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TO THE

MATTERS CONTAINED IN THIS VOLUME.

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

ADMIRALTY.

1. The act of Congress, passed on the 26th of February, 1845, (5 Stat. at L., 726,) extending the jurisdiction of the district courts to certain cases upon the lakes, and navigable waters connecting the same, is consistent with the Constitution of the United States. *Propeller Genesee Chief v. Fitzhugh et al.*, 443.
2. It does not rest upon the power granted to Congress to regulate commerce. But it rests upon the ground that the lakes and navigable waters connecting them are within the scope of admiralty and maritime jurisdiction, as known and understood in the United States, when the Constitution was adopted. *Ib.*
3. The admiralty and maritime jurisdiction granted to the Federal Government by the Constitution of the United States is not limited to tide-waters, but extends to all public navigable lakes and rivers, where commerce is carried on between different states, or with a foreign nation. *Ib.*
4. In the present case of collision between a vessel navigated by steam and a sailing vessel, the evidence shows that the former was in fault. *Ib.*
5. It is the duty of every steamboat to keep a trustworthy person employed as a look-out; and if there be none such, additional to the helmsman, or if he was not stationed in a proper place, or not vigilantly employed in his duty, it must be regarded as *prima facie* evidence that the collision was the fault of the steamboat. *Ib.*
6. The extent of the admiralty and maritime jurisdiction of the courts of the United States, as explained in the preceding case, again affirmed. *Fretz et al. v. Bull et al.*, 466.
7. In admiralty, the party entitled to relief should always be made libellant; and the practice of instituting a suit in the name of one person for the benefit of another, to whom the right has been transferred, only obtains in particular cases. But all persons entitled, on the same state of facts, to participate in the same relief, may join as libellants, whether the suit be *in personam* or *in rem*. *Ib.*
8. Hence, where the cargo of a boat was partly insured, but not the boat itself, and the insurance company paid for that part of the cargo which was insured, it was competent for the owners of the boat to file a libel for the use of the insurance company. *Ib.*
9. In this case, where a collision took place between a steamboat and a flatboat, both descending the Mississippi River, the steamboat was in fault. *Ib.*
10. The flatboat was in an eddy of the river, and impelled by it towards the steamboat, and the latter should have kept further away. *Ib.*

AGREEMENT.

See CONTRACT.

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APPEAL, AND WRIT OF ERROR.

See JURISDICTION; PRACTICE.

APPEAL BONDS.

See COSTS.

BANKRUPTCY.

1. Where the highest court of a state decided in favor of a defendant who pleaded his discharge under the bankrupt law of the United States, and the case was brought to this court under the 25th section of the Judiciary Act, this court has no jurisdiction. *Linton v. Stanton*, 423.
2. It would have been otherwise if the decision had been adverse to the exemption claimed under the law of Congress. *Ib.*
3. Promises alleged to have been made by the bankrupt after his discharge are not the subject of jurisdiction under the 25th section. The decision of a state court upon their effect cannot be reviewed by this court. *Ib.*

BILLS OF LADING.

See COMMERCIAL LAW.

BOND OF CONVEYANCE.

When evidence. See EVIDENCE.

CHANCERY.

1. Where a settler upon the public lands had a pre-emption right to them and sold them to a person who again sold them to a third party, the original vendor has a lien upon the land for the balance of the purchase-money still due, and can enforce it by a bill in chancery, notwithstanding the vendee has taken out a patent in his own name under a subsequent pre-emption law. *Thredgill v. Pintard*, 24.
2. The principles of law decided in this case are so dependent upon the facts, that a succinct statement of the latter becomes necessary. *Ib.*
3. Collier was in possession of two drafts drawn by King upon Groves and accepted by him for the accommodation of King. Collier pledged these drafts to the Farmers' Bank of Virginia, as collateral security for a debt which he owed the bank. *Farmers' Bank of Virginia v. Groves*, 51.
4. The drafts not being paid at maturity, the bank sued both Groves and King, and recovered judgments against them, which were liens upon their property. *Ib.*
5. Collier and King then agreed, that if Collier were to purchase King's property at a certain sum, he would return his drafts to him and free him from the bank. To this agreement Groves was a witness, and the purchase was accordingly made. *Ib.*
6. Collier and the bank then agreed that the bank should give him time and he should give additional collateral security to the bank and mortgage his property; first reducing the liens of prior mortgages down to a certain sum. The bank was moreover to surrender the collateral securities previously received. The mortgage was made by Collier and the collateral security surrendered to him by the bank. *Ib.*
7. After this, the bank had no right to prosecute the judgment which it had obtained against Groves. *Ib.*
8. By the first agreement made between King and Collier, to which Groves was privy, Collier exonerated Groves, as far as it was in his power; and in consequence of the second agreement between Collier and the bank, Collier became re-invested with the whole control of the matter and his previous exoneration of Groves became immediately operative. Groves was, therefore, entirely discharged from all responsibility. *Ib.*
9. The failure of Collier to comply with his contract with the bank, did not prevent this exoneration of Groves from being effectual. *Ib.*
10. An agreement, whereby the purchaser of a plantation "bound himself to transfer to his son-in-law one half of the plantation, slaves, cattle, and stock, as soon as the son-in-law should pay for one half of the cost of said property, either with his own private means, or with one half of the profits of the plantation," was deficient in mutuality. The son-in-law was not bound to render any services nor pay any money. It was a *nude pact*. *Dorsey v. Packwood*, 126.
11. It was not an alternative obligation upon the son-in-law, because the election to pay his half out of the profits would have been merely paying with another man's money. *Ib.*

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12. Even if the agreement possessed mutuality, there was no performance, or offer of performance by the son-in-law for twenty-seven years. *Ib.*
13. Moreover, fifteen years after the agreement, when the plantation was likely to prove a ruinous purchase, the son-in-law abandoned and released all his claim. *Ib.*
14. When the question before a court of equity is, whether a deed which purports upon its face to be an absolute deed, was in reality a deed or a mortgage, extraneous evidence is admissible to show that it was only a mortgage. *Russell v. Southard*, 139.
15. Upon such a question as this, depending upon the general principles of equity jurisprudence, this court does not hold itself bound by the decisions of the highest court of the state in which the land in question was, but will be governed by its own view of those principles. *Ib.*
16. The decisions of the courts of Kentucky examined. *Ib.*
17. Such evidence is admissible when it is alleged and proved that a loan on security was really intended and the defendant sets up the loan as a payment of purchase-money and the conveyance as a sale. *Ib.*
18. In examining the question whether the transaction was a sale or mortgage, it is of great importance to inquire whether the consideration was adequate to induce a sale. *Ib.*
19. In the present case, the court decides, from the evidence, that the consideration was grossly inadequate; that he was a stranger, without friends or other resources there than the land in question; that it is true he offered to sell, but there is no evidence to show that he offered to sell for the amount of money which he actually received. *Ib.*
20. The papers executed between the parties show a conditional sale; but in doubtful cases the court leans to the conclusion that the reality was a mortgage or a conditional sale. *Ib.*
21. The absence of a personal obligation by the grantor to repay the money furnishes no conclusive test to determine whether the conveyance was a mortgage or a conditional sale. *Ib.*
22. Nor do the facts that the grantor endeavored to obtain the relinquishment of his wife's dower, and actually surrendered the paper under which he had the right to reclaim his land, amount to a bar of his claim, under the circumstances of this case. *Ib.*
23. Three years after the transaction the grantor received one hundred dollars from the grantee upon the ground of an arithmetical error, and signed a release of all further demands. But apart from other considerations bearing upon the purchase of an equity of redemption, in the present case it was the duty of the grantee to correct errors, and consequently he paid nothing for this equity of redemption. *Ib.*
24. Where there was a long lapse of time and the original mortgagee had been dead for many years, an account of rents and profits and of interest upon the money loaned, will be decreed to commence from the filing of the bill. *Ib.*
25. Where there were purchasers during the intermediate time, and the record did not enable this court to determine upon their rights, the case will be remanded to the Circuit Court for its adjudication thereon. *Ib.*
26. A motion made in this court after the decision of the case here, to set aside the decree and remand the case to the Circuit Court for further preparation and proof, upon the ground that new and material evidence has been discovered since the trial of the case in that court,—cannot be sustained. *Ib.*
27. Affidavits of newly-discovered testimony cannot be received. This court must affirm or reverse upon the case as it appears upon the record. *Ib.*
28. The established chancery practice is so, and if it were not, the act of Congress, passed on March 3, 1803, would be decisive of the question. *Ib.*
29. The proper condition of an injunction-bond is "to answer all damages which the defendant may sustain in consequence of the injunction being granted." *Bein v. Heath*, 168.
30. Where a bond was given in order to obtain an injunction to suspend proceedings, under an order of seizure and sale, and the condition was that

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- the principal and sureties "would pay to the plaintiff, in the case of seizure and sale, all such damages as he may recover against us, in case it should be decided that the said injunction was wrongfully obtained," this bond was irregular. *Ib.*
31. It conformed to the Louisiana practice, by which, if an injunction be dissolved judgment is at once given for the debt, interest, and damages, against the principal and sureties in the injunction-bond. *Ib.*
 32. But the equity practice in the courts of the United States is regulated by the laws of Congress, and the rules of this court made under the authority of an act of Congress; and one of those rules is, that, when not otherwise directed, the practice in the High Court of Chancery, in England, shall be followed. *Ib.*
 33. According to these rules, a court of equity cannot, when it dissolves an injunction, give judgment, at the same time, against the obligors. It merely orders the dissolution, leaving the obligee to proceed at law against the sureties, if he sustains damage from the delay occasioned by the injunction. *Ib.*
 34. Where there were two trustees of the property of insolvents, and one of them made an assignment, but the other neither joined in it nor assented to it afterwards, the assignment was void. *Wilbur v. Almy*, 180.
 35. And in the present case, also, the assignee appears to have received an assignment of the property only as security, until its profits should pay a debt due to him by the insolvents. That debt being extinguished, he has no right, as owner, to claim an account of further profits from the holder of the property. *Ib.*
 36. Where a bill in chancery states that, at an execution sale, which was alleged to have been open and fair, the complainant purchased, for the sum of \$600, certain promissory notes secured by mortgage, amounting in the whole to \$260,000, and the bill was demurred to, and the demurrer sustained by the Circuit Court, this judgment must be reversed. *Erwin v. Parham*, 197.
 37. Mere inadequacy of price does not, of itself, furnish a sufficient reason for dismissing the bill, or deciding that the complainant was entitled to no relief whatever. *Ib.*
 38. Where a mortgage was executed by a husband, his own name only being used in the body of the instrument, but it was signed by his wife also, who relinquished her right of dower, and made her acknowledgment in an after part of the instrument; and there is sufficient evidence, from an inspection of the whole instrument, to believe that the intention of the parties was to consider the whole paper as forming one assurance, the wife will be barred of her dower, as far as the mortgage is concerned. *Dundas v. Hitchcock*, 257.
 39. Where a statute requires a private examination of the wife, to ascertain that she acts freely, and not by compulsion of her husband, but prescribes no precise form of words to be used in the certificate, it is sufficient if the words of the acknowledgment have the same meaning, and are in substance the same, with those used in the statute. *Ib.*
 40. Where a widow was allowed one year, after probate of her husband's will, to elect whether to take under it or not, and by the will she was sole devisee for herself and children, and before the expiration of the year she released to the mortgagee all her estate, right and claim to the mortgaged premises, styling herself widow and sole devisee, she cannot afterwards avail herself of her right of election and set up a claim to dower, outside of the will; she is estopped by her deed. *Ib.*
 41. The 25th section of the law of Louisiana incorporating the Union Bank of Louisiana declares that in all hypothecary contracts and obligations entered into by any married individual with the bank, it shall be lawful for the wife to unite with him; and in such case the property of the wife, whether dotal or of any other description, shall be affected by the contract. *Union Bank of Louisiana v. Stafford*, 328.
 42. Where a wife united with her husband in mortgaging property to the bank, the mortgage was good under this clause. *Ib.*
 43. A sale of the mortgaged property for a twelve months' bond under ar.

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- order of seizure and sale was not a novation of extinguishment of the original mortgage. *Ib.*
44. Where the mortgage is payable by instalments, some of which were not due at the filing of the bill, the statute of limitations will not apply. The possession of the mortgagor was not adverse to the mortgagee. *Ib.*
 45. Where other parties had a nominal interest as defendants, and resided beyond the jurisdiction of the court, it was error in the Circuit Court to dismiss the bill because they were not made parties. Under the act of Congress of 1839, the court should have gone on to decree against the actual defendants; and in this case all who have a beneficial interest are in court. *Ib.*
 46. Prior to the Revised Code of Virginia in 1819 the lien created upon land by a judgment was the same as in England. In both countries the following rules prevailed:
 1. That the lien of the judgment resulted entirely from the right of the plaintiff to sue out an *elegit*, and charge the goods and the moiety of the lands of the debtor.
 2. That the election so to charge them by an *elegit* executed, discharges from liability the body of the defendant and the remaining moiety of the lands.
 3. That the *capias ad satisfaciendum* executed is, *pro tanto*, a satisfaction of the judgment which releases *proprio vigore* any previous lien upon the lands, and inhibits all recourse against the goods and chattels or lands of the debtor, with the exceptions of the instances of death whilst charged in execution, or of an escape from prison, or a rescue. *Snead v. McCoull*, 40.
 47. A discharge under the act of Congress for the relief of persons imprisoned for debt (2 Stat. at L., 4, sec. 2,) did not restore the lien originally created by the judgment, and waived by issuing a *ca. sa.* *Ib.*
 48. In 1819 the state of Virginia revised her code. By a part which went into operation on the 1st January, 1820, it was enacted that, thereafter, the issuance of a *ca. sa.* should constitute a lien upon lands. *Ib.*
 49. But as it did not relate to past liens, the purchaser of a lien created under the Revised Code had a good title when compared with a claimant under the lien which existed in 1817, but which had been waived by issuing a *capias ad satisfaciendum.* *Ib.*
 50. After a case had been argued and was under advisement, a motion to permit the complainant to file a further bill by way of supplement and amendment, which would have made an essential change in the character and objects of the cause, was properly overruled in the Circuit Court. *Ib.*
 51. Myra Clark Gaines filed a bill in chancery, alleging her claim to certain property upon the ground that Clark, who died seized of the property, had been married to Zulime, the mother of the complainant. *Gaines v. Relf et al.*, 472.
 52. The claim was resisted upon two grounds. 1st, That no such alleged marriage took place; 2d, That Zulime was, at the date of the alleged marriage, the wife of a man named Desgrange. The marriage with Desgrange was admitted by the complainant, but it was contended that the marriage was void *ab initio*, because Desgrange, at the time of contracting it, had another wife living, and therefore was guilty of bigamy. *Ib.*
 53. In this case, it is decided that the two principal witnesses for the complainant, to establish the fact of the marriage between Zulime and Clark, (the parents of the complainant), are unworthy of credit. *Ib.*
 54. That the charge of bigamy against Desgrange is not substantial, because,
 1. The depositions of persons who testify to it only state hearsay and rumor.
 2. That the naked confessions of bigamy which Desgrange was alleged to have made are incompetent evidence and inadmissible as against the executors of Clark and purchasers holding by sales from them. To hold that either party could, by a mere declaration, establish the fact that a marriage was void, would be an alarming doctrine.
 3. A certificate of a priest, given sixteen years after the marriage, that he

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- had married Desgrange to his alleged first wife, was inadmissible as evidence. There was no register of the marriage in the records of the church.
4. A mutilated record of a suit brought by Zulime against Desgrange, and alleged to have been for the purpose of having her marriage with him declared null and void, does not prove the bigamy of Desgrange. The cause of action is not stated, the petition having been lost. *Ib.*
 55. A sworn copy of an ecclesiastical record, taken at the proper office and produced by the lawful keeper of the records, may be admitted as evidence, the original being produced by the bishop who had charge of the records of the bishopric. *Ib.*
 56. This purported to be a trial of Desgrange for bigamy, and his acquittal. It was competent evidence as rebutting testimony inasmuch as proof of the loss of the record and secondary proof of its contents had been given on the other side. *Ib.*
 57. The depositions of Zulime in this ecclesiastical case, and also in a suit brought by her against Desgrange for alimony, are received by this court as competent evidence, because there was notice of a motion in the Circuit Court to suppress the evidence, but in the course of a long trial no such motion was made. If it had been made, the deponent herself was at hand to testify. No objection having been made to it in the court below, none can be made here. Moreover, the complainant claims under a deed of gift from the deponent, and is estopped by her declarations. *Ib.*
 58. The decree of this court in the case of *Patterson v. Gaines*, (6 How., 550,) cannot affect other persons, because these persons were not parties to it, and because that case was not a controversy carried on in earnest. *Ib.*
 59. Where slaves are in the possession of a mortgagee, who renders an account of the profits of their labor and the expenses which he has incurred on their behalf, he must be held bound to exercise a reasonable diligence in keeping them engaged in useful employments. *Bennett v. Butterworth*, 367.
 60. It is not a sufficient excuse for allowing them to remain idle, to say that he managed them as they had been managed by their former master, the mortgagor. *Ib.*
 61. If the mortgagee is charged with their hire from a period commencing three months after the death of the mortgagor, he is not charged too much. *Ib.*
 62. Where the account of the master charged the mortgagee with a certain sum for their hire, exclusive of clothing, medical treatment, or other expenses, it was a correct mode of stating the account. *Ib.*

COMMERCIAL LAW.

1. Where goods are shipped and the usual bill of lading given, "promising to deliver them in good order, the dangers of the seas excepted," and they are found to be damaged, the *onus probandi* is upon the owners of the vessel, to show that the injury was occasioned by one of the excepted causes. *Clark v. Barnwall*, 273.
2. But, although the injury may have been occasioned by one of the excepted causes, yet still the owners of the vessel are responsible if the injury might have been avoided, by the exercise of reasonable skill and attention on the part of the persons employed in the conveyance of the goods. But the *onus probandi* then becomes shifted upon the shipper, to show the negligence. *Ib.*
3. Where spools of cotton thread, put up in boxes, were shipped at Liverpool for Charleston, and the vessel had a voyage of sixty-one days going far south into a warm climate, and the thread was an article peculiarly subject to the effect of dampness, some of the inside boxes being stained, whilst the outside ones were not, the cargo also being well stowed and dunnaged, the injury must be attributed to the dangers of the seas. *Ib.*
4. The usage of trade is to bring sacks of salt in the same vessel with dry goods; and the evidence in this case is that, if the salt be well stowed

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- it does not increase the humidity of the vessel, but rather acts the other way. *Ib.*
5. In this case, also, there was no evidence that the shipmaster was guilty of any negligence in omitting to provide proper precautionary measures. He was not responsible for the effect of boisterous weather or adverse winds. *Ib.*
 6. The words "contents unknown" being annexed to a bill of lading, imply that the master only meant to acknowledge the shipment in good order of the cases, as to their external condition. He might justify himself by showing that the contents were not in good order, but the evidence in this case shows that they were so; and the injury must be attributed to the dangers of the seas. *Ib.*
 7. Where several owners of a cargo filed libels *in rem* against the vessel for damages done to the goods, and these libels were consolidated by order of the court, which afterwards decreed damages in favor of the libellants, in some cases to more and in some to less than \$2,000, those cases where the damages are less than that sum must be dismissed, on an appeal to this court, for want of jurisdiction. *Rich v. Lambert*, 347.
 8. Where further evidence was taken after the appeal to this court was entered, under the authority of an act of Congress passed in 1803, (2 Stat. at L., 244,) the issuing of the commission by the clerk of the Circuit Court, and the uniting by both parties in its execution, furnish a presumption that the proper order was given. If not, the parties have waived all objection. *Ib.*
 9. Where goods on board a ship received a damage which must necessarily have accrued during the voyage, the *onus probandi* is upon the master and owners to show that it was occasioned by one of the perils of navigation within the exception of the bill of lading. *Ib.*
 10. The master is not to blame for bringing sacks of salt between decks, if it be well stowed and packed, and secured with proper dunnage. The usage of trade is to carry salt in that way. *Ib.*
 11. The evidence in the present case shows that the damage was caused by the perils of navigation. *Ib.*

CONSTITUTIONAL LAW.

1. Under an act passed by the State of Maryland, and an assent given to it by Congress, no toll could be levied, for passing over the Cumberland Road, upon coaches which carried the United States mail. *Achison v. Huddleson*, 293.
2. In 1843, the Legislature of Maryland passed an act imposing a toll upon all passengers in mail-coaches, and if it were not paid, a toll of one dollar for each coach for every time that it passed over the road. *Ib.*
3. The toll upon passengers in mail-coaches was inconsistent with the compact made between Maryland and Congress, and therefore void. *Ib.*
4. And the toll per coach, of one dollar, is more properly a commutation of tolls than a penalty, and therefore void also. *Ib.*
5. A law of the state of Pennsylvania, that a vessel which neglects or refuses to take a pilot shall forfeit and pay to the master warden of the pilots, for the use of the Society for the relief of Distressed and Decayed Pilots, their widows and children, one half the regular amount of pilotage, is an appropriate part of a general system of regulations on the subject of pilotage, and cannot be considered as a covert attempt to legislate upon another subject, under the appearance of legislating on this one. *Cooley v. Board of Wardens*, 299.
6. Nor can the exemption of American vessels engaged in the Pennsylvania coal-trade from the necessity of paying half pilotage, be declared to be other than a fair exercise of legislative discretion, acting upon the subject of the regulation of the pilotage of the port of Philadelphia. *Ib.*
7. The law of Pennsylvania is, therefore, not inconsistent with the second and third clauses of the tenth section of the first article of the Constitution of the United States. Imposts, and duties on imports, exports, and tonnage, were understood, when the Constitution was formed, to mean totally distinct things from fees of pilotage. *Ib.*
3. Nor is the law repugnant to the first clause of the eighth section of the first article of the Constitution, because, as the charge is not a duty,

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- import, or excise, there is no necessity for its being uniform throughout the United States. *Ib.*
9. Neither is the law repugnant to the fifth clause of the ninth section of the first article of the Constitution; because it neither gives a preference of one port over another, nor does it require a vessel to pay duties. *Ib.*
10. Upon this point, the act of Congress, passed in 1789, (1 Stat. at L., 54,) recognizing the pilot-laws of the states, is entitled to great weight, as showing that these laws neither levied duties nor gave a preference of one port over another. *Ib.*
11. Moreover, the law is not inconsistent with the third clause of the eighth section of the first article of the Constitution. *Ib.*
12. It is true that the power to regulate commerce includes the regulation of navigation, and that pilot-laws are regulations of navigation, and, therefore, of commerce, within the grant to Congress of the commercial power. *Ib.*
13. But the mere grant of the commercial power to Congress, does not forbid the states from passing laws to regulate pilotage. The power to regulate commerce includes various subjects, upon some of which there should be a uniform rule, and upon others different rules in different localities. The power is exclusively in Congress in the former, but not so in the latter class. *Ib.*
14. Although Congress may legislate upon the subject of pilotage throughout the United States, yet they have manifested an intention not to overrule the state laws, except in one instance. The law of Pennsylvania, not being overruled, is not repugnant to the Constitution of the United States. *Ib.*
15. The act of Congress, passed on the 26th of February, 1845, (5 Stat. at L., 726,) extending the jurisdiction of the district courts to certain cases upon the lakes, and navigable waters connecting the same, is consistent with the Constitution of the United States. *Propeller Genesee Chief v. Fitzhugh et al.*, 443.
16. It does not rest upon the power granted to Congress to regulate commerce. *Ib.*
17. But it rests upon the ground that the lakes and navigable waters connecting them are within the scope of admiralty and maritime jurisdiction, as known and understood in the United States, when the Constitution was adopted. *Ib.*
18. The admiralty and maritime jurisdiction granted to the Federal Government by the Constitution of the United States is not limited to tide-waters, but extends to all public navigable lakes and rivers, where commerce is carried on between different states or with a foreign nation. *Ib.*
19. In the present case of collision between a vessel navigated by steam and a sailing vessel, the evidence shows that the former was in fault. *Ib.*
20. It is the duty of every steamboat to keep a trustworthy person employed as a look-out; and if there be none such, additional to the helmsman, or if he was not stationed in a proper place, or not vigilantly employed in his duty, it must be regarded as *prima facie* evidence that the collision was the fault of the steamboat. *Ib.*
21. The 34th section of the Judiciary Act of 1789, declaring that the laws of the several states shall be regarded as rules of decision in trials at common law in the courts of the United States, meant only to include civil cases at common law, and not criminal offences against the United States. *United States v. Reid et al.*, 361.
22. Therefore, the law by which the admissibility of testimony in criminal cases must be determined, is the law of the state, as it was when the courts of the United States were established by the judiciary Act of 1789. *Ib.*

CONTRACTS.

1. Where a defendant, when sued upon a note, set up, as a defense, that the note was given for an illegal consideration, the whole statute must be examined in order to discover whether or not the legislature intended to prevent courts of justice from enforcing contracts relating to the act prohibited. *Harris v. Runnels*, 80.
2. Where a statute prohibits an act or annexes a penalty to its commission,

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- it is true that the act is made unlawful, but it does not follow that the unlawfulness of the act was meant by the legislature to avoid a contract made in contravention of it. *Ib.*
3. Where a statute is silent, and contains nothing from which the contrary can properly be inferred, a contract in contravention of it is void. But the whole statute must be examined in order to decide whether or not it does contain any thing "from which the contrary can be properly inferred." *Ib.*
 4. Thus, where a statute of Mississippi declared that slaves should not be brought into the state without a previous certificate signed by two freeholders, with a certificate of the clerk of the county from which they came, certifying that the singers were respectable freeholders; and slaves were brought in without such certificate and sold, the contract is not void, but the purchaser must pay his note given for the purchase-money. *Ib.*
 5. Other parts of the statute indicate that the legislature did not intend to declare the contract void: as, for example, a part in which a fine is imposed upon the buyer and also upon the seller. *Ib.*
 6. An agreement, whereby the purchaser of a plantation "bound himself to transfer to his son-in-law one half of the plantation, slaves, cattle, and stock, as soon as the son-in-law should pay for one half of the cost of said property, either with his own private means, or with half of the profits of the plantation," was deficient in mutuality. The son-in-law was not bound to render any services nor pay any money. It was a *nude pact*. *Dorsey v. Packwood*, 126.
 7. It was not an alternative obligation upon the son-in-law, because the election to pay his half out of the profits would have been merely paying with another man's money. *Ib.*
 8. Even if the agreement possessed mutuality, there was no performance, or offer of performance by the son-in-law for twenty-seven years. *Ib.*
 9. Moreover, fifteen years after the agreement, when the plantation was likely to prove a ruinous purchase, the son-in-law abandoned and released all his claim. *Ib.*
 10. Where persons were indebted to a bank and gave their promissory notes for the amount of debt, the mere acceptance of the notes by the bank did not necessarily operate as a satisfaction; and whether or not there was an agreement at the time to receive them in satisfaction, or whether the circumstances attending the transaction warranted such an inference, were questions for the jury. *Lyman v. Bank of United States*, 225.
 11. All the notes having been paid except the last, and the action not being brought upon the note but upon the original consideration, the bank was not bound to bring the prior notes into court: the presumption of law was, they had been given up by the holder at the time of payment. If the fact was not so, the burden lay upon the defendants to show it. *Ib.*
 12. So also, a part of the consideration being the purchase of real estate, the bank was not bound to prove the execution and delivery of proper conveyances to the defendants. Having given their notes for the purchase-money, the court was bound to presume that they were satisfied with the conveyances. If not, it was their duty to show it. *Ib.*
 13. Where the bank had become insolvent and had made an assignment of its effects to trustees for the benefit of its creditors, the bank was allowed to sue in its own name at the instance, and for the benefit of creditors, and the case was the same as if the law permitted the suit to be brought, and the same had been brought, in the name of such trustees. *Ib.*
 14. Although the bank had indorsed a note amongst its other assets to its trustees, yet under the circumstances it could maintain a suit upon the note, because.
Where a party who is the holder of a note has transferred it for purposes of collection, and it is not paid but is found in the possession of the original holder, he can recover, as he is remitted to his original rights, notwithstanding the indorsement; and if the note is not paid, the plaintiff may give it up and recover upon the original consideration. *Ib.*
 15. Before the defendants became indebted to the bank, the bank had made a compromise of certain claims, which, amongst others, were the sub-

CONTRACTS—(Continued).

ject of the sale by the bank and purchase by the defendants. Two of the defendants had knowledge of the conditions of this compromise, and their knowledge must be considered as extending to the other defendants. It was a question for the jury to determine what the defendants purchased. *Ib.*

COSTS.

1. The surety for the appellants from a decree in admiralty gave bond to pay all costs and damages which might be adjudged by this court. *Ives v. Merchants Bank of Boston*, 159.
2. This court having affirmed the decree of the Circuit Court with costs and six per cent. damages, judgment was entered upon the receipt of the mandate by the Circuit Court, for the amount of the original judgment together with the amount of costs and damages calculated up to that day; and execution was awarded. *Ib.*
3. Under this execution, the vessel, which had been attached under the libel, was sold for less than this aggregate amount. *Ib.*
4. The surety is not entitled to have a relative proportion of the proceeds of sale applied to the reduction of his bond, but is responsible upon it to the entire amount. *Ib.*
5. By the 26th section of the Judiciary Act, the courts have power to assess damages upon bonds, &c., and to render judgment for so much as is due according to equity, in cases of default or confession or demurrer. This section does not apply to a case heard on agreed facts. *Ib.*
6. But then when the case heard on agreed facts was the case of an appeal-bond, it was proper for the court to give judgment for the penalty of the bond (being less than the judgment under the mandate) and allow interest from the date of the institution of the suit, although the amount to be paid in this way would exceed the penalty of the bond. *Ib.*

CRIMINAL CASES.

See EVIDENCE.

CUMBERLAND ROAD.

1. Under an act passed by the State of Maryland, and an assent given to it by Congress, no toll could be levied for passing over the Cumberland Road, upon coaches which carried the United States mail. *Achison v. Huddleson*, 293.
2. In 1843, the legislature of Maryland passed an act imposing a toll upon all passengers in mail-coaches, and if it were not paid, a toll of one dollar for each coach for every time that it passed over the road. *Ib.*
3. The toll upon passengers in mail-coaches was inconsistent with the compact made between Maryland and Congress, and therefore void. *Ib.*
4. And the toll per coach, of one dollar, is more properly a commutation of tolls than a penalty, and therefore void also. *Ib.*

DEED.

1. A deed to trustees and their successors in trust to sell and convey a fee-simple absolute, vested such an estate in them without the insertion of the word "heirs" in the deed. *Neilson v. Lagow*, 98.
2. Where a mortgage was executed by a husband, his own name only being used in the body of the instrument, but it was signed by his wife also, who relinquished her right of dower, and made her acknowledgment in an after part of the instrument; and there is sufficient evidence, from an inspection of the whole instrument, to believe that the intention of the parties was to consider the whole paper as forming one assurance, the wife will be barred of her dower, as far as the mortgage is concerned. *Dundas v. Hitchcock*, 257.
3. Where a statute requires a private examination of the wife, to ascertain that she acts freely, and not by compulsion of her husband, but prescribes no precise form of words to be used in the certificate, it is sufficient if the words of the acknowledgment have the same meaning, and are in substance the same, with those used in the statute. *Ib.*
4. Where a widow was allowed one year, after probate of her husband's will, to elect whether to take under it or not, and by the will she was sole devisee for herself and children, and before the expiration of the year she released to the mortgagee all her estate, right, and claim to the mortgaged premises, styling herself widow and sole devisee, she cannot

DEED—(Continued).

afterwards avail herself of her right of election, and set up a claim to dower, outside of the will; she is estopped by her deed. *Ib.*

DEMURRER.

See PRACTICE.

DUTIES.

1. The Tariff Act, passed in 1846, (9 Stat. at Large, p. 44,) enacted duties on glass, as follows, viz.: "Schedule B. Forty per centum ad valorem, Glass cut. Schedule C. Thirty per centum ad valorem, Glass tumblers, plain, moulded, or pressed; not cut or punted." *Binns v. Lawrence*, 9.
2. The following classes of tumblers fall within Schedule B, and are chargeable with a duty of forty per centum, viz.:
3. Glass tumblers, the entire surface of the bottom of which had been smoothed by the glass-cutter or grinder, previous to their importation into the United States. *Ib.*
4. Glass tumblers, on the sides of which ornamental figures had been engraved by the glass-cutter or engraver, previous to their importation into the United States. *Ib.*

EVIDENCE.

1. When the question before a court of equity is, whether a deed which purports upon its face to be an absolute deed, was in reality a deed or a mortgage, extraneous evidence is admissible to show that it was only a mortgage. *Russell v. Southard*, 139.
2. Upon such a question as this, depending upon the general principles of equity jurisprudence, this court does not hold itself bound by the decisions of the highest court of the State in which the land in question was, but will be governed by its own view of those principles. *Ib.*
3. The decisions of the courts of Kentucky examined. *Ib.*
4. Such evidence is admissible when it is alleged and proved that a loan on security was really intended, and the defendant sets up the loan as a payment of purchase-money, and the conveyance as a sale. *Ib.*
5. All the notes having been paid except the last, and the action not being brought upon the note but upon the original consideration, the bank was not bound to bring the prior notes into court; the presumption of law was, they had been given up by the holder at the time of payment. If the fact was not so, the burden lay upon the defendants to show it. *Lyman v. Bank of United States*, 225.
6. So also, a part of the consideration being the purchase of real estate, the bank was not bound to prove the execution and delivery of proper conveyances to the defendants. Having given their notes for the purchase-money, the court was bound to presume that they were satisfied with the conveyances. If not, it was their duty to show it. *Ib.*
7. Where goods on board of a ship received a damage which must necessarily have accrued during the voyage, the *onus probandi* is upon the master and owners to show that it was occasioned by one of the perils of navigation within the exception of the bill of lading. *Rich v. Lambert*, 347.
8. For evidence of marriage and bigamy, see *Gaines v. Relf et al.*, 472.
9. Where two persons were jointly indicted for an offence committed against the United States, viz., a murder committed upon the high seas, and were tried separately, it was not competent for the person first tried to call the other as a witness in his behalf. *United States v. Reid et al.*, 361.
10. The trial took place in Virginia, and the evidence would have been competent under a law of Virginia passed in 1849. *Ib.*
11. By the 34th section of the Judiciary Act of 1789, declaring that the laws of the several States shall be regarded as rules of decision in trial at common law in the courts of the United States, meant only to include civil cases at common law and not criminal offenses against the United States. *Ib.*
12. The law by which the admissibility of testimony in criminal cases must be determined is the law of the State, as it was when the courts of the United States were established by the Judiciary Act of 1789. *Ib.*
13. By the strict rules of the common law, a bond of conveyance might be

EVIDENCE—(Continued).

- adduced in support of a possession of twenty years, held in pursuance of the bond to corroborate such possession against an action founded upon the mere right of entry in the obligor or his heirs. *Sargeani v. State Bank of Indiana*, 371.
14. But when the bond was given to carry out the policy of a state in establishing the seat of justice for a new county, it was proper to allow it to be given to the jury as competent evidence to be weighed by them in expounding the provisions of the statute. *Ib.*
 15. Where a court, acting under a state law, appointed a commissioner to convey the legal title, after the death of the obligor of the bond, and the record of that court said that proper and legal notices had been given, it was not competent to offer evidence in another court for the purpose of showing that legal notice had not been given. *Ib.*
 16. For what was proper evidence to go to the jury in a case where a marine brought a suit against an officer of the navy for improper punishment, see "NAVY OF THE UNITED STATES."

EXCEPTIONS.

See PRACTICE.

EXECUTION.

See JUDGMENT.

HUSBAND AND WIFE.

See DEED.

INJUNCTION BOND.

See CHANCERY.

JUDGMENT.

1. In Louisiana, the Supreme Court of the State reviews the questions of fact as well as of law which are brought up from the courts below; and when it reverses a judgment upon either ground, it gives the judgment which the inferior court ought to have given. *Parke v. Turner, et al.*, 39.
2. But when a case is brought before this court by a writ of error, it can only review questions of law; and, therefore, where the validity of a verdict of a jury is brought into question, the practice which prevails in the state courts of Louisiana is inapplicable in the courts of the United States. *Ib.*
3. Hence, where the jury found a verdict in general terms for the plaintiff in a suit upon a promissory note, without finding the amount due, which the laws and practice of Louisiana require them to do, and, the court then gave judgment for the amount of the note, this would have been adjudged to be a cause of reversal of the judgment by the Supreme Court of the state, but cannot be so held by this court. *Ib.*
4. The sufficiency of the verdict must be judged by the rules of the common law and the statutes of the United States, and not by the laws and practice of Louisiana. The act of 1824 (4 Stat. at L., 62) does not include such a case. *Ib.*
5. By the common law, although a judgment in such a case might not have been strictly proper, yet under a power of amending the verdict, the judgment can stand, because the plea having been that no consideration was given for the note and the verdict being for the plaintiff, it necessarily found that the whole amount was due. *Ib.*
6. The 32d section of the Judiciary Act provides for this case by enjoining upon this court to disregard niceties of form, and so it was decided in 16 Pet., 321. *Ib.*
7. The Constitution of Louisiana requires the state judges to give reasons for their decisions; but this is not operative upon the judges of the Circuit Court of the United States. On the contrary, their reasons form no part of the record when the case is brought up to this court. *Ib.*
8. Prior to the revised code of Virginia in 1819, the lien created upon land by a judgment was the same as in England. In both countries the following rules prevailed:
 1. That the lien of the judgment resulted entirely from the right of the plaintiff to sue out an *elegit*, and charge the goods and the moiety of the lands of the debtor.

JUDGMENT—(Continued).

2. That the election so to charge them by an *elegit* executed, discharges from liability the body of the defendant and the remaining moiety of the lands.
3. That the *capias ad satisfaciendum* executed, is, *pro tanto*, a satisfaction of the judgment which releases *proprio vigore* any previous lien upon the lands and inhibits all recourse against the goods and chattels or lands of the debtor, with the exceptions of the instances of death whilst charged in execution, or of an escape from prison, or a rescue. *Snead v. McCoull*, 407.
9. A discharge under the act of Congress for the relief of persons imprisoned for debt (2 Stat. at L., 4, § 2,) did not restore the lien originally created by the judgment, and waived by issuing a *ca. sa.* *Ib.*
10. In 1819, the state of Virginia revised her code. By a part which went into operation on the 1st of January, 1820, it was enacted that, thereafter, the issuance of a *ca. sa.* should constitute a lien upon lands. *Ib.*
11. But as it did not relate to past liens, the purchaser of a lien created under the Revised Code had a good title when compared with a claimant under the lien which existed in 1817, but which had been waived by issuing a *capias ad satisfaciendum.* *Ib.*
12. Where an appeal was taken in a common-law case instead of a writ of error, and after the lapse of ten days the plaintiff issued an execution upon his judgment, and the defendant then sued out a writ of error to bring the case up to this court, it was error in the court below to quash the execution and supersede the judgment. *Saltmarsh v. Tuthill*, 387.
13. The appeal did not remove the case, and the writ of error was sued out too late to stay execution. It is immaterial whether it was a mistake of the party or the court. *Ib.*
14. The question reserved is whether this court has the power to issue a mandamus to the judge below, commanding him to set aside the supersedeas and order the clerk to issue an execution. *Ib.*

JURISDICTION.

1. Where a bank was chartered and its charter repealed by the legislature of a territory, the question of the validity of the repealing act cannot be brought before this court under the twenty-fifth section of the Judiciary Act. *Miners Bank v. State of Iowa*, 1.
2. The power of review is confined by that section to certain laws passed by states, and does not extend to those passed by Territorial Legislatures. *Ib.*
3. Where the highest court of a state affirmed the judgment of the court below, in consequence of an equal division between the judges thereof, such judgment of affirmance is considered, when the case is brought here under the twenty-fifth section of the Judiciary Act, as an affirmance of the rulings of the court below. *Lessieur v. Price*, 60.
4. The act of Congress passed on the 3d of March, 1845, (5 Stat. at L., 736,) forbids the transportation of letters, packages, or other mailable matter, except such as may have relation to some part of the cargo or some article at the same time conveyed in a stage or other vehicle, when such transportation is over a mail route. *United States v. Bromley*, 88.
5. A letter or order, although unsealed, directing tobacco to be sent by the return boat as a commercial transaction, was within the prohibition of the statute. *Ib.*
6. Under the act of Congress passed on the 31st of May, 1844, (5 Stat. at L., 658,) directing that final judgments in a circuit court in any civil action brought by the United States for the enforcement of the revenue laws may be reviewed in this court without regard to the sum or value in controversy, this court can exercise jurisdiction. The revenue of the Post-Office Department is a part of the revenue of the government. *Ib.*
7. The act of Congress, passed on 1st May, 1820, (3 Stat. at L., 568,) enacts, "That no land shall be purchased on account of the United States, except under a law authorizing such purchase." *Neilson v. Lagow*, 98.
8. Where land was conveyed to trustees, for the purpose of paying a debt due to the United States, and the highest court of a state decided against a title set up under that deed, upon the ground that the deed

JURISDICTION—(Continued).

- was in violation of the act of Congress, this court has jurisdiction, under the twenty-fifth section of the Judiciary Act, to review that decision. *Ib.*
9. Where the grounds of the decision of the Supreme Court of the state are not stated in the record, this court will look into the bill of exceptions taken in the court of original jurisdiction, to see what points were carried up to the Supreme Court, and whether they were necessarily involved in the judgment of the Supreme Court. *Ib.*
 10. In 1839, a treaty was made between the United States and Mexico, providing for the "adjustment of claims of citizens of the United States on the Mexican Republic." *Williams's Trustee v. Oliver*, 111.
 11. Under this treaty a sum of money was awarded to be paid to the members of the Baltimore Mexican Company, who had subscribed money to fit out an expedition against Mexico, under General Mina, in 1816. See the case of *Gill v. Oliver's Executors*, 11 How., 529. *Ib.*
 12. The proceeds of one of the shares of this company were claimed by two parties; one as being the second permanent trustee of the insolvent owner of the share, and the other as being the assignee of the first permanent trustee. *Ib.*
 13. The Court of Appeals of Maryland decided that the plaintiff, viz., the second permanent trustee, did not take the claim under the insolvent laws of Maryland. *Ib.*
 14. This decision is not reviewable by this court, under the 25th section of the Judiciary Act; and the case is similar to that of *Gill v. Oliver's Executors*, 11 How., 529. *Ib.*
 15. Nor does jurisdiction accrue in this case in consequence of the additional fact that the legislature of Maryland passed a law curing certain defects in the assignment to Oliver, the validity of which law was drawn into question, as impairing the obligation of a contract; because, if there had been no such law, the decision of the state court would have been the same. *Ib.*
 16. The former decisions of this court respecting its jurisdiction under the 25th section of the Judiciary Act, examined and explained. *Ib.*
 17. In order to bring a case within the reviewing power of this court, as prescribed by the 25th section of the Judiciary Act, it is necessary that the record should show that the point giving jurisdiction to this court, was raised and decided in the state court. *Grand Gulf Railroad and Banking Co. v. Marshall*, 165.
 18. The preceding decisions upon this subject referred to.
Hence, where it appears from the record that the decision of the state court turned upon the construction and not the validity of a state law, and that the question of its validity was not raised, this court has no jurisdiction. *Ib.*
 19. The 13th and 30th section of the act of Congress, passed in 1825, (4 Stat. at L., 105-111), forbid a writing or memorandum from being written on a newspaper, or other printed paper, pamphlet, or magazine, and transmitted by mail. *Teal v. Felton*, 284.
 20. The Postmaster-General directed that if the wrappers of newspapers, pamphlets, or magazines, should be found to contain any manuscript or memorandum of any kind, either written or stamped, or marks or signs made in any way, by which information shall be asked or communicated, it should be charged with letter-postage. *Ib.*
 21. The part of the order relating to marks or signs was not justified by the law. *Ib.*
 22. Hence, where a postmaster refused to deliver a newspaper upon which there was an "initial," unless the person to whom it was addressed would pay letter postage, he was properly held liable in an action for trover. It was not a case calling for discretion in the discharge of his duties. The law, and not the instructions of a department, furnishes the guide to officers. *Ib.*
 23. The state court has jurisdiction to try the case. State courts had jurisdiction over all cases of trover, and the Constitution of the United States did not abrogate their jurisdiction in such cases as the present. *Ib.*

JURISDICTION—(Continued).

24. Where several owners of a cargo filed libels *in rem* against the vessel for damages done to the goods, and these libels were consolidated by order of the court, which afterwards decreed damages in favor of the libellants, in some cases to more and in some to less than \$2,000, those cases where the damages are less than that sum must be dismissed, on an appeal to this court, for want of jurisdiction. *Rich v. Lambert*, 347.
25. Where the highest court of a state decided in favor of a defendant who pleaded his discharge under the bankrupt law of the United States, and the case was brought to this court under the 25th section of the Judiciary Act, this court has no jurisdiction. *Linton v. Stantor*, 423.
26. It would have been otherwise if the decision had been adverse to the exemption claimed under the law of Congress. *Ib.*
27. Promises alleged to have been made by the bankrupt after his discharge are not the subject of jurisdiction under the 25th section. The decision of a state court upon their effect cannot be reviewed by this court. *Ib.*

For Jurisdiction in Admiralty, see ADMIRALTY.

JURY.

1. Where persons were indebted to a bank, and gave their promissory note for the amount of the debt, the mere acceptance of the notes by the bank did not necessarily operate as a satisfaction; and whether or not there was an agreement at the time to receive them in satisfaction, or whether the circumstances attending the transaction warranted such an inference, were questions for the jury. *Lyman v. United States Bank*, 225.
2. Before the defendants became indebted to the bank, the bank had made a compromise of certain claims, which, amongst others, were the subject of the sale by the bank and purchase by the defendants. Two of the defendants had knowledge of the conditions of this compromise, and their knowledge must be considered as extending to the other defendants. It was a question for the jury to determine what the defendants purchased. *Ib.*
3. Without laying down any general rule, how far the affidavits of jurors impeaching their verdict ought to be received, it is decided that the affidavits of two jurors, stating that, while impanelled, they read a newspaper report of the preceding evidence, but which had no influence upon their verdict, were not sufficient ground for a new trial. *United States v. Reid*, 361.
4. For what was proper evidence to go to the jury, in a suit brought by a marine against an officer of the navy for improper punishment, see NAVY OF THE UNITED STATES.

LANDS—PUBLIC.

1. Where a settler upon the public lands had a pre-emption right to them and sold them to a person who again sold them to a third party, the original vendor has a lien upon the land for the balance of the purchase-money still due, and can enforce it by a bill in chancery, notwithstanding the vendee has taken out a patent in his own name under a subsequent pre-emption law. *Thredgill v. Pintard*, 24.
2. This court again decides, as in 9 How., 127, 280, and 10 How., 600, that, with respect to the tract of country between the Mississippi and Perdido rivers, south of the thirty-first degree of north latitude, the authorities of Louisiana had no right to make grants of land after the time of signing the treaty, by which it was ceded to Great Britain. *Montault v. The United States*, 47.
3. That treaty having been signed on the 10th of February, 1763, a grant of the land in the above tract of country, issued by the French Governor of Louisiana, on the 11th March, 1763, was void. *Ib.*
4. Under the act of the 10th of February, 1815, (3 Stat. at L., 211,) for the relief of the inhabitants of New Madrid County, who suffered by earthquakes, a notice of location given to the Surveyor-General was not sufficient to vest the title in the applicant; the title was not complete until the plat and certificate of survey were filed and recorded in the Recorder's office. An exchange of titles then at once took place. The

LANDS—PUBLIC—(*Continued*).

- applicant became entitled to his new location, and the land which he abandoned reverted to the United States. *Lessieur v. Price*, 30.
5. But if the claim, under a New Madrid certificate, be prosecuted by an agent without the knowledge of the principal, the title to the new land cannot vest in the principal until he assents to and adopts the proceedings of his agent; because, by such assent, he relinquishes the title to the land which he first owned. *Ib.*
 6. In 1820, Congress granted to the state of Missouri, (3 Stat. at L., 547,) four sections of land, which should, "under the direction of the legislature, be located, as near as may be, in one body, at any time, in such townships and ranges as the legislature may select, on any of the public lands of the United States: Provided, that such locations shall be made prior to the public sale of the lands of the United States surrounding such location." *Ib.*
 7. This grant did not need an application to an officer of the United States for permission to locate it. When the legislature selected the land, and gave notice thereof to the Surveyor-General and Recorder of the Land-District, the land became identified, and the title complete. *Ib.*
 8. In making the selection, the legislature had a right to include fractional parts of sections, until the entire amount of four sections was made up. *Ib.*
 9. The time at which the title of the State became complete, was the day on which the Governor notified the Surveyor-General of the selection of the land by commissioners who had been appointed for that purpose. *Ib.*
 10. An historical account given as to what officer in Louisiana possessed the power to grant part of the king's domain. *The United States v. Moore*, 209.
 11. In September, 1797, Morales, who was intendant, had not the power. And a receipt of that date, given by him for the purchase-money of lands sold, could convey no title. *Ib.*
 12. By the regulations of O'Rielly, made in 1770, the front proprietors of land upon the Mississippi were bound to make mounds or levees, and also to clear and ditch the whole front of the depth of two arpents, within three years from the date of their purchases. In default thereof, the land reverted to the king. *Ib.*
 13. This condition not having been complied with in the present case, and the alleged proprietor not having asserted any claim from 1797 to 1835, the presumption is that he surrendered his purchase and had his money refunded. *Ib.*
 14. The claim is also barred by lapse of time. *Ib.*
 15. The District Court decreed that "in case any of the lands claimed by the petitioner should have been sold by the United States, he, the petitioner, should be authorized to enter, in any land-office in the state of Louisiana, a like quantity of public lands." *Ib.*
 16. This decree was erroneous. The act of 1844 revived the act of 1824, but did not revive the act of 1828; and the act of 1824 required the grantees of the United States to be made parties in order that they might come in and defend their title. It also intended that these grantees should produce their titles, so that the court might ascertain their boundaries and quantities, and decree accordingly. But in the decree in question, this was not done. *Ib.*
 17. The act of Congress passed on 26th May, 1824, enabling claimants to land in Missouri and Arkansas, to try their titles, was revived by the act of 17th June, 1844, and extended to Louisiana. *The United States v. Porche*, 426.
 18. By the fifth section of the act of 1824, the claimants were required to present their claims within two years from the passage of the law. *Ib.*
 19. This section being revived by the act of 1844, claimants were required by the latter act to present their claims before the 17th of June, 1846. *Ib.*
 20. Acts supplementary to that of 1824 were not revived by the act of 1844. Nothing was revived except the original act. *Ib.*

LANDS—PUBLIC—(Continued).

21. The District Court of Louisiana had no jurisdiction, therefore, over a case where the petition was not presented until the 8th March, 1848. *Ib.*
22. The ninth section of the act of 1824 does not prevent the United States from appealing, where a claim is for less than one thousand acres. *Ib.*
23. In 1791 Miro granted an order of survey for some land in Louisiana. *The United States v. Simon*, 433.
24. During the ten years that the province remained in the hands of Spain, the grantee neither had a survey, nor took possession, nor did any other act showing an intention of fulfilling the conditions upon which the grant was made. *Ib.*
25. The regulations of Morales required parties so situated to have their titles made out. In case of neglect the Spanish government was under no obligation to grant the land, and therefore the claim is not good against the United States. *Ib.*
26. A paper, offered as a grant from the Spanish authorities for some land in Louisiana, decided to be incomplete, and nothing more than the preamble to Spanish grants. *The United States v. Le Blanc*, 435.
27. Moreover, there is no evidence that the claimants are the heirs of the grantee, nor that any one claiming under him ever took possession or exercised any act of ownership from 1777 to 1846. *Ib.*
28. This court again decides, as in 9 How., 127, and 10 How., 609, that by the act of 1824, a claimant of land in Louisiana must aver and prove his residence in that Province at the date of the grant, or on or before the 10th of March, 1804. *United States v. Castant*, 437.
29. Also, that the act was not intended to provide for perfect grants. Over such, the District Court has no jurisdiction. *Ib.*
30. A decree of the court was erroneous, authorizing the claimants to enter public land, upon the ground that the United States had sold what was covered by the claim, when there was no evidence that the United States had made any such sales. *Ib.*

LAND, PURCHASED FOR THE UNITED STATES.

1. The act of Congress, passed on 1st May, 1820, (3 Stat. at L., 568,) enacts, "That no land shall be purchased on account of the United States, except under a law authorizing such purchase." *Neilson v. Lagow*, 98.
2. Where land was conveyed to trustees, for the purpose of paying a debt due to the United States, and the highest court of a state decided against a title set up under that deed, upon the ground that the deed was in violation of the act of Congress, this court has jurisdiction, under the twenty-fifth section of the Judiciary Act, to review that decision. *Ib.*
3. The deed to the trustees being an authority to sell so much of the land as might be necessary to pay the debt, this was not such a purchase as is forbidden by the statute. Nor does the act of Congress prohibit the acquisition, directly, by the United States, of the legal title to land, when it is taken by way of security for a debt. *Ib.*
4. Where the trustees purchased, and paid for out of money belonging to the United States, the equitable title, where the legal title to the land had been previously conveyed to them, the acquisition of this equitable title was nothing more than relieving the land of an incumbrance, and was not such a purchase as was forbidden by the statute. *Ib.*

LIEN OF A JUDGMENT.

See JUDGMENT.

LIMITATIONS, STATUTE OF.

Where a mortgage is payable by instalments, some of which were not due at the time of filing the bill, the statute of limitations will not apply. *Union Bank of Louisiana v. Stafford*, 328.

LOUISIANA.

1. The practice of the Louisiana courts does not govern the courts of the United States in cases where the state court exercises its appellate power in reviewing matters of fact upon a writ of error. *Parks v. Turner et al.*, 39.
2. By the Louisiana practice, if neither party claims a trial by jury, the whole case is decided by the court; matters of fact as well as of law. *Bond v. Brown*, 254.

LOUISIANA—(Continued).

3. Where, upon such a trial, no testimony is objected to, and it does not appear that any question of law arose or was decided, and the case is brought to this court by writ of error, the judgment of the court below must be affirmed. *Ib.*
4. The decision of the court below, upon questions of fact, is as conclusive upon this court as the verdict of a jury would be. *Ib.*
5. The 25th section of the law of Louisiana incorporating the Union Bank of Louisiana, declares that in all hypothecary contracts and obligations entered into by any married individual, with the bank, it shall be lawful for the wife to unite with him; and in such case the property of the wife, whether dotal or of any other description, shall be affected by the contract. *Union Bank of Louisiana v. Stafford*, 328.
6. Where a wife united with her husband in mortgaging property to the bank, the mortgage was good under this clause. *Ib.*
7. A sale of the mortgaged property for a twelve months' bond under an order of seizure and sale was not an ovation or extinguishment of the original mortgage. *Ib.*

MARRIAGE.

Evidence of MARRIAGE AND BIGAMY, see *Gaines v. Relf et al.*, 472.

MISSISSIPPI.

1. Where a defendant, when sued upon a note, set up, as a defense, that the note was given for an illegal consideration, the whole statute must be examined, in order to discover whether or not the legislature intended to prevent courts of justice from enforcing contracts relating to the act prohibited. *Harris v. Runnels*, 80.
2. Where a statute prohibits an act, or annexes a penalty to its commission, it is true that the act is made unlawful, but it does not follow that the unlawfulness of the act was meant by the legislature to avoid a contract made in contravention of it. *Ib.*
3. Where a statute is silent, and contains nothing from which the contrary can properly be inferred, a contract in contravention of it is void. But the whole statute must be examined in order to decide whether or not it does contain anything "from which the contrary can be properly inferred." *Ib.*
4. Thus, where a statute of Mississippi declared that slaves should not be brought into the state without a previous certificate signed by two freeholders, with a certificate of the clerk of the county from which they came, certifying that the signers were respectable freeholders; and slaves were brought in without such certificate and sold, the contract is not void, but the purchaser must pay his note given for the purchase-money. *Ib.*
5. Other parts of the statute indicate that the legislature did not intend to declare the contract void; as for example, a part in which a fine is imposed upon the buyer and also upon the seller. *Ib.*

MISSOURI.

See LANDS, PUBLIC.

MORTGAGE.

1. Whether a deed was a mortgage or a conditional sale, see *Russell v. Southard*, 139.
2. See also for other principles, title CHANCERY.
3. Where slaves were mortgaged, see CHANCERY.
4. Acknowledgment by wife, see DEED.

NAVY OF THE UNITED STATES.

1. Under the Act of Congress, passed on the 2d of March, 1837, (5 Stat. at L., 153,) the commander of a squadron had power to detain a marine after the term of his enlistment expired, if, in the opinion of the commander, public interest required it. See 7 How., 89. *Dinsman v. Wilkes*, 390.
2. The decision of this question, by the commander, was final and conclusive; and if the marine did not conform to it, he was liable to punishment. *Ib.*
3. So, too, the commander was the judge of the degree of punishment necessary to suppress a spirit of disobedience and insubordination; and he is

NAVY OF THE UNITED STATES—(Continued).

- not liable to an action for a mere error in judgment, even if the jury suppose that milder measures would have accomplished his object. *Ib.*
4. But at the same time he is bound never to inflict any severer punishment than he conscientiously believes to be necessary to maintain discipline, and due subordination in his ships. *Ib.*
 5. The question being one of motives, the jury are to judge whether he was actuated alone by an upright intention to maintain the discipline of his command, or whether punishment was in any manner or degree increased or aggravated by malice or vindictive feeling. *Ib.*
 6. In deciding this question, the jury are to take into consideration all the circumstances of the case. *Ib.*
 7. A letter from one of the officers of the squadron to the commander, upon the temper and disposition of the marines in one of the ships, was proper evidence for the jury. *Ib.*
 8. But the proceedings of a court-martial, for the trial of men for offenses committed long before, was not evidence, because it did not show the spirit existing at that time. *Ib.*
 9. Nor was evidence admissible, of the flogging of two other persons merely by the authority of the commander without a court-martial. *Ib.*
 10. Nor was evidence admissible, that the commander refused to give to the marine a certificate, under the act of Congress before referred to; because the commander claimed to hold him by voluntary enlistment. *Ib.*
 11. In order to show the motive by which the commander was actuated in confining the marine in a fort, on shore, it was admissible for the commander to offer evidence that merchant seamen from American ships were confined there, and also for the marine to offer evidence to rebut it. *Ib.*

NEGROES AND SLAVES.

When mortgaged, see CHANCERY.

NEW MADRID CERTIFICATE.

See LANDS, PUBLIC.

NEW TRIALS.

Without laying down any general rule, how far the affidavits of jurors impeaching their verdict ought to be received, it is decided that the affidavits of two jurors, stating that, whilst impaneled, they read a newspaper report of the preceding evidence, but which had no influence upon their verdict, were not sufficient ground for a new trial. *United States v. Reid et al.*, 361.

PILOTAGE.

1. A law of the State of Pennsylvania, that a vessel which neglects or refuses to take a pilot, shall forfeit and pay to the master-warden of the pilots, for the use of the society for the relief of distressed and decayed pilots, their widows and children, one half the regular amount of pilotage, is an appropriate part of a general system of regulations on the subject of pilotage, and cannot be considered as a covert attempt to legislate upon another subject, under the appearance of legislation on this one. *Cooley v. Board of Wardens, &c.*, 299.
2. Nor can the exemption of American vessels, engaged in the Pennsylvania coal trade, from the necessity of paying half pilotage, be declared to be other than a fair exercise of legislative discretion, acting upon the subject of the regulation of the pilotage of the port of Philadelphia. *Ib.*
3. The law of Pennsylvania is, therefore, not inconsistent with the second and third clauses of the tenth section of the first article of the Constitution of the United States. Imposts, and duties on imports, exports and tonnage, were understood, when the Constitution was formed, to mean totally distinct things from fees of pilotage. *Ib.*
4. Nor is the law repugnant to the first clause of the eighth section of the first article of the Constitution, because, as the charge is not a duty, import, or excise, there is no necessity for its being uniform throughout the United States. *Ib.*
5. Neither is the law repugnant to the fifth clause of the ninth section of the first article of the Constitution; because it neither gives a preference of one port over another, nor does it require a vessel to pay duties. *Ib.*

PILOTAGE—(Continued).

8. Upon this point, the act of Congress, passed in 1789, (1 Stat. at L., 54,) recognizing the pilot laws of the States, is entitled to great weight, as showing that these laws neither levied duties, nor gave a preference of one port over another. *Ib.*
7. Moreover, the law is not inconsistent with the third clause of the eighth section of the first article of the Constitution. *Ib.*
8. It is true that the power to regulate commerce includes the regulation of navigation, and that pilot laws are regulations of navigation, and, therefore, of commerce, within the grant to Congress of the commercial power. *Ib.*
9. But the mere grant of the commercial power to Congress does not forbid the States from passing laws to regulate pilotage. The power to regulate commerce includes various subjects, upon some of which there should be a uniform rule, and upon others different rules in different localities. The power is exclusive in Congress, in the former, but not so in the latter class. *Ib.*
10. Although Congress may legislate upon the subject of pilotage, throughout the United States, yet they have manifested an intention not to overrule the State laws, except in one instance. The law of Pennsylvania, not being overruled, is not repugnant to the Constitution of the United States. *Ib.*

POSTAGE AND POST-OFFICE.

1. The act of congress passed on the 3d of March, 1845, (5 Stat. at L., 736,) forbids the transportation of letters, packages, or other mailable matter, except such as may have relation to some part of the cargo, or some article at the same time conveyed in a stage or other vehicle, when such transportation is over a mail route. *United States v. Bromley*, 88.
2. A letter or order, although unsealed, directing tobacco to be sent by the return boat, as a commercial transaction, was within the prohibition of the statute. *Ib.*
3. Under the act of Congress, passed on the 31st of May, 1844, (5 Stat. at L., 658,) directing that final judgments in a Circuit Court in any civil action brought by the United States, for the enforcement of the revenue laws, may be reviewed in this court, without regard to the sum or value in controversy, this court can exercise jurisdiction. The revenue of the Post-Office Department is a part of the revenue of the government. *Ib.*
4. Where the suit was upon a postmaster's bond, and the district-attorney offered to read in evidence an authentic copy thereof, which the court refused to receive, this refusal was erroneous. *United States v. Wilkinson*, 246.
5. Although the presumption of law is in favor of the correctness of the court below, where no reasons appear, yet, in this case, the record itself shows the error. If there was any fact which made the copy of the bond inadmissible, it ought to have been shown by the defendants, and set forth in the exception. *Ib.*
6. The 13th and 30th sections of the act of Congress, passed in 1825, (4 Stat. at L., 105-111,) forbid a writing or memorandum from being written on a newspaper, or other printed paper, pamphlet, or magazine, and transmitted by mail. *Teal v. Felton*, 284.
7. The Postmaster-General directed that if the wrappers of newspapers, pamphlets, or magazines, should be found to contain any manuscript or memorandum of any kind, either written or stamped, or marks or signs made in any way, by which information shall be asked or communicated, it should be charged with letter postage. *Ib.*
8. The part of the order relating to marks and signs was not justified by law. *Ib.*
9. Hence, where a postmaster refused to deliver a newspaper upon which there was an "initial," unless the person to whom it was addressed would pay letter postage, he was properly held liable in an action for trover. It was not a case, calling for discretion in the discharge of his duties. The law, and not the instructions of a department, furnishes the guide to officers. *Ib.*
10. The State court had jurisdiction to try the case. State courts had juris-

POSTAGE AND POST-OFFICE—(*Continued*).

diction over all cases of trover, and the Constitution of the United States did not abrogate their jurisdiction in such cases as the present. *Ib.*

PRACTICE.

1. Where a motion is made to docket and dismiss a case under the 43d rule of this court, the certificate of the clerk of the court below, upon which the motion is founded, must state the names of the parties to the suit. It is not enough to say, Joseph W. Clark and others. The names of the "others" ought to be set forth. *Smith v. Clark et al.*, 21.
2. The practice of the Louisiana courts does not govern the courts of the United States in cases where the state court exercises its appellate power in reviewing matters of fact upon a writ of error. *Parks v. Turner et al.*, 39.
3. A motion in this court after the decision of the case here, to set aside the decree and remand the case to the Circuit Court for further preparation and proof, upon the ground that new and material evidence has been discovered since the trial of the case in that court, cannot be sustained. *Russell v. Southard*, 139.
4. Affidavits of newly-discovered testimony cannot be received. This court must affirm or reverse upon the case as it appears in the testimony. *Ib.*
5. The established chancery practice is so, and if it were not, the act of Congress, passed on March 3, 1803, would be decisive of the question. *Ib.*
6. The surety for the appellants from a decree in admiralty, gave bond to pay all costs and damages which might be adjudged by this court. *Ives v. Merchants Bank of Boston*, 159.
7. This court having affirmed the decree of the Circuit Court with costs and six per cent. damages, judgment was entered upon the receipt of the mandate by the Circuit Court, for the amount of the original judgment together with the amount of costs and damages calculated up to that day; and execution was awarded. *Ib.*
8. Under this execution, the vessel, which had been attached under the libel was sold for less than this aggregate amount. *Ib.*
9. The surety is not entitled to have a relative proportion of the proceeds of sale applied to the reduction of his bond, but is responsible upon it to the entire amount. *Ib.*
10. By the 26th section of the Judiciary Act, the courts have power to assess damages upon bonds, &c., and to render judgment for so much as is due according to equity, in cases of default or confession or demurrer. This section does not apply to a case heard on agreed facts. *Ib.*
11. But then when the case heard on agreed facts was the case of an appeal-bond, it was proper for the court to give judgment for the penalty of the bond (being less than the judgment under the mandate) and allow interest from the date of the institution of the suit, although the amount to be paid in this way would exceed the penalty of the bond. *Ib.*
12. The proper condition of an injunction-bond is "to answer all damages which the defendant may sustain in consequence of the injunction being granted." *Bein v. Heath*, 168.
13. Where a bond was given in order to obtain an injunction to suspend proceedings, under an order of seizure and sale, and the condition was that the principal and sureties "would pay to the plaintiff in the case of seizure and sale, all such damages as he may recover against us, in case it should be decided that the said injunction was wrongfully obtained," this bond was irregular. *Ib.*
14. It conformed to the Louisiana practice, by which, if an injunction be dissolved, judgment is at once given for the debt, interest, and damages, against the principal and sureties in the injunction-bond. *Ib.*
15. But the equity practice in the courts of the United States is regulated by the laws of Congress, and the rules of this court made under the authority of an act of Congress; and one of those rules is, that, when not otherwise directed, the practice in the High Court of Chancery, in England, shall be followed. *Ib.*
16. According to these rules, a court of equity cannot, when it dissolves an injunction, give judgment, at the same time, against the obligors. It merely orders the dissolution, leaving the obligee to proceed at law

PRACTICE—(Continued).

- against the sureties, if he sustains damage from the delay occasioned by the injunction. *Ib.*
17. Where a bill in chancery states that, at an execution sale, which was alleged to have been open and fair, the complainant purchased, for the sum of \$600, certain promissory notes secured by mortgage, amounting in the whole to \$260,000, and the bill was demurred to, and the demurrer sustained by the Circuit Court, this judgment must be reversed. *Erwin v. Parham*, 197.
 18. Mere inadequacy of price does not, of itself, furnish a sufficient reason for dismissing the bill, or deciding that the complaint was entitled to no relief whatever. *Ib.*
 19. Where the bill of exceptions purported to have been taken at April term, 1848, but the record showed that, at that time, no suit between the parties was pending, and that the trial took place in April, 1849, the date of 1848 must be considered as a clerical error. The certificate from the Circuit Court showed that the bill of exceptions was regularly allowed upon the trial, and this must be conclusive upon this court. *United States v. Wilkinson*, 246.
 20. Where the suit was upon a postmaster's bond and the district-attorney offered to read in evidence an authentic copy thereof, which the court refused to receive, this refusal was erroneous. *Ib.*
 21. Although the presumption of law is in favor of the correctness of the court below where no reasons appear, yet, in this case, the record itself shows the error. If there was any fact which made the copy of the bond inadmissible, it ought to have been shown by the defendants, and set forth in the exception. *Ib.*
 22. By the Louisiana practice, if neither party claims a trial by jury, the whole case is decided by the court; matters of fact as well as of law. *Bond v. Brown*, 254.
 23. Where, upon such a trial, no testimony is objected to, and it does not appear that any question of law arose or was decided, and the case is brought to this court by writ of error, the judgment of the court below must be affirmed. *Ib.*
 24. The decision of the court below, upon questions of fact, is as conclusive upon this court as the verdict of a jury would be. *Ib.*
 25. If a writ of error does not set out the names of all the parties to the judgment of the Circuit Court, the case will be dismissed. *Smyth v. Strader, Perrine & Co.*, 327.
 26. Where other parties had a nominal interest as defendants, and resided beyond the jurisdiction of the court, it was error in the Circuit Court to dismiss the bill because they were not made parties. Under the act of Congress of 1839, the court should have gone on to decree against the actual defendants; and in this case all who have a beneficial interest are in court. *Union Bank of Louisiana v. Stafford*, 328.
 27. Where further evidence was taken after the appeal to this court was entered, under the authority of an act of Congress passed in 1803, (2 Stat. at L., 244,) the issuing of the commission by the clerk of the Circuit Court, and the uniting by both parties in its execution, furnish a presumption that the proper order was given. If not, the parties have waived all objection. *Rich v. Lambert*, 347.
 28. After a case had been argued and was under advisement, a motion to permit the complainant to file a further bill by way of supplement and amendment, which would have made an essential change in the character and objects of the cause, was properly overruled in the Circuit Court. *Snead v. McCoull*, 407.
 29. Where an appeal was taken in a common-law case instead of a writ of error, and after the lapse of ten days the plaintiff issued an execution upon his judgment, and the defendant then sued out a writ of error to bring the case up to this court, it was error in the court below to quash the execution and supersede the judgment. *Saltmarsh v. Tut-hill*, 387.
 30. The appeal did not remove the case, and the writ of error was sued out too late to stay execution. It is immaterial whether it was a mistake of the party or the court. *Ib.*

PRACTICE—(Continued).

31. The question reserved is whether this court has the power to issue a mandamus to the judge below, commanding him to set aside the supersedeas and order the clerk to issue an execution. *Ib.*

For Practice in Admiralty, see ADMIRALTY.

SHIPS OR VESSELS.

See COMMERCIAL LAW.

STATUTES, CONSTRUCTION OF.

See CONTRACTS.

1. The act of Congress, passed on 1st May, 1820, (3 Stat. at L., 568,) enacts, that no land shall be purchased on account of the United States, except under a law authorizing such purchases. *Neilson v. Lagow*, 98.
2. But this does not prohibit the acquisition of land by the United States, either directly, or through trustees, when taken as security for a debt. *Ib.*
3. Where the trustees purchased, and paid for out of money belonging to the United States, the equitable title, where the legal title to the land had been previously conveyed to them, the acquisition of this equitable title was nothing more than relieving the land of an incumbrance, and was not such a purchase as was forbidden by the statute. *Ib.*

TARIFF OF 1846.

1. The Tariff Act, passed in 1846, (9 Stat. at L., 44,) enacted duties on glass, as follows, viz.:
 "Schedule B. Forty per centum *ad valorem*, Glass cut.
 "Schedule C. Thirty per centum, *ad valorem*, Glass tumblers, plain, moulded, pressed; not cut or punted." *Binns et al. v. Lawrence*, 9.
2. The following classes of tumblers fall within Schedule B, and are chargeable with a duty of forty per centum, viz.:
 1. Glass tumblers, the entire surface of the bottom of which had been smoothed by the glass-cutter or grinder, previous to their importation into the United States. *Ib.*
 2. Glass tumblers, on the sides of which ornamental figures had been engraved by the glass-cutter or engraver, previous to their importation into the United States. *Ib.*

TERRITORY.

1. Where a bank was chartered and its charter repealed by the legislature of a Territory, the question of the validity of the repealing act cannot be brought before the court under the twenty-fifth section of the Judiciary Act. *Miners Bank v. State of Iowa*, 1.
2. The power of review is confined by that section to certain laws passed by states and does not extend to those passed by territorial legislatures. *Ib.*

TREATY.

1. This court again decides, as in 9 How., 127, 280, and 10 How., 609, that, with respect to the tract of country between the Mississippi and Perdido rivers, south of the thirty-first degree of north latitude, the authorities of Louisiana had no right to make grants of land after the time of signing the treaty, by which it was ceded to Great Britain. *Montault v. United States*, 47.
2. That treaty having been signed on the 10th of February, 1763, a grant of land in the above tract of country, issued by the French Governor of Louisiana, on the 11th March, 1763, was void. *Ib.*

TRUSTEES.

1. Where there were two trustees of the property of insolvents, and one of them made an assignment, but the other neither joined in it nor assented to it afterwards, the assignment was void. *Wilbur v. Almy*, 180.
2. And in the present case, also, the assignee appears to have received an assignment of the property only as security, until its profits should pay a debt due to him by the insolvents. That debt being extinguished, he has no right, as owner, to claim an account of further profits from the holder of the property. *Ib.*
3. Where the bank had become insolvent and had made an assignment of its effects to trustees for the benefit of its creditors, the bank was allowed to sue in its own name at the instance, and for the benefit of creditors, and the case was the same as if the law permitted the suit to be brought, and the same had been brought, in the name of such trustees. *Lymca v. Bank of the United States*, 225.

TRUSTEES—(Continued).

4. Although the bank had indorsed a note amongst its other assets to its trustees, yet under the circumstances it could maintain a suit upon the note, because,
5. Where a party who is the holder of a note transferred it for purposes of collection, and it is not paid but is found in the possession of the original holder, he can recover, as he is remitted to his original rights, notwithstanding the indorsement; and if the note is not paid, the plaintiff may give it up and recover upon the original consideration. *Ib.*

VERDICT.

1. In Louisiana, the Supreme Court of the State reviews the questions of fact as well as of law which are brought up from the courts below; and when it reverses a judgment upon either ground, it gives the judgment which the inferior court ought to have given. *Parke v. Turner, et al., 33.*
2. But when a case is brought before this court by a writ of error, it can only review questions of law; and, therefore, where the validity of a verdict of a jury is brought into question, the practice which prevails in the state courts of Louisiana is inapplicable in the courts of the United States.
3. Hence, where the jury found a verdict in general terms for the plaintiff in a suit upon a promissory note, without finding the amount due, which the laws and practice of Louisiana require them to do, and the court then gave judgment for the amount of the note, this would have been adjudged to be a cause of reversal of the judgment by the Supreme Court of the state, but cannot be so held by this court. *Ib.*
4. The sufficiency of the verdict must be judged by the rules of the common law and the statutes of the United States, and not by the laws and practice of Louisiana. The act of 1824 (4 Stat. at L., 62) does not include such a case. *Ib.*
5. By the common law, although a judgment in such a case might not have been strictly proper, yet under a power of amending the verdict, the judgment can stand, because the plea having been that no consideration was given for the note and the verdict being for the plaintiff, it necessarily found that the whole amount was due. *Ib.*
6. The 32d section of the Judiciary Act provides for this case by enjoining upon this court to disregard niceties of form, and so it was decided in 16 Pet., 321. *Ib.*
7. The Constitution of Louisiana requires the state judges to give reasons for their decisions; but this is not operative upon the judges of the Circuit Court of the United States. On the contrary, their reasons form no part of the record when the case is brought up to this court. *Ib.*

WITNESS.

1. Where two persons were jointly indicted for an offense committed against the United States, viz., a murder committed upon the high seas, and were tried separately, it was not competent for the person first tried to call the other as a witness in his behalf. *United States v. Reid, 361.*
2. The trial took place in Virginia, and the evidence would have been competent under a law of Virginia passed in 1849. *Ib.*
3. But the 34th section of the Judiciary Act of 1789, declaring that the laws of the several States shall be regarded as rules of decision in trials at common law in the courts of the United States, meant only to include civil cases at common law, and not criminal offenses against the United States. *Ib.*
4. The law by which the admissibility of testimony in criminal cases must be determined, is the law of the State, as it was when the courts of the United States were established by the Judiciary Act of 1789. *Ib.*
5. Without laying down any general rule, how far the affidavits of jurors impeaching their verdict ought to be received, it is decided that the affidavits of two jurors, stating that, whilst impaneled, they read a newspaper report of the preceding evidence, but which had no influence upon their verdict, were not sufficient ground for a new trial. *Ib.*

WRIT OF ERROR.

If a writ of error does not set out the names of all the parties to the judgment of the Circuit Court, the case will be dismissed. *Smyth v. Strader, Perrine & Co., 327.*









