peters, 329, examined and distinguished from the present. *Ib.*
17. Under the acts of Congress, providing for the subdivision of the public lands, and the instructions of the Secretary of the Treasury, made under the act of 24th April, 1820, entitled "An act making further provision for the sale of the public lands," it is the duty of the surveyor-general to lay out a fractional section in such a manner that an entire quarter-section may be had if the fraction will admit of it. *Brown's Lessee v. Clements*, 650.

LANDS PUBLIC—(Continued.)

18. The surveyor-general has no right to divide a fractional section by arbitrary lines, so as to prevent a regular quarter-section from being taken up. *Ib.*
19. The treaty by which Louisiana was ceded to the United States, recognized complete grants, issued anterior to the cession, and the decision of a state court against the validity of a title set up under such a grant, would be subject to revisal by this court, under the 25th section of the Judiciary Act. *McDonogh v. Millaudon*, 693.
20. But if the state court only applies the local laws of the state to the construction of the grant, it is not a decision against its validity, and this court has no jurisdiction. *Ib.*
21. Congress, in acting upon complete grants, recognized them as they stood; and the act of 11th May, 1820, confirming such as were recommended for confirmation by the register and receiver, had no reference to any particular surveys. *Ib.*
22. A decision of a state court, therefore, which may be in opposition to one of these surveys, is not against the validity of a title existing under an act of Congress, and this court has no jurisdiction in such a case. *Ib.*
23. By the treaty of 1795, between the United States and Spain, Spain admitted that she had no title to land north of the thirty-first degree of latitude, and her previous grants of land, so situated, were of course void. The country, thus belonging to Georgia, was ceded to the United States, in 1802, with a reservation that all persons who were actual settlers on 27th October, 1795, should have their grants confirmed. Congress provided a board of commissioners to examine these grants, and declared that their decision should be final. *Lessee of Hickey v. Stewart*, 750.
24. The Court of Chancery of the state of Mississippi had no authority to establish one of these grants which had not been brought within the provisions of the act of Congress. The claim itself being utterly void, and no power having been conferred by Congress on that court to take or exercise jurisdiction over it, for the purpose of imparting to it legality, the exercise of jurisdiction was a mere usurpation of judicial power, and the whole proceeding of the court void. *Ib.*
25. The certificate of survey alleged to have been given by Trudeau, on the 14th of June, 1797, and brought forward to sustain a grant to the Marquis de Maison Rouge, declared ante-dated and fraudulent. *United States v. King et al.*, 773.
26. The circumstance that a copy of this paper was delivered by the Spanish authorities in 1803, is not sufficient to prevent its authenticity from being impeached. *Ib.*
27. Leaving this certificate out of the case, the instruments executed by the Baron de Carondelet in 1795 and 1797, have not the aid of any authentic survey to ascertain and fix the limits of the land, and to determine its location. *Ib.*
28. This court has repeatedly decided, and in cases too where the instrument contained clear words of grant, that if the description was vague and indefinite, and there was no official survey to give it a certain location, it could create no right of private property in any particular parcel of land, which could be maintained in a court of justice. *Ib.*
29. An equitable title is no defence in a suit brought by the United States. An imperfect title derived from Spain, before the cession, cannot be supported against a party claiming under a grant from the United States. *Ib.*
30. The act of Congress of the 29th April, 1816, confirming the grant to the extent of a league square, restricted it to that quantity, and cannot be construed as confirming the residue. *Ib.*
31. Query: Whether the acceptance, by the claimant, of this league square, affected his title to the residue. *Ib.*

LEAD MINES.

1. The act of Congress entitled "An act to create additional land districts in the states of Illinois and Missouri, and in the territory north of the state of Illinois," approved June 26th, 1834, does not require the President of the United States to cause to be offered for sale the public lands containing lead mines situated in the land districts created by said act. *United States v. Gear*, 120.

LEAD MINES—(Continued.)

2. The said act does not require the President to cause said lands, containing lead mines, to be sold, because the 5th section of the act of the 3d March, 1807, entitled "An act making provision for the disposal of the public lands situated between the United States military tract and the Connecticut reserve, and for other purposes," is still in full force. *Ib.*
3. The lands containing lead mines in the Indiana territory, or in that part of it made into new land districts by the act of the 26th June, 1834, are not subject, under any of the pre-emption laws which have been passed by Congress, to a pre-emption by settlers upon the public lands. *Ib.*
4. The 4th section of the act of 1834 does in no way repeal any part of the 5th section of the act of the 3d March, 1807, by which the lands containing lead mines were reserved for the future disposal of the United States, by which grants for lead-mine tracts, discovered to be such before they may be bought from the United States, are declared to be fraudulent and null, and which authorized the President to lease any lead mine which had been, or might be, discovered in the Indiana territory, for a term not exceeding five years. *Ib.*
5. The lands containing lead mines, in the districts made by the act of 1834, are not subject to pre-emption and sale under any of the existing laws of Congress. *Ib.*
6. Digging lead ore from the lead mines upon the public lands of the United States, is such a waste as entitles the United States to a writ of injunction to restrain it. *Ib.*

LIBEL.

1. In an action for a libel it is not indispensable to use the word "maliciously" in the declaration. It is sufficient if words of equivalent power or import are used. *White v. Nichols*, 266.
2. Every publication, either by writing, printing, or pictures, which charges upon, or imputes to, any person that which renders him liable to punishment, or which is calculated to make him infamous, or odious, or ridiculous, is *prima facie* a libel, and implies malice in the author and publisher towards the person concerning whom such publication is made. *Ib.*
3. Proof of malice cannot, in these cases, be required of the party complaining, beyond the proof of the publication itself; justification, excuse, or extenuation, if either can be shown, must proceed from the defendant. *Ib.*
4. Privileged communications are an exception; and the rule of evidence, as to such cases, is so far changed as to require of the plaintiff to bring home to the defendant the existence of malice as the true motive of his conduct.

Privileged communications are of four kinds:

1. Wherever the author and publisher of the alleged slander acted in the *bona fide* discharge of a public or private duty, legal or moral, or in the prosecution of his own rights or interests.
2. Any thing said or written by a master in giving the character of a servant who has been in his employment.
3. Words used in the course of a legal or judicial proceeding, however hard they may bear upon the party of whom they are used.
4. Publications duly made in the ordinary mode of Parliamentary proceedings, as a petition printed and delivered to the members of a committee appointed by the House of Commons to hear and examine grievances. *Ib.*
5. But in these cases the only effect of the change of the rule is to remove the usual presumption of malice. It then becomes incumbent on the party complaining to show malice, either by the construction of the spoken or written matter, or by facts and circumstances connected with that matter, or with the situation of the parties, adequate to authorize the conclusion. *Ib.*
6. Proof of express malice, so given, will render the publication, petition, or proceeding, libellous. Falsehood and the absence of probable cause will amount to proof of malice. *Ib.*
7. The jury being the tribunal to determine whether this malice did or did not mark the publication, the alleged libel should be submitted to them, and the court below erred in withholding it. *Ib.*

LIMITATIONS.

1. Where there has been a tenancy in common, if the tenants in possession only claim the undivided interest which was held by their immediate grantors, it is not adverse to the remaining part of the title, and such persons cannot avail themselves of the Statute of Limitations. *Clymer's Lessee v. Dawkins*, 674.
2. But if the occupants entered into possession and held the lands for more than twenty years before the commencement of the suit, by a purchase and claim thereof in entirety and severalty, and not an undivided part thereof, in co-tenancy, it is an adverse possession, and the Statute of Limitations is a good plea. *Ib.*

LOCAL LAW.

1. The mere construction of a will by a state court, does not, as the construction of a statute of the state, constitute a rule of decision for the courts of the United States. If such construction by a state court had been long acquiesced in, so as to become a rule of property, this court would follow it. *Lane et al. v. Vick et al.*, 464.

MAISON ROUGE.

1. The certificate of survey alleged to have been given by Trudeau, on the 14th of June, 1797, and brought forward to sustain a grant to the Marquis de Maison Rouge, declared to be ante-dated and fraudulent. *United States v. King et al.*, 773.
2. Leaving the certificate out of the case, the instruments executed by the Baron de Carondelet in 1795 and 1797, have not the aid of any authentic survey to ascertain and fix the limits of the land and to determine its location. *Ib.*

MANDAMUS.

1. Where a party has resorted to, and obtained a mandamus, he cannot afterwards proceed in another suit for the same cause of action. *Kendall v. Stokes et al.*, 87.

MARINE CORPS.

1. A brevet field-officer of the marine corps is not entitled by law to brevet pay and rations, by reason of his commanding a separate post or station, if the force under his command would not entitle a brevet field-officer of infantry of a similar grade to brevet pay and rations. *United States v. Freeman*, 556.
2. The act of 1834, chap. 132, does not repeal the 1st section of the act of 1818, regulating the pay and emoluments of brevet officers. *Ib.*
3. The 5th section of the act of 30th June, 1834, is a repeal of the joint resolution of the two houses of Congress of the 25th May, 1832, respecting the pay and emoluments of the marine corps. *Ib.*
4. By force of the army regulation No. 1125, authorizing the issues of double rations to officers commanding departments, posts, and arsenals, a brevet field-officer of marines is entitled to double rations. But the fact must be shown that he had such a command of a post or arsenal at which double rations had been allowed according to the army regulations. *Ib.*
5. The fact of appropriations having been made by Congress for double rations does not determine what officers are entitled to them. *Ib.*
6. A brevet field-officer of the marine corps, commanding a separate post, without a command equal to his brevet rank, is not entitled to brevet pay and emoluments. But if such brevet officer is a captain in the line of his corps, and in the actual command of a company, whether he is in the command of a post or not, he is entitled to the compensation given by the 2d section of the act of the 2d March, 1827. *Ib.*

MARSHAL.

1. A marshal is not authorized by law to receive any thing, in discharge of an execution, but gold and silver, unless the plaintiff authorizes him to receive something else. *McFarland v. Gwin*, 717.
2. The case of *Griffin et al. v. Thompson*, 2 How., 244, reviewed and confirmed. *Ib.*
3. A marshal, like a sheriff, is bound, after the expiration of his term of office, to complete an execution which has come to his hands during his term; and an execution is never completed until the money is made and paid over to the plaintiff, if it is practicable to make it. *Ib.*

ORLEANS TERRITORY.

1. The act of February 20th, 1811, authorizing the people of the territory of Orleans to form a constitution and state government, contained, in the third section thereof, two provisos; one in the nature of instructions how the constitution was to be formed, and the other reserving to the United States the property in the public lands, their exemption from state taxation, and the common right to navigate the Mississippi. *Pernoli v. First Municipality*, 589.
2. The first of these provisos was fully satisfied by the act of 1812, admitting Louisiana into the union, "on an equal footing with the original states." The conditions and terms referred to in the act of admission referred solely to the second proviso, involving rights of property and navigation. *Ib.*
3. The act of 1805, ch. 83, extending to the inhabitants of the Orleans territory, the rights, privileges and advantages secured to the North Western territory by the ordinance of 1787, had no further force after the adoption of the state constitution of Louisiana, than other acts of Congress, organizing the territorial government, and standing in connection with the ordinance. They are none of them in force unless they were adopted by the state constitution. *Ib.*

PLEAS AND PLEADING.

See LIBEL.

PRACTICE.

1. There was a judgment against an administrator of assets *quando acciderint*.
2. Upon this judgment a *scire facias* was issued, containing an averment that goods, chattels, and assets had come to the hands of the defendant.
3. Upon this *scire facias* there was a judgment by default; execution was issued, and returned "*nulla bona*."
4. A *scire facias* was then accorded against the administrator to show cause why the plaintiff should not have execution "*de bonis propriis*."
5. It was then too late to plead that the averment in the first *scire facias* did not state that assets had come into the hands of the administrator subsequent to the judgment *quando*. *Dickson v. Williamson*, 57.
6. A judgment by default against an executor or administrator is an admission of assets to the extent charged in the proceeding against him. *Ib.*
7. If a party fail to plead matter in bar to the original action, and judgment pass against him, he cannot afterwards plead it in another action founded on that judgment; nor in a *scire facias*. *Ib.*
8. A demurrer reaches no further back than the proceedings remain in *feri*, or under the control of the court. *Ib.*
9. Before a case can be dismissed under the 21st rule, regulating equity practice, there must exist, in the technical sense, a plea or demurrer on the part of the defendant, which the plaintiff shall not have replied to or set down for hearing before the second term of the court after filing the same. *Poultney et al. v City of Lafayette et al.*, 81.
10. The complainant, if he chooses, may go to the hearing, on bill and answer. *Ib.*
11. After a reference, an award, and the reception of the money awarded, another suit cannot be maintained on the original cause of action, upon the ground that the party had not proved, before the referee, all the damages he had sustained, or that his damage exceeded the amount which the arbitrator awarded. *Kendall v. Stokes*, 87.
12. Where a party has a choice of remedies for a wrong done, selects one, proceeds to judgment, and reaps the fruits of his judgment, he cannot afterwards proceed in another suit for the same cause of action. *Ib.*
13. This is especially true where the party has resorted to a mandamus, because it is not issued where the law affords a party any other adequate mode of redress. To allow him to maintain another suit for the same cause of action would be inconsistent with the decision of the court which awards the mandamus. *Ib.*
14. An application for a writ of error, prayed for without the authority of the party concerned, but at the request of his friends, cannot be granted. *Ex parte Dorr*, 103.
15. The objection of multifariousness can be taken by a party to the bill only

PRACTICE--(Continued.)

- by demurrer, or plea, or answer, and cannot be taken at the hearing of the cause. But the court itself may take the objection at any time—at the hearing or otherwise. The objection cannot be taken by a party in the appellate court. *Oliver v. Piatt*, 333.
16. Where exceptions are taken to a master's report, it is not necessary for the court formally to allow or disallow them on the record. It will be sufficient if it appears from the record, that all of them have been considered by the court, and allowed or disallowed, and the report reformed accordingly. *Ib.*
 17. After a case has been decided upon its merits, and remanded to the court below, if it is again brought up on a second appeal, it is then too late to allege that the court had not jurisdiction to try the first appeal. *Washington Bridge Co. v. Stewart*, 413.
 18. The Supreme Court has no power to review its decisions, whether in a case at law or in equity. A final decree in chancery is as conclusive as a judgment at law. *Ib.*
 19. An affirmance by a divided court, either upon a writ of error or appeal, is conclusive upon the rights of the parties. *Ib.*
 20. Where the court below awarded a supersedeas to stay execution, but afterwards revoked that order on account of the insufficiency of the security, the Supreme Court will not interfere by granting a supersedeas. *Black v. Zacharie*, 453.
 21. Nor will it interfere on account of the bankruptcy of the defendant, because the assignee of the bankrupt has his remedy in the Circuit Court. *Ib.*
 22. Where a general objection is made, in the court below, to the reception of testimony, without stating the grounds of the objection, this court considers it as vague and nugatory; nor ought it to have been tolerated in the court below. *Camden v. Doremus*, 515.
 23. If the citation be signed by the clerk, and not by a judge of the Circuit Court, or a justice of the Supreme Court, the case will, on motion, be dismissed. *The United States v. Hodge*, 534.
 24. The 38th rule of court forbids the insertion of the whole of the charge of the court to the jury in a general bill of exceptions, but requires that the part excepted to shall be specifically set out. *Stimpson v. West Chester Railroad Company*, 553.
 25. This court has not the power to correct any errors or omissions which may have been made in the Circuit Court in framing the exception; nor can it regard any part of the charge as the subject-matter of revision, unless the judges, or one of them, certify under his seal, that it was excepted to at the trial. *Ib.*
 26. If the omission of a part of the charge, which was in fact embraced in the exception, is a mere clerical error, the party will be entitled to a *certiorari*, upon producing a copy of the exception, properly certified. *Ib.*
 27. But in no case can the exception certified under the seals of the judges of the Circuit Court be altered or amended. *Ib.*
 28. Where this court has affirmed the title to lands in Florida, and referred, in its decree, to a particular survey, it would not be proper for the court below to open the case for a re-hearing, for the purpose of adopting another survey. *Chaires v. United States*, 611.
 29. The court below can only execute the mandate of this court. It has no authority to disturb the decree, and can only settle what remains to be done. *Ib.*
 30. A court is not bound to give instructions to the jury in the terms required by either party; it is sufficient if so much thereof are given as are applicable to the evidence before the jury, and the merits of the case as presented by the parties. *Clymer's Lessee v. Dawkins*, 674.
 31. When an issue is directed by a court of chancery, to be tried by a court of law, and in the course of the trial at law, questions are raised and bills of exceptions taken, these questions must be brought to the notice and decision of the court of chancery which sends the issue. *Brockett v. Brockett*, 691.
 32. If this is not done, the objections cannot be taken in an appellate court of chancery. *Ib.*

PRACTICE—(Continued.)

33. If the chancery court below refers matters of account to a master, his report cannot be objected to in the appellate court, unless exceptions to it have been filed in the court below in the manner pointed out in the 73d chancery rule of this court. *Ib.*
34. Where a cause has been pending in this court for two terms, a writ of *certiorari* sent down at the instance of the defendant in error, to complete the record, and the defendant in error then moves to dismiss the case upon the ground that the clerk of a state court issued the writ of error, and one of the judges of that court signed the citation, the motion comes too late. *McDonogh v. Millaudon*, 693.
35. Where the matter in dispute is below the amount necessary to give jurisdiction to this court, the writ of error must be dismissed, on motion. *Winston v. The United States*, 771.
36. Where a bill was filed on the equity side of the court below, to enjoin the marshal from levying an execution upon certain property, which execution was for a less sum than two thousand dollars, an appeal from a decree dismissing the bill will not lie to this court, although the entire value of the property may be more than two thousand dollars. *Ross v. Prentiss*, 771.
37. The jurisdiction of the court does not depend upon the amount of any contingent loss or damage which one of the parties may sustain by a decision against him, but upon the amount in dispute between them. *Ib.*

PUBLIC LANDS.

See LANDS, PUBLIC.

QUESTIONS OF LAW AND FACT.

See COMMERCIAL LAW, 4; DUTIES, 4.

RECEIVER OF PUBLIC MONEY.

The felonious taking and carrying away the public moneys in the custody of a receiver of public moneys, without any fault or negligence on his part, does not discharge him and his sureties, and cannot be set up as a defence to an action on his official bond. *The United States v. Prescott*, 578.

REPEAL.

See COMPROMISE ACT, 1, 2; LEAD MINES, 4.

SHIPS AND SHIPPING.

1. An agreement of consortium between the masters of two vessels engaged in the business known by the name of wrecking, is a contract capable of being enforced in an admiralty court, against property or proceeds in the custody of the court. *Andrews v. Wall et al.*, 568.
2. The case of *Ramsay v. Allegre*, 12 Wheat., 611, commented on, and explained. *Ib.*
3. Such an agreement extends to the owners and crews, and is not merely personal between the masters. *Ib.*

STATUTES.

1. The court, in construing an act, will not consider the motives, or reasons, or opinions, expressed by individual members of Congress, in debate, but will look, if necessary, to the public history of the times in which it was passed. *Aldridge et al. v. Williams*, 9.

See CONSTRUCTION.

2. In affirmative statutes, such parts of the prior as may be incorporated into the subsequent statute, as consistent with it, must be considered in force. *Davies v. Fairbairn*, 636.
3. If a subsequent statute be not repugnant in all its provisions to a prior one, yet if the later statute clearly intended to prescribe the only rules which should govern, it repeals the prior one. *Ib.*
4. Under the application of these rules, the law of Virginia, passed in 1776, authorizing the mayor of a city to take the acknowledgment of a feme covert to a deed, is not repealed by the act of 1785, or that of 1796. *Ib.*
5. Statutes *in pari materia* should be taken into consideration in construing a law. If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute. *United States v. Freeman*, 556.

STATUTES—(Continued.)

6. And if it can be gathered from a subsequent statute *in pari materia* what meaning the legislature attached to the words of a former statute, this will amount to a legislative declaration of its meaning, and will govern the construction of the first statute. *Ib.*
7. The meaning of the legislature may be extended beyond the precise words used in the law, from the reason or motive upon which the legislature proceeded, from the end in view, or the purpose which was designed; the limitation of the rule being that to extend the meaning to any case, not included within the words, the case must be shown to come within the same reason upon which the law-maker proceeded, and not a like reason. *Ib.*

TAXATION.

1. When the purchaser of land from the United States has paid for it, and received a final certificate, it is taxable property, according to the statutes of Michigan, although a patent has not yet been issued. *Carroll v. Safford*, 441.
2. Taxation upon lands so held is not a violation of the ordinance of 1787, as an "interference with the primary disposition of the soil by Congress," nor is it "a tax on the lands of the United States." The state of Michigan could rightfully impose the tax. *Ib.*
3. It was competent for the state to assess and tax such lands at their full value, as the absolute property of the holder of the final certificate, and in default of payment, to sell them as if he owned them in fee. *Ib.*

TENANCY IN COMMON.

1. The entry and possession of one tenant in common is ordinarily deemed the entry and possession of all the tenants; and this presumption will prevail in favor of all, until some notorious act of ouster or adverse possession by the party so entering is brought home to the knowledge or notice of the others. When this occurs, the possession is from that period treated as adverse to the other tenants. *Clymer's Lessee v. Dawkins*, 674.
2. Such a notorious ouster or adverse possession may be by any overt act *in pais* of which the other tenants have due notice, or the assertion in any proceeding at law of a several and distinct claim or title. If an attempt be made to obtain a partition, although the legal proceedings by which it is effected may be invalid or defective, still, being a matter of public notoriety, the co-tenant is bound at his peril to take notice of the claim to adverse possession thus set up. *Ib.*
3. If the tenants in possession only claim the undivided interest which was held by their immediate grantors, it is not adverse to the remaining part of the title, and such persons cannot defend themselves in ejectment by giving in evidence an outstanding title elder than that under which they claim; nor can they avail themselves of the Statute of Limitations. *Ib.*
4. But if the occupants entered into possession and held the lands for more than twenty years before the commencement of the suit, by a purchase and claim thereof in entirety and severalty, and not an undivided part thereof in co-tenancy, it is an adverse possession, and the Statute of Limitations is a good plea. *Ib.*

TOLLS.

See CONSTITUTIONAL LAW, 7-9.

TRUSTS.

1. In cases of trust, where the trustee has violated his trust by an illegal conversion of the trust property, the *cestui que trust* has a right to follow the property into whosoever hands he may find it, not being a *bona fide* purchaser for a valuable consideration, without notice. *Oliver et al. v. Piatt*, 333.
2. Where a trustee has, in violation of his trust, invested the trust property or its proceeds in any other property, the *cestui que trust* has his option, either to hold the substituted property liable to the original trust, or to hold the trustee himself personally liable for the breach of the trust. *Ib.*
3. The option, however, belongs to the *cestui que trust* alone and is for his benefit, and not for the benefit of the trustee. *Ib.*
4. If the trustee, after such an unlawful conversion of the trust property should re-purchase it, the *cestui que trust* may, at his option, either

TRUSTS—(Continued.)

- hold the original property subject to the trust, or take the substituted property in which it has been invested, in lieu thereof. And the trustee, in such a case, has no right to insist that the trust shall, upon the re-purchase, attach exclusively to the original trust property. *Ib.*
5. Where the trust property has been unlawfully invested, with other funds of the trustee, in other property, the latter, in the hands of the trustee, is chargeable *pro tanto* to the amount or value of the original property. *Ib.*
 6. What constitutes notice of a trust? *Ib.*
 7. An agent, employed by a trustee in the management of the trust property, and who thereby acquires a knowledge of the trust, is, if he afterwards becomes possessed of the trust property, bound by the trust, in the same manner as the trustee. *Ib.*

USURY.

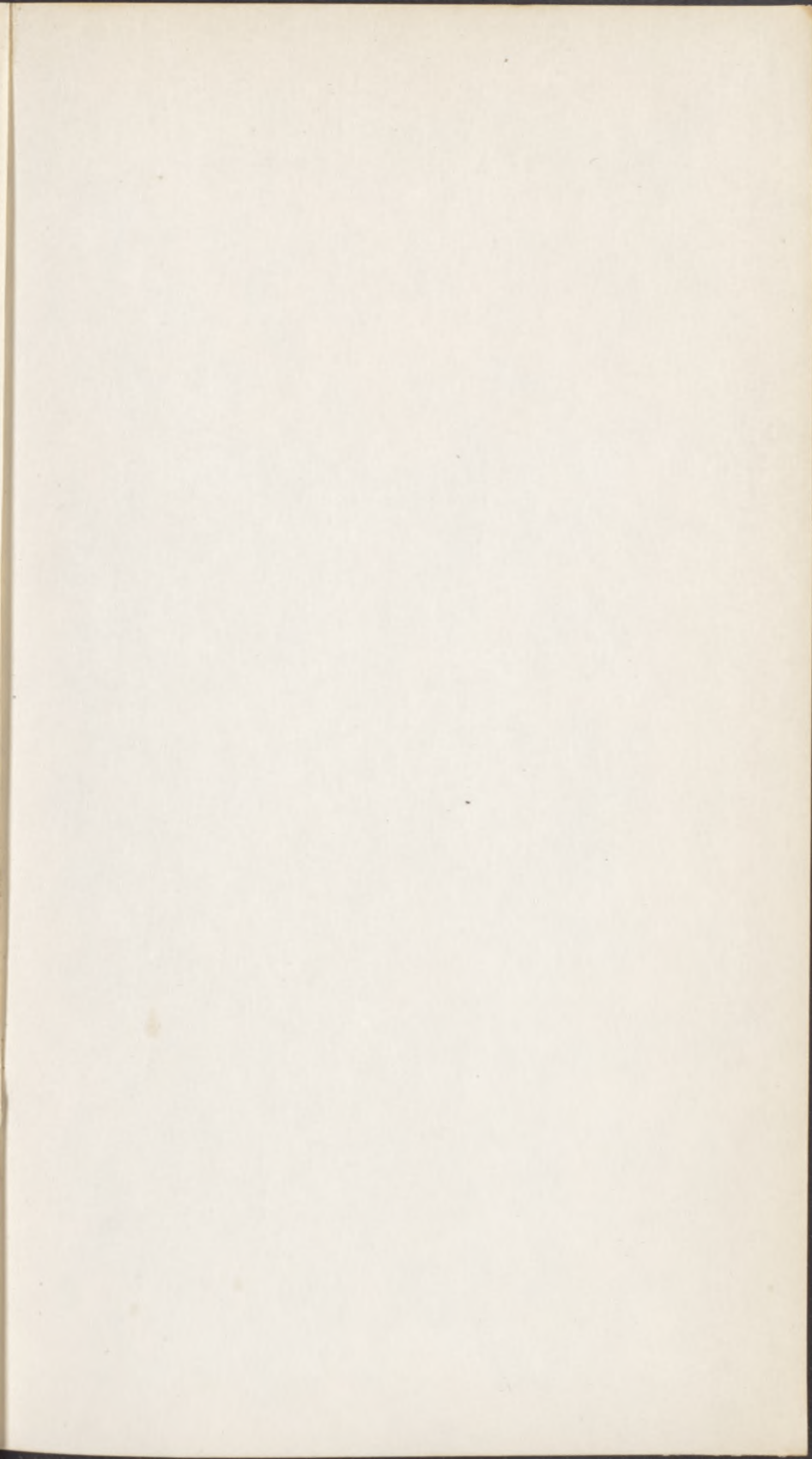
See COMMERCIAL LAW, 1-4.

VENDOR AND PURCHASER.

1. A purchaser by a deed of quit claim without any covenant of warranty, is not entitled to protection in a court of equity as a purchaser for a valuable consideration, without notice; and he takes only what the vendor could lawfully convey. *Oliver v. Piatt*, 333.
2. A warranty, either lineal or collateral, is no bar to an heir who does not claim the property to which the warranty is attached by descent, but as a purchaser thereof. *Ib.*

WILLS.

See DEVISE.



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