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TO THE

MATTERS CONTAINED IN THIS VOLUME.

[The references are to the STAR (*) pages.]

ADMIRALTY.

1. The grant in the constitution, extending the judicial power "to all cases of admiralty and maritime jurisdiction," is neither to be limited to, nor to be interpreted by, what were cases of admiralty jurisdiction in England when the constitution was adopted by the States of the Union. *Waring* v. *Clarke*, 441.
2. Admiralty jurisdiction in the courts of the United States is not taken away because the courts of common law may have concurrent jurisdiction in a case with the admiralty. Nor is a trial by jury any test of admiralty jurisdiction. The subject-matter of a contract or service gives jurisdiction in admiralty. Locality gives it in tort, or collision. *Ib.*
3. The meaning of the clause in the ninth section of the Judiciary Act of 1789, saving to suitors, in all cases, a common law remedy when the common law is competent to give it, is, that in cases of concurrent jurisdiction in admiralty and at common law the jurisdiction in the latter is not taken away. *Ib.*

AGENT.

1. The acts and declarations of an agent of the government should not be given in evidence without first establishing the agency. Secondary proof of the contents of a letter of appointment should not have been received without first accounting for the non-production of the original. *The United States* v. *Boyd*, 29.

AMENDMENT.

1. Where there was a demurrer to a rejoinder, which demurrer was sustained by the court below, and the party, on leave, filed an amended rejoinder, this court cannot be asked to decide upon the demurrer. The point was waived by the filing of the amended rejoinder. *United States* v. *Boyd*, 29.

APPEAL.

1. Where the prayer of a bill in equity shows that the demand of the complainant is susceptible of definite computation, and that there can be no recovery over the sum of two thousand dollars, the appeal to this court will be dismissed on motion, for want of jurisdiction. *Sewall* v. *Chamberlain*, 6.

ARBITRATION.

1. Although the charter of a company does not, in terms, give the power to refer, yet a power to sue and be sued includes a power of reference, that being one of the modes of prosecuting a suit to judgment. *Alexandria Canal Company* v. *Swann*, 83.
2. So, also, a power to agree with a proprietor for the purchase or use of land includes a power to agree to pay a specified sum, or such sum as arbitrators may fix upon. *Ib.*
3. It is immaterial whether the power of reference is lodged in the president and directors, or in the stockholders assembled in general meeting; for the entire corporation is represented in court by its counsel, whose acts, in conducting the suit, are presumed to be authorized by the party. *Ib.*
4. Where the order of reference provides for the appointment of an umpire, it is no error if he is appointed before the referees had heard the evidence and discovered that they could not agree. *Ib.*

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ARBITRATION — (*Continued.*)
5. Where the agreement for reference contained a clause providing that upon payment of damages to the owner of the land he should convey it to the other party, it was proper for the umpire to omit all notice of this. It was not put in issue by the pleadings, nor referred to the arbitrators. *Ib.*

ASSUMPSIT.
1. Where there are privies in a contract with the knowledge of a debtor to secure to his creditor the payment of a debt, the payment of it by any one of them other than the debtor is a payment at his request, and is an express assumpsit to reimburse the amount. *Hall* v. *Smith*, 96.
2. Where the surety of a surety pays the debt of a principal, under a legal obligation, from which the principal was bound to relieve him, such a payment is a sufficient consideration to raise an implied assumpsit to repay the amount, although the payment was made without a request from the principal. *Ib.*

BILLS AND NOTES.
1. When a bill of exchange is made payable at a bank, and the bank itself is the holder of the bill, it is a sufficient demand if the notary presents it at the bank and demands payment. *Hildeburn* v. *Turner*, 69.
2. If, therefore, the protest states this and also that the notary was answered that it could not be paid, it is sufficient. It is not necessary for him to give the name of the person or officer of the bank to whom it was presented, and by whom he was answered. *Ib.*
3. In a suit by the first indorser of promissory notes against a second indorser, upon an alleged contract that the second indorser would bear half the loss which might accrue from their non-payment by the drawer, it is not a sufficient objection to the jurisdiction of the court, that the second indorsee and defendant were citizens of the same State. Such an objection would be well founded if the suit had been upon the notes. But not where the suit is brought upon a collateral contract. *Philips* v. *Preston*, 278.
4. In the case of *The United States* v. *The Bank of the United States* (2 How., 711), the court is of opinion that the question on the structure of the bill is an open question, and for the first time presented to this court for decision. *United States* v. *Bank of United States*, 382.
5. The statute of Maryland of 1785, in its terms, does not embrace a bill of exchange drawn on a foreign government. *Ib.*
6. A bill of exchange in form, drawn by one government on another, as this was, is not and cannot be governed by the law merchant, and therefore is not subject to protest and consequential damages. *Ib.*

BONDS.
1. The returns of the receiver to the Treasury Department are not conclusive evidence in an action by the government against the sureties upon the receiver's bond. If the sums of money stated in such returns were not actually in the hands of the receiver, the sureties are allowed to show how the fact was. *United States* v. *Boyd*, 29.
2. The sureties cannot be concluded by a fabricated account of their principal with his creditors; they may always inquire into the reality and truth of the transactions existing between them. *Ib.*
3. The condition of the bond was prospective, and fraud in respect to past transactions, not within the condition, could not render the instrument void prospectively. *Ib.*
4. Nor should the acts and declarations of the agent of the government have been allowed to be given in evidence, without first establishing his agency. Secondary proof of the contents of a letter of appointment should not have been received, without first accounting for the non-production of the original. *Ib.*

See LANDS, PUBLIC.

CERTIFICATES OF DIVISION.
1. When a case is brought up to this court on a certificate of division in opinion, the point upon which the difference occurs must be distinctly stated. *United States* v. *Briggs*, 208.

CERTIFICATES OF DIVISION — (*Continued.*)

2. Where there was a demurrer, upon three grounds, to an indictment, it is not enough to certify that the court was divided in opinion whether or not the demurrer should be sustained. *Ib.*

CHANCERY.

1. Where the prayer of a bill in equity shows that the demand of the complainant is susceptible of definite computation, and that there can be no recovery over the sum of two thousand dollars, the appeal to this court will be dismissed on motion, for want of jurisdiction. *Sewall* v. *Chamberlain*, 6.
2. Where a perpetual injunction was granted by a subordinate State court, and, upon appeal, the highest State court decided that the party in whose favor the injunction had been granted was entitled to relief, and therefore remanded the case to the same subordinate court from which it had come, for further proceedings, this is not such a final decree as can be reviewed by this court. The writ of error must be dismissed, on motion. *Pepper* v. *Dunlap*, 51.
3. It is not irregular for two mercantile firms to unite as complainants in equity in a creditor's bill. *Nelson* v. *Hill*, 127.
4. An objection that a bill is multifarious must be made before answer, and can be tested only by the structure of the bill itself. *Ib.*
5. The creditor of a partnership may, at his option, proceed at law against the surviving partner, or go, in the first instance, into equity against the representatives of the deceased partner. It is not necessary for him to exhaust his remedy at law against the surviving partner before proceeding in equity against the estate of the deceased. *Ib.*
6. Where there were two mercantile firms, and some of the members common to both, a creditor's bill was not multifarious when filed against the personal representatives of two of the deceased partners of the two firms, and also against the surviving partners of one of the firms. *Ib.*
7. The general principle with regard to injunctions after a judgment at law is this,—that any fact which proves it to be against conscience to execute such judgment, and of which the party could not have availed himself in a court of law, or of which he might have availed himself at law, but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will authorize a court of equity to interfere by injunction to restrain the adverse party from availing himself of such judgment. *Truly* v. *Wanzer*, 141.
8. Hence, where a party had remained for ten years in the undisturbed enjoyment of the property which he purchased, it was no ground for an injunction to stay proceedings for the recovery of the purchase-money, to say that the original purchase was void by the laws of the State, but that he had neglected to urge that defence at law, or to say that he had heard that some persons unknown might possibly at some future time assert a title to the property. *Ib.*
9. Such an injunction, if granted, must be dissolved. *Ib.*
10. By the laws of Louisiana, where there has been a judicial sale of the succession by a probate judge, a creditor of the estate, who obtains a judgment, cannot levy an execution upon the property so transferred, upon the ground that the sale was fraudulent and void. He should first bring an action to set the sale aside. *Ford* v. *Douglas*, 143.
11. The purchaser under the judicial sale having filed a bill and obtained an injunction upon the creditor to stay the execution, it was an irregular mode of raising the question of fraud for the creditor to file an answer setting it forth, and alleging the sale to be void upon that ground. He should have filed a cross bill. Exceptions to the answer upon this account were properly sustained by the court below. *Ib.*
12. But if the court below should perpetuate the injunction, upon the defendants' refusal to answer further, the injunction should be free from doubt, in leaving the creditor to pursue other property under his judgment, and also at liberty to file a cross bill. If the injunction does not clearly reserve these rights to the creditor, it goes too far, and the judgment of the court below must be reversed. *Ib.*

CHANCERY—(*Continued.*)

13. In this case, the pleadings and proofs show that a mortgage executed by the debtor to the creditor was really for an unascertained balance of accounts, which the sum named in the mortgage was supposed to be sufficient to cover. *Gear* v. *Parish*, 168.
14. As it did not prove to be sufficient, and the creditor obtained a judgment against the debtor for the residue, the payment of the sum named in the mortgage was no reason for an injunction to stay proceedings upon the judgment. *Ib.*
15. The following principles of equity jurisprudence may be affirmed to be without exception; namely, that whosoever would seek admission into a court of equity must come with clean hands; that such a court will never interfere in opposition to conscience or good faith; that it will never be called into activity to remedy the consequences of laches or neglect, or the want of reasonable diligence. *Creath's Administrator* v. *Sims*, 192.
16. Therefore, where a complainant prays to be relieved from the fulfilment of a contract, which was intentionally made in fraud of the law, the answer is, that, however unworthy may have been the conduct of his opponent, the parties are *in pari delicto*. The complainant cannot be admitted to plead his own demerits. *Ib.*
17. Nor is it any ground of interference when a complainant applies to be relieved from the payment of a promissory note given under the above circumstances, upon which judgment had been recovered at law. The consideration upon which the note was given was then open to inquiry, and it is a sufficient indulgence to have been permitted once to set up such a defence. *Ib.*
18. The cases examined, showing how far, and under what circumstances the liability of a surety becomes fixed upon him as a principal debtor. *Ib.*
19. Where the plaintiff in a suit voluntarily abstains from pressing the principal debtor, but receives no consideration for such indulgence, nor puts any limitation upon his right to proceed upon his execution, whenever it may be his pleasure to do so, this conduct furnishes no reason for the exemption of the surety from liability, and especially where the surety had united with his principal in a forthcoming bond. *Ib.*
20. The authorities upon this point examined. *Ib.*
21. By the laws of Alabama, an administrator *de bonis non*, with the will annexed, is liable for assets in the hands of a former executor. *Taylor* v. *Benham*, 233.
22. Where an executor has settled what appears to be a final account, it must be a very strong case of fraud proved in such a settlement, or of clear accident or mistake, to make it just to reopen and revise the account after the lapse of twenty years and the death of the parties concerned. *Ib.*
23. Where a person who held land as trustee directed by his will that the whole of the property that he may die seized and possessed of, or may be in any wise belonging to him, should be sold, the executors had power to sell the land held in trust, as well as that belonging to the testator in his own right. *Ib.*
24. The trustee, by his will, having appointed residuary legatees, must be considered as devising the trust as well as the lands to these residuary legatees, who thus became themselves trustees for the original *cestui que trust*. *Ib.*
25. The power in the executors to sell was a power coupled with a trust. *Ib.*
26. It might also be considered as a power coupled with an interest. *Ib.*
27. The distinction between these powers adverted to. *Ib.*
28. In order to avoid an escheat, and carry out the wishes of the testator, a court of equity will, if necessary, consider land as money, where a testator, who is a trustee, has directed the land to be sold, and will direct the proceeds to be given to the *cestui que trust*. *Ib.*
29. Whether the executor had a power to sell coupled with a trust, or a power coupled with an interest, the residuary legatees took by devise

CHANCERY—(*Continued.*)
and not by descent, although they were supposed to be also the *cestui que trusts*. *Ib.*
30. If, therefore, they were aliens, the land did not escheat on the death of the trustee, because land taken by devise does not escheat until office found, although land cast by descent does. *Ib.*
31. The testator, who held the lands as trustee, having died in South Carolina, the executor took out letters testamentary in that State, sold the lands which were in Kentucky, and then removed his residence to Alabama. He can be sued in Alabama for the proceeds of the lands, because his transactions in reference to them were not necessarily connected with the settlement of the estate under his letters testamentary. *Ib.*
32. Having sold the lands and received the consideration, he must be responsible to the residuary legatees. *Ib.*
33. An objection that only one executor sold (there having originally been four) cannot be sustained. Where a power is coupled with a trust, it is only necessary to show such a case as may, in a court of equity, make an agent or trustee liable to those for whom he acts. As much strictness is not required as there would be if the power to sell were a naked one, and not coupled with an interest or trust. *Ib.*
34. A power to sell, coupled either with an interest or trust, survives to the surviving executor. So, also, if all the trustees or executors in such a case decline to act, except one. *Ib.*
35. When a sale is made under a will, the omission to record the will does not vitiate the sale, unless recording is made necessary by a local statute. *Ib.*
36. The land being in fact sold by the executor, claiming a right to do so under the will, and the purchase-money being received by him, he is responsible to the *cestui que trusts* for the money thus received. The reception of an additional sum, as purchase-money, by them, with a reservation of the right to sue the executor, is not an avoidance of the first sale by the executor. *Ib.*
37. But the executor is not responsible for more money than he received, with interest, unless in case of very supine negligence or wilful default. A claim for damages would also be subject to the operation of the statute of limitations. *Ib.*
38. If the executor himself did not set up a claim, as an offset, for his personal expenses, his representative cannot do it, under the circumstances of this case. *Ib.*
39. The *cestui que trusts* residing in a foreign country, the statute of limitations did not begin to run until a demand was made upon the executor for the money. His retaining it during that time is no evidence that he did not intend to account for it. *Ib.*
40. Although the bill made no distinction between the two characters in which the executor acted, namely, as executor proper, and as executor having a power coupled with a trust, yet as no objection was taken in the court below upon this ground, this court does not think that an amendment is imperatively necessary. The material facts are alleged upon which the claim rests. *Ib.*

COLLISION.
1. In cases of tort, or collision, happening upon the high seas, or within the ebb and flow of the tide, as far up a river as the tide ebbs and flows, though it may be *infra corpus comitatus*, courts of admiralty of the United States have jurisdiction. *Waring* v. *Clarke*, 441.

COMMERCIAL LAW.
1. By the laws of Louisiana, a notary is required to record in a book kept for that purpose all protests of bills made by him and the notices given to the drawers or indorsers, a certified copy of which record is made evidence. *McAfee* v. *Doremus*, 53.
2. Under these statutes, a deposition of the notary, giving a copy of the original bill, stating a demand of payment, a subsequent protest, and notice to the drawers and indorsers respectively, is good evidence. *Ib.*

COMMERCIAL LAW—(*Continued.*)

3. The original protest must be recorded in a book. Its absence at the trial is therefore sufficiently accounted for. *Ib.*
4. Where a joint action against the drawers and indorser was commenced under the statute of Mississippi (which statute this court has heretofore, 16 Pet., 89, held to be repugnant to an act of Congress), the plaintiffs may discontinue the suit against the drawers and proceed against the indorser only. *Ib.*
5. When a bill of exchange is made payable at a bank, and the bank itself is the holder of the bill, it is a sufficient demand if the notary presents it at the bank and demands payment. *Hildebrand* v. *Turner*, 69.
6. If, therefore, the protest states this, and also that the notary was answered that it could not be paid, it is sufficient. It is not necessary for him to give the name of the person or officer of the bank to whom it was presented, and by whom he was answered. *Ib.*
7. It is not irregular for two mercantile firms to unite as complainants in a creditor's bill. *Nelson* v. *Hill*, 127.
8. The creditor of a partnership may, at his option, proceed at law against the surviving partner, or go, in the first instance, into equity against the representative of the deceased partner. It is not necessary for him to exhaust his remedy at law against the surviving partner before proceeding in equity against the estate of the deceased. *Ib.*
9. Where there were two mercantile firms, and some of the members common to both, a creditor's bill was not multifarious when filed against the personal representatives of two of the deceased partners of the two firms, and also against the surviving partner of one of the firms. *Ib.*
10. In a suit by the first indorser of promissory notes against a second indorser, upon an alleged contract that the second indorser would bear half the loss which might accrue from their non-payment by the drawer, it is not a sufficient objection to the jurisdiction of the court, that the second indorsee and defendant were citizens of the same State. Such an objection would be well founded if the suit had been upon the notes. *Phillips* v. *Preston*, 278.
11. But not where the suit is brought upon a collateral contract. *Ib.*
12. A contract between two indorsers, that they will divide the loss between them, is a good contract, and founded on a sufficient consideration. *Ib.*
13. Being a collateral contract, by parol, parol evidence can be given to prove it. The payee is a competent witness, and so is the notary, bringing with him the act of sale. *Ib.*
14. In the case of *The United States* v. *The Bank of the United States* (2 How., 711), the court is of opinion that the question on the structure of the bill is an open question, and for the first time presented to this court for decision. *The United States* v. *The Bank of the United States*, 382.
15. The statute of Maryland of 1785, in its terms, does not embrace a bill of exchange drawn on a foreign government. *Ib.*
16. A bill of exchange in form, drawn by one government on another, as this was, is not and cannot be governed by the law merchant, and therefore is not subject to protest and consequential damages. *Ib.*

CONSTITUTIONAL LAW.

1. In the case of *Groves* v. *Slaughter* (15 Pet., 449), this court decided that the constitution of Mississippi did not, of itself, and without any legislative enactment, prohibit the introduction of slaves as merchandise and for sale. *Rowan* v. *Runnels*, 134. *Truly* v. *Wanzer*, 141.
2. This constitution went into operation on the 1st of May, 1833, and on the 13th of May, 1837, a law was passed to provide for the case. *Ib.*
3. This court adheres to the construction of the constitution which was given in the case of *Groves* v. *Slaughter*, and enforces contracts made between the two days above mentioned, although the courts of the State of Mississippi have, since the decision in the case of *Groves* v. *Slaughter*, declared such contracts to be void. *Ib.*
4. Under the fourth section of the act of 12th February, 1793, respecting fugitives from justice, and persons escaping from the service of their

CONSTITUTIONAL LAW—(*Continued.*)
master, on a charge for harbouring and concealing fugitives from labor, the notice need not be in writing by the claimant or his agent, stating that such person is a fugitive from labor under the third section of the above act, and served on the person harbouring or concealing such fugitive, to make him liable to the penalty of five hundred dollars under the act. *Jones* v. *Van Zandt*, 215.

5. Such notice, if not in writing and served as aforesaid, may be given verbally by the claimant or his agent to the person who harbours or conceals the fugitive; and, to charge him under the statute, a general notice to the public in a newspaper is not necessary. *Ib.*
6. Clear proof of the knowledge of the defendant, by his own confession or otherwise, that he knew the colored person was a slave and fugitive from labor, though he may have acquired such knowledge from the slave himself, or otherwise, is sufficient to charge him with notice. *Ib.*
7. Receiving the fugitive from labor at three o'clock in the morning, at a place in the State of Ohio about twelve miles distant from the place in Kentucky where the fugitive was held to labor, from a certain individual, and transporting him in a closely covered wagon twelve or fourteen miles, so that the boy thereby escaped pursuit, and his services were thereby lost to his master, is a harbouring or concealing of the fugitive within the statue. *Ib.*
8. A transportation under the above circumstances, though the boy should be recaptured by his master, is a harbouring or concealing of him within the statute. *Ib.*
9. Such a transportation, in such a wagon, whereby the services of the boy were entirely lost to his master, is a harbouring of him within the statute. *Ib.*
10. A claim of the fugitive from the person harbouring or concealing him need not precede or accompany the notice. *Ib.*
11. Any overt act so marked in its character as to show an intention to elude the vigilance of the master or his agent, and which is calculated to attain such an object, is a harbouring of the fugitive within the statute. *Ib.*
12. In this particular case, the first and second counts contain the necessary averments, that Andrew, the colored man, escaped from the State of Kentucky into the State of Ohio. *Ib.*
13. They also contain the necessary averments of notice that said Andrew was a fugitive from labor, within the description of the act of Congress. *Ib.*
14. The averments in the said counts, that the defendant harboured said Andrew, are sufficient. *Ib.*
15. Said counts are otherwise sufficient. *Ib.*
16. The act of Congress, approved February 12, 1793, is not repugnant to the constitution of the United States. *Ib.*
17. The said act is not repugnant to the ordinance of Congress, adopted July, 1787, entitled, "An Ordinance for the Government of the Territory of the United States northwest of the River Ohio." *Ib.*
18. A contract, made in New York, is not affected by a discharge of the debtor under the insolvent laws of Maryland, where the debtor resided, although the insolvent law was passed antecedently to the contract. *Cook* v. *Moffat*, 295.
19. The prior decisions of this court upon this subject reviewed and examined. *Ib.*
20. In the case of the *United States* v. *The Bank of the United States* (2 How., 711), the court is of opinion that the question on the structure of the bill is an open question, and for the first time presented to this court for decision. *The United States* v. *The Bank of the United States*, 382.
21. The statute of Maryland of 1785, in its terms, does not embrace a bill of exchange drawn on a foreign government. *Ib.*
22. A bill of exchange in form, drawn by one government on another, as this

CONSTITUTIONAL LAW—(*Continued.*)
was, is not and cannot be governed by the law merchant, and therefore is not subject to protest and consequential damages. *Ib.*

23. The power conferred upon Congress by the fifth and sixth clauses of the eighth section of the first article of the constitution of the United States, viz.:—"To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures"; "To provide for the punishment of counterfeiting the securities and current coin of the United States";—does not prevent a State from passing a law to punish the offence of circulating counterfeit coin of the United States. *Fox* v. *The State of Ohio*, 410.
24. The two offences of counterfeiting the coin, and passing counterfeit money, are essentially different in their characters. The former is an offence directly against the government, by which individuals may be affected; the latter is a private wrong, by which the government may be remotely, if it will in any degree, be reached. *Ib.*
25. The prohibitions contained in the amendments to the constitution were intended to be restrictions upon the federal government, and not upon the authority of the States. *Ib.*
26. The grant in the constitution, extending the judicial power "to all cases of admiralty and maritime jurisdiction," is neither to be limited to, nor to be interpreted by, what were cases of admiralty jurisdiction in England when the constitution was adopted by the States of the Union. *Waring* v. *Clarke*, 441.
27. Admiralty jurisdiction in the courts of the United States is not taken away because the courts of common law may have concurrent jurisdiction in a case with the admiralty. Nor is a trial by jury any test of admiralty jurisdiction The subject-matter of a contract or service gives jurisdiction in admiralty. Locality gives it in tort, or collision. *Ib.*
28. In cases of tort, or collision, happening upon the high seas, or within the ebb and flow of the tide, as far up a river as the tide ebbs and flows, though it may be *infra corpus comitatus*, courts of admiralty of the United States have jurisdiction. *Ib.*
29. The meaning of the clause in the ninth section of the Judiciary Act of 1789, saving to suitors, in all cases, a common law remedy when the common law is competent to give it, is, that in cases of concurrent jurisdiction in admiralty and at common law the jurisdiction in the latter is not taken away. *Ib.*
30. The act of 7th July, 1838 (5 Stat. at L., 304), for the better security of the lives of passengers on board of vessels propelled in whole or part by steam, is obligatory in all its provisions, except as it has been altered by the act of 1843 (5 Stat. at L., 626), upon all owners and masters of steamers navigating the waters of the United States, whether navigating on waters within a State, or between States, or waters running from one State into another State, or on the coast of the United States between the ports of the same State or different States. *Ib.*
31. By the law of 7th July, 1838, masters and owners neglecting to comply with its conditions are liable to a penalty of two hundred dollars, to be recovered by suit or indictment. And if neglect or disobedience of the law shall be proved to exist when injury shall occur to persons or property, it throws upon the master and owner of a steamer the burden of proof to show that the injury done was not the consequence of it. *Ib.*
32. Laws of Massachusetts, providing that no person shall presume to be a retailer or seller of wine, brandy, rum, or other spirituous liquors in a less quantity than twenty-eight gallons, and that delivered and carried away all at one time, unless he is first licensed as a retailer of wine and spirits, and that nothing in the law should be so construed as to require the county commissioners to grant any licenses, when in their opinion the public good does not require them to be granted. *License Cases*, 504.
33. Of Rhode Island, forbidding the sale of rum, gin, brandy, &c., in a less quantity than ten gallons, although in this case the brandy which was sold was duly imported from France into the United States, and purchased by the party indicted from the original importer. *Ib.*

CONSTITUTIONAL LAW—(*Continued.*)
34. Of New Hampshire, imposing similar restrictions to the foregoing upon licenses, although in this case the article sold was a barrel of American gin, purchased in Boston and carried coastwise to the landing at Piscataqua Bridge, and there sold in the same barrel. *Ib.*
35. All adjudged to be not inconsistent with any of the provisions of the constitution of the United States or acts of Congress under it. *Ib.*

CORPORATION.
1. Although the charter of a company does not, in terms, give the power to refer, yet a power to sue and be sued includes a power of reference, that being one of the modes of prosecuting a suit to judgment. *Alexandria Canal Company* v. *Swann*, 83.
2. So, also, a power to agree with a proprietor for the purchase or use of land includes a power to agree to pay a specified sum, or such sum as arbitrators may fix upon. *Ib.*
3. It is immaterial whether the power of reference is lodged in the president and directors, or in the stockholders assembled in general meeting; for the entire corporation is represented in court by its counsel, whose acts, in conducting the suit, are presumed to be authorized by the party. *Ib.*

COSTS.
1. If a judgment for costs be given against the United States by the court below, it must be reversed, as the United States are not liable for costs. *The United States* v. *Boyd*, 30.

COUNTERFEITING.
1. The power conferred upon Congress by the fifth and sixth clauses of the eighth section of the first article of the constitution of the United States, viz.:—"To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures"; "To provide for the punishment of counterfeiting the securities and current coin of the United States";—does not prevent a State from passing a law to punish the offence of circulating counterfeit coin of the United States. *Fox* v. *State of Ohio*, 410.
2. The two offences of counterfeiting the coin, and passing counterfeit money, are essentially different in their characters. The former is an offence directly against the government, by which individuals may be affected; the latter is a private wrong, by which the government may be remotely, if it will in any degree, be reached. *Ib.*

CREDITOR'S SUIT.
1. It is not irregular for two mercantile firms to unite as complainants in equity in a creditor's bill. *Nelson* v. *Hill*, 127.

DEBTOR AND CREDITOR.
1. Where there are privies in a contract with the knowledge of a debtor to secure to his creditor the payment of a debt, the payment of it by any one of them other than the debtor, is a payment at his request, and is an express assumpsit to reimburse the amount. *Hall* v. *Smith*, 96.
2. In this case, the pleadings and proofs show that a mortgage executed by the debtor to the creditor was really for an unascertained balance of accounts, which the sum named in the mortgage was supposed to be sufficient to cover. *Gear* v. *Parish*, 168.
3. As it did not prove to be sufficient, and the creditor obtained a judgment against the debtor for the residue, the payment of the sum named in the mortgage was no reason for an injunction to stay proceedings upon the judgment. *Ib.*

DEPOSITIONS.
1. By the 30th section of the Judiciary Act of 1789 (1 Stat. at L., 88), depositions may be taken in certain cases, and notice thereof must be served on the adverse party or his attorney, provided either of them is within one hundred miles of the place where such deposition is taken. *Dick* v. *Runnels*, 7.
2. A certificate of the person before whom the deposition was taken, that neither the adverse party nor his attorney lived within one hundred miles of such place, and that therefore no notice was made out, is suffi-

DEPOSITIONS—(*Continued.*)

cient. It is not necessary for him to state that they were not actually within one hundred miles. If they had been temporarily within that distance, and the certifying officer did not know it, the certificate would still have been good. *Ib.*

3. If either of the two facts, viz., that the party resided within one hundred miles, or that he was temporarily within that distance, and that the magistrate knew it, were established by parol proof, the certificate would then be irregular and void. *Ib.*

EQUITY.

1. The following principles of equity jurisprudence may be affirmed to be without exception; namely, that whosoever would seek admission into a court of equity must come with clean hands; that such a court will never interfere in opposition to conscience or good faith; that it will never be called into activity to remedy the consequences of laches or neglect, or the want of reasonable diligence. *Creath's Adm.* v. *Sims*, 192.
2. Therefore, when a complainant prays to be relieved from the fulfilment of a contract, which was intentionally made in fraud of the law, the answer is, that however unworthy may have been the conduct of his opponent, the parties are *in pari delicto*. The complainant cannot be admitted to plead his own demerits. *Ib.*
3. Nor is it any ground of interference when a complainant applies to be relieved from the payment of a promissory note given under the above circumstances, upon which judgment had been recovered at law. The consideration upon which the note was given was then open to inquiry, and it is a sufficient indulgence to have been permitted once to set up such a defence. *Ib.*
4. The cases examined, showing how far and under what circumstances the liability of a surety becomes fixed upon him as a principal debtor. *Ib.*

ERROR, WRIT OF.

1. Where a perpetual injunction was granted by a subordinate State court, and, upon appeal, the highest State court decided that the party in whose favor the injunction had been granted was entitled to relief, and therefore remanded the case to the same subordinate court from which it had come for further proceedings, this is not such a final decree as can be reviewed by this court. *Pepper* v. *Dunlap*, 51.
2. The writ of error must be dismissed, on motion.
3. Where the plaintiff below claimed a ferry right under an act of the legislature of Kentucky, and the ground of defence was that the act was unconstitutional and void as impairing vested rights, and the decision of the highest State court was against the plaintiff, a writ of error, issued under the 25th section of the judiciary act, will not lie. *Walker* v. *Taylor*, 64.
4. This court can entertain jurisdiction under that section only when the decision of the State court is in favor of the validity of such a statute. Here, the decision was against its validity. *Ib.*
5. The judgments of a Circuit Court can be reviewed only when the matter in dispute exceeds the sum or value of two thousand dollars. It must have a known and certain value which can be proved and calculated in the ordinary mode of business transactions. *Barry* v. *Mercein*, 103.
6. But a controversy between a father and mother, each claiming the right to the custody, care, and society of their child, relates to a matter in dispute which is incapable of being reduced to any pecuniary standard of value. *Ib.*
7. Under the acts of 1839, chap. 20 (5 Statutes at Large, 315), and 1840, chap. 43 (5 Statutes at Large, 392), where a case was carried from the District Court for the Middle District of Alabama to the Circuit Court for the Southern District of Alabama, and the Circuit Court reversed the judgment of the District Court, it was not a proper mode of proceeding to bring the case to this court upon such reversal. *Mayberry* v. *Thompson*, 121.

ERROR, WRIT OF—(*Continued.*)

8. The judgment of the District Court having been reversed, the plaintiff should have taken the necessary steps to bring his case to a final decision in the Circuit Court, in the same manner as if the suit had been originally brought there. This court could then have reëxamined the judgment of the Circuit Court, if a writ of error were sued out. *Ib.*
9. Where a writ of error was allowed, the citation signed, and the bond approved, by the chief justice of the Territorial court of Iowa, it was a sufficient compliance with the statutes of the United States. *Sheppard* v. *Wilson*, 210.
10. Under the acts of 1789 and 1792, the clerk of the Circuit Court where the judgment was rendered may issue a writ of error, and a judge of that court may sign the citation, and approve the bond. *Ib.*
11. The act of 1838, providing that writs of error, and appeals from the final decision of the Supreme Court of the Territory, shall be allowed in the same manner and under the same regulations as from the Circuit Court of the United States, gives to the clerk of the Territorial court the power to issue the writ of error, and to a judge of that court the power to sign the citation, and approve the bond. *Ib.*
12. A judgment of a court, sustaining a demurrer under the following circumstances, is not a final judgment which can be reviewed by this court. Information in the nature of a *quo warranto*, calling upon the President, Directors, and Company of the Miners' Bank of Dubuque to show by what warrant they claimed the right to use the franchise. Plea, referring to an act of incorporation. Replication, that the act of incorporation had been repealed. Rejoinder, that the repealing law was passed without notice to the parties, and without any evidence of misuse of the franchise. Demurrer to the rejoinder. Joinder in demurrer. Sustaining the demurrer, without any further judgment of the court, did not prevent the parties from continuing to exercise the franchise, and therefore is not a final judgment. The writ of error must, upon motion, be dismissed. *Miners' Bank* v. *United States*. 213.
13. Under the practice of Louisiana, peremptory exceptions must be considered as specially pleaded when they are set forth in writing, in a specific or detailed form, and judgment prayed on them. *Phillips* v. *Preston*, 278.
14. Although the court should refuse to receive exceptions thus tendered, yet if the party has the benefit of them on a motion in arrest of judgment and in a bill of exceptions, the refusal of the court is not a sufficient cause for reversal. *Ib.*
15. The statute of Louisiana, requiring their courts to have the testimony taken down in all cases where an appeal lies to the Supreme Court, and the adoption of this rule by the court of the United States, includes only cases where an appeal (technically speaking) lies, and not cases which are carried to an appellate court by writ of error. *Ib.*
16. Where the laws permit a waiver of a trial by jury, it is too late to raise an objection that the waiver was not made a matter of record, after the case has proceeded to a hearing. *Ib.*
17. A citation is not necessarily a part of the record, and the fact of its having been issued and served may be proved *aliunde*. *Innerarity* v. *Byrne*, 295.
18. To bring a case to this court from the highest court of a State, under the twenty-fifth section of the Judiciary Act, it must appear on the face of the record,—1st. That some of the questions stated in that section did arise in the State court; and, 2d. That the question was decided in the State court, as required in the section. *Commercial Bank* v. *Buckingham*, 317.
19. It is not enough that the record shows that the plaintiff in error contended and claimed that the judgment of the court impaired the obligation of a contract, and violated the provisions of the constitution of the United States, and that this claim was overruled by the court, but it must appear, by clear and necessary intendment, that the question must have

ERROR, WRIT OF—(*Continued.*)
been raised, and must have been decided, in order to induce the judgment. *Ib.*
20. Hence, where the legislature of Ohio, in the year 1824, passed a general law relating to banks, and afterwards, in 1829, chartered another bank; and the question before the State court was, whether or not some of the provisions of the act of 1824 applied to the bank subsequently chartered, the question was one of construction of the State statutes, and not of their validity. *Ib.*
21. This court has no jurisdiction over such a case. *Ib.*
22. An objection to the validity of a statute, founded upon the ground that the legislature which passed it were not competent or duly organized, under acts of Congress and the constitution, so as to pass valid statutes, is not within the cases enumerated in the twenty-fifth section of the Judiciary Act, and therefore this court has no jurisdiction over the subject. *Scott* v. *Jones*, 343.
23. In order to give this court jurisdiction, the statute the validity of which is drawn in question must be passed by a State, a member of the Union, and a public body owing obedience and conformity to its constitution and laws. *Ib.*
24. If public bodies, not duly organized or admitted into the Union, undertake, as States, to pass laws which might encroach on the Union or its granted powers, such conduct would have to be reached, either by the power of the Union to put down insurrections, or by the ordinary penal laws of the States or Territories within which these bodies are situated and acting. *Ib.*
25. But their measures are not examinable by this court on a writ of error. They are not a State, and cannot pass statutes within the meaning of the Judiciary Act. *Ib.*

EVIDENCE.
1. The acts and declarations of an agent of the government should not be given in evidence without first establishing his agency. Secondary proof of the contents of a letter of appointment should not have been received, without first accounting for the non-production of the original. *The United States* v. *Boyd*, 29.
2. A party upon the record, although divested of all interest in the event of the suit, is not a competent witness in a cause. *Bridges* v. *Armour*, 91.
3. If a person be declared a bankrupt at a time when a suit is pending to which he is a party, his discharge would not be a bar to his liability for costs upon a judgment obtained subsequently to his discharge. His liability for costs, therefore, excludes him as a witness upon the ground of interest. *Ib.*
4. If the event of the suit may increase the effects of the bankrupt in the hands of the assignee, and thus increase the surplus which would belong to him, he is an incompetent witness. *Ib.*
5. By the laws of Louisiana, a notary is required to record in a book kept for that purpose, all protests of bills made by him and the notices given to the drawers or indorsers, a certified copy of which record is made evidence. *McAfee* v. *Doremus*, 53.
6. Under these statutes, a deposition of the notary, giving a copy of the original bill, stating a demand of payment; a subsequent protest and notice to the drawers and indorsers respectively, is good evidence. *Ib.*
7. The original protest must be recorded in a book. Its absence at the trial is therefore sufficiently accounted for. *Ib.*

EXECUTORS AND ADMINISTRATORS.
1. By the laws of Alabama, an administrator *de bonis non*, with the will annexed, is liable for assets in the hands of a former executor. *Taylor* v. *Benham*, 233.
2. Where an executor has settled what appears to be a final account, it must be a very strong case of fraud proved in such a settlement, or of clear accident or mistake, to make it just to reopen and revise the account after the lapse of twenty years and the death of the parties concerned. *Ib.*

EXECUTORS AND ADMINISTRATORS—(*Continued.*)

3. Where a person who held land as trustee directed by his will that the whole of the property that he may die seised and possessed of, or may be in any wise belonging to him, should be sold, the executors had power to sell the land held in trust, as well as that belonging to the testator in his own right. *Ib.*
4. The trustee, by his will, having appointed residuary legatees, must be considered as devising the trust as well as the lands to these residuary legatees, who thus became themselves trustees for the original *cestui que trust.* *Ib.*
5. The power in the executors to sell was a power coupled with a trust. *Ib.*
6. It might also be considered as a power coupled with an interest. *Ib.*
7. The distinction between these powers adverted to. *Ib.*
8. In order to avoid an escheat, and carry out the wishes of the testator, a court of equity will, if necessary, consider land as money, where a testator, who is a trustee, has directed the land to be sold, and will direct the proceeds to be given to the *cestui que trust.* *Ib.*
9. Whether the executor had a power to sell coupled with a trust, or a power coupled with an interest, the residuary legatees took by devise and not by descent, although they were supposed to be also the *cestui que trusts.* *Ib.*
10. If, therefore, they were aliens, the land did not escheat on the death of the trustee, because land taken by devise does not escheat until office found, although land cast by descent does. *Ib.*
11. The testator, who held the lands as trustee, having died in South Carolina, the executor took out letters testamentary in that State, sold the lands which were in Kentucky, and then removed his residence to Alabama. He can be sued in Alabama for the proceeds of the lands, because his transactions in reference to them were not necessarily connected with the settlement of the estate under his letters testamentary. *Ib.*
12. Having sold the lands and received the consideration, he must be responsible to the residuary legatees. *Ib.*
13. An objection that only one executor sold (there having originally been four) cannot be sustained. Where a power is coupled with a trust, it is only necessary to show such a case as may, in a court of equity, make an agent or trustee liable to those for whom he acts. As much strictness is not required as there would be if the power to sell were a naked one, and not coupled with an interest or trust. *Ib.*
14. A power to sell, coupled either with an interest or trust, survives to the surviving executor. So, also, if all the trustees or executors in such a case decline to act, except one. *Ib.*
15. When a sale is made under a will, the omission to record the will does not vitiate the sale, unless recording is made necessary by a local statute. *Ib.*
16. The land being in fact sold by the executor, claiming a right to do so under the will, and the purchase-money being received by him, he is responsible to the *cestui que trusts* for the money thus received. The reception of an additional sum, as purchase-money, by them, with a reservation of the right to sue the executor, is not an avoidance of the first sale by the executor. *Ib.*
17. But the executor is not responsible for more money than he received, with interest, unless in case of very supine negligence or wilful default. A claim for damages would also be subject to the operation of the statute of limitations. *Ib.*
18. If the executor himself did not set up a claim, as an offset, for his personal expenses, his representative cannot do it, under the circumstances of this case. *Ib.*
19. The *cestui que trusts* residing in a foreign country, the statute of limitations did not begin to run until a demand was made upon the executor for the money. His retaining it during that time is no evidence that he did not intend to account for it. *Ib.*

EXECUTORS AND ADMINISTRATORS—(*Continued.*)
20. Although the bill made no distinction between the two characters in which the executor acted, namely, as executor proper, and as executor having a power coupled with a trust, yet as no objection was taken in the court below upon this ground, this court does not think that an amendment is imperatively necessary. The material facts are alleged upon which the claim rests. *Ib.*

EXTRADITION.
1. The treaty with France, made in 1843, provides for the mutual surrender of fugitives from justice, in certain cases. *In the matter of Metzger*, 176.
2. Where a district judge, at his chambers, decided that there was sufficient cause for the surrender of a person claimed by the French government, and committed him to custody to await the order of the President of the United States, this court has no jurisdiction to issue a *habeas corpus* for the purpose of reviewing that decision. *Ib.*

FLORIDA.
See LANDS, PUBLIC.

FUGITIVES.
See EXTRADITION; SLAVES.

HABEAS CORPUS.
1. This court has no appellate power, in a case where the Circuit Court refused to grant a writ of *habeas corpus*, prayed for by a father to take his infant child out of the custody of its mother. *Barry* v. *Mercein*, 103.

INSOLVENCY.
1. A contract, made in New York, is not affected by a discharge of the debtor under the insolvent laws of Maryland, where the debtor resided, although the insolvent law was passed antecedently to the contract. The prior decisions of this court upon this subject reviewed and examined. *Cook* v. *Moffat*, 295.

JUDICIAL SALE.
1. By the laws of Louisiana, where there has been a judicial sale of the succession by a probate judge, a creditor of the estate, who obtains a judgment, cannot levy an execution upon the property so transferred, upon the ground that the sale was fraudulent and void. He should first bring an action to set the sale aside. *Ford* v. *Douglas*, 143.
2. The purchaser under the judicial sale having filed a bill and obtained an injunction upon the creditor to stay the execution, it was an irregular mode of raising the question of fraud for the creditor to file an answer setting it forth, and alleging the sale to be void upon that ground. He should have filed a cross bill. Exceptions to the answer upon this account were properly sustained by the court below. *Ib.*
3. But if the court below should perpetuate the injunction, upon the defendants' refusal to answer further, the injunction should be free from doubt, in leaving the creditor to pursue other property under his judgment, and also at liberty to file a cross bill. If the injunction does not clearly reserve these rights to the creditor, it goes too far, and the judgment of the court below must be reversed. *Ib.*

JURISDICTION.
1. Where the prayer of a bill in equity shows that the demand of the complainant is susceptible of definite computation, and that there can be no recovery over the sum of two thousand dollars, the appeal to this court will be dismissed, on motion, for want of jurisdiction. *Sewall* v. *Chamberlain*, 6.
2. Where a perpetual injunction was granted by a subordinate State court, and, upon appeal, the highest State court decided that the party in whose favor the injunction had been granted was entitled to relief, and therefore remanded the case to the same subordinate court from which it had come for further proceedings, this is not such a final decree as can be reviewed by this court. The writ of error must be dismissed, on motion. *Pepper* v. *Dunlap*, 51.
3. Where the plaintiff below claimed a ferry right under an act of the legislature of Kentucky, and the ground of defence was, that the act was

JURISDICTION—(*Continued.*)
unconstitutional and void as impairing vested rights, and the decision of the highest State court was against the plaintiff, a writ of error, issued under the twenty-fifth section of the Judiciary Act, will not lie. *Walker* v. *Taylor*, 64.
4. This court can entertain jurisdiction under that section only when the decision of the State court is in favor of the validity of such a statute. Here, the decision was against its validity. *Ib.*
5. This court has no appellate power, in a case where the Circuit Court refused to grant a writ of *habeas corpus*, prayed for by a father to take his infant child out of the custody of its mother. *Barry* v. *Mercein*, 103.
6. The judgments of a Circuit Court can be reviewed only where the matter in dispute exceeds the sum or value of two thousand dollars. It must have a known and certain value, which can be proved and calculated in the ordinary mode of business transactions. *Ib.*
7. But a controversy between a father and mother, each claiming the right to the custody, care, and society of their child, relates to a matter in dispute which is incapable of being reduced to any pecuniary standard of value. *Ib.*
8. The writ of error must be dismissed for want of jurisdiction. *Ib.*
9. Under the acts of 1839, chap. 20 (5 Stat. at L., 315), and 1840, chap. 43 (5 Stat. at L., 392), where a case was carried from the District Court for the Middle District of Alabama to the Circuit Court for the Southern District of Alabama, and the Circuit Court reversed the judgment of the District Court, it was not a proper mode of proceeding to bring the case to this court upon such reversal. *Mayberry* v. *Thompson*, 121.
10. The judgment of the District Court having been reversed, the plaintiff should have taken the necessary steps to bring his case to a final decision in the Circuit Court, in the same manner as if the suit had been originally brought there. This court could then have reëxamined the judgment of the Circuit Court, if a writ of error were sued out. *Ib.*
11. The treaty with France, made in 1843, provides for the mutual surrender of fugitives from justice, in certain cases. *Ex parte Metzger*, 176.
12. Where a district judge, at his chambers, decided that there was sufficient cause for the surrender of a person claimed by the French government, and committed him to custody to await the order of the President of the United States, this court has no jurisdiction to issue a *habeas corpus* for the purpose of reviewing that decision, *Ib.*
13. When a case is brought up to this court on a certificate of division in opinion, the point upon which the difference occurs must be distinctly stated. *United States* v. *Briggs*, 208.
14. Where there was a demurrer, upon three grounds, to an indictment, it is not enough to certify that the court was divided in opinion whether or not the demurrer should be sustained. *Ib.*
15. A judgment of a court, sustaining a demurrer under the following circumstances, is not a final judgment which can be reviewed by this court. *Miners' Bank of Dubuque* v. *The United States*, 213.
16. Information in the nature of a *quo warranto*, calling upon the President, Directors, and Company of the Miners' Bank of Dubuque to show by what warrant they claimed the right to use the franchise. *Ib.*
17. Plea, referring to an act of incorporation. *Ib.*
18. Replication, that the act of incorporation had been repealed. *Ib.*
19. Rejoinder, that the repealing law was passed without notice to the parties, and without any evidence of misuse of the franchise. *Ib.*
20. Demurrer to the rejoinder. *Ib.*
21. Joinder in demurrer. *Ib.*
22. Sustaining the demurrer, without any further judgment of the court, did not prevent the parties from continuing to exercise the franchise, and therefore is not a final judgment. *Ib.*
23. The writ of error must, upon motion, be dismissed. *Ib.*
24. In a suit by the first indorser of promissory notes against a second indorser, upon an alleged contract that the second indorser would bear

JURISDICTION—(*Continued.*)
half the loss which might accrue from their non-payment by the drawer, it is not a sufficient objection to the jurisdiction of the court, that the second indorsee and defendant were citizens of the same State. Such an objection would be well founded if the suit had been upon the notes. *Phillips* v. *Preston*, 278.
25. But not where the suit is brought upon a collateral contract. *Ib.*
26. To bring a case to this court from the highest court of a State, under the twenty-fifth section of the Judiciary Act, it must appear on the face of the record, — 1st. That some of the questions stated in that section did arise in the State court; and, 2d. That the question was decided in the State court, as required in the section. *Commercial Bank* v. *Buckingham*, 317.
27. It is not enough that the record shows that the plaintiff in error contended and claimed that the judgment of the court impaired the obligation of a contract, and violated the provisions of the constitution of the United States, and that this claim was overruled by the court, but it must appear, by clear and necessary intendment, that the question must have been raised, and must have been decided, in order to induce the judgment. *Ib.*
28. Hence, when the legislature of Ohio, in the year 1824, passed a general law relating to banks, and afterwards, in 1829, chartered another bank; and the question before the State court was, whether or not some of the provisions of the act of 1824 applied to the bank subsequently chartered, the question was one of construction of the State statutes, and not of their validity. *Ib.*
29. This court has no jurisdiction over such a case. *Ib.*
30. An objection to the validity of a statute, founded upon the ground that the legislature which passed it were not competent or duly organized, under acts of Congress and the constitution, so as to pass valid statutes, is not within the cases enumerated in the twenty-fifth section of the Judiciary Act, and therefore this court has no jurisdiction over the subject. *Scott* v. *Jones*, 343.
31. In order to give this court jurisdiction, the statute the validity of which is drawn in question must be passed by a State, a member of the Union, and a public body owing obedience and conformity to its constitution and laws. *Ib.*
32. If public bodies, not duly organized or admitted into the Union, undertake, as States, to pass laws which might encroach on the Union or its granted powers, such conduct would have to be reached, either by the power of the Union to put down insurrections, or by the ordinary penal laws of the States or Territories within which these bodies are situated and acting. *Ib.*
33. But their measures are not examinable by this court on a writ of error. They are not a State, and cannot pass statutes within the meaning of the Judiciary Act. *Ib.*

JURY.
1. The sufficiency of the description in patents for machines, or for a new composition of matter, where any of the ingredients do not always possess exactly the same properties in the same degree, is, generally, a question of fact to be determined by the jury. *Wood* v. *Underhill*, 1.
2. The court should have left it to the jury to say, from the evidence of persons skilled in the art, whether the description contained in a patent for an improvement in the art of making brick was clear and exact enough to enable such persons to compound and use the invention. *Ib.*

LANDS, PUBLIC.
1. A Spanish grant of land in Florida, for six miles square, "at the place called Dunn's lake, upon the river St. John's," is too vague to be confirmed, even with the additional knowledge that the object of the grantee was to establish machinery to be propelled by water-power. *United States* v. *Lawton*, 10.
2. The river St. John's meanders so much that it is near Dunn's lake for

LANDS, PUBLIC—(*Continued.*)
thirty miles. The survey might therefore commence at any point of this distance with as much propriety as at any other point. *Ib.*
3. This concession cannot be distinguished from various others which have been brought before this court. The land granted was not severed from the king's domain. It remained a floating grant, not recognized by the government of Spain before the cession, nor by this government since, as conferring an individual title to any specific parcel of land. *Ib.*
4. Nor is the grant in this case aided by two surveys, one purporting to have been made in December, 1817, and the other in the spring of 1818. The first must have been fictitious, not actually made upon the ground, but merely upon paper; and the second was too imperfect to be effectual. *Ib.*
5. Previous to the act of May 26, 1824, Congress alone could act upon these incipient titles. By that act power was given to the court to pass a decree for the land, provided its locality, extent, and boundaries could be found. But, in the present case, this cannot be done. *Ib.*
6. The act of Congress, passed on the 24th of April, 1820 (3 Statutes at Large, 566), which substituted cash payments in lieu of credit sales of the public lands, made no exception in favor of the receiver. If he can purchase at all, it must be by placing his own money with the other moneys which he holds in trust for the government. *United States* v. *Boyd*, 29.
7. The returns of the receiver to the Treasury Department are not conclusive evidence in an action by the government against the sureties upon the receiver's bond. If the sums of money stated in such returns were not actually in the hands of the receiver, the sureties are allowed to show how the fact was. *Ib.*
8. The sureties cannot be concluded by a fabricated account of their principal with his creditors; they may always inquire into the reality and truth of the transactions existing between them. *Ib.*
9. An instruction given by the court below,—viz., that if the jury believed that a fraudulent design existed on the part of the receiver and an agent of the government, to conceal defalcations existing prior to the date of the bond, then the bond was fraudulent and void,—was erroneous. *Ib.*
10. The condition of the bond was prospective, and fraud in respect to past transactions, not within the condition, could not render the instrument void prospectively. *Ib.*
11. Nor should the acts and declarations of the agent of the government have been allowed to be given in evidence, without first establishing his agency. Secondary proof of the contents of a letter of appointment should not have been received, without first accounting for the non-production of the original. *Ib.*

LEX LOCI.
1. Where a case is removed from Alexandria county to Washington county, in the District of Columbia, whatever defences might have been made in Alexandria county, either as to the form of the action or upon any other ground, or whatever would have been a bar to the action, may all be relied upon in the new forum. *Alexandria Canal Co.* v. *Swann*, 83.
2. But the mode of proceeding, by which the rights of the parties are determined, must be regulated by the law of the court to which the suit is transferred. *Ib.*
3. A reference to arbitrators, therefore, which is sanctioned by the laws of Maryland, governing Washington county, is not to be overthrown because it is not sanctioned by the laws of Virginia, governing Alexandria county. *Ib.*
4. The validity of the reference, and of the proceedings and judgment upon it, must be tested by the laws of Maryland. *Ib.*
5. A testator who held lands as a trustee having died in South Carolina, the executor took out letters testamentary in that State, sold the lands,

LEX LOCI—(*Continued.*)
which were in Kentucky, and then removed his residence to Alabama. He can be sued in Alabama for the proceeds of the lands, because his transactions in reference to them were not necessarily connected with the settlement of the estate under his letters testamentary. *Taylor* v. *Benham*, 233.

LICENSE LAWS.
1. Laws of Massachusetts, providing that no person shall presume to be a retailer or seller of wine, brandy, rum, or other spirituous liquors, in a less quantity than twenty-eight gallons, and that delivered and carried away all at one time, unless he is first licensed as a retailer of wine and spirits, and that nothing in the law should be so construed as to require the county commissioners to grant any licenses, when in their opinion the public good does not require them to be granted. *License Cases*, 504.
2. Of Rhode Island, forbidding the sale of rum, gin, brandy, &c., in a less quantity than ten gallons, although in this case the brandy which was sold was duly imported from France into the United States, and purchased by the party indicted from the original importer. *Ib.*
3. Of New Hampshire, imposing similar restrictions to the foregoing upon licenses, although in this case the article sold was a barrel of American gin, purchased in Boston and carried coastwise to the landing at Piscataqua Bridge and there sold in the same barrel. *Ib.*
4. All adjudged to be not inconsistent with any of the provisions of the constitution of the United States or acts of Congress under it. *Ib.*

LOUISIANA.
1. By the laws of Louisiana, where there has been a judicial sale of the succession by a probate judge, a creditor of the estate, who obtains a judgment, cannot levy an execution upon the property so transferred, upon the ground that the sale was fraudulent and void. He should first bring an action to set the sale aside. *Ford* v. *Douglas*, 143.
2. The purchaser under the judicial sale having filed a bill and obtained an injunction upon the creditor to stay the execution, it was an irregular mode of raising the question of fraud for the creditor to file an answer setting it forth, and alleging the sale to be void upon that ground. He should have filed a cross bill. Exceptions to the answer upon this account were properly sustained by the court below. *Ib.*
3. But if the court below should perpetuate the injunction, upon the defendant's refusal to answer further, the injunction should be free from doubt, in leaving the creditor to pursue other property under his judgment, and also at liberty to file a cross bill. If the injunction does not clearly reserve these rights to the creditor, it goes too far, and the judgment of the court below must be reversed. *Ib.*
4. Under the practice of Louisiana, peremptory exceptions must be considered as specially pleaded when they are set forth in writing, in a specific or detailed form, and judgment prayed on them. *Phillips* v. *Preston*, 278.
5. Although the court should refuse to receive exceptions thus tendered, yet if the party has the benefit of them on a motion in arrest of judgment, and in a bill of exceptions, the refusal of the court is not a sufficient cause for reversal. *Ib.*
6. The statute of Louisiana, requiring their courts to have the testimony taken down in all cases where an appeal lies to the Supreme Court, and the adoption of this rule by the court of the United States, includes only cases where an appeal (technically speaking) lies, and not cases which are carried to an appellate court by writ of error. *Ib.*
7. Where the laws permit a waiver of a trial by jury, it is too late to raise an objection that the waiver was not made a matter of record, after the case has proceeded to a hearing. *Ib.*

MISSISSIPPI.
1. In the case of *Groves* v. *Slaughter* (15 Pet., 449) this court decided that the constitution of Mississippi did not, of itself, and without any legis-

MISSISSIPPI—(*Continued.*)
lative enactment, prohibit the introduction of slaves as merchandise and for sale. *Rowan* v. *Runnels*, 134; *Truly* v. *Wanzer*, 141.
2. This constitution went into operation on the 1st of May, 1833, and on the 13th of May, 1837, a law was passed to provide for the case. *Ib.*
3. This court adheres to the construction of the constitution which was given in the case of *Groves* v. *Slaughter*, and enforces contracts made between the two days above mentioned, although the courts of the State of Mississippi have, since the decision in the case of *Groves* v. *Slaughter*, declared such contracts to be void. *Ib.*

PARTNERSHIP.
1. The creditor of a partnership may, at his option, proceed at law against the surviving partner or go, in the first instance, into equity against the representatives of the deceased partner. It is not necessary for him to exhaust his remedy at law against the surviving partner before proceeding in equity against the estate of the deceased. *Nelson v. Hill*, 127.
2. Where there were two mercantile firms and some of the members common to both, a creditor's bill was not multifarious when filed against the personal representatives of two of the deceased partners of the two firms and also against the surviving partner of one of the firms. *Ib.*

PATENTS.
1. In order to obtain a patent, the specification must be in such full, clear, and exact terms as to enable any one skilled in the art to which it appertains to compound and use the invention, without making any experiments of his own. *Wood* v. *Underhill*, 1.
2. If the patent be for a new composition of matter, and no relative proportions of the ingredients are given, or they are stated so ambiguously and vaguely that no one could use the invention without first ascertaining, by experiment, the exact proportion required to produce the result, it would be the duty of the court to declare the patent void. *Ib.*
3. But the sufficiency of the description in patents for machines, or for a new composition of matter where any of the ingredients do not always possess exactly the same properties in the same degree, is generally a question of fact to be determined by the jury. *Ib.*
4. Where a patent was obtained for a new improvement in the mode of making brick, tile, and other clay ware, and the process described in the specification was, to mix pulverized anthracite coal with the clay before moulding it, in the proportion of three fourths of a bushel of coal-dust to one thousand brick, some clay requiring one eighth more, and some not exceeding half a bushel, this degree of vagueness and uncertainty was not sufficient to justify the court below in declaring the patent void. *Ib.*
5. The court should have left it to the jury to say, from the evidence of persons skilled in the art, whether the description was clear and exact enough to enable such persons to compound and use the invention. *Ib.*

PLEAS AND PLEADINGS.
1. Where there was a demurrer to a rejoinder, which demurrer was sustained by the court below, and the party, on leave, filed an amended rejoinder, this court cannot be asked to decide upon the demurrer. The point was waived by the filing of the amended rejoinder. *United States* v. *Boyd*, 30.

PRACTICE.
1. Where the prayer of a bill in equity shows that the demand of the complainant is susceptible of definite computation, and that there can be no recovery over the sum of two thousand dollars, the appeal to this court will be dismissed, on motion, for want of jurisdiction. *Sewall* v. *Chamberlain*, 6.
2. By the thirtieth section of the Judiciary Act of 1789 (1 Stat. at L., 88), depositions may be taken in certain cases, and notice thereof must be served on the adverse party or his attorney, provided either of them is within one hundred miles of the place where such deposition is taken. *Dick* v. *Runnels*, 7.

PRACTICE—(*Continued.*)

3. A certificate of the person before whom the deposition was taken, that neither the adverse party nor his attorney lived within one hundred miles of such place, and that therefore no notice was made out, is sufficient. It is not necessary for him to state that they were not actually within one hundred miles. If they had been temporarily within that distance, and the certifying officer did not know it, the certificate would still have been good. *Ib.*
4. If either of the two facts, viz. that the party resided within one hundred miles, or that he was temporarily within that distance, and that the magistrate knew it, were established by parol proof, the certificate would then be irregular and void. *Ib.*
5. Where there was a demurrer to a rejoinder, which demurrer was sustained by the court below, and the party, on leave, filed an amended rejoinder, this court cannot be asked to decide upon the demurrer. The point was waived by the filing of the amended rejoinder. *United States* v. *Boyd*, 30.
6. If a judgment for costs be given against the United States by the court below, it must be reversed, as the United States are not liable for costs. *Ib.*
7. Where a perpetual injunction was granted by a subordinate State court, and, upon appeal, the highest State court decided that the party in whose favor the injunction had been granted was entitled to relief, and therefore remanded the case to the same subordinate court from which it had come for further proceedings, this is not such a final decree as can be reviewed by this court. *Pepper* v. *Dunlap*, 51.

   The writ of error must be dismissed, on motion. *Ib.*
9. Under the acts of 1839 and 1840, where a case was carried from the District Court for the Middle District of Alabama to the Circuit Court for the Southern District of Alabama, and the Circuit Court reversed the judgment of the District Court, it was not a proper mode of proceeding to bring the case to this court upon such reversal. *Mayberry* v. *Thompson*, 121.
10. The judgment of the District Court having been reversed, the plaintiff should have taken the necessary steps to bring his case to a final decision in the Circuit Court, in the same manner as if the suit had been originally brought there. This court could then have reëxamined the judgment of the Circuit Court, if a writ of error were sued out. *Ib.*
11. When a case is brought up to this court on a certificate of division in opinion, the point upon which the difference occurs must be distinctly stated. *The United States* v. *Briggs*, 208.
12. Where there was a demurrer, upon three grounds, to an indictment, it is not enough to certify that the court was divided in opinion whether or not the demurrer should be sustained. *Ib.*
13. Where a writ of error was allowed, the citation signed, and the bond approved, by the chief justice of the Territorial court of Iowa, it was a sufficient compliance with the statutes of the United States. *Sheppard* v. *Wilson*, 210.
14. Under the acts of 1789 and 1792, the clerk of the Circuit Court where the judgment was rendered may issue a writ of error, and a judge of that court may sign the citation, and approve the bond. *Ib.*
15. The act of 1838, providing that writs of error and appeals from the final decision of the Supreme Court of the Territory shall be allowed in the same manner and under the same regulations as from the Circuit Courts of the United States, gives to the clerk of the Territorial court the power to issue the writ of error, and to a judge of that court the power to sign the citation, and approve the bond. *Ib.*
16. A judgment of a court, sustaining a demurrer under the following circumstances, is not a final judgment which can be reviewed by this court. *Miners' Bank of Dubuque* v. *United States*, 213.
17. Information in the nature of a *quo warranto*, calling upon the President, Directors, and Company of the Miners' Bank of Dubuque to show by what warrant they claimed the right to use the franchise. *Ib.*

PRACTICE—(*Continued.*)
18. Plea, referring to an act of incorporation. *Ib.*
19. Replication, that the act of incorporation had been repealed. *Ib.*
20. Rejoinder, that the repealing law was passed without notice to the parties, and without any evidence of misuse of the franchise. *Ib.*
21. Demurrer to the rejoinder. *Ib.*
22. Joinder in demurrer. *Ib.*
23. Sustaining the demurrer, without any further judgment of the court, did not prevent the parties from continuing to exercise the franchise, and therefore is not a final judgment. *Ib.*
24. The writ of error must, upon motion, be dismissed. *Ib.*
25. Under the practice of Louisiana, peremptory exceptions must be considered as specially pleaded when they are set forth in writing, in a specific or detailed form, and judgment prayed on them. *Phillips* v. *Preston*, 278.
26. Although the court should refuse to receive exceptions thus tendered, yet if the party has the benefit of them on a motion in arrest of judgment, and in a bill of exceptions, the refusal of the court is not a sufficient cause for reversal. *Ib.*
27. The statute of Louisiana, requiring their courts to have the testimony taken down in all cases where an appeal lies to the Supreme Court, and the adoption of this rule by the court of the United States, includes only cases where an appeal (technically speaking) lies, and not cases which are carried to an appellate court by writ of error. *Ib.*
28. Where the laws permit a waiver of a trial by jury, it is too late to raise an objection that the waiver was not made a matter of record, after the case has proceeded to a hearing. *Ib.*
29. A citation is not necessarily a part of the record, and the fact of its having been issued and served may be proved *aliunde*. *Innerarity* v. *Byrne*, 295.

PRINCIPAL AND SURETY.
1. Where the surety of a surety pays the debt of a principal, under a legal obligation, from which the principal was bound to relieve him, such a payment is a sufficient consideration to raise an implied assumpsit to repay the amount, although the payment was made without a request from the principal. *Hall* v. *Smith*, 96.
2. Where the plaintiff in a suit voluntarily abstains from pressing the principal debtor, but receives no consideration for such indulgence, nor puts any limitation upon his right to proceed upon his execution, whenever it may be his pleasure to do so, this conduct furnishes no reason for the exemption of the surety from liability, and especially where the surety had united with his principal in a forthcoming bond. *Creath's Adm.* v. *Sims*, 192.

QUESTIONS OF LAW AND FACT.
1. The court should have left it to the jury to say, from the evidence of persons skilled in the art, whether the description was clear and exact enough to enable such persons to compound and use the invention. *Wood* v. *Underhill*, 1.

RECEIVER OF PUBLIC MONEY.
See LANDS, PUBLIC.

REMOVAL OF CAUSES.
1. Where a case is removed from Alexandria county to Washington county, in the District of Columbia, whatever defences might have been made in Alexandria county, either as to the form of the action or upon any other ground, or whatever would have been a bar to the action, may all be relied upon in the new forum. *Alexandria Canal Co.* v. *Swann*, 83.

SLAVES.
1. Under a statute of Maryland, passed in 1796, a deed of manumission is not good unless recorded within six months after its date; and this law is in force in Washington county, District of Columbia. *Miller* v. *Herbert*, 72.
2. The statutes and decisions of Maryland examined. *Ib.*

SLAVES—(*Continued.*)

3. Under the fourth section of the act of 12th February, 1793, respecting fugitives from justice, and persons escaping from the service of their master, on a charge for harbouring and concealing fugitives from labor, the notice need not be in writing by the claimant or his agent, stating that such person is a fugitive from labor under the third section of the above act, and served on the person harbouring or concealing such fugitive, to make him liable to the penalty of five hundred dollars under the act. *Jones* v. *Van Zandt*, 215.
4. Such notice, if not in writing and served as aforesaid, may be given verbally by the claimant or his agent to the person who harbours or conceals the fugitive; and to charge him under the statute a general notice to the public in a newspaper is not necessary. *Ib.*
5. Clear proof of the knowledge of the defendant, by his own confession or otherwise, that he knew the colored person was a slave and fugitive from labor, though he may have acquired such knowledge from the slave himself, or otherwise, is sufficient to charge him with notice. *Ib.*
6. Receiving the fugitive from labor at three o'clock in the morning, at a place in the State of Ohio about twelve miles distant from the place in Kentucky where the fugitive was held to labor, from a certain individual, and transporting him in a closely covered wagon twelve or fourteen miles, so that the boy thereby escaped pursuit, and his services were thereby lost to his master, is a harbouring or concealing of the fugitive within the statute. *Ib.*
7. A transportation under the above circumstances, though the boy should be recaptured by his master, is a harbouring or concealing of him within the statute. *Ib.*
8. Such a transportation, in such a wagon, whereby the services of the boy were entirely lost to his master, is a harbouring of him within the statute. *Ib.*
9. A claim of the fugitive from the person harbouring or concealing him need not precede or accompany the notice. *Ib.*
10. Any overt act so marked in its character as to show an intention to elude the vigilance of the master or his agent, and which is calculated to attain such an object, is a harbouring of the fugitive within the statute. *Ib.*
11. In this particular case, the first and second counts contain the necessary averments, that Andrew, the colored man, escaped from the State of Kentucky into the State of Ohio. *Ib.*
12. They also contain the necessary averments of notice that said Andrew was a fugitive from labor, within the description of the act of Congress. *Ib.*
13. The averments in the said counts, that the defendant harboured said Andrew, are sufficient. *Ib.*
14. Said counts are otherwise sufficient. *Ib.*
15. The act of Congress, approved February 12, 1793, is not repugnant to the constitution of the United States. *Ib.*
16. The said act is not repugnant to the ordinance of Congress, adopted July, 1787, entitled, "An Ordinance for the Government of the Territory of the United States northwest of the River Ohio." *Ib.*
17. In the case of *Groves* v. *Slaughter* (15 Pet., 449) this court decided that the constitution of Mississippi did not, of itself, and without any legislative enactment, prohibit the introduction of slaves as merchandise and for sale. *Rowan* v. *Runnels*, 134.
18. This constitution went into operation on the 1st of May, 1833, and on the 13th of May, 1837, a law was passed to provide for the case. *Ib.*
19. This court adheres to the construction of the constitution which was given in the case of *Groves* v. *Slaughter*, and enforces contracts made between the two days above mentioned, although the courts of the State of Mississippi have, since the decision in the case of *Groves* v. *Slaughter*, declared such contracts to be void. *Ib.*

SPANISH GRANTS.

See LANDS, PUBLIC.

SPECIFICATION.
See PATENTS.
STEAMBOATS.
1. The grant in the constitution, extending the judicial power "to all cases of admiralty and maritime jurisdiction," is neither to be limited to, nor to be interpreted by, what were cases of admiralty jurisdiction in England when the constitution was adopted by the States of the Union. *Waring* v. *Clarke*, 441.
2. Admiralty jurisdiction in the courts of the United States is not taken away because the courts of common law may have concurrent jurisdiction in a case with the admiralty. Nor is a trial by jury any test of admiralty jurisdiction. The subject-matter of a contract or service gives jurisdiction in admiralty. Locality gives it in tort, or collision. *Ib.*
3. In cases of tort, or collision, happening upon the high seas, or within the ebb and flow of the tide, as far up a river as the tide ebbs and flows, though it may be *infra corpus comitatus*, courts of admiralty of the United States have jurisdiction. *Ib.*
4 The meaning of the clause in the ninth section of the Judiciary Act of 1789, saving to suitors, in all cases, a common law remedy when the common law is competent to give it, is, that in cases of concurrent jurisdiction in admiralty and at common law, the jurisdiction in the latter is not taken away. *Ib.*
5. The act of 7th July, 1838 (5 Statutes at Large, 304), for the better security of the lives of passengers on board of vessels propelled in whole or part by steam, is obligatory in all its provisions, except as it has been altered by the act of 1843 (5 Statutes at Large, 626), upon all owners and masters of steamers navigating the waters of the United States, whether navigating on waters within a State, or between States, or waters running from one State into another State, or on the coast of the United States between the ports of the same State or different States. *Ib.*
6. By the law of 7th July, 1838, masters and owners neglecting to comply with its conditions are liable to a penalty of two hundred dollars, to be recovered by suit or indictment. And if neglect or disobedience of the law shall be proved to exist when injury shall occur to persons or property, it throws upon the master and owner of a steamer the burden of proof to show that the injury done was not the consequence of it. *Ib.*
SURETIES.
1. The sureties of a receiver of the public money cannot be concluded by a fabricated account of their principal with his creditors; they may always inquire into the reality and truth of the transactions existing between them. *United States* v. *Boyd*, 29.
2. The returns of the receiver to the Treasury Department are not conclusive evidence in an action by the government against the sureties upon the receiver's bond. If the sums of money stated in such returns were not actually in the hands of the receiver, the sureties are allowed to show how the fact was. *Ib.*
3. Where there are privies in a contract, with the knowledge of a debtor, to secure to his creditor the payment of a debt, the payment of it by any one of them other than the debtor is a payment at his request, and is an express assumpsit to reimburse the amount. *Hall* v. *Smith*, 96.
4. Where the surety of a surety pays the debt of the principal, under a legal obligation from which the principal was bound to relieve him, such a payment is a sufficient consideration to raise an implied assumpsit to repay the amount, although the payment was made without a request from the principal. *Ib.*
5. The cases examined, showing how far and under what circumstances the liability of a surety becomes fixed upon him as a principal debtor. *Creath's Administrator* v. *Sims*, 192.
6. Where the plaintiff in a suit voluntarily abstains from pressing the principal debtor, but receives no consideration for such indulgence, nor puts any limitation upon his right to proceed upon his execution, whenever

SURETIES—(*Continued.*)
it may be his pleasure to do so, this conduct furnishes no reason for the exemption of the surety from liability, and especially where the surety had united with his principal in a forthcoming bond. *Ib.*
7. The authorities upon this point examined. *Ib.*
WILLS.
1. The trustee, by his will, having appointed residuary legatees, must be considered as devising the trust as well as the lands to these residuary legatees, who thus became themselves trustees for the original *cestui que trust*. *Taylor* v. *Benham*, 233.
WRIT OF ERROR.
See ERROR.