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TO THE

MATTERS CONTAINED IN THIS VOLUME.

The references are to the STAR (*) pages.

ALABAMA.

1. By the admission of the State of Alabama into the Union, that State became invested with the sovereignty and dominion over the shores of navigable rivers between high and low water mark. Consequently, after such admission, Congress could make no grant of land thus situated. *Goodtitle* v. *Kibbe*, 471.

APPEAL AND ERROR.

1. Where the defendant pleaded his discharge under the Bankrupt Act of 1841 passed by Congress, and the plea was allowed, the plaintiff cannot bring the case to this court to be reviewed, under the twenty-fifth section of the Judiciary Act. *Strader* v. *Baldwin*, 261.
2. The defendant pleaded a privilege or exemption under a statute of the United States, and the decision was in favor of it. *Ib.*
3. The case, must, therefore, be dismissed, for want of jurisdiction. *Ib.*
4. No exception can be taken in this court which was not moved below, or which does not appear in some way on the record below. *Barrow* v. *Reab*, 366.
5. Where land was sold under an execution, and the money arising therefrom about to be distributed amongst creditors by an order of the Circuit Court, a controversy between the creditors as to the priority of their respective judgments cannot be brought to this court, either by appeal or writ of error. *Bayard* v. *Lombard*, 530.
6. Although the State in which the judgment was given allowed appeals, by statute, in similar cases arising in the courts of the State, yet it does not follow from the adoption of the forms of process in execution that the courts of the United States adopted the modes of reviewing the decisions of inferior courts. *Ib.*
7. An appeal to this court is given in chancery cases alone. *Ib.*
8. Nor is the case a proper one for a writ of error. Such a writ cannot be sued out by persons who are not parties to the record, in a matter arising after execution, by strangers to the judgment and proceedings, and where the error assigned is in an order of the court disposing of certain funds in their possession accidently connected with the record. *Ib.*
9. The creditors should have filed their bill in equity, or stated an issue in due legal form, with proper parties, setting forth the merits of their respective claims, in order to lay the foundation for an appeal or writ of error to this court. *Ib.*
10. The Judiciary Act of 1789 made no provision for the revision, by this court, of judgments of the Circuit or District Courts in criminal cases; and the act of 1802 (2 Stat. at L., 156) only embraced cases in which the opinions of the judges were opposed in criminal cases. There is, therefore, no general law giving appellate jurisdiction to this court in such cases. *Forsyth* v. *United States*, 571.
11. But the act of Congress passed on the 22d of February, 1847 (Sess. Laws, 1847, ch. 17) providing that certain cases might be brought up from

APPEAL AND ERROR—(*Continued.*)
the Territorial courts of Florida to this court, included all cases, whether of civil or criminal jurisdiction. *Ib.*
12. Under this act, this court can revise a judgment of the Superior Court of the District of West Florida in a criminal case, which originated in October, 1845, and was transferred to the District Court of the United States for the Northern District of Florida. *Ib.*
13. Proceeding, therefore, to revise the judgment, this court decides that the jurisdiction of the Territorial courts, of which the Superior Court was one, ceased on the erection of the Territory into a State, on the 3d of March, 1845. The proceedings before the court in which the indictment was found were, consequently, *coram non judice,* and void. *Ib.*
14. In the case of *Forsyth* v. *The United States,* this court decided that the act of Congress passed on the 22d of February, 1847 (Sess. Laws, 1847, ch. 17), gave jurisdiction to this court to review certain classes of cases brought up from the Territorial courts of Florida. *Cotton* v. *United States,* 579.
15. A motion to dismiss one of these cases, for want of jurisdiction, must be denied. *Ib.*
16. Where no citation had been issued or served upon the defendant in error, the cause must be dismissed on motion. *Hogan* v. *Ross,* 602.

ASSIGNMENT.
1. The laws of Alabama place sealed instruments, commonly called single bills, upon the footing of promissory notes, by allowing the defendant to impeach or go into their consideration; and also permit their assignment, so that the assignee can sue in his own name. But in such suit, the defendant shall be allowed the benefit of all payments, discounts, and set-offs, made, had, or possessed against the same, previous to notice of the assignment. *Withers* v. *Greene,* 213.
2. The construction of this latter clause is, that where an assignee sues, the defendant is not limited to showing payments or set-offs made before notice of the assignment, but may also prove a total or partial failure of the consideration for which the writing was executed. *Ib.*
3. Proof of a partial failure of the consideration may be given in evidence in mitigation of damages. *Ib.*
4. The English and American cases upon this point examined, showing a relaxation of the old rule, and allowing a defendant to obtain justice in this way, instead of driving him to a cross action for damages. *Ib.*
5. Thus, where the obligor of a single bill was sued by an assignee, and pleaded that the bill was given for the purchase of horses which were not as sound nor of as high a pedigree as had been represented by the seller, such a plea was admissible. *Ib.*
6. It is not a sufficient objection to the plea, that it omits a disclaimer of the contract, and a proffer to return the property. If the defendant looked only to a mitigation of damages, he was not bound to do either, and therefore was not bound to make such an averment in his plea. *Ib.*
7. Nor is it a sufficient objection to the plea, that it avers that the obligation was obtained from him by fraudulent representations, or that it concludes with a general prayer for judgment. Pleas in bar are not to receive a narrow and merely technical construction, but are to be construed according to their entire subject-matter. *Ib.*
8. In this respect there is a difference between pleas in bar and pleas in abatement. *Ib.*

BILLS OF EXCHANGE AND PROMISSORY NOTES.
1. The laws of Alabama place sealed instruments, commonly called single bills, upon the footing of promissory notes, by allowing the defendant to impeach or go into their consideration; and also permit their assignment, so that the assignee can sue in his own name. But in such suit, the defendant shall be allowed the benefit of all payments, discounts, and set-offs, made, had, or possessed against the same, previous to notice of the assignment. *Withers* v. *Greene,* 213.

BILLS OF EXCHANGE AND PROMISSORY NOTES—(*Continued.*)

2. The construction of this latter clause is, that where an assignee sues, the defendant is not limited to showing payments or set-offs made before notice of the assignment, but may also prove a total or partial failure of the consideration for which the writing was executed. *Ib.*
3. Proof of a partial failure of the consideration may be given in evidence in mitigation of damages. *Ib.*
4. The English and American cases upon this point examined, showing a relaxation of the old rule, and allowing a defendant to obtain justice in this way, instead of driving him to a cross action for damages. *Ib.*
5. Where promissory notes were executed in Louisiana, but made payable in Mississippi, and indorsed in Mississippi, and the indorsee sues in Louisiana, the law of Mississippi, and not that of Louisiana, must be the law of the case. *Brabston* v. *Gibson*, 263.
6. By the law of Mississippi, where the indorsee sues the maker, the "defendant shall be allowed the benefit of all want of lawful consideration, failure of consideration, payments, discounts, and set-offs, made, had, or possessed against the same, previous to notice of the assignment." *Ib.*
7. Where the notes were originally given for the purchase of a plantation, which plantation was afterwards reclaimed by the vendor (under the laws of Louisiana and the deed), and, in the deed of reconveyance made in consequence of such reclamation, the plantation remained bound for the payment of these notes, these facts do not show a "want of lawful consideration, failure of consideration, payment, discount, nor set-off," and consequently furnish no defence for the maker when sued by the indorsee. *Ib.*
8. The fact, that the notes were indorsed "*Ne varietur*" by the notary, did not destroy the negotiability of the notes. *Ib.*
9. In an action upon a bill of exchange brought by the holder, residing in Alexandria, against the indorser, a physician residing in Maryland, the bill upon its face not being dated at any particular place, it was sufficient proof of due diligence to ascertain the residence of the indorser before sending him notice of the dishonor of the bill, that the holder inquired from those persons who were most likely to know where the residence of the indorser was. *Lambert et al.* v. *Ghiselin*, 552.
10. Where a notice is sent, after the exercise of due diligence, a right of action immediately accrues to the holder, and subsequent information as to the true residence of the indorser does not render it necessary for the holder to send him another notice. *Ib.*

BOUNDARIES.

1. State courts have a right to decide upon the true running of lines of tracts of land, and this court has no authority to review those decisions under the twenty-fifth section of the Judiciary Act. *Almonester* v. *Kenton*, 1.
2. Where the decision was that the true lines of the litigants did not conflict with each other, but the losing party alleged that her adversary's title was void under the correct interpretation of an act of Congress, this circumstance did not bring the case within the jurisdiction of this court. *Ib.*
3. Nor is the jurisdiction aided because the State court issued a perpetual injunction upon the losing party. This was a mere incident to the decree, and arose from the mode of practice in Louisiana, where titles are often quieted in that way. *Ib.*

CANALS.

1. The Chesapeake and Delaware Canal Company have no right under their charter to demand toll from passengers who pass through the canal, or from vessels on account of the passengers on board. *Perrine* v. *Chesapeake and Delaware Canal Co.*, 172.
2. The articles upon which the company is authorized to take toll are particularly enumerated, and the amount specified. The toll is imposed on commodities on board of a vessel passing through the canal. *Ib.*

CANALS—(*Continued.*)

3. No toll is given on the vessels themselves, except only when they have no commodities on board, or not sufficient to yield a toll of four dollars. Passengers are not mentioned in the enumeration, nor is any toll given upon a vessel on account of the persons or passengers it may have on board. *Ib.*
4. A corporation created by statute is a mere creature of the law, and can exercise no powers except those which the law confers upon it. The canal company is not the absolute owner of the works, but holds the property only for the purposes for which it was created. It has not, therefore, the same unlimited control over it which an individual has over his property. *Ib.*
5. Nor has the company a right to refuse permission for passengers to pass through the canal. On the contrary, any one has a right to navigate the canal for the transportation of passengers with passenger boats, without paying any toll on the passengers on board, upon his paying or offering to pay the toll prescribed by law upon the commodities on board, or the toll prescribed by law on a vessel or boat when it is empty of commodities. *Ib.*

CHANCERY.

See LANDS, PUBLIC.

1. Where a right to a public highway is alleged to be violated, and a remedy is sought through an injunction, it is not issued, either at the instance of a public officer or private individual, unless there is danger of great, continued, and irreparable injury; and not issued at the instance of an individual, claiming under such public right, unless he has suffered some private, direct, and material damage beyond the public at large. *Irwin* v. *Dixion et al.*, 10.
2. Where the remedy by injunction is sought for an injury to an individual, and not public right, it is necessary also that the right to raise the obstruction should not be in controversy, or have been settled at law. Otherwise, an injunction is not the appropriate remedy. Until the rights of the parties are settled by a trial at law, a temporary injunction only is issued to prevent an irremediable injury. *Ib.*
3. The principles examined which constitute a dedication of land to public uses. *Ib.*
4. This court having sent a mandate to a Circuit Court to put a party into possession of certain lands which were the subject of an ejectment suit, it was right in the Circuit Court not to extend the possession further than the land originally recovered in ejectment, although other lands were afterwards drawn into the controversy. *Walden et al.* v. *Bodley's Heirs et al.*, 34.
5. Where a defendant in ejectment aliens the property in dispute whilst the proceedings are pending, a possession by the vendee will not justify a plea of the statute of limitations. This court having issued an order, after the expiration of the demise, that the Circuit Court should place the plaintiff in possession, such an order proceeded on principles governing a court of equity, and the Circuit Court was bound to conform to it. *Ib.*
6. The statute of 43d Elizabeth, respecting charitable uses, having been repealed in Virginia, the courts of chancery have no jurisdiction to decree charities where the objects are indefinite and uncertain. *Wheeler* v. *Smith et al.*, 55.
7. Therefore, where a bequest was made to trustees for such purposes as they considered might promise to be most beneficial to the town and trade of Alexandria, such bequest was void. *Ib.*
8. Where there were joint and several bonds given for duties, and the United States had recovered a joint judgment against all the obligors, and then the surety died, it was not allowable for the United States to proceed in equity against the executor of the deceased surety for the purpose of holding the assets responsible. *United States* v. *Price*, 83.
9. The rule formerly, with regard to the enforcement of marriage articles

CHANCERY—(*Continued.*)
which created executory trusts, was this; namely, that chancery would interfere only in favor of one of the parties to the instrument or the issue, or one claiming through them; and not in favor of remote heirs or strangers, though included within the scope of the provisions of the articles. They were regarded as volunteers. *Neves et al.* v. *Scott et al.*, 196.

10. But this rule has in modern times been much relaxed, and may now be stated thus: that if, from the circumstances under which the marriage articles were entered into by the parties, or as collected from the face of the instrument itself, it appears to have been intended that the collateral relatives, in a given event, should take the estate, and a proper limitation to that effect is contained in them, a court of equity will enforce the trust for their benefit. *Ib.*
11. The following articles show an intention by the parties to include the collateral relatives:—
"Articles of agreement made and entered into this 17th day of February, in the year 1810, between John Neves and Catharine Jewell, widow and relict of the late Thomas Jewell, (deceased,) all of the State and county aforesaid, are as follows, viz.:—
"Whereas a marriage is shortly to be had and solemnized between the said John Neves and the said Catharine Jewell, widow, as aforesaid, are as follows, to wit:—that all property, both real and personal, which is now, or may hereafter become, the right of the said John and Catharine, shall remain in common between them, the said husband and wife, during their natural lives, and should the said Catharine become the longest liver, the property to continue hers so long as she shall live, and at her death the estate to be divided between the heirs of her, said Catharine, and the heirs of the said John, share and share alike, agreeable to the distribution laws of this State made and provided. And, on the other hand, should the said John become the longest liver, the property to remain in the manner and form as above." *Ib.*
12. Moreover, these articles are an executed trust, not contemplating any future act, but intended as a final and complete settlement. *Ib.*
13. Property acquired by either party after the marriage must follow the same direction which is given by the settlement to property held before the marriage, if there is a clause to that effect in the same. *Ib.*
14. The laws of Mississippi limit the liability of the sureties in the official bond of a sheriff to the amount of the penalty. *Humphreys* v. *Leggett et al.*, 297.
15. Where a surety had been compelled to pay the whole amount of his bond before a third party recovered judgment, the surety ought to have been relieved against an execution by this third party. *Ib.*
16. Not having been allowed to plead *puis darrein continuance*, and protect himself in this way by showing that he had paid the full amount of his bond, the surety ought to have been relieved in equity where he had filed a bill for relief. *Ib.*
17. The chancery act of Ohio of 1824 confers on the Court of Common Pleas general chancery powers. The twelfth section gives jurisdiction over the rights of absent defendants, on the publication of notice, "in all cases properly cognizable in courts of equity, where either the title to, or boundaries of, land may come in question, or where a suit in chancery becomes necessary in order to obtain the rescission of a contract for the conveyance of land, or to compel the specific execution of such contract." *Boswell's Lessee* v. *Otis et al.*, 336.
18. A bill being filed to compel the specific execution of a contract relating to land, where the defendants were out of the State, the court passed a money decree, and ordered the sale of other lands than those mentioned in the bill. *Ib.*
19. This decree was void, and no title passed to the purchaser at the sale ordered by the decree. *Ib.*
20. The act did not authorize such an act of general jurisdiction. A special jurisdiction only was given *in rem*. *Ib.*

CHANCERY—(*Continued.*)

21. Jurisdiction is acquired in one of two modes,—first, as against the person of the defendant, by the service of process, or secondly, by a procedure against the property of the defendant within the jurisdiction of the court. In the latter case, the defendant is not personally bound by the judgment, beyond the property in question. *Ib.*
22. Whilst an ejectment suit was pending to try the legal title to a tract of land in Mississippi, the defendants filed a bill on the equity side of the court, praying for a perpetual injunction, upon the ground that the plaintiffs had obtained a patent from the United States by fraud and misrepresentation. *Gaines et al.* v. *Nicholson et al.*, 356.
23. But the fraud is not established by the evidence, and therefore the bill must be dismissed, and the parties remitted to the trial at law. *Ib.*
24. Where the United States, as indorsees of a promissory note, recovered judgment against the makers thereof, who thereupon filed a bill upon the equity side of the court, and obtained an injunction to stay proceedings, this injunction was improvidently allowed. *Hill et al.* v. *United States et al.*, 386.
25. The United States were made directly parties defendants; process was prayed immediately against them, and they were called upon to answer the several allegations in the bill. *Ib.*
26. This course of proceeding falls within the principle that the government is not liable to be sued, except by its own consent, given by law. *Ib.*
27. The bill must therefore be dismissed. *Ib.*
28. A court of equity, having obtained jurisdiction to enforce a specific performance of the contract by compelling the company to issue a policy, can proceed to give such final relief as the circumstances of the case demand. *Tayloe* v. *Merchants' Fire Insurance Company of Baltimore*, 390.
29. A prayer for general relief in this case covers and includes a prayer for specific performance. *Ib.*
30. Certificates were issued by the Treasury Department, under a treaty with Mexico, which were payable to a claimant or his assigns upon presentation at the Department. *Baldwin* v. *Ely*, 580.
31. These certificates being legally assignable under an act of Congress, an indorsement in blank by the original payee was always considered sufficient evidence of title in the holder to enable him to receive the amount of the certificate when presented to the Treasury Department for payment. *Ib.*
32. The possession of them with a blank indorsement is *primâ facie* evidence of ownership. *Ib.*
33. Where a complainant in chancery alleged that they had been purloined from him, and the defendant alleged that he had received them from a third person in the regular course of business, the claim of the complainant, who furnished no proof that they had been purloined, to have them restored to him unconditionally, could not be maintained. *Ib.*
34. The bill was one of discovery, and the defendant, in his answer, alleged that he had received them from the third person as security for money loaned. *Ib.*
35. The complainant was entitled to have them restored to him upon his refunding to the holder the amount of the loan for which they had been deposited as security. It was error, therefore, in the court below to dismiss his bill. *Ib.*
36. But as the complainant did not offer to redeem the certificates, but insisted upon their unconditional restoration, the defendant below is entitled to costs in the Circuit Court. But the plaintiff below, who was the appellant here, is entitled to his costs in this court. *Ib.*

CHARITIES.

1. The statute of the 43d Elizabeth, respecting charitable uses, having been repealed in Virginia, the courts of chancery have no jurisdiction to decree charities where the objects are indefinite and uncertain. *Wheeler* v. *Smith*, 55.
2. Therefore, where a bequest was made to trustees for such purposes as they

CHARITIES—(*Continued.*)
considered might promise to be most beneficial to the town and trade of Alexandria such bequest was void. *Ib.*

COMMERCIAL LAW.

1. An act of Congress passed on the 28th of February, 1803 (2 Stat. at L., 203), declares that "it shall be the duty of every master or commander of a ship or vessel belonging to citizens of the United States, on his arrival at a foreign port, to deposit his register, sea-letter, and Mediterranean passport with the consul, commercial agent, or vice commercial agent, if any there be, at such port. In case of refusal or neglect of the said master or commander to deposit the papers aforesaid, he shall forfeit and pay $500." *Harrison* v. *Vose*, 372.
2. The arrival here spoken of means an arrival for purposes of business, requiring an entry and clearance and stay at the port so long as to require some of the acts connected with business; and not merely touching at a port for advices, or to ascertain the state of the market, or being driven in by an adverse wind and sailing again as soon as it changes. *Ib.*
3. Therefore, when a vessel arrived at the harbour of Kingston, Jamaica, and came to anchor at about a quarter of a mile from the town, but did not go up to the town, nor come to an entry, nor discharge any part of her cargo, nor take in passengers or cargo at Kingston, nor do any business except to communicate with the consignees, by whom the master was informed that his cargo was sold, deliverable at Savannah la Mar, the master was not liable to the penalty for omitting to deliver his papers to the consul. *Ib.*

CONFLICT OF LAWS.

1. Where promissory notes were executed in Louisiana, but made payable in Mississippi, and indorsed in Mississippi, and the indorsee sues in Louisiana, the law of Mississippi, and not that of Louisiana, must be the law of the case. *Brabston* v. *Gibson*, 263.
2. By the law of Mississippi, where the indorsee sues the maker, the "defendant shall be allowed the benefit of all want of lawful consideration, failure of consideration, payments, discounts, and set-offs, made, had, or possessed against the same, previous to notice of the assignment." *Ib.*
3. Where the notes were originally given for the purchase of a plantation, which plantation was afterwards reclaimed by the vendor (under the laws of Louisiana and the deed), and, in the deed of reconveyance made in consequence of such reclamation, the plantation remained bound for the payment of these notes, these facts do not show a "want of lawful consideration, failure of consideration, payment, discount, nor set-off," and consequently furnish no defence for the maker when sued by the indorsee. *Ib.*
4. The fact, that the notes were indorsed "*Ne varietur*" by the notary, did not destroy the negotiability of the notes. *Ib.*

CONSTITUTIONAL LAW.

1. On the 3d of March, 1825, Congress passed an act (4 Stat. at Large, 121) providing for the punishment of persons who shall bring into the United States, with intent to pass, any false, forged, or counterfeited coin; and also for the punishment of persons who shall pass, utter, publish, or sell any such false, forged, or counterfeited coin. *United States* v. *Marigold*, 560.
2. Congress had the constitutional power to pass this law. Under the power to regulate commerce, Congress can exclude, either partially or wholly, any subject falling within the legitimate sphere of commercial regulation; and under the power to coin money and regulate the value thereof, Congress can protect the creature and object of that power. *Ib.*
3. The doctrines asserted by this court in the case of *Fox* v. *The State of Ohio* (5 Howard, 433) are not inconsistent with that now maintained. *Ib.*
4. A State has power to regulate the remedies by which contracts and judgments are sought to be enforced in its courts of justice, unless its regulations are controlled by the Constitution of the United States, or by

CONSTITUTIONAL LAW—(*Continued.*)
laws enacted under its authority. *Bank of the State of Alabama* v. *Dalton*, 522.
5. Therefore, where a State passed a law declaring that all judgments which had been obtained in any other State prior to the passage of the law should be barred unless suit was brought upon the judgment within two years after the passage of the act, this law was within the power of the State, and not inconsistent with the Constitution of the United States or any act of Congress. *Ib.*
6. And this was true, although the person against whom the judgment was given became a citizen of the said State upon the very day on which he was sued. The Legislature made no exception, and courts can make none. *Ib.*

CONTRACTS.
1. The obligations of a contract upon the parties to it, except in well-known cases, are to be expounded by the *lex loci contractus;* but suits brought to enforce contracts, either in the State where they were made or in the courts of other States, are subject to the remedies of the forum in which the suit is, including that of statutes of limitation. *Townsend* v. *Jemison*, 407.
2. The cases of *Leroy* v. *Crowninshield*, 2 Mason, 351, and *McElmoyle* v. *Cohen*, 13 Peters, 312, examined and commented on. *Ib.*
3. Where there was a correspondence relating to the insurance of a house against fire, the insurance company making known the terms upon which they were willing to insure, the contract was complete when the insured placed a letter in the post-office accepting the terms. *Tayloe* v. *Merchants' Fire Insurance Company of Baltimore*, 390.
4. The house having been burned down whilst the letter of acceptance was in progress by the mail, the company were held responsible. *Ib.*
5. On the acceptance of the terms proposed, transmitted by due course of mail to the company, the minds of both parties have met on the subject, in the mode contemplated at the time of entering upon the negotiation, and the contract becomes complete. *Ib.*

CORPORATION.
1. The Chesapeake and Delaware Canal Company have no right under their charter to demand toll from passengers who pass through the canal, or from vessels on account of the passengers on board. *Perrine* v. *Chesapeake and Delaware Canal Company*, 172.
2. The articles upon which the company is authorized to take toll are particularly enumerated, and the amount specified. The toll is imposed on commodities on board of a vessel passing through the canal. *Ib.*
3. No toll is given on the vessels themselves, except only when they have no commodities on board, or not sufficient to yield a toll of four dollars. Passengers are not mentioned in the enumeration, nor is any toll given upon a vessel on account of the persons or passengers it may have on board. *Ib.*
4. A corporation created by statute is a mere creature of the law, and can exercise no powers except those which the law confers upon it. The canal company is not the absolute owner of the works, but holds the property only for the purposes for which it was created. It has not, therefore, the same unlimited control over it which an individual has over his property. *Ib.*
5. Nor has the company a right to refuse permission for passengers to pass through the canal. On the contrary, any one has a right to navigate the canal for the transportation of passengers with passenger boats, without paying any toll on the passengers on board, upon his paying or offering to pay the toll prescribed by law upon the commodities on board, or the toll prescribed by law on a vessel or boat when it is empty of commodities. *Ib.*
6. Under the earlier charters of the city of Washington, this court decided (8 Wheaton, 687), that, where an individual owned several lots which were put up for sale for taxes, the corporation had no right to sell more

CORPORATION—(*Continued.*)
than one, provided that one sold for enough to pay the taxes on all. *Mason et al.* v. *Fearson*, 248.
7. In 1824, Congress passed an act, providing, "That it shall be lawful for the said corporation, when there shall be a number of lots assessed to the same person or persons, to sell one or more of such lots for the taxes and expenses due on the whole; and also to provide for the sale of any part of a lot for the taxes and expenses due on said lot, or other lots assessed to the same person, as may appear expedient, according to such rules and regulations as the corporation may prescribe." *Ib.*
8. This is not in conflict with the previous decision of this court. The discretion given to the corporation is not unlimited to sell each lot for its own taxes. On the contrary, the words "it shall be lawful" and "may" sell one lot, impose an obligation to stop selling if that one lot produces enough to pay the taxes on all. *Ib.*
9. What a public corporation or officer is empowered to do for others, and it is beneficial to them to have done, the law holds he ought to do. *Ib.*

COUNTERFEITING.
1. On the 3d of March, 1825, Congress passed an act (4 Stat. at L., 121) providing for the punishment of persons who shall bring into the United States, with intent to pass, any false, forged, or counterfeited coin; and also for the punishment of persons who shall pass, utter, publish, or sell any such false, forged, or counterfeited coin. *United States* v. *Marigold*, 560.
2. Congress had the constitutional power to pass this law. Under the power to regulate commerce, Congress can exclude, either partially or wholly, any subject falling within the legitimate sphere of commercial regulation; and under the power to coin money and regulate the value thereof, Congress can protect the creature and object of that power. *Ib.*
3. The doctrines asserted by this court in the case of *Fox* v. *The State of Ohio* (5 How., 433) are not inconsistent with that now maintained. *Ib.*

CUSTOMS.
See DUTIES.

CUTTING TIMBER ON THE PUBLIC LANDS.
1. On the 2d of March, 1831, Congress passed an act (4 Stat. at L., 472), entitled "An act to provide for the punishment of offences committed in cutting, destroying, or removing live-oak or other timber or trees, reserved for naval purposes." *United States* v. *Briggs*, 351.
2. The act itself declares, that every person who shall remove, &c., any live-oak or red-cedar trees, or other timber, from any other lands of the United States, shall be punished by fine and imprisonment. *Ib.*
3. The title of the act would indicate that timber reserved for naval purposes was meant to be protected by this mode, and none other. But the enacting clause is general, and therefore cutting and using of oak and hickory, or any other description of timber trees from the public lands, is indictable, and punishable by fine and imprisonment. *Ib.*

DEVISE.
1. The statute of 43d Elizabeth, respecting charitable uses, having been repealed in Virginia, the courts of chancery have no jurisdiction to decree charities where the objects are indefinite and uncertain. *Wheeler* v. *Smith et al.*, 55.
2. Therefore, where a bequest was made to trustees for such purposes as they considered might promise to be most beneficial to the town and trade of Alexandria, such bequest was void. *Ib.*

DUTIES.
1. Where there were joint and several bonds given for duties, and the United States had recovered a joint judgment against all the obligors, and then the surety died, it was not allowable for the United States to proceed in equity against the executor of the deceased surety for the purpose of holding the assets responsible. *United States* v. *Price*, 83.
2. During the war between the United States and Mexico, the port of Tampico, in the Mexican State of Tamaulipas, was conquered, and pos-

DUTIES—(*Continued.*)
session of it held by the military authorities of the United States, acting under the orders of the President. *Fleming et al.* v. *Page*, 603.
3. The President acted as a military commander prosecuting a war waged against a public enemy by the authority of his government, and the conquered country was held in possession in order to distress and harass the enemy. *Ib.*
4. It did not thereby become a part of the Union. The boundaries of the United States were not extended by the conquest. *Ib.*
5. Tampico was, therefore, a foreign port, within the meaning of the act of Congress passed on the 30th of July, 1846, and duties were properly levied upon goods imported into the United States from Tampico. *Ib.*
6. The administrative departments of the government have never recognized a place in a newly acquired country as a domestic port, from which the coasting trade might be carried on, unless it had been previously made so by an act of Congress; and the principle thus adopted has always been sanctioned by the Circuit Courts of the United States, and by this court. *Ib.*
7. By the eleventh section of the act of Congress passed on the 30th of July, 1846 (Stat. at L., Pamphlet, page 46), the duties upon imported sugar are fixed at thirty per cent. *ad valorem*. *Marriott* v. *Brune et al.*, 619.
8. The true construction of this law is, that the duty should be charged only upon that quantity of sugar and molasses which arrives in our ports, and not upon the quantity which appears by the invoice to have been shipped; an allowance being proper for leakage. *Ib.*
9. The proviso in the eighth section, viz., "that under no circumstance shall the duty be assessed upon an amount less than the invoice value," is not in hostility with the above construction, because the proviso refers only to the price, and not to the quantity. *Ib.*
10. A protest made after the payment of the duties charged, and after the case had been closed up, will not enable a party to recover back the money from the collector; but if the protest be made in a single case, with a design to include subsequent cases, and the money remains in the hands of the collector without being paid into the treasury, and it was so understood by all parties, such a protest will entitle the importer to recover the money from the collector. *Ib.*
11. The decision in the preceding case of *Marriott* v. *Brune* affirmed. *United States* v. *Southmayd et al.*, 637.
12. The fact, that the seller of sugars abroad takes into consideration the probable loss from drainage, does not justify the collector in our ports in charging a duty upon the portion thus lost. The duty must be assessed upon what arrives in this country, and not upon what was purchased abroad. *Ib.*

EJECTMENT.
1. This court having sent a mandate to a Circuit Court to put a party into possession of certain lands which were the subject of an ejectment suit, it was right in the Circuit Court not to extend the possession further than the land originally recovered in ejectment, although other lands were afterwards drawn into the controversy. *Walden* v. *Bodley's Heirs*, 34.
2. Where a defendant in ejectment aliens the property in dispute whilst the proceedings are pending, a possession by the vendee will not justify a plea of the statute of limitations. This court having issued an order, after the expiration of the demise, that the Circuit Court should place the plaintiff in possession, such an order proceeded on principles governing a court of equity, and the Circuit Court was bound to conform to it. *Ib.*

EQUITY.
See CHANCERY.

EVIDENCE.
1. Proof of a partial failure of the consideration may be given in evidence in mitigation of damages. *Withers* v. *Greene*, 213.

EVIDENCE—(*Continued.*)
2. The English and American cases upon this point examined, showing a relaxation of the old rule, and allowing a defendant to obtain justice in this way, instead of driving him to a cross action for damages. *Ib.*
3. The rule of evidence, as stated by Tindal, Chief Justice, in the case of *Miller* v. *Travers* (8 Bing., 244), sanctioned by this court, viz.:—"In all cases where a difficulty arises in applying the words of a will or deed to the subject-matter of the devise or grant, the difficulty or ambiguity which is introduced by the admission of extrinsic evidence may be rebutted or removed by the production of further evidence upon the same subject calculated to explain what was the estate or subject-matter really intended to be granted or devised." *Atkinson's Lessee* v. *Cummins*, 479.
4. Therefore, where the sheriff sold a tract of land under a *fieri facias*, and made a deed of it to the purchaser, and it appeared afterwards that the debtor had two tracts near to, but separated from, each other, and the sheriff's deed described one tract accurately except that it called to bound upon two parcels of land which were actually contiguous to the other tract, and the purchaser took possession of that to which the description was mainly applicable, and retained possession for nearly twenty years, parol evidence was admissible to show that the levy and sale applied to one tract only, and not both. *Ib.*

FLORIDA.
1. Whilst Florida was a Territory, Congress established courts there, in which cases appropriate to Federal and State jurisdictions were tried indiscriminately. *Benner* v. *Porter*, 235.
2. Florida was admitted into the Union as a State, on the 3d of March, 1845. *Ib.*
3. The constitution of the State provided, that all officers, civil and military, then holding their offices under the authority of the United States, should continue to hold them until superseded under the State constitution. *Ib.*
4. But this article did not continue the existence of courts which had been created, as part of the Territorial government, by Congress. *Ib.*
5. In 1845, the Legislature of the State passed an act for the transfer from the Territorial to the State courts of all cases except those cognizable by the Federal courts; and, in 1847, Congress provided for the transfer of these to the Federal courts. *Ib.*
6. Therefore, where the Territorial court took cognizance, in 1846, of a case of libel, it acted without any jurisdiction. *Ib.*

FRAUDULENT CONVEYANCES.
1. Where the heir at law, who was young, needy, and hurried, executed a release, in consideration of a sum of money, to the executors, who were men of high character, and who assured the heir that the bequest was considered to be good, such release was held to be invalid. *Wheeler* v. *Smith*, 55.

INJUNCTION.
1. Where a right to a public highway is alleged to be violated, and a remedy is sought through an injunction, it is not issued, either at the instance of a public officer or private individual, unless there is danger of great, continued, and irreparable injury; and not issued at the instance of an individual, claiming under such public right, unless he has suffered some private, direct, and material damage beyond the public at large. *Irwin* v. *Dixion*, 10.
2. Where the remedy by injunction is sought for an injury to an individual, and not public right, it is necessary also that the right to raise the obstruction should not be in controversy, or have been settled at law. Otherwise, an injunction is not the appropriate remedy. Until the rights of the parties are settled by a trial at law, a temporary injunction only is issued to prevent an irremediable injury. *Ib.*
3. Where the United States, as indorsees of a promissory note, recovered judgment against the makers thereof, who thereupon filed a bill upon

INJUNCTION—(*Continued.*)
the equity side of the court, and obtained an injunction to stay proceedings, this injunction was improvidently allowed. The United States were made directly parties defendants; process was prayed immediately against them, and they were called upon to answer the several allegations in the bill. This course of proceeding falls within the principle that the government is not liable to be sued, except by its own consent, given by law. The bill must therefore be dismissed. *Hill* v. *United States*, 386.

INSURANCE.
1. Where there was a correspondence relating to the insurance of a house against fire, the insurance company making known the terms upon which they were willing to insure, the contract was complete when the insured placed a letter in the post-office accepting the terms. *Tayloe* v. *Merchants' Fire Insurance Company of Baltimore*, 390.
2. The house having been burned down whilst the letter of aceptance was in progress by the mail, the company were held responsible. *Ib.*
3. On the acceptance of the terms proposed, transmitted by due course of mail to the company, the minds of both parties have met on the subject, in the mode contemplated at the time of entering upon the negotiation, and the contract becomes complete. *Ib.*
4. The practice of this company was to date a policy from the time when the acceptance was made known to their agent. *Ib.*
5. The agent of the company having instructed the applicant to "send him his check for the premium, and the business was done," the transmission of the check by mail was a sufficient payment of the premium within the terms of the policy. *Ib.*
6. One of the conditions annexed to the policy was, that preliminary proofs of the loss should be furnished to the company within a reasonable time. The fire occurred on the 22d of December, 1844, and the preliminary proofs were furnished on the 24th of November, 1845. This would have been too late, but that the company must be considered to have waived their being furnished, by refusing to issue a policy, and denying their responsibility altogether. *Ib.*
7. The cases in 2 Pet., 25, and 10 Pet., 507, examined. *Ib.*
8. A court of equity, having obtained jurisdiction to enforce a specific performance of the contract by compelling the company to issue a policy, can proceed to give such final relief as the circumstances of the case demand. *Ib.*
9. A prayer for general relief in this case covers and includes a prayer for specific performance. *Ib.*

INTEREST.
1. Formerly the laws of Louisiana did not allow interest on accounts or unliquidated claims; but now it is due from the time the debtor is put in default for the payment of the principal. *Barrow* v. *Reab*, 366.

JURISDICTION (OF SUPREME COURT).
See CHANCERY.
1. State courts have a right to decide upon the true running of lines of tracts of land, and this court has no authority to review those decisions under the twenty-fifth section of the Judiciary Act. *Almonester* v. *Kenton*, 1.
2. Where the decision was that the true lines of the litigants did not conflict with each other, but the losing party alleged that her adversary's title was void under the correct interpretation of an act of Congress, this circumstance did not bring the case within the jurisdiction of this court. *Ib.*
3. Nor is the jurisdiction aided because the State court issued a perpetual injunction upon the losing party. This was a mere incident to the decree, and arose from the mode of practice in Louisiana, where titles are often quieted in that way. *Ib.*
4. Where the defendant pleaded his discharge under the Bankrupt Act of 1841 passed by Congress, and the plea was allowed, the plaintiff cannot

JURISDICTION (OF SUPREME COURT)—(*Continued.*)
bring the case to this court to be reviewed, under the twenty-fifth section of the Judiciary Act. *Strader et al.* v. *Baldwin*, 261.
5. The defendant pleaded a privilege or exemption under a statute of the United States, and the decision was in favor of it. *Ib.*
6. The case must, therefore, be dismissed, for want of jurisdiction. *Ib.*
7. Jurisdiction is acquired in one of two modes,—first, as against the person of the defendant, by the service of process, or secondly, by a procedure against the property of the defendant within the jurisdiction of the court. In the latter case, the defendant is not personally bound by the judgment, beyond the property in question. *Boswell's Lessee* v. *Otis et al.*, 336.
8. The Judiciary Act of 1789 made no provision for the revision, by this court, of judgments of the Circuit or District Courts in criminal cases; and the act of 1802 (2 Stat. at L., 156) only embraced cases in which the opinions of the judges were opposed in criminal cases. There is, therefore, no general law giving appellate jurisdiction to this court in such cases. *Forsyth* v. *United States*, 571.
9. But the act of Congress passed on the 22d of February, 1847 (Sess. Laws, 1847, chap. 17), providing that certain cases might be brought up from the Territorial courts of Florida to this court, included all cases, whether of civil or criminal jurisdiction. *Ib.*
10. Under this act, this court can revise a judgment of the Superior Court of the District of West Florida in a criminal case, which originated in October, 1845, and was transferred to the District Court of the United States for the Northern District of Florida. *Ib.*
11. Proceeding, therefore, to revise the judgment, this court decides that the jurisdiction of the Territorial courts, of which the Superior Court was one, ceased on the erection of the Territory into a State, on the 3d of March, 1845. The proceedings before the court in which the indictment was found were, consequently, *coram non judice*, and void. *Ib.*

JURISDICTION (OF INFERIOR COURTS).
1. Whilst Florida was a territory, Congress established courts there, in which cases appropriate to Federal and State jurisdictions were tried indiscriminately. *Benner et al.* v. *Porter*, 235.
2. Florida was admitted into the Union as a State, on the 3d of March, 1845. *Ib.*
3. The constitution of the State provided, that all officers, civil and military, then holding their offices under the authority of the United States, should continue to hold them until superseded under the State constitution. *Ib.*
4. But this article did not continue the existence of courts which had been created, as part of the Territorial government, by Congress. *Ib.*
5. In 1845, the Legislature of the State passed an act for the transfer from the Territorial to the State Courts of all cases except those cognizable by the Federal courts; and, in 1847, Congress provided for the transfer of these to the Federal courts. *Ib.*
6. Therefore, where the Territorial court took cognizance, in 1846, of a case of libel, it acted without any jurisdiction. *Ib.*
7. The case of *Hunt* v. *Palao*, 4 Howard, 589, commented on and explained. *Ib.*

LANDS, PUBLIC.
See CHANCERY.
TREATIES.
1. The act of Congress of May 26, 1824 (4 Stat. at Large, 52), for enabling claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their titles, and which was revived by the act of June 17th, 1844 (5 Stat. at Large, 676), did not embrace within its operation complete or perfect titles to land. *United States* v. *Reynes*, 127.
2. It applied to incomplete titles only, derived either from Spanish, French, or British grants, and of these provided for such only as had been

LANDS, PUBLIC—(*Continued.*)
legally issued by a competent authority, and were protected by treaty. *Ib.*
3. The act, as revived and reënacted as aforesaid, was not designed to invest the holders of imperfect titles with new or additional rights, but merely to provide a remedy by which legal, just, and *bonâ fide* claims might be established. *Ib.*
4. The treaty of St. Ildefonso, between Spain and the French Republic, and that of Paris, between France and the United States, should be construed as binding on the parties thereto, from the respective dates of those treaties. *Ib.*
5. Upon no plausible pretext could it be denied that the treaty of St. Ildefonso was obligatory upon Spain from the period of her acceptance of the provision made for the Duke of Parma, in pursuance of that treaty, viz. on the 21st of March, 1801, or from the date at which she ordered the surrender of the Province of Louisiana to France, viz. on the 15th of October, 1802. *Ib.*
6. A grant by Morales, the Spanish governor, issued on the 2d of January, 1804, for lands included within the limits of Louisiana, was void; Spain having parted with her title to that Province to France, by the treaty St. Ildefonso, on the 1st of October, 1800; and France having ceded the same Province to the United States by the treaty of Paris of the 30th of September, 1803. *Ib.*
7. Such a grant could not be protected by that article of the treaty of Paris which stipulated for the protection of the people of Louisiana in the free enjoyment *of their liberty and property;* the term *property*, in any correct acceptation, being applicable only to possessions or rights founded in justice and good faith, and based upon authority competent to their creation. *Ib.*
8. The circumstance, that the Spanish authorities retained possession of portions of Louisiana till the year 1810, did not authorize the issuing of grants for land by those authorities, upon the ground that they constituted a government *de facto*, Spain having long previously ceded away her right of sovereignty, and her possession subsequently thereto having been ever treated by the United States as wrongful, viz. after October, 1800. *Ib.*
9. The decisions of this court in the cases of Foster and Neilson, and Garcia and Lee, sustaining the construction of the political department of the government upon the question of the limits of Louisiana, reviewed and confirmed. *Ib.*
10. After the cession by Georgia to the United States, in 1802, of all the territory north of 31° north latitude and west of the Chatahoochee River, Congress passed an act (2 Stat. at Large, 229) confirming certain titles derived from the British or Spanish governments, and appointing commissioners to hear and decide upon such claims, whose decision was declared to be final. *La Roche et al.* v. *Jones et al.*, 155.
11. In 1812, another act was passed (2 Stat. at Large, 765) confirming the titles of those who were actual residents on the 27th of October, 1795, and whose claims had been filed with the Register and reported to Congress. *Ib.*
12. A grant of land on the north side of latitude 31, issued in 1789 by the Governor-General of Louisiana and West Florida, was void, because the United States owned all the country to the north of latitude 31°, under the treaty of 1782. Consequently, no title to land so granted could pass by descent. *Ib.*
13. But the subsequent legislation of Congress conferred a title emanating from the United States, and vested it in the person to whom the commissioners awarded the land. *Ib.*
14. This title is conclusive against the government, and a court of law cannot now inquire into previous facts, in a collateral action, with a view of impeaching that title. It is equivalent to a patent. *Ib.*
15. Where territory is ceded, the national character continues for commercial

LANDS, PUBLIC—(*Continued.*)
purposes, until actual delivery; but between the time of signing the treaty and the actual delivery of the territory, the sovereignty of the ceding power ceases, except for strictly municipal purposes, or such an exercise of it as is necessary to preserve and enforce the sanctions of its social condition. *Davis* v. *The Police Jury of Concordia*, 280.
16. The power to grant land or franchises is one of those attributes of sovereignty which ceases. *Ib.*
17. The Spanish governor of Louisiana had, therefore, no right to grant a perpetual ferry franchise on the 19th of February, 1801; and, consequently, it is not property which was protected by the treaty between France and the United States. *Ib.*
18. The preëmption act of May 29th, 1830, conferred certain rights upon settlers upon the public lands, upon proof of settlement or improvement being made to the satisfaction of the register and receiver, agreeably to the rules prescribed by the Commissioner of the General Land Office. *Lytle et al.* v. *State of Arkansas et al.*, 314.
19. The commissioner directed the proof to be taken before the register and receiver, and afterwards directed them to file the proof where it should establish to their entire satisfaction the rights of the parties. *Ib.*
20. Where the proof was taken in presence of the register only, but both officers decided in favor of the claim, and the money paid by the claimant was received by the commissioner, this was sufficient. The commissioner had power to make the regulation, and power also to dispense with it. *Ib.*
21. This proof being filed, there was no necessity of reopening the case when the public surveys were returned. *Ib.*
22. The circumstance, that the register would not afterwards permit the claimant to enter the section, did not invalidate the claim. *Ib.*
23. The preëmptioner had no right to go beyond the fractional section upon which his improvements were, in order to make up the one hundred and sixty acres to which settlers generally were entitled. *Ib.*
24. No selection of lands under a subsequent act of Congress could impair the right of a preëmptioner, thus acquired. *Ib.*
25. On the 2d of March, 1831, Congress passed an act (4 Statutes at Large, 472), entitled "An act to provide for the punishment of offences committed in cutting, destroying, or removing live-oak or other timber or trees, reserved for naval purposes." *United States* v. *Briggs*, 351.
26. The act itself declares, that every person who shall remove, &c., any live-oak or red-cedar trees, or other timber, from any other lands of the United States, shall be punished by fine and imprisonment. *Ib.*
27. The title of the act would indicate that timber reserved for naval purposes was meant to be protected by this mode, and none other. But the enacting clause is general, and therefore cutting and using of oak and hickory, or any other description of timber trees from the public lands, is indictable, and punishable by fine and imprisonment. *Ib.*
28. Where there are reservations, in Indian treaties, of specific tracts of land, which are afterwards found to be the sections set apart for school purposes under a general law, the reservees have the better title. They hold under the original Indian title which the United States confirmed in the treaty. *Gaines et al.* v. *Nicholson et al.*, 356.
29. But where the reservee claimed under a float, no specific tract of land being designated for him in the treaty, this court abstains from expressing an opinion, that being the legal question pending in the court below. *Ib.*
30. There were two conflicting claims to land in that part of Louisiana west of the Perdido River; one founded upon a French grant in 1757, with possession continuing down to 1787; the other founded upon a Spanish grant in 1788, with possession continuing down to 1819. *Doe* v. *Eslava et al.*, 421.
31. Both these claims were confirmed by Congress. *Ib.*
32. In an ejectment suit, where the titles were in conflict, the State court

LANDS, PUBLIC—(*Continued.*)
instructed the jury, that the confirmations balanced each other, and they must look to other evidences of title in order to settle the rights of the parties. *Ib.*
33. The judgment of the court being, ultimately, in favor of the party who claimed under the Spanish grant, this court will not, under the circumstances of the case, disturb that judgment. *Ib.*
34. The fifth section of the act of Congress passed on the 8th of May, 1822, giving certain powers to the registers and receivers of the land office, did not confer upon them the power of finally adjudicating titles to land. *Ib.*
35. Under the two acts of Congress passed on the 8th of May, 1822 (4 Stat. at L., 700 and 708), the register and receiver of the land office were not empowered to settle conflicting titles but only conflicting locations. *Doe* v. *The City of Mobile et al.*, 451.
36. In this case they did not describe a boundary line by visible objects, but called to bound upon another line. *Ib.*
37. The authority given to these officers was to be exercised only in cases of imperfect grants, confirmed by the act of Congress, and not cases of perfect title. In these they had no authority to act. *Ib.*
38. Hence, where a State court left the question of location to be settled by a jury, this court will not disturb the judgment of the State court founded upon such finding. *Ib.*
39. The decision of this court in *Pollard* v. *Hagan*, 3 How., 212, reëxamined and affirmed. *Goodtitle* v. *Kibbe*, 471.
40. By the admission of the State of Alabama into the Union, that State became invested with the sovereignty and dominion over the shores of navigable rivers between high and low water mark. Consequently, after such admission, Congress could make no grant of land thus situated. *Ib.*

LIMITATION OF ACTIONS.
1. Where the cause of action accrued in the State of Mississippi, and suit was brought upon it in the State of Alabama, a plea of the statute of limitations of Mississippi was not a good plea; but the same was demurrable, and the court sustained the demurrer. *Townsend* v. *Jemison*, 407.
2. The rule is, that the statute of limitations of the country in which the suit is brought may be pleaded to bar a recovery upon a contract made out of its political jurisdiction, and that the statute of *lex loci contractus* cannot. *Ib.*

LOCAL LAW.
1. The obligations of a contract upon the parties to it, except in well-known cases, are to be expounded by the *lex loci contractus;* but suits brought to enforce contracts, either in the State where they were made or in the courts of other States, are subject to the remedies of the forum in which the suit is, including that of statutes of limitation. *Townsend* v. *Jemison*, 407.

MARRIAGE SETTLEMENTS.
1. The rule formerly, with regard to the enforcement of marriage articles which created executory trusts, was this; namely, that chancery would interfere only in favor of one of the parties to the instrument or the issue, or one claiming through them; and not in favor of remote heirs or strangers, though included within the scope of the provisions of the article. They were regarded as volunteers. *Neves et al.* v. *Scott et al.*, 196.
2. But this rule has in modern times been much relaxed, and may now be stated thus: that if, from the circumstances under which the marriage articles were entered into by the parties, or as collected from the face of the instrument itself, it appears to have been intended that the collateral relatives, in a given event, should take the estate, and a proper limitation to that effect is contained in them, a court of equity will enforce the trust for their benefit. *Ib.*

MARRIAGE SETTLEMENTS—(*Continued.*)

3. The following articles show an intention by the parties to include the collateral relatives:—

"Articles of agreement made and entered into this 17th day of February, in the year 1810, between John Neves and Catharine Jewell, widow and relict of the late Thomas Jewell (deceased), all of the State and county aforesaid, are as follows, viz.:—

"Whereas a marriage is shortly to be had and solemnized between the said John Neves and the said Catharine Jewell, widow, as aforesaid, are as follows, to wit:—that all property, both real and personal, which is now, or may hereafter become, the right of the said John and Catharine, shall remain in common between them, the said husband and wife, during their natural lives, and should the said Catharine become the longest liver, the property to continue hers so long as she shall live, and at her death the estate to be divided between the heirs of her, said Catharine, and the heirs of the said John, share and share alike, agreeable to the distribution laws of this State made and provided. And, on the other hand, should the said John become the longest liver, the property to remain in the manner and form as above." *Ib.*

4. Moreover, these articles are an executed trust, not contemplating any future act, but intended as a final and complete settlement. *Ib.*

5. Property acquired by either party after the marriage must follow the same direction which is given by the settlement to property held before the marriage, if there is a clause to that effect in the same. *Ib.*

PATENTS.

1. The documents showing the title to Woodworth's planing-machine are set forth *in extenso* in 4 How., 647, *et seq.* *Wilson* v. *Simpson et al.*, 109.

2. The assignment from Woodworth and Strong to Toogood, Halstead, and Tyack (4 How., 655) declared not to have been fraudulently obtained according to the evidence in this case. *Ib.*

3. An assignee of Woodworth's planing-machine, having a right, under the decision in 4 How., to continue the use of the patented machine, has a right to replace new cutters or knives for those which are worn out. *Ib.*

4. The difference explained between repairing and reconstructing a machine. *Ib.*

PLEAS AND PLEADING.

1. Thus, where the obligor of a single bill was sued by an assignee, and pleaded that the bill was given for the purchase of horses which were not as sound nor of as high a pedigree as had been represented by the seller, such a plea was admissible. *Withers* v. *Greene*, 213.

2. It is not a sufficient objection to the plea, that it omits a disclaimer of the contract, and a proffer to return the property. If the defendant looked only to a mitigation of damages, he was not bound to do either, and therefore was not bound to make such an averment in his plea. *Ib.*

3. Nor is it a sufficient objection to the plea, that it avers that the obligation was obtained from him by fraudulent representations, or that it concludes with a general prayer for judgment. Pleas in bar are not to receive a narrow and merely technical construction, but are to be construed according to their entire subject-matter. *Ib.*

4. In this respect there is a difference between pleas in bar and pleas in abatement. *Ib.*

5. Where the cause of action accrued in the State of Mississippi, and suit was brought upon it in the State of Alabama, a plea of the statute of limitations of Mississippi was not a good plea; but the same was demurrable, and the court sustained the demurrer. *Townsend* v. *Jemison*, 407.

6. The rule is, that the statute of limitations of the country in which the suit is brought may be pleaded to bar a recovery upon a contract made out of its political jurisdiction, and that the statute of *lex loci contractus* cannot. *Ib.*

POST-OFFICE DEPARTMENT.

1. An act of Congress passed on the 2d of July, 1836 (5 Stat. at L., 83),

POST-OFFICE DEPARTMENT—(*Continued.*)
directs that, where any money has been paid out of the funds of the Post-Office Department to any person in consequence of fraudulent representations or by mistake, collusion, or misconduct of any officer or clerk of the Department, the Postmaster-General shall institute a suit to recover it back. *United States* v. *Brown*, 487.

2. Where the person who was the chief clerk and treasurer of the Post-Office Department transferred to the Department a deposit which he had made, in his own name, in a bank which had become broken, and in consequence of such transfer received the full value of the deposit from the Department, it was a case which fell within the statute; and the adjudication of the Postmaster-General, ordering the person to be credited upon the books and to receive the money, cannot be considered a final adjudication, closing the transaction from judicial scrutiny. *Ib.*
3. The rules and regulations of the Post-Office Department placed the whole subject of finance under the charge of the chief clerk. It was within the range of his official duties, therefore, to superintend all matters relating to finance, and he was not entitled to charge a commission for negotiating loans for the use of the Department. *Ib.*
4. By the ninth section of the act of Congress passed in 1836 (5 Stat. at L., 81), it was enacted that the Postmaster-General was authorized to give instructions to postmasters for accounting and disbursing the public money. *United States* v. *Roberts et al.*, 571.
5. In 1838, the Postmaster-General gave instructions to all postmasters, that, where they paid money to contractors for carrying the mail, duplicate receipts were to be taken in the form prescribed, one of which the postmaster was to keep, and the other was directed to be sent by the next mail to the Auditor for the Post-Office Department. *Ib.*
6. Where a payment was made to a contractor by the surety of a postmaster in his behalf, and no duplicate receipt forwarded to the Post-Office Department, nor any information thereof given to the Department until after a final settlement of the accounts of the contractor had been made, in which settlement the contractor was not charged with the amount of such payment, it was error in the Circuit Court to instruct the jury that they might allow a credit for it to the surety when sued upon his bond, provided they believed from the testimony that the contractor had not received more money than he was entitled to. *Ib.*
7. By an act passed on the 3d of March, 1825 (4 Stat. at L., 112), Congress declared that if any postmaster shall neglect to render his account for one month after the time, and in the form and manner, prescribed by law, and by the Postmaster-General's instructions conformable therewith, he shall forfeit double the value of the postages which shall have arisen at the same office in any equal portion of time previous or subsequent thereto; or, in case no account shall have been rendered at the time of the trial of such case, then such sum as the court and jury shall estimate as equivalent thereto. *Ib.*
8. Where, at the time of the trial of a suit by the United States against a postmaster and his surety, there was no return for an entire quarter and a fraction of the ensuing quarter, the proper mode of computing damages was to go back to a quarter for which there was a return, calculate from it the amount due for the deficient quarter and deficient fraction taken together, and then double the sum arrived at by this calculation. *Ib.*

PRACTICE.

1. This court having sent a mandate to a Circuit Court to put a party into possession of certain lands which were the subject of an ejectment suit, it was right in the Circuit Court not to extend the possession further than the land originally recoverd in ejectment, although other lands were afterwards drawn into the controversy. *Walden et al.* v. *Bodley's Heirs et al.*, 34.
2. Where a defendant in ejectment aliens the property in dispute whilst

PRACTICE—(*Continued.*)
the proceedings are pending, a possession by the vendee will not justify a plea of the statute of limitations. This court having issued an order, after the expiration of the demise, that the Circuit Court should place the plaintiff in possession, such an order proceeded on principles governing a court of equity, and the Circuit Court was bound to conform to it. *Ib.*
3. No exception can be taken in this court which was not moved below, or which does not appear in some way on the record below. *Barrow* v. *Reab*, 366.
4. Where land was sold under an execution, and the money arising therefrom about to be distributed amongst creditors by an order of the Circuit Court, a controversy between the creditors as to the priority of their respective judgments cannot be brought to this court, either by appeal or writ of error. *Bayard* v. *Lombard et al.*, 530.
5. Although the State in which the judgment was given allowed appeals, by statute, in similar cases arising in the courts of the State, yet it does not follow from the adoption of the forms of process in execution that the courts of the United States adopted the modes of reviewing the decisions of inferior courts. *Ib.*
6. An appeal to this court is given in chancery cases alone. *Ib.*
7. Nor is the case a proper one for a writ of error. Such a writ cannot be sued out by persons who are not parties to the record, in a matter arising after execution, by strangers to the judgment and proceedings, and where the error assigned is in an order of the court disposing of certain funds in their possession accidentally connected with the record. *Ib.*
8. The creditors should have filed their bill in equity, or stated an issue in due legal form, with proper parties, setting forth the merits of their respective claims, in order to lay the foundation for an appeal or writ of error to this court. *Ib.*
9. Where no citation had been issued or served upon the defendant in error, the cause must be dismissed on motion. *Hogan et al.* v. *Ross*, 602.
10. In a cause depending in this court in the exercise of original jurisdiction, wherein the State of Pennsylvania complained of the erection of a bridge across the Ohio River at Wheeling, the cause was referred to a commissioner for the purpose of taking further proof, with instructions to report to the court by the first day of the next stated term. *State of Pennsylvania* v. *Wheeling and Belmont Bridge Company*, 647.

PRINCIPAL AND SURETY.
1. Where there were joint and several bonds given for duties, and the United States had recovered a joint judgment against all the obligors, and then the surety died, it was not allowable for the United States to proceed in equity against the executor of the deceased surety for the purpose of holding the assets responsible. *United States* v. *Price*, 83.
2. The laws of Mississippi limit the liability of the sureties in the official bond of a sheriff to the amount of the penalty. *Humphreys* v. *Leggett*, 297.
3. Where the surety had been compelled to pay the whole amount of his bond before a third party recovered judgment, the surety ought to have been relieved against an execution by this third party. *Ib.*
4. Not having been allowed to plead *puis darrein continuance*, and protect himself in this way by showing that he had paid the full amount of his bond, the surety ought to have been relieved in equity where he had filed a bill for relief. *Ib.*

RELEASE.
1. Where the heir at law, who was young, needy, and hurried, executed a release, in consideration of a sum of money, to the executors, who were men of high character, and who assured the heir that the bequest was considered to be good, such release was held to be invalid. *Wheeler* v. *Smith et al.*, 55.

SHIPPING.
1. An act of Congress passed on the 28th of February, 1803 (2 Stat. at L.,

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203), declares that "it shall be the duty of every master or commander of a ship or vessel belonging to citizens of the United States, on his arrival at a foreign port, to deposit his register, sea-letter, and Mediterranean passport with the consul, commercial agent, or vice commercial agent, if any there be, at such port. In case of refusal or neglect of the said master or commander to deposit the papers as aforesaid, he shall forfeit and pay $500." The arrival here spoken of means an arrival for purposes of business, requiring an entry and clearance and stay at the port so long as to require some of the acts connected with business; and not merely touching at a port for advices, or to ascertain the state of the market, or being driven in by an adverse wind and sailing again as soon as it changes. *Harrison* v. *Vose*, 372.

2. Therefore when a vessel arrived at the harbor of Kingston, Jamaica, and came to anchor at about a quarter of a mile from the town, but did not go up to the town, nor come to an entry, nor discharge any part of her cargo, nor take in passengers or cargo at Kingston, nor do any business except to communicate with the consignees, by whom the master was informed that his cargo was sold, deliverable at Savannah la Mar, the master was not liable to the penalty for omitting to deliver his papers to the consul. *Ib.*

SPECIFIC PERFORMANCE.

1. The chancery act of Ohio of 1824 confers on the Court of Common Pleas general chancery powers. The twelfth section gives jurisdiction over the rights of absent defendants, on the publication of notice, "in all cases properly cognizable in courts of equity, where either the title to, or boundaries of, land may come in question, or where a suit in chancery becomes necessary in order to obtain the rescission of a contract for the conveyance of land, or to compel the specific execution of such contract." *Boswell's Lessee* v. *Otis*, 336.
2. A bill being filed to compel the specific execution of a contract relating to land, where the defendants were out of the State, the court passed a money decree, and ordered the sale of other lands than those mentioned in the bill. *Ib.*
3. This decree was void, and no title passed to the purchaser at the sale ordered by the decree. *Ib.*
4. The act did not authorize such an act of general jurisdiction. A special jurisdiction only was given *in rem*. *Ib.*

TAXES.

1. Under the earlier charters of the city of Washington, this court decided (8 Wheat., 687), that, where an individual owned several lots which were put up for sale for taxes, the corporation had no right to sell more than one, provided that one sold for enough to pay the taxes on all. *Mason et al.* v. *Fearson*, 248.
2. In 1824, Congress passed an act, providing, "That it shall be lawful for the said corporation, when there shall be a number of lots assessed to the same person or persons, to sell one or more of such lots for the taxes and expenses due on the whole; and also to provide for the sale of any part of a lot for the taxes and expenses due on said lot, or other lots assessed to the same person, as may appear expedient, according to such rules and regulations as the corporation may prescribe." *Ib.*
3. This is not in conflict with the previous decision of this court. The discretion given to the corporation is not unlimited to sell each lot for its own taxes. On the contrary, the words "it shall be lawful" and "may" sell one lot, impose an obligation to stop selling if that one lot produces enough to pay the taxes on all. *Ib.*
4. What a public corporation or officer is empowered to do for others, and it is beneficial to them to have done, the law holds he ought to do. *Ib.*

TOLL.

1. The Chesapeake and Delaware Canal Company have no right under their charter to demand toll from passengers who pass through the canal, or from vessels on account of the passengers on board. *Perrine* v. *Chesapeake and Delaware Canal Company*, 172.

TOLL—(*Continued.*)
2. The articles upon which the company is authorized to take toll are particularly enumerated, and the amount specified. The toll imposed on commodities on board of a vessel passing through the canal. *Ib.*
3. No toll is given on the vessels themselves, except only when they have no commodities on board, or not sufficient to yield a toll of four dollars. Passengers are not mentioned in the enumeration, nor is any toll given upon a vessel on account of the persons or passengers it may have on board. *Ib.*
4. A corporation created by statute is a mere creature of the law, and can exercise no powers except those which the law confers upon it. The canal company is not the absolute owner of the works, but holds the property only for the purposes for which it was created. It has not, therefore, the same unlimited control over it which an individual has over his property. *Ib.*
5. Nor has the company a right to refuse permission for passengers to pass through the canal. On the contrary, any one has a right to navigate the canal for the transportation of passengers with passenger boats, without paying any toll on the passengers on board, upon his paying or offering to pay the toll prescribed by law upon the commodities on board, or the toll prescribed by law on a vessel or boat when it is empty of commodities. *Ib.*

TREATIES.
See LANDS, PUBLIC.
1. The treaty of St. Ildefonso, between Spain and the French Republic, and that of Paris, between France and the United States, should be construed as binding on the parties thereto, from the respective dates of those treaties. *United States* v. *Reynes*, 127.
2. Upon no plausible pretext could it be denied that the treaty of St. Ildefonso was obligatory upon Spain from the period of her acceptance of the provision made for the Duke of Parma, in pursuance of that treaty, viz. on the 21st of March, 1801, or from the date at which she ordered the surrender of the Province of Louisiana to France, viz. on the 15th of October, 1802. *Ib.*
3. The treaty of St. Ildefonso, by which Spain ceded Louisiana to France, became operative to transfer the sovereignty upon the day of its date, viz. the 1st of October, 1800. *Davis* v. *The Police Jury of Concordia*, 280.
4. The executive and legislative branches of the government of the United States have always maintained this position, and this court concurs with them in its correctness. *Ib.*
5. The preceding case, p. 127, of *The United States* v. *Reynes* referred to. *Ib.*
6. By the laws of nations, all treaties, as well those for cessions of territory as for other purposes, are binding upon the contracting parties, unless when otherwise provided in them, from the day they are signed. The ratification of them relates back to the time of signing. *Ib.*
7. Where territory is ceded, the national character continues for commercial purposes, until actual delivery; but between the time of signing the treaty and the actual delivery of the territory, the sovereignty of the ceding power ceases, except for strictly municipal purposes, or such an exercise of it as is necessary to preserve and enforce the sanctions of its social condition. *Ib.*
8. The power to grant land or franchises is one of those attributes of sovereignty which ceases. *Ib.*
9. The Spanish Governor of Louisiana had, therefore, no right to grant a perpetual ferry franchise on the 19th of February, 1801; and, consequently, it is not property which was protected by the treaty between France and the United States. *Ib.*

USES.
1. The principles examined which constitute a dedication of land to public uses. *Irwin* v. *Dixion et al.*, 10.

WAYS.

1. Where a right to a public highway is alleged to be violated, and a remedy is sought through an injunction, it is not issued, either at the instance of a public officer or private individual, unless there is danger of great, continued, and irreparable injury; and not issued at the instance of an individual, claiming under such public right, unless he has suffered some private, direct, and material damage beyond the public at large. *Irwin* v. *Dixion et al.*, 10.
2. Where the remedy by injunction is sought for an injury to an individual, and not public right, it is necessary also that the right to raise the obstruction should not be in controversy, or have been settled at law. Otherwise, an injunction is not the appropriate remedy. Until the rights of the parties are settled by a trial at law, a temporary injunction only is issued to prevent an irremediable injury. *Ib.*

WILLS.

See CHARITIES; DEVISE.