INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

The references are to the STAR (*) pages.

ADVERSE POSSESSION.

1. Where a claim to land was maintained upon an uninterrupted possession of forty years, the death of the original holder and subsequent reception of rent by his widow, did not break the continuity of possession. She is liable to account for the rent to the heirs. *Reed v. Proprietors of Locks and Canals*, 274.

APPEALS AND WRITS OF ERROR.

1. Where an "action of jactitation" or "slander of title" was brought in a state court of Louisiana and removed into the Circuit Court of the United States by the defendant, who was a citizen of Mississippi (the persons who brought the action being in possession of the land under a legal title), and the defendant pleaded in reconvention, setting up an equitable title, and the court below decreed against the defendant, it was proper for him to bring the case to this court by appeal, and not by writ of error. *Surgett* v. *Lapice*, 48.
2. This case distinguished from that of the *United States* v. *King*, 3d and 7th Howard, 773 and 844. *Ib.*
3. Where a plaintiff in the court below filed a petition for the recovery from the defendant of four slaves, whose value he alleged to be $2700, and the jury found a verdict for the plaintiff "for $1200, the value of the negro slaves in suit," and the plaintiff thereupon released the judgment for $1200, and the court adjudged that he recover of the said defendant the said slaves, the case is within the appellate jurisdiction of this court. *Bennett* v. *Butterworth*, 124.
4. The plaintiff averred in his petition, that the slaves were worth $2700, and by his releasing the judgment for $1200, the only question before this court is the right to the property. And as the defendant below prosecuted the appeal, the plaintiff cannot be allowed to deny here the truth of his own averment of the value of the property in dispute. *Ib.*

AUCTION, SALES AT.

See CHANCERY, 6–13.

BARON AND FEME.

See CHANCERY, 1–5; EXECUTORS AND ADMINISTRATORS, 4, 5.

CASES CERTIFIED.

1. The jurisdiction given to it by statute in certified cases only extends to points of law. *Wilson* v. *Barnum*, 258.

CHANCERY.

1. Where a married woman has power, under a marriage settlement, to dispose of property settled upon her, by the execution of a power of appointment for that purpose, and alleges afterwards that she executed the power under undue marital influence and through fraud practised upon her, but alleges no specific mode or act by which this undue marital influence was exerted, and the facts disclosed in the testimony go very far to contradict the allegation, the charge cannot be sustained. *Ladd* v. *Ladd*, 10.
2. Every feme covert is presumed, under such a settlement, to be, to some extent, a free agent. *Ib.*
3. Where the marriage settlement recited that the woman was possessed of

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a considerable real and personal estate, which it was agreed should be settled to her sole and separate use with power to dispose of the same by appointment or devise, and then directed that the trustee should permit her to have, receive, take, and enjoy all the interest, rents, and profits of the property to her own use, or to that of such persons as she might from time to time appoint during the coverture, or to such persons as she, by her last will and testament, might devise or will the same to, and in default of such appointment or devise, then the estate and premises aforesaid to go to those who might be entitled thereto by legal distribution,—this deed enabled her to convey the whole fee, under the power, and not merely the annual interest, rents, and profits. *Ib.*

4. Where the marriage settlement gave her the power of appointment to the use of such persons as she might from time to time appoint, during the coverture, by any writing or writings under her hand and seal, attested by three credible witnesses, and she executed a deed which recited that the parties had thereunto set their hands and seals, and which the witnesses attested as having been *sealed* and *delivered*, this was a sufficient execution of the power, although the witnesses did not attest the fact of her *signing* it. *Ib.*
5. The authorities upon this point examined. *Ib.*
6. Where false steps are taken to enhance the price of property sold at auction, a court of equity will relieve the purchaser from the consequences and injury caused by these unfair means. *Veazie* v. *Williams*, 134.
7. Therefore, where the owners had instructed the auctioneer to take $14,500 for the property, and the real bids stopped at $20,000, and the auctioneer, even without the consent or knowledge of the owner, continued to make fictitious bids until he ran it up to $40,000, this was a fraud upon the purchaser. *Ib.*
8. These sham bids could not have been made by the auctioneer upon his own account. Even if they had been so, it is very questionable whether they would have been valid. *Ib.*
9. Being the general agent of the owners, the latter are responsible for his acts if they receive the benefit of them. By-bidding or puffing by the owners, or caused by or ratified by them, is a fraud, and avoids the sale. *Ib.*
10. The sale being made on the 1st of January, 1836, but the fraud not discovered until 1840, and the bill being filed in 1841, there is no sufficient objection to relief owing to lapse of time. *Ib.*
11. A release given by the purchaser to the auctioneer, for the purpose of making him a competent witness, did not operate as a bar to a recovery against the vendors. He would have been a competent witness without it. *Ib.*
12. There was no necessity for making the auctioneer a defendant in the suit. *Ib.*
13. The various modes of relief examined. *Ib.*
14. A deed from a female child, just of age, and living with her parents, made to a trustee for the benefit of one of those parents, founded on no real consideration, executed under the influence of misrepresentation by the parents, and containing in its preamble a recital of false statements, ordered to be set aside, and the property reconveyed to the grantor. *Taylor* v. *Taylor*, 183.
15. The principles upon which a court of equity interferes to protect persons from undue and improper influences examined and stated. *Ib.*
16. A lapse of forty-six years is a bar to relief in equity, although the creditor, during all that time, supposed the debtor to be insolvent and not worth pursuing, where it appears that for a considerable portion of that time he was in a condition to pay, and the creditor might, by reasonable diligence, have discovered it, and recovered the money by a suit at law. *Maxwell* v. *Kennedy*, 210.
17. Where, upon the case stated in the bill, the complainant is not entitled to relief by reason of lapse of time and laches on his part, the defendant may demur. *Ib.*
18. Where a bill was filed in the Circuit Court of the United States for the County of Alexandria, by a legatee, against the executor and resid-

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uary devisee, praying for the sale of the real estate in order to pay legacies, the personal estate being exhausted, it was not necessary to make a special devisee of land in Virginia, who resided in Virginia, a party defendant. *West* v. *Smith*, 402.
19. The Orphans' Court had power to allow a commission to the executor for paying over a specific legacy, and a right to extend this commission to ten per cent. *Ib.*
20. Under the laws of Virginia, the executor had a right to refrain from pleading the statute of limitations when sued, and to pay a judgment thus obtained against him. The judgment, at all events, must stand good until reversed. *Ib.*
21. Where the executor paid legacies to persons who had occupied property, which, it was alleged, belonged to the deceased, and the occupiers claimed to hold it in consequence of an uninterrupted possession of twenty years, the justice of their claim could not be tried in a collateral manner, by objecting to this item of the executor's account, on the ground that he should have set up the claim for rent in set-off to the legacy. *Ib.*
22. A merchant who owed debts upon his own private account, and was also a partner in two commercial houses which owed debts upon partnership account, executed a deed of trust containing the following provisions, viz.:—
23. It recited a relinquishment of dower by his wife in property previously sold and in the property then conveyed, and also a debt due to the daughter of the grantor, which was still unpaid, and then proceeded to declare that he was indebted to divers other persons residing in different parts of the United States, the names of whom he was then unable to specify particularly, and that the trustee should remit from time to time to Alexander Neill, of the first moneys arising from sales, until he shall have remitted the sum of $15,000, to be paid by the said Neill to the creditors of the said grantor, whose demands shall then have been ascertained; and if such demands shall exceed the sum of $15,000, then to be divided amongst such creditors *pari passu*; and out of further remittances there was to be paid the sum of $12,000 to his wife as a compensation for her relinquishment of dower, and next the debt due to his daughter, and after that the moneys arising from further sales were to be applied to the payment of all the creditors of the grantor whose demands shall then have been ascertained. In case of a surplus, it was to revert to the grantor. *Murrill* v. *Neill*, 414.
24. The construction of this deed must be, that the grantor intended to provide for his private creditors only out of this fund, leaving the partnership creditors to be paid out of the partnership funds. *Ib.*
25. Under the deed, it was the duty of the trustee to divide the first $15,000 amongst the private creditors of the grantor, and exclude from all participation therein the creditors of the two commercial houses with which the grantor was connected; next to pay the debts due to the wife and daughter; then to pay in full the private creditors, or divide the amount amongst them, proportionally. *Ib.*
26. The rule is, that partnership creditors shall, in the first instance, be satisfied from the partnership estate; and separate or private creditors of the individual partners from the separate and private estate of the partners, with whom they have made private and individual contracts; and that the private and individual property of the partners shall not be applied in extinguishment of partnership debts, until the separate and individual creditors of the respective partners shall be paid. *Ib.*
27. The American and English cases respecting this rule examined. *Ib.*
28. Mary Clarke devised to Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, and their heirs forever, as joint tenants, and not as tenants in common, "all that part of my said farm at Greenwich aforesaid, called Chelsea, &c., to have and to hold the said hereby devised premises to the said Benjamin Moore and Charity, his wife, and Elizabeth Maunsell, and to the survivor or survivors of them, and to the heirs of such survivor, as joint tenants, and not as tenants in common, in trust, to receive the rents, issues, and profits thereof, and to pay the same to Thomas B. Clarke, &c., during his natural life, and

CHANCERY—(*Continued.*)
from and after the death of Thomas B. Clarke, in further trust, to convey the same in fee to the lawful issue of the said Thomas B. Clarke, living at his death." Under this devise, the first-born child of Thomas B. Clarke, at its birth, took a vested estate in remainder, which opened to let in his other children to the like estate, as they were successively born, and such vested remainder became a fee simple absolute in the children living, on the death of their father. *Williamson* v. *Berry*, 496.

29. The acts of the legislature of New York passed for the relief of Thomas B. Clarke show that he was made the trustee of the property devised, to sell or mortgage a part of it, with the assent or appointment of the Chancellor. *Ib.*

30. His obligation was to account annually for the proceeds of every sale or mortgage which might be made, and it was his right to use the interest of the principal for himself and for the education and maintenance of his children. *Ib.*

31. The acts of the legislature discharged the trustees named in the devise, whatever may have been their estate in the land under it, but did not vest an estate in fee in Thomas B. Clarke. *Ib.*

32. The acts of the legislature for the relief of Clarke are private acts. They provide that the Chancellor may act upon them summarily, upon the petition of Clarke, upon which orders are given, as contradistinguished from decrees in suits by bill filed. The last are judgments upon the matters in controversy between the parties before the court. The other are orders in conformity with a legislative act in a particular case. Whatever the Chancellor does in either case, he does as a court of chancery. It will stand when it has been done within the jurisdiction conferred by the private act, until it has been set aside upon motion, as his decrees in suits upon bill filed do, until they have been set aside by a bill of review. *Ib.*

33. In such a case the court will not deviate from the letter of the act, nor make an order partly founded upon its original jurisdiction, and partly upon the statute. It cannot confound its original jurisdiction in a suit with the powers it may be authorized to execute by petition, either in a public act giving statutory jurisdiction to the court, to be exercised summarily upon petition, or in a private act providing for relief in a particular case, which is to be carried out by the same mode of procedure. *Ib.*

34. In these acts for the relief of Clarke, what the Chancellor can do is precisely stated. No authority was given to him, in giving his assent to Clarke's making sales of any part of the devised premises, to order that Clarke might make sales of any portion of it, in payment and satisfaction of any debt or debts due and owing by Clarke, upon a valuation to be agreed upon between him and his respective creditors. Or that Clarke might take the money arising from the sales of the premises, and apply the same to the payment of his debts, investing the surplus only in such manner as he may deem proper to yield an income for the maintenance and support of his family. This was not an exercise of jurisdiction, but an order out of and beyond it. *Ib.*

35. These were private acts for the alienation of land, to be made with the assent of the Chancellor that there might be an assurance by matter of record, under his sanction, of a transfer of the property to such as might become purchasers from Clarke. *Ib.*

36. Neither orders summarily given upon petition in chancery, nor decrees in suits upon bill filed, can be summarily reviewed as a whole in a collateral way. *Ib.*

37. But it is a well-settled rule in jurisprudence, that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings. *Ib.*

38. The rule applies to the case in hand, though it may have been decided by the highest tribunal in New York, that the Chancellor had jurisdiction, under the acts for the relief of Clarke, to give the order permitting him to sell the property to his creditors, in payment of his

CHANCERY—(*Continued.*)
debts, for though this court will recognize as a rule for its judgments the decisions of the highest courts of the states relative to real property as a part of the local law, it does not recognize as in any way binding upon them, as a part of the local law, the decisions of the state courts upon private acts of any kind, or such of them as provide for the alienation of private estates, by particular persons, with the sanction of a court or of the Chancellor. Decisions upon private acts form no part of the local law of real property. They concern only those for whose benefit they are made, and can be no rule for any other case. *Ib.*

39. This court decides that, under the acts of New York, the Chancellor had not the jurisdiction to give an order, permitting Clarke to convey any part of the devised premises in satisfaction of his debts, and that neither De Grasse, nor his alienee Berry, can derive from the order of the Chancellor, or from the conveyance by Clarke to De Grasse, any title to the premises in dispute. *Ib.*

40. *Sale* is a word of precise legal import, both at law and in equity. It means a contract between parties to take and to pass rights of property for money, which the buyer pays or promises to pay to the seller for the thing bought and sold. *Ib.*

41. A sale ordered, decreed, or permitted by a chancellor, subject to the approval of a master, requires the master's approval, and confirmation by the court, before a purchaser can have a legal title to the estate that he means to buy or has bid for under the decree of the court. *Ib.*

42. In any sale under a decree or order in chancery, the purchaser, before he pays his money, must not only satisfy himself that the title to the property to be sold is good, but he must take care that the sale has been made according to the decree or order. *Ib.*

43. If he takes under an imperfect sale, he must abide the consequence. *Ib.*

44. The sale in this instance by Clarke to De Grasse, if it were otherwise good, which it is not, would be a nullity, for it wants the approval by the master to whom the execution of the order was confided by the Chancellor. *Ib.*

45. Nor was Clarke's sale to De Grasse a judicial sale. By judicial sale is meant one made under the process of a court, having competent authority to order it, by an officer legally appointed and commissioned to sell. *Ib.*

46. In order that the sale by Clarke to De Grasse should be a judicial sale, it was requisite that the Chancellor should have had the authority to direct a sale of the premises to his creditors for their demands, and that it should have been approved by the master in the way the order directed it to be done. *Ib.*

47. The circumstance, that the defendants paid to the grantees of George De Grasse a valuable consideration for the premises in dispute, does not give them a valid title against the plaintiffs. *Williamson* v. *Irish Presbyterian Congregation*, 565.

48. Under the acts of the Legislature of New York for the relief of Thomas B. Clarke, the Chancellor had no authority to order that the trustee might make a conveyance of any part of the premises devised for a precedent debt due by the trustee to his grantee. *Williamson* v. *Ball*, 566.

49. The deed executed by Clarke to Chrystie in this case was not made in the due execution of the power and authority to sell and convey, though approved by the master in conformity with the Chancellor's order, it not having been within the Chancellor's jurisdiction to order that the trustee might make a conveyance of the premises to a creditor in payment of the debt. *Ib.*

50. Although the defendant in this case may have paid to such a grantee a valuable consideration, yet he cannot be said to have acquired any title against the plaintiffs; inasmuch as Clarke had no lawful authority to convey to his grantee, that grantee had no right to convey to another. *Ib.*

51. Some of the distinctions stated between bills of review, of revivor, and supplemental and original bills. *Kennedy* v. *Georgia Bank*, 586.

52. A decree for a sale made with the approbation of counsel filed in court, removes all preceding technical objections. *Ib.*

COASTING TRADE.

1. The sixteenth section of the act of Congress, passed on the 18th of February, 1793, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," (1 Stat. at L., 305,) prescribes the manner in which foreign merchandise shall be specified in the manifest of a vessel going coastwise, and imposes a pecuniary penalty upon the master for failing to comply with it; but does not forfeit the goods. *United States* v. *Carr*, 1.
2. The forfeiture provided in the seventeenth section was intended to apply to cases where the foreign merchandise was not included at all in the manifest, and not to cases where it was included in fact, although not with legal precision, and where there was no bad faith. *Ib.*
3. The act of May 31st, 1844 (5 Stat. at L., 658), gives jurisdiction to this court in revenue cases, without regard to amount, only where the judgment is rendered in a Circuit Court of the United States. Therefore, where the case was brought from the Court of Appeals for the territory of Florida, and the amount in controversy did not exceed one thousand dollars, the case must be dismissed for want of jurisdiction. *Ib.*

COMMERCIAL LAW.

For cases relating to Partnership see CHANCERY, 22–27.

1. The sixteenth section of the act of Congress, passed on the 18th of February, 1793, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," (1 Stat. at L., 305,) prescribes the manner in which foreign merchandise shall be specified in the manifest of a vessel going coastwise, and imposes a pecuniary penalty upon the master for failing to comply with it; but does not forfeit the goods. *United States* v. *Carr*, 1.
2. The forfeiture provided in the seventeenth section was intended to apply to cases where the foreign merchandise was not included at all in the manifest, and not to cases where it was included in fact, although not with legal precision, and where there was no bad faith. *Ib.*
3. By the statutes of Mississippi, the holder of an inland bill of exchange is entitled to recover of an indorser the amount due on the bill, with interest, upon giving the customary proof of default and notice. A protest is necessary only for the purpose of enabling him to recover the five per cent. damages given by the act. *Wanzer* v. *Tupper*, 234.
4. The case of *Bailey* v. *Dozier* (6 How., 23) confirmed. *Ib.*
5. Where personal property is, from its character or situation at the time of the sale, incapable of actual delivery, the delivery of the bill of sale, or other evidence of title, is sufficient to transfer the property and possession to the vendee. *Gibson* v. *Stevens*, 384.
6. Where articles of commerce were purchased in the state of Indiana, and the vendors, in whose warehouses they were lying, gave a written memorandum of the sale, with a receipt for the money, and an engagement to deliver them on board of canal-boats soon after the opening of canal navigation, these documents transferred the property and the possession of the articles to the purchasers. *Ib.*
7. These documents, being indorsed and delivered to a merchant in New York, in consideration of advances of money in the usual course of trade, transferred to him the legal title and constructive possession of the property. *Ib.*
8. Therefore an attachment subsequently issued, at the instance of a creditor of the original purchasers, which was levied upon the property in question, could not be maintained. *Ib.*
9. This court will judicially recognize this branch of trade. It has existed long enough to assume a regular form of dealing, and its ordinary course and usages are now publicly known and understood. *Ib.*
10. The New York merchant stood in the position of an actual purchaser to the extent of his advances, and not in that of a factor who had made advances upon goods in his possession. *Ib.*
11. A guarantee by the first sellers that the articles should pass inspection did not change the original sale into an executory contract. It was nothing more than the usual warranty of the soundness of the goods sold. *Ib.*
12. Where a manufacturer upon the upper waters of the Potomac shipped five hundred kegs of nails to Alexandria, taking from the master of the

COMMERCIAL LAW—(*Continued.*)
canal-boat a receipt saying that the nails were "to be delivered to Fowle & Sons in Alexandria, for the use of Robert Gilmor of Baltimore," and on the same day sent a letter to the consignees, advising them that the goods were consigned for the use of Gilmor, such delivery and bill of lading operated as a transfer of the legal title to Gilmor, who was in fact the consignor. *Grove* v. *Brien*, 429.

13. The effect of a consignment of goods, generally, is to vest the property in the consignee; but if the bill of lading is special to deliver the goods to A for the use of B, the property vests in B, and the action must be brought in his name in case of loss or damage. *Ib.*
14. Therefore, the kegs of nails in the hands of Fowle & Sons were not subject to an attachment by the creditors of the manufacturer; nor had Fowle & Sons any valid lien upon them for previous advances to him. The title to the nails had passed to Gilmor before they came into the possession of Fowle & Sons. *Ib.*
15. In this case the manufacturer acted *bonâ fide*, in the transfer of the goods, for the purpose of securing a pre-existing debt to Gilmor. This being so, there was no necessity for Gilmor's expressing his assent to the transfer, in order to the vesting the title. The manufacturer was a competent witness. *Ib.*

CONSTITUTIONAL LAW.

1. A tax imposed by a state upon all money or exchange brokers is not void for repugnance to the constitutional power of Congress to regulate commerce. *Nathan* v. *Louisiana*, 73.
2. Foreign bills of exchange are instruments of commerce, it is true; but so also are the products of agriculture or manufactures, over which the taxing power of a state extends until they are separated from the general mass of property by becoming exports. *Ib.*
3. A state has a right to tax its own citizens for the prosecution of any particular business or profession within the state. *Ib.*
4. Banks deal in bills of exchange, and this court has recognized the power of a state to tax banks, where there is no clause of exemption in their charters. *Ib.*
5. This court refrains from expressing an opinion as to the right of state legislation to compel foreign creditors, in *all* cases, to seek their remedy against the estates of decedents in the state courts alone, to the exclusion of the jurisdiction of the courts of the United States. *Williams* v. *Benedict*, 107.
6. In 1829, the legislature of Virginia passed an act appointing five commissioners to raise by way of lottery or lotteries the sum of $30,000 for the benefit of the Fauquier and Alexandria Turnpike Road Company. Two of the commissioners declined to act, and the remaining three took no steps to execute the power for a long time. *Phalen* v. *Virginia*, 163.
7. On the 25th of February, 1834, the legislature passed an act for the suppression of lotteries, which prohibited all lotteries and sale of lottery-tickets after the 1st of January, 1837, saving, however, contracts already made which were by their terms to extend beyond the 1st of January, 1837, or contracts hereafter to be made under any existing law, which were to extend beyond that day. These were permitted to go on until the 1st of January, 1840. *Ib.*
8. On the 11th of March, 1834, the legislature passed an act appointing two commissioners in the place of the two who had declined to act. *Ib.*
9. On the 19th of December, 1839, these commissioners entered into a contract with certain persons, authorizing these persons to draw as many lotteries as they might think proper, without limitation as to time, upon the payment of a certain sum per annum to the commissioners. *Ib.*
10. The right to draw lotteries under the act of 1829 is not a contract the obligations of which were impaired by the act of 1834. *Ib.*
11. It may be doubted whether it constitutes a contract at all. But if it was a contract, it was not unlimited as to time, and the act of 1834, allowing the grant to continue for a certain time, stands upon the same ground as acts of limitation and recording acts, which this court has said a state has a right to pass. *Ib.*
12. The privilege granted by the act of 1829 had become obsolete from non-user, and the act of 1834, appointing two commissioners, did not fully

CONSTITUTIONAL LAW—(*Continued.*)
revive it, because the two acts of 1834 must be taken together; and the limitation contained in one must apply to the other. *Ib.*
13. The courts of Virginia have so construed these statutes, and this court adopts their construction. *Ib.*
14. The act of Congress which restrains the Circuit Courts from taking cognizance of any suit to recover the contents of a chose in action brought by an assignee, when the original holder could not have maintained the suit, is not inconsistent with the third article of the Constitution of the United States, which gives to the judicial power cognizance over controversies between citizens of different states. *Sheldon* v. *Sill*, 441.
15. By a law of the state of Louisiana, every person not being domiciliated in that state, and not being a citizen of any state or territory in the Union, who shall be entitled, whether as heir, legatee, or donee, to the whole or any part of the succession of a person deceased, shall pay a tax to the state of ten per cent. of the value thereof. *Mager* v. *Grima*, 490.
16. This law is not repugnant to the Constitution of the United States. *Ib.*

CONSTRUCTION.
Of Statutes. See STATUTES.
Of Deeds. See CHANCERY, 1–4; 14, 15; 22–27; DEEDS.
Of Wills. See WILLS.

CONTEMPT.
1. *It seems* that to obtain the opinion of the court, affecting the rights of third persons not parties to such suit, is punishable as a contempt of court. *Lord* v. *Veazie*, 251.

CUSTOM.
1. A custom cannot be set up against a settled rule; nor can it ever be binding unless it be ancient, reasonable, generally known, and certain. *United States* v. *Buchanan*, 83.

DEEDS, CONSTRUCTION OF.
See JURY, 3, 4; CHANCERY, 1–5; 14, 15; 22–27.
1. Where a power of attorney authorized the agent "to contract for the sale of, and to sell, either in whole or in part, the lands and real estate so purchased," and "on such terms in all respects as he shall deem most advantageous," and "to execute deeds of conveyance necessary for the full and perfect transfer of all our respective right, title, &c., as sufficiently in all respects as we ourselves could do personally in the premises," these expressions, aided by the situation of the parties and the property, the usages of the country on such subjects, the acts of the parties themselves, and any other circumstance having a legal bearing upon the question, must be construed as giving to the agent the power to enter into a covenant of seizin. *LeRoy* v. *Beard*, 451.
2. Some of the general rules stated for the construction of powers. *Ib.*

DUTIES.
See FINES, PENALTIES, AND FORFEITURES, 1–7.

EJECTMENT.
1. Where a testator made certain devises to his two grandchildren, "provided, and the legacies herein before devised are upon this special condition, that, if both my said grandchildren shall happen to die under age and without any lawful issue, then it is my will that three fourth-parts shall be equally divided between Sarah Smallwood and others," &c., and the two grandchildren lived many years after they arrived at full age, and then both died without issue, the devise over to Sarah Smallwood, &c., never took effect, because the two grandchildren both arrived at full age. *Doe* v. *Watson*, 263.
2. The plaintiffs below having claimed the whole as the heirs of Sarah Smallwood, the court instructed the jury that they could not recover. But the plaintiffs below claimed, in this court, that they were entitled to recover a part, because they were a portion of the heirs of the two grandchildren. This point was not made in the court below, and therefore cannot be made here. *Ib.*
3. The Supreme Court of Pennsylvania decided, with regard to this very will, that the devise over to Sarah Smallwood never took effect. This decision was made in 1795, and the acquiescence of half a century

EJECTMENT—(*Continued.*)
would seem to close all litigation under the will. But even if it did not, this court is of the same opinion. *Ib.*

EQUITY.
See CHANCERY.

ERROR.
See APPEALS AND WRITS OF ERROR.

EVIDENCE.
1. Where an action was brought upon a policy of insurance against fire, by the assignees of the person originally insured, and in the policy it was said that it was "made and accepted upon the representation of the said assured, contained in his application therefor, to which reference is to be had," it was proper to prove by parol testimony that the representations alleged to have been made by the party originally insured were actually made by him. *Clark* v. *Manufacturers' Ins. Co.*, 235.
2. And if the assignees, by their acts, adopted these representations, when renewing the policy from time to time, the evidence was equally admissible, because the subsequent policies had reference to the one first made. *Ib.*

EXECUTORS AND ADMINISTRATORS.
1. The laws of Mississippi direct that, where the insolvency of the estate of a deceased person shall be reported to the Orphans' Court, that court shall order a sale of the property, and distribute the proceeds thereof amongst the creditors *pro rata*, and that in the meantime no execution shall issue upon a judgment obtained against such insolvent estate. *Williams* v. *Benedict*, 107.
2. A judgment obtained against the administrator *before* the declaration by the Orphans' Court of the insolvency of the estate, is not, upon that account, entitled to a preference; but must share in the general distribution. *Ib.*
3. The assent of an executor must be obtained before a legatee can take possession of a legacy. But this assent may be implied, and an assent to the interest of the tenant for life in a chattel inures to vest the interest of the remainder. Therefore, where a bill averred the possession of the subject of the legacy by the life-tenant in pursuance of the bequest in the will, and this bill was demurred to, it is sufficient to raise a presumption that the possession was taken with the assent of the executor. *McClanahan* v. *Davis*, 170.
4. By the laws of Virginia, where there is a tenancy for life in a slave, with remainder to the wife of another person, the interest of the husband in the wife's remainder is placed upon the footing of an interest in a chose in action. If, therefore, he survives the wife, he may reduce the property into possession at the expiration of the life estate; but if he be dead at such expiration, the property survives to the wife, and on her death passes to her legal representative as part of her assets. *Ib.*
5. Query, whether the husband or his personal representative is not bound to administer upon the wife's estate, before bringing suit to recover property so situated in the state of Virginia. *Ib.*
6. Where there was no direct or positive averment that the defendants, or either of them, had any interest in the property claimed, or that it was in their possession, no ground of relief against those parties was shown, and the right to a discovery as incidental thereto, failed also. *Ib.*
7. The Orphans' Court of Alexandria had power to allow a commission to the executor for paying over a specific legacy, and a right to extend this commission to ten per cent. *West* v. *Smith*, 402.
8. Under the laws of Virginia, the executor had a right to refrain from pleading the statute of limitations when sued, and to pay a judgment thus obtained against him. The judgment, at all events, must stand good till reversed. *Ib.*
9. Where the executor paid legacies to persons who had occupied property which, it was alleged, belonged to the deceased, and the occupiers claimed to hold it in consequence of an uninterrupted possession of twenty years, the justice of their claim could not be tried in a collateral manner by objecting to this item of the executor's account, on the ground that he should have set up the claim for rent in set-off to the legacy. *Ib.*

FINES, PENALTIES AND FORFEITURES.

1. The sixteenth section of the act of Congress, passed on the 18th of February, 1793, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same" (1 Stat. at L., 305), prescribes the manner in which foreign merchandise shall be specified in the manifest of a vessel going coastwise, and imposes a pecuniary penalty upon the master for failing to comply with it; but does not forfeit the goods. *United States* v. *Carr et al.*, 1.
2. The forfeiture provided in the seventeenth section was intended to apply to cases where the foreign merchandise was not included at all in the manifest, and not to cases where it was included in fact, although not with legal precision, and where there was no bad faith. *Ib.*
3. In this case, the court below instructed the jury, that if the goods were fraudulently entered, it was no matter in whose possession they were when seized, or whether the United States had made an election between the penalties, and that the forfeiture took place when the fraud, if any, was committed, and the seller of the goods could convey no title to the purchaser. *Caldwell* v. *United States*, 366.
4. This instruction was right in respect to the sixty-eighth section of the act of 1799 (1 Stat. at L., 677), as the penalty is the forfeiture of the goods *without an alternative of their value*, but wrong as the instruction applies to the sixty-sixth section of the same act,—as the forfeiture under it is either the goods *or their value*. *Ib.*
5. Under the sixty-eighth section, the forfeiture is the statutory transfer of right to the goods at *the time* the offence is committed. The title of the United States to the goods forfeited is not consummated until after judicial condemnation, but the *right to them* relates backwards to the time the offence was committed, so as to avoid all intermediate sales of them between the commission of the offence and condemnation. *Ib.*
6. But under the sixty-sixth section of the act, in which the forfeiture is the goods *or their value*, the United States have no title in the goods, until an election has been made either to recover the goods or their value. Therefore, under that section, any rights in the goods acquired *bonâ fide* by third persons in the meantime are protected. *Ib.*
7. The claimants prayed the court to instruct the jury, that the United States were not entitled to recover under the first and second counts of the information founded on the fiftieth section, unless the goods were unladen and delivered without permits. The jury was told, in reply,—"If the permits were obtained by fraud and improper means, they were of no effect, and a mere nullity. The United States are entitled to recover, if the goods were imported with the view to defraud the revenues." Whether or not the permits were obtained by fraud or improper means was a point in the cause for the jury to decide, and what the court said upon the prayer was virtually saying to the jury, that a verdict might be returned upon the first and second counts against the claimants, and that they were liable to the penalties of the act for unlading goods without a permit, without saying if they thought that there was evidence enough to prove the fact against them. *Ib.*

FRAUDS ON THE GOVERNMENT.

1. Where an act of Congress declared, that, if any person "shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the government of the United States, any deed, power of attorney, order, certificate, receipt, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; every such person shall be deemed and adjudged guilty of felony," &c.—it was sufficient that the indictment charged the act to have been done "with intent to defraud the United States," without also charging that it was done feloniously, or with a "felonious intent." *United States* v. *Staats*, 41.
2. Where the act done was the transmission to the Commissioner of Pensions of an affidavit which was false in the facts which it professed to narrate, although sworn to by a person who really existed, and the person who transmitted it knew that it was false, it was an offence within the meaning of the act of Congress. *Ib.*

HUSBAND AND WIFE.
See CHANCERY, 1–5; EXECUTORS AND ADMINISTRATORS, 4, 5.
INDICTMENT.
1. Where an act of Congress declared, that, if any person "shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the government of the United States, any deed, power of attorney, order, certificate, receipt, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; every such person shall be deemed and adjudged guilty of felony," &c.,—it was sufficient that the indictment charged the act to have been done "with intent to defraud the United States," without also charging that it was done feloniously, or with a "felonious intent." *United States* v. *Staats*, 41.
2. Where the act done was the transmission to the Commissioner of Pensions of an affidavit which was false in the facts which it professed to narrate, although sworn to by a person who really existed, and the person who transmitted it knew that it was false, it was an offence within the meaning of the act of Congress. *Ib.*
INSOLVENCY.
1. The rule is, that partnership creditors shall, in the first instance, be satisfied from the partnership estate; and separate or private creditors of the individual partners from the separate and private estate of the partners, with whom they have made private and individual contracts; and that the private and individual property of the partners shall not be applied in extinguishment of partnership debts, until the separate and individual creditors of the respective partners shall be paid. *Murrill* v. *Neill*, 414.
INSURANCE.
1. Where an action was brought upon a policy of insurance against fire, by the assignees of the person originally insured, and in the policy it was said that it was "made and accepted upon the representation of the said assured, contained in his application therefor, to which reference is to be had," it was proper to prove by parol testimony that the representations alleged to have been made by the party originally insured were actually made by him. *Clark* v. *Manufacturers' Ins. Co.*, 235.
2. And if the assignees, by their acts, adopted these representations, when renewing the policy from time to time, the evidence was equally admissible, because the subsequent policies had reference to the one first made. *Ib.*
3. Therefore, where the representation upon which the original policy was founded was, that "the picker is inside of the building, but no lamps used in the picking-room," it was a correct instruction to give to the jury, that the use of lamps in the picker-room rendered the policy void. *Ib.*
4. But if no representations were made or asked, it would not be the duty of the insured to make known the fact that lamps were used in the picker-room, although the risk might have been thereby increased, unless the use of them in that way was unusual. *Ib.*
JURISDICTION.
1. The act of May 31st, 1844 (5 Stat. at L., 658), gives jurisdiction to this court in revenue cases, without regard to amount, only where the judgment is rendered in a Circuit Court of the United States. Therefore, where the case was brought from the Court of Appeals for the territory of Florida, and the amount in controversy did not exceed one thousand dollars, the case must be dismissed for want of jurisdiction. *United States* v. *Carr*, 1.
2. The act of 1824, relating to certain claimants to lands, which was revived and re-enacted by the act of 1844, did not expire in five years from the passage of the act of 1844, so far as regards appeals from the District Court to this court. It will continue in force until all the appeals regularly brought up from the District Courts shall be finally disposed of *United States* v *Boisdoré's Heirs*, 113.
3. Where a plaintiff in the court below filed a petition for the recovery from the defendant of four slaves, whose value he alleged to be $2700, and the jury found a verdict for the plaintiff "for $1200, the value of the

JURISDICTION—(*Continued.*)
negro slaves in suit," and the plaintiff thereupon released the judgment for $1200, and the court adjudged that he recover of the said defendant the said slaves, the case is within the appellate jurisdiction of this court. *Bennett* v. *Butterworth*, 124.

4. The plaintiff averred in his petition, that the slaves were worth $2700, and by his releasing the judgment for $1200, the only question before this court is the right to the property. And as the defendant below prosecuted the appeal, the plaintiff cannot be allowed to deny here the truth of his own averment of the value of the property in dispute. *Ib.*
5. Where it appears to this court, from affidavits and other evidence filed by persons not parties to a suit, that there is no real dispute between the plaintiff and defendant in the suit, but, on the contrary, that their interest is one and the same, and is adverse to the interests of the parties who filed the affidavits, the judgment of the Circuit Court entered *pro forma* is a nullity and void, and no writ of error will lie upon it. It must, therefore, be dismissed. *Lord* v. *Veazie*, 251.
6. The following question, sent up to this court upon a certificate of division in opinion between the judges of the Circuit Court,—viz., "Whether, according to the true construction of the Woodworth patent, as amended, the machines made or used by the defendant at the time of filing the bill, or either of them simply, do or do not infringe the said amended letters patent,"—is a question of fact, over which this court has no jurisdiction. *Wilson* v. *Barnum*, 258.
7. The jurisdiction given to it by statute in certified cases only extends to points of law. *Ib.*
8. Courts created by statute can have no jurisdiction but such as the statute confers. *Sheldon* v. *Sill*, 441.
9. Therefore, where the third article of the Constitution of the United States says that the judicial power shall have cognizance over controversies between citizens of different states, but the act of Congress restrains the Circuit Courts from taking cognizance of any suit to recover the contents of a chose in action brought by an assignee, when the original holder could not have maintained the suit, this act of Congress is not inconsistent with the Constitution. *Ib.*
10. A debt secured by bond and mortgage is a chose in action. *Ib.*
11. Therefore, where the mortgagor and mortgagee resided in the same state, and the mortgagee assigned the mortgage to the citizen of another state, this assignee could not file his bill for foreclosure in the Circuit Court of the United States. *Ib.*
12. The jurisdiction of a chancellor under a private act of the Legislature examined. *Williamson* v. *Berry*, 496.
13. The jurisdiction of this court, under the twenty-fifth section of the Judiciary Act, extends to a review of the judgment of a state court, where the point involved was the alleged violation of a contract granting a ferry right by a state to an individual; but it does not extend to a case where the alleged violation of a contract is, that a state has taken more land than was necessary for the easement which it wanted, and thus violated the contract under which the owner held his land by a patent. It rests with state legislatures and state courts exclusively to protect their citizens from injustice and oppression of this description. *Mills* v. *St. Clair County*, 569.
14. This court, as an appellate court, has the power to allow amendments to be made to the record before it, although the general practice has been to remand the case to the Circuit Court for that purpose. *Kennedy* v. *Georgia Bank*, 586.
15. When a cause is brought before this court on a division in opinion between the judges of the Circuit Court, the points certified only are before it. The cause should remain on the docket of the Circuit Court, and at their discretion may be prosecuted. *Ib.*
16. If the jurisdiction of a Circuit Court be not shown in the proceedings in the case, its judgment is erroneous, and liable to be reversed; but it is not an absolute nullity. *Ib.*
17. But when an amendment to the record was made by consent of counsel in this court, which amendment set forth the jurisdiction, a mandate

JURISDICTION—(*Continued.*)
containing that amendment ought to have prevented any subsequent objection to the jurisdiction in the Circuit Court. *Ib.*

JURY.

1. The question, whether or not certain acts were part of the official duty of pursers, was one of law, to be decided by the court, and not one of fact to be left to the jury. *United States* v. *Buchanan*, 83.
2. The following question sent up to this court upon a certificate of division in opinion between the judges of the Circuit Court,—viz, "Whether, according to the true construction of the Woodworth patent as amended, the machines made or used by the defendant at the time of filing the bill, or either of them simply, do or do not infringe the said amended letters patent,"—is a question of fact, over which this court has no jurisdiction. *Wilson* v. *Barnum*, 258.
3. It is the duty of the court to give a construction to a deed so far as the intention of the parties can be elicited therefrom; but the doubt in the application of the descriptive portion of a deed to external objects usually arises from what is called a latent ambiguity, which has its origin in parol testimony and must necessarily be solved in the same way. It therefore, in such cases, becomes a question to be decided by a jury, what was the intention of the parties to a deed. *Reed* v. *Proprietors of Locks and Canals*, 274.
4. Therefore, there was no error in the following instructions given by the court to the jury, viz.:—"That if the jury believed from the evidence, looking to the monuments, length of lines, and quantities, actual occupation, &c., that it was more probable that the parties to the mortgage intended to include therein the demanded premises than otherwise, they should return their verdict for the tenants." *Ib.*
5. In a trial for a fraudulent entry of goods, the question whether the permits were obtained by fraud or improper means was a point for the jury to decide. *Caldwell* v. *United States*, 366.

LACHES. See LIMITATIONS OF SUITS.

LANDS, PUBLIC.

1. Before the transfer of Louisiana to the United States, the Spanish government was accustomed to grant lands fronting on the Mississippi River, and reserve the lands behind those thus granted for the use of the front proprietors, who had always a right of preëmption to them. *Surgett* v. *Lapice*, 48.
2. After the transfer, Congress recognized this right of preëmption by several laws. *Ib.*
3. In 1832, Congress passed an act (4 Stat. at L., 534) giving to the proprietors of any tracts bordering on a river, creek, bayou, or water-course, the right of preference in the purchase of any vacant tract of land adjacent to and back of his own tract, provided that the right of preëmption should not extend so far in depth as to include lands fit for cultivation bordering on another river, creek, bayou, or water-course, and provided that all notices of claims shall be entered, and the money paid thereon, at least three weeks before such period as may be designated by the President of the United States for the public sale of the lands in the township. *Ib.*
4. This last proviso cannot be construed to apply to a township where the lands had already been exposed to sale by order of the President in 1829. The act having been passed in 1832, a compliance with it was impossible, and it must, therefore, be construed as applying prospectively to those lands which had not been exposed to public sale. *Ib.*
5. The first proviso related only to a river, creek, bayou, or water-course which was a navigable stream. The bayou in question was not so, as is shown by the evidence in the case, and also by the fact that the sections of land, as laid out by the public surveyor, cross it. When the surveyor comes to navigable streams, he bounds upon the shore, and makes fractional sections. *Ib.*
6. In order to bring land within the exception, it must be fit for cultivation, and also border on another river, &c. The two circumstances are coupled together, and both must concur, or else the exception does not apply. *Ib.*
7. In 1824, Congress passed an act (4 Stat. at L., 52), entitled "An act

LANDS, PUBLIC—(*Continued.*)
enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims." *United States* v. *Boisdoré's Heirs*, 113.

8. The second section provided that, in "all cases, the party against whom the judgment or decree of the said District Court may be finally given, shall be entitled to an appeal, within one year from the time of its rendition, to the Supreme Court of the United States"; and the fifth section enacted that any claim which shall not be brought by petition before the said courts within two years from the passing of the act, or which, after being brought before the said courts, shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within three years, shall be forever barred. *Ib.*

9. In 1844, Congress passed another act (5 Stat. at L., 676), entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama, south of the thirty-first degree of north latitude, and between the Mississippi and Perdido Rivers." *Ib.*

10. It enacted, "that so much of the expired act of 1824 as related to the State of Missouri be, and is hereby, revived and reënacted, and continued in force for the term of five years, and no longer; and the provisions of that part of the aforesaid act hereby revived and reënacted shall be, and hereby are, extended to the States of Louisiana and Arkansas, and to so much of the States of Mississippi and Alabama as is included in the district of country south of the thirty-first degree of north latitude, and between the Mississippi and Perdido Rivers." *Ib.*

11. The act of 1824, revived and reënacted by the act of 1844, did not expire in five years from the passage of the act of 1844, so far as regards appeals from the District Court to this court. It will continue in force until all the appeals regularly brought up from the District Courts shall be finally disposed of. *Ib.*

12. The plaintiff in a writ of right produced a patent from the United States, dated in 1839, which contained sundry recitals, referring to titles of anterior date derived from acts of Congress for the adjustment of claims to lands. But the patent itself was issued under an act of Congress in 1836. *Marsh* v. *Brooks*, 223.

13. The defendant, in order to show an outstanding title, gave in evidence a treaty between the United States and the Sac and Fox Indians, in which this, with other lands, was reserved for the half-breeds, and an act of Congress passed in 1834 relinquishing the reversionary interest of the United States to these half-breeds. *Ib.*

14. This was sufficient to show an outstanding title. *Ib.*

15. The recitals in a patent are not enough to show that the title is of an earlier date than the patent itself, although they are evidence for some purposes. Nor was it necessary for the defendant to show that any of the half-breeds were in existence at the time of the trial. *Ib.*

16. A concession, having no defined boundaries, made by the Lieutenant-Governor of Upper Louisiana in 1799, but not surveyed, cannot be considered as "property," and, as such, protected by the courts of justice, without a sanction by the political power, under the third article of the treaty with France made in 1803. *Menard's Heirs* v. *Massey*, 293.

17. The Lieutenant-Governor of Upper Louisiana had the authority, as a sub-delegate, to grant concessions, direct surveys, and place grantees in possession; but no perfect title to the land passed until the concession and a copy of the survey were delivered to the Intendant-General at New Orleans, and also a proces-verbal attesting the fact that the survey was made in the presence of the commandant, or in that of a syndic and two neighbors. On these the legal title was founded, and then perfected and recorded. *Ib.*

18. The mere circumstance that another plat, containing different land, was upon the same sheet of paper which contained the genuine plat, and which was filed in the recorder's office, was not sufficient to invalidate the claim; because the name of the claimant was written upon the face of the one describing the tract claimed, and that was the only one before the commissioners. *Ib.*

19. In the case of *Stoddard* v. *Chambers*, 2 How., 284, this court decided by

PUBLIC LANDS—(*Continued.*)
implication, and now decides expressly, that a general and unlocated concession, granted by the Spanish governor prior to the transfer of Louisiana, a private survey of which made after the transfer was recognized by the commissioners appointed under the act of 1805, before whom the claim was filed, was so designated and located as to be reserved from sale by virtue of the act of 1811, and consequently no New Madrid certificate could be located upon it. *Bissell* v. *Penrose*, 317.

20. The act of 1804, forbidding private surveys upon the public lands, was impliedly repealed by the act of 1805, which required claimants to file a plat. The act of 1806 authorized the commissioners to direct such surveys as they might deem necessary, which gave them, thereby, the power to adopt any prior and private surveys which they might deem just and proper, for the purpose of designation and location. *Ib.*
21. The effect of such private surveys was not to sever the land from the public domain, but merely to indicate the tract which Congress was to act upon at a subsequent period, in case it thought proper to confirm the claim. *Ib.*
22. The act of 1836 confirmed the claims of assignees who had prosecuted them as claimants, and did not intend to vest the title in the assignor, the original holder. This court has so decided in former cases. *Ib.*
23. The confirmation by the act of 1836 is equally effectual in favor of the claimant, whether the commissioners recommended that the claim should be confirmed generally, or confirmed "according to the survey." The only difference is, that in the latter case the survey on file is probably conclusive upon the government, and errors cannot be corrected, whilst in the former case they may be. *Ib.*
24. The second section of the act of 1836 makes no provision for a re-location of an unlocated claim confirmed on the report of the commissioners, and further legislation will be necessary for such cases. *Ib.*
25. The cases of *Mackay* v. *Dillon*, 4 How., 421, *Les Bois* v. *Bramell*, 4 Id., 449, and *Jourdan* v. *Barrett*, 4 Id., 169, examined and explained. *Ib.*
26. Upon the transfer of Louisiana, the United States succeeded to all the powers of the Intendant-Generals, and could give or withhold the completion of all imperfect titles at their pleasure. In order to exercise this power with discretion, Boards of Commissioners were established in order to enlighten the judgment of Congress, and special courts were organized in which claimants might prosecute their claims. *Ib.*
27. But in all the legislation upon the subject, the claimants were never considered as possessing a legal title, until the final assent of Congress was expressed in some mode or other to that effect. *Ib.*
28. The date of such legal title commences with the ratification by Congress, and does not extend back to the date of the imperfect title. *Ib.*
29. Therefore, the title of Cerré, being confirmed in 1836, must give way to patents for the same land, issued before that time, unless Congress had, by some law, protected the land from the location of patents. *Ib.*
30. But the acts of Congress did not so protect it, because the concession of Cerré called for no boundaries, and had never been surveyed. Before land could be reserved from sale, it was necessary to know where the land was. *Ib.*
31. The confirming act of 1836 declared that it should convey no title to any part of the land which had previously been surveyed and sold by the United States. This the United States had a right to do, because, having the plenary power of confirmation, they could annex such conditions to it as they chose. *Ib.*
32. Where claims were confirmed according to the concession, a subsequent survey made in the mode pointed out by law is conclusive upon the United States and the confirmee, to show that the land included in the survey was the land the title to which was confirmed. But it does not follow that other persons, who may previously have purchased portions of the land from the United States, subsequent to the confirming act and before the survey, are equally concluded. *Ib.*
33. The form of a Spanish title given. *Ib.*
34. The decision of this court in the case of *Stoddard et al.* v. *Chambers* (2 How., 285) re-examined and confirmed. *Mills* v. *Stoddard*, 345.

PUBLIC LANDS—(*Continued.*)
35. The original petition to the Spanish Governor of Louisiana, upon which the concession was made, stated that he "came over to this side of the M. R. S. with the consent of your predecessors." These letters stand for *Majeste Rive Sud*, and refer to the Mississippi River. *Ib.*
36. The survey of the concession in 1806 fixed its locality. It is true that the survey was a private one, but it was adopted by the commissioners, who had authority to direct such surveys as they deemed necessary. *Ib.*
37. The holder of a New Madrid certificate had a right to locate it only on public lands the sale of which was authorized by law. But lands claimed under a Spanish concession, where the claim had been filed according to the acts of Congress, were reserved from sale when the entry under the New Madrid certificate was made, viz., in 1816. Consequently, the entry was void. *Ib.*
38. The patent for the land covered by the New Madrid certificate was not issued until after Congress had renewed this reservation, viz., in 1832. Therefore, neither the entry nor patent can give a good title. *Ib.*
39. Had the patent been issued before Congress passed the act of 1832, the result would have been different. *Ib.*

LEGACIES.
See EXECUTORS AND ADMINISTRATORS, 3, 7–9.

LEX LOCI CONTRACTUS AND LEX FORI.
1. By the laws of Wisconsin, where the contract in question was made, a scroll or any device by way of seal has the same effect as an actual seal. But in New York it is different, and an action brought in New York upon such an instrument must be an action appropriate to unsealed instruments. *LeRoy* v. *Beard*, 451.
2. Therefore, where a deed was executed with a scroll in Wisconsin, which contained a covenant of seizin, and an action was brought in New York for a breach of this, it was properly an action of assumpsit, and not covenant. *Ib.*

LIMITATION OF SUITS.
1. A lapse of forty-six years is a bar to relief in equity, although the creditor, during all that time, supposed the debtor to be insolvent and not worth pursuing, where it appears that for a considerable portion of that time he was in a condition to pay, and the creditor might, by reasonable diligence, have discovered it, and recovered the money by a suit at law. *Maxwell* v. *Kennedy*, 210.
2. Where a claim to land was maintained upon an uninterrupted possession of forty years, the death of the original holder and subsequent reception of rent by his widow, did not break the continuity of possession. She is liable to account for the rent to the heirs. *Reed v. Proprietors of Locks and Canals*, 274.

LOTTERIES.
See CONSTITUTIONAL LAW, 6–13.

MARRIAGE SETTLEMENTS.
1. Where a married woman has power, under a marriage settlement, to dispose of property settled upon her, by the execution of a power of appointment for that purpose, and alleges afterwards that she executed the power under undue marital influence and through fraud practised upon her, but alleges no specific mode or act by which this undue marital influence was exerted, and the facts disclosed in the testimony go very far to contradict the allegation, the charge cannot be sustained. *Ladd* v. *Ladd*, 10.
2. Every feme covert is presumed, under such a settlement, to be, to some extent, a free agent. *Ib.*
3. Where the marriage settlement recited that the woman was possessed of a considerable real and personal estate, which it was agreed should be settled to her sole and separate use with power to dispose of the same by appointment or devise, and then directed that the trustee should permit her to have, receive, take, and enjoy all the interest, rents, and profits of the property to her own use, or to that of such persons as she might from time to time appoint during the coverture, or to such persons as she, by her last will and testament, might devise or will the same to, and in default of such appointment or devise, then the estate and premises aforesaid to go to those who might be entitled thereto by

MARRIAGE SETTLEMENTS—(*Continued.*)
legal distribution,—this deed enabled her to convey the whole fee, under the power, and not merely the annual interest, rents, and profits. *Ib.*
4. The word "interest" in such settlement, held to be the equivalent of "estate." *Ib.*
5. Where the marriage settlement gave her the power of appointment to the use of such persons as she might from time to time appoint, during the coverture, by any writing or writings under her hand and seal, attested by three credible witnesses, and she executed a deed which recited that the parties had thereunto set their hands and seals, and which the witnesses attested as having been *sealed* and *delivered*, this was a sufficient execution of the power, although the witnesses did not attest the fact of her *signing* it. This could be proved *aliunde*. *Ib.*

NAVY.
1. Commissions for drawing bills of exchange were not usually allowed to permanent pursers in the navy; and on the 10th of November, 1826, commissions for such services to commanders of squadrons and officers of any grade were expressly abolished. *United States* v. *Buchanan*, 83.
2. A custom cannot be set up against a settled rule; nor can it ever be binding unless it be ancient, reasonable, generally known and certain. *Ib.*
3. There are two books for the government of the officers of the navy, usually known as the "Blue Book" and the "Red Book." The "Red Book," although later in date, did not repeal the "Blue Book," except in some few specified particulars. *Ib.*
4. The duty of paying mechanics and laborers at the navy-yards was imposed, by the Blue Book, upon pursers who were stationed there. It was made a part of their official duty. As this was not repealed by the Red Book, no commission can be allowed to a purser for performing this service. *Ib.*
5. The question, whether or not these acts were parts of the official duty of pursers, was one of law, to be decided by the court, and not of fact to be left to the jury. *Ib.*
6. Losses alleged to have been sustained by a purser, in consequence of an order by the commodore forbidding certain sales of slops, cannot be set off in a suit by the United States upon the purser's bond. *Ib.*
7. The statute of March 3, 1797, which allows set-offs, has for its object the settlement between the parties of their mutual accounts or debts. But wrongs or torts done, and any unliquidated damages claimed, have never been permitted as a set-off. *Ib.*
8 It appears also that the government is not responsible for a wrong committed by one officer upon another. The party injured has other modes of redress than setting off the damages as a defence, when sued upon his bond by the United States. *Ib.*

ORPHANS' COURTS.
See EXECUTORS AND ADMINISTRATORS, 1, 2, 7.

PARTNERSHIP.
See CHANCERY, 22–27.

PATENT RIGHTS.
1. The following question sent up to this court upon a certificate of division in opinion between the judges of the Circuit Court,—viz, "Whether, according to the true construction of the Woodworth patent as amended, the machines made or used by the defendant at the time of filing the bill, or either of them simply, do or do not infringe the said amended letters patent,"—is a question of fact, over which this court has no jurisdiction. *Wilson* v *Barnum*, 258.
2. The jurisdiction given to it by statute in certified cases only extends to points of law. *Ib.*

PENSIONS.
See FRAUDS ON THE GOVERNMENT.

PLEAS AND PLEADINGS.
1. Where, upon the case stated in a bill in equity, the complainant is not entitled to relief by reason of lapse of time and laches on his part, the defendant may demur. *Maxwell* v. *Kennedy*, 210.
2. By the laws of Wisconsin, where the contract in question was made, a scroll or a device by way of seal has the same effect as an actual seal. But in New York it is otherwise, and an action brought in New York

PLEAS AND PLEADINGS—(*Continued.*)
upon such an instrument must be an action appropriate to unsealed instruments. *LeRoy* v. *Beard*, 451.
3. Therefore, where a deed was executed with a scroll in Wisconsin, which contained a covenant of seizin, and an action was brought in New York for a breach of this, it was properly an action of assumpsit, and not covenant. *Ib.*
4. It was not necessary in the declaration to allege an eviction, because the covenant was broken as soon as made. *Ib.*

POWERS OF ATTORNEY.
See DEEDS, CONSTRUCTION OF, 1, 2.

PRACTICE.
1. Where an "action of jactitation" or "slander of title" was brought in a state court of Louisiana and removed into the Circuit Court of the United States by the defendant, who was a citizen of Mississippi (the persons who brought the action being in possession of the land under a legal title) and the defendant pleaded in re-convention, setting up an equitable title, and the court below decreed against the defendant, it was proper for him to bring the case to this court by appeal, and not by writ of error. *Surgett* v. *Lapice*, 48.
2. This case distinguished from that of the *United States* v. *King*, 3 and 7 Howard, 773 and 844. *Ib.*
3. An error in a citation, calling Mary Rice the wife of Charles Bowers, whereas she was the wife of Charles Rice, is not fatal in a case coming from Louisiana. The practice there is for the husband to assent when the wife brings a suit, so that his name is merely a matter of form. *Peale* v. *Phipps*, 256.
4. Nor is it a fatal error when the citation was issued at the instance of E. Peale as plaintiff in error, instead of Elijah Peale, Trustee of the Agricultural Bank of Mississsppi. *Ib.*
5. The acceptance of the service of the citation by the attorney for the parties shows that the error led to no misapprehension. *Ib.*
6. The plaintiffs in ejectment claimed below the whole of certain property as the heirs of a devisee; and the title of the devisee being held not to be good, they claimed in this court a portion of the property as a portion of the heirs of the person upon whom the descent was cast. But this point was not made in the court below, and therefore cannot be made here. *Doe* v. *Watson*, 263.
7. Where, in a special verdict, the essential facts are not distinctly found by the jury, although there is sufficient evidence to establish them, this court will not render a judgment, but remand the cause to the court below for a *venire facias de novo*. *Prentice* v. *Zane's Adm.*, 470.
8. Therefore, where a suit was brought by an indorsee upon a promissory note, and the special verdict found that the original consideration of the note was fraudulent on the part of the payee, but omitted to find whether the holder had given a valuable consideration for it or received it in the regular course of business, and the court below gave judgment for the defendant, this court could not decide whether that judgment was erroneous or not, and would have been compelled to remand the case. *Ib.*
9. But the parties below agreed to submit the cause to the court, both on the facts and the law. This court must presume that the court below founded its judgment upon proof of the fact as to the manner in which the holder received it, and must therefore affirm the judgment of the court below. *Ib.*
10. Some of the distinctions stated between bills of review, of revivor, and supplemental and original bills in chancery. *Kennedy et al.* v. *Georgia State Bank*, 586.
11. This court, as an appellate court, has the power to allow amendments to be made to the record before it, although the general practice has been to remand the case to the Circuit Court for that purpose. *Ib.*
12. When a cause is brought before this court on a division in opinion by the judges of the Circuit Court, the points certified only are before it. The cause should remain on the docket of the Circuit Court, and at their discretion may be prosecuted. *Ib.*
13. If the jurisdiction of a Circuit Court be not shown in the proceedings in

PRACTICE—(*Continued.*)
the case, its judgment is erroneous, and liable to be reversed; but it is not an absolute nullity. *Ib.*
14. But when an amendment to the record was made by consent of counsel in this court, which amendment set forth the jurisdiction, a mandate containing that amendment ought to have prevented any subsequent objection to the jurisdiction in the Circuit Court. *Ib.*
15. A decree for a sale, made with the approbation of counsel filed in court, removes all preceding technical objections. *Ib.*

PURSERS.
See NAVY.

QUESTIONS OF LAW AND FACT.
1. It is the duty of the court to give a construction to a deed so far as the intention of the parties can be elicited therefrom; but the doubt in the application of the descriptive portion of a deed to external objects usually arises from what is called a latent ambiguity, which has its origin in parol testimony and must necessarily be solved in the same way. It therefore, in such cases, becomes a question to be decided by a jury, what was the intention of the parties to a deed. *Reed* v. *Proprietors of Locks and Canals*, 274.
2. Therefore, there was no error in the following instructions given by the court to the jury, viz.:—"That if the jury believed from the evidence, looking to the monuments, length of lines, and quantities, actual occupation, &c., that it was more probable that the parties to the mortgage intended to include therein the demanded premises than otherwise, they should return their verdict for the tenants." *Ib.*

RIGHT (WRIT OF).
1. The plaintiff in a writ of right produced a patent from the United States, dated in 1839, which contained sundry recitals, referring to titles of anterior date derived from acts of Congress for the adjustment of claims to lands. But the patent itself was issued under an act of Congress in 1836. *Marsh* v. *Brooks*, 223.
2. The defendant, in order to show an outstanding title, gave in evidence a treaty between the United States and the Sac and Fox Indians, in which this, with other lands, was reserved for the half-breeds, and an act of Congress passed in 1834 relinquishing the reversionary interest of the United States to these half-breeds. *Ib.*
3. This was sufficient to show an outstanding title. *Ib.*
4. The recitals in a patent are not enough to show that the title is of an earlier date than the patent itself, although they are evidence for some purposes. Nor was it necessary for the defendant to show that any of the half-breeds were in existence at the time of the trial. *Ib.*

SALES.
1. Where personal property is, from its character or situation at the time of the sale, incapable of actual delivery, the delivery of the bill of sale, or other evidence of title, is sufficient to transfer the property and possession to the vendee. *Gibson* v. *Stevens*, 384.
2. Where articles of commerce were purchased in the state of Indiana, and the vendors, in whose warehouses they were lying, gave a written memorandum of the sale, with a receipt for the money, and an engagement to deliver them on board of canal-boats soon after the opening of canal navigation, these documents transferred the property and the possession of the articles to the purchasers. *Ib.*
3. These documents, being indorsed and delivered to a merchant in New York, in consideration of advances of money in the usual course of trade, transferred to him the legal title and constructive possession of the property. *Ib.*
4. Therefore an attachment subsequently issued, at the instance of a creditor of the original purchasers, which was levied upon the property in question, could not be maintained. *Ib.*
5. This court will judicially recognize this branch of trade. It has existed long enough to assume a regular form of dealing, and its ordinary course and usages are now publicly known and understood. *Ib.*
6. The New York merchant stood in the position of an actual purchaser to the extent of his advances, and not in that of a factor who had made advances upon goods in his possession. *Ib.*

SALES—(*Continued.*)
7. A guarantee by the first sellers that the articles should pass inspection did not change the original sale into an executory contract. It was nothing more than the usual warranty of the soundness of the goods sold. *Ib.*

SET-OFF.
1. The statute of March 3, 1797, which allows set-offs, has for its object the settlement between the parties of their mutual accounts or debts. But wrongs or torts done, and any unliquidated damages claimed, have never been permitted as a set-off. *United States* v. *Buchanan*, 83.

STATUTES.
Construction of, and distinction between private and public, see CHANCERY, 29–35.
1. In the year 1819, the Legislature of Illinois authorized Samuel Wiggins, his heirs and assigns, to establish a ferry on the east bank of the River Mississippi, near the town of Illinois, and to run the same from lands "that may belong to him," provided the ferry should be put into actual operation within eighteen months. *Mills* v. *St. Clair County*, 569.
2. At this time he had no land, but within the eighteen months acquired an interest in a tract of one hundred acres. *Ib.*
3. In 1821, another act was passed, authorizing him to remove the ferry "on any land that may belong to him" on the said Mississippi River, under the same privileges as were prescribed by the former act. *Ib.*
4. The words of this act, "on any land that may belong to him," must be construed to apply to the lands which then belonged to him, and not to such as he obtained after the passage of the act, viz., in 1822. *Ib.*
5. The following rules for construing statutes applied to the case, viz.:—
First,—That in a grant, designed by the sovereign power making it to be a general benefit and accommodation to the public, if the meaning of the words be doubtful, they shall be taken most strongly against the grantee and for the government; and therefore should not be extended by implication in favor of the grantee beyond the natural and obvious meaning of the words employed; and if these do not support the right claimed, it must fall.
Secondly,—If the grant admits of two interpretations, one of which is more extended, and the other more restricted, so that a choice is fairly open, and either may be adopted without any apparent violation of the apparent objects of the grant, if in such case one interpretation would render the grant inoperative and the other would give it force and effect, the latter, if within a reasonable construction of the terms employed, should be adopted. *Ib.*

TAXES.
See CONSTITUTIONAL LAW, 1–4; 15, 16.

TRUST DEEDS.
1. A merchant who owed debts upon his own private account, and was also a partner in two commercial houses which owed debts upon partnership account, executed a deed of trust containing the following provisions, viz.:—It recited a relinquishment of dower by his wife in property previously sold and in the property then conveyed, and also a debt due to the daughter of the grantor, which was still unpaid, and then proceeded to declare that he was indebted to divers other persons residing in different parts of the United States, the names of whom he was then unable to specify particularly, and that the trustee should remit from time to time to Alexander Neill, of the first moneys arising from sales, until he shall have remitted the sum of $15,000, to be paid by the said Neill to the creditors of the said grantor, whose demands shall then have been ascertained; and if such demands shall exceed the sum of $15,000, then to be divided amongst such creditors *pari passu:* and out of further remittances there was to be paid the sum of $12,000 to his wife as a compensation for her relinquishment of dower, and next the debt due to his daughter, and after that the moneys arising from further sales were to be applied to the payment of all the creditors of the grantor whose demands shall then have been ascertained. In case of a surplus, it was to revert to the grantor. *Murrill* v. *Neill*, 414.
2. The construction of this deed must be, that the grantor intended to pro-

TRUST DEEDS—(*Continued.*)
vide for his private creditors only out of this fund, leaving the partnership creditors to be paid out of the partnership funds. *Ib.*
3. Under the deed, it was the duty of the trustee to divide the first $15,000 amongst the private creditors of the grantor, and exclude from all participation therein the creditors of the two commercial houses with which the grantor was connected; next to pay the debts due to the wife and daughter; then to pay in full the private creditors, or divide the amount amongst them, proportionally. *Ib.*
WILLS.
1. Where a testator made certain devises to his two grandchildren, "provided, and the legacies herein before devised are upon this special condition, that, if both my said grandchildren shall happen to die under age and without any lawful issue, then it is my will that three fourth-parts shall be equally divided between Sarah Smallwood and others," &c., and the two grandchildren lived many years after they arrived at full age, and then both died without issue, the devise over to Sarah Smallwood, &c., never took effect, because the two grandchildren both arrived at full age. *Doe* v. *Watson*, 263.
2. The plaintiffs below having claimed the whole as the heirs of Sarah Smallwood, the court instructed the jury that they could not recover. But the plaintiffs below claimed, in this court, that they were entitled to recover a part, because they were a portion of the heirs of the two grandchildren. This point was not made in the court below, and therefore cannot be made here. *Ib.*
3. The Supreme Court of Pennsylvania decided, with regard to this very will, that the devise over to Sarah Smallwood never took effect. This decision was made in 1795, and the acquiescence of half a century would seem to close all litigation under the will. But even if it did not, this court is of the same opinion. *Ib.*