INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

The references are to the STAR (*) pages.

ADMIRALTY.

1. The usage upon the River Ohio is, that when the steamboats are approaching each other in opposite directions, and a collision is apprehended, the descending boat must stop her engine, ring her bell, and float; leaving the option to the ascending boat how to pass. *Williamson* v. *Barrett*, 101.
2. The descending boat was not bound to back her engines, and it was correct in the Circuit Court to refuse leaving to the jury the question whether or not, in fact, such backing of the engines would have prevented the collision, where the ascending boat was manifesting an intention to cross the river. *Ib.*
3. The proper measure of damages is a sum sufficient to raise the sunken boat, repair her, and compensate the owners for the loss of her use during the time when she was being refitted. *Ib.*
4. In a case of collision, upon the River Mississippi, between the steamboats Iowa and Declaration, whereby the Iowa was sunk, the weight of evidence was, that the Iowa was in fault, and the libel filed by her owners against the owners of the Declaration was properly dismissed. *Walsh et al.* v. *Rogers et al.*, 283.
5. *Ex parte* depositions, under the act of 1789, without notice, ought not to be taken, unless in circumstances of absolute necessity, or in cases of mere formal proof, or of some isolated fact. *Ib.*
6. During the war with Mexico, the Admittance, an American vessel, was seized in a port of California, by the commander of a vessel of war of the United States, upon suspicion of trading with the enemy. She was condemned as a lawful prize by the chaplain belonging to one of the vessels of war upon that station, who had been authorized by the President of the United States to exercise admiralty jurisdiction in cases of capture. *Jecker et al.* v. *Montgomery*, 498.
7. The owners of the cargo filed a libel against the captain of the vessel of war, in the Admiralty Court for the District of Columbia. Being carried to the Circuit Court, it was decided:

   1. That the condemnation in California was invalid as a defence for the captors.

   2. That the answer of the captors, having averred sufficient probable cause for the seizure of the cargo, and the libellants having demurred to this answer, upon the ground that the District Court had no right to adjudicate, because the property had not been brought within its jurisdiction, the demurrer was overruled, and judgment was entered against the libellants. *Ib.*
8. The judgment of the Circuit Court, upon the first point, was correct, and upon the second point, erroneous. *Ib.*
9. The Prize Court established in California was not authorized by the laws of the United States or the laws of nations. *Ib.*

ADMIRALTY—(*Continued.*)

10. The grounds alleged for the seizure of the vessel and cargo in the answer, viz., that the vessel sailed from New Orleans with the design of trading with the enemy, and did, in fact, hold illegal intercourse with them, are sufficient to subject both to condemnation, if they are supported by testimony. *Ib.*
11. And, if they were liable to capture and condemnation, the reasons assigned in the answer for not bringing them into a port of the United States and libelling them for condemnation, viz., that it was impossible to do so consistently with the public interests, are sufficient, if supported by proof, to justify the captors in selling vessel and cargo in California, and to exempt them from damages on that account. *Ib.*
12. The Admiralty Court in the district had jurisdiction of the case, and it was the duty of the court to order the captors to institute proceedings in that court, to condemn the property as prize, by a day to be named in the order; and in default thereof, to be proceeded against upon the libel for an unlawful seizure. *Ib.*
13. The Admiralty Court, in the District of Columbia, had jurisdiction of such a libel for condemnation, although the property was not brought within its jurisdiction; and, if they found it liable to condemnation, might proceed to condemn it, although it was not brought within the custody or control of the court. *Ib.*
14. The necessity of proceeding to condemn as prize, does not arise from any difference between the Instance Court and the Prize Court, as known in England. The same court here possesses the instance and prize jurisdiction. But because the property of the neutral is not divested by the capture, but by the condemnation in a prize court; and it is not divested until condemnation, although, when condemned, the condemnation relates back to the capture. *Ib.*
15. As this libel is for the restitution of the property or the proceeds, probable cause of seizure is no defence. It is a good defence against a claim for damages, when the property has been restored, or lost after seizure without the fault of the captor. But, while the property or proceeds is withheld by the captor, and claimed as prize, probable cause of seizure is no defence. *Ib.*
16. The Circuit Court, therefore, erred in deciding that probable cause of seizure was a good defence. *Ib.*

ALABAMA.

1. Boundary line between Alabama and Georgia. See GEORGIA.

APPEAL AND ERROR.

1. An appeal does not lie to this court from the decision of a District Court in a case of bankruptcy. *Crawford* v. *Points*, 11.
2. Where a State Court has, in fact, decided a federal question adversely to the plaintiff, error will lie, notwithstanding the State Court may have violated its own rules of practice in making such decision. *Darrington* v. *Bank of Alabama*, 12.
3. Where the only exceptions taken in the court below were to the refusals of the court to continue the case to the next term; and it appears that the continuance asked for below and the suing out the writ of error were only for the purpose of delaying the payment of a just debt, and no counsel appeared in this court on that side, the 17th rule will be applied and the judgment of the court below be affirmed with ten per cent. interest. *Barrow* v. *Hill*, 53.
4. Where a defendant in error or an appellee wishes to have a case dismissed because no citation has been served upon him, his counsel should give notice of the motion when his appearance is entered, or at the same term; and also that his appearance is entered for that purpose. A general appearance is a waiver of the want of notice. *Buckingham* v. *McLean*, 150.
5. An appeal in equity brings up all the matters which were decided in the Circuit Court to the prejudice of the appellant; including a prior decree of that court from which an appeal was then taken, but which appeal was dismissed under the rules of this court. *Ib.*

ARBITRATION.

1. Where two partners assigned all their partnership property to a trustee with certain instructions how to dispose of it, and afterwards agreed between themselves to appoint an arbitrator, recognizing in their bonds the directions given to the trustee, the arbitrator had no right to deviate from these directions, and make other disposition of the property. *McCormick* v. *Gray*, 27.
2. The reason given by the arbitrator, that he preferred creditors before awarding a certain sum to one of the partners, is insufficient. *Ib.*
3. Nor had the arbitrator a right to depart, in any particular, from the arrangement of the property which the partners had designated in their deed to the trustee. *Ib.*

ARMY, OFFICERS OF THE.

1. During the war between the United States and Mexico, where a trader went into the adjoining Mexican provinces which were in possession of the military authorities of the United States, for the purpose of carrying on a trade with the inhabitants which was sanctioned by the executive branch of the government, and also by the commanding military officer, it was improper for an officer of the United States to seize the property upon the ground of trading with the enemy. *Mitchell* v. *Harmony*, 115.
2. Private property may be taken by a military commander to prevent it from falling into the hands of the enemy, or for the purpose of converting it to the use of the public; but the danger must be immediate and impending, or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. *Ib.*
3. The facts as they appeared to the officer must furnish the rule for the application of these principles. *Ib.*
4. But the officer cannot take possession of private property for the purpose of insuring the success of a distant expedition upon which he is about to march. *Ib.*
5. Whether or not the owner of the goods resumed the possession of them at any time after their seizure, was a fact for the jury. In this case, they found that he did not resume the possession, and in this they were sustained by legal evidence. *Ib.*
6. The officer who made the seizure cannot justify his trespass by showing the orders of his superior officer. An order to commit a trespass can afford no justification to the person by whom it was executed. *Ib.*
7. The trespass was committed out of the limits of the United States. But an action for it may be maintained in the Circuit Court for any district in which the defendant may be found upon process against him, where the citizenship of the respective parties gives jurisdiction to a court of the United States. *Ib.*

ASSIGNMENT.

1. The following paper, viz.—
"The President or Cashier of the Planters and Merchants Bank will please hold, subject to the order of Mr. J. G. Lindsey, all the debts referred to in the inclosed letter from Mr. McFarlin, except the two drafts of McCollier Minge, upon the Messrs. Ellicotts, of Baltimore, which, when collected, please place to my credit"—imports an authority to Lindsey to control the settlement and collection of these several demands; but not necessarily a transfer of the title to or interest in them. *Rogers* v. *Lindsey*, 441.
2. The circumstances of the case favor this construction. Lindsey had become personally responsible for a sum of money, which these debts were intended in part to meet. As an honest transaction, it would answer all purposes, if he had only a power to collect the debts. *Ib.*
3. Where Lindsey, under this power, assigned an interest in one of these judgments, and the bill charged that the assignee knew of the interest of the original creditor, which the assignee, in his answer, did not deny, he failed to bring himself within the rules which protect a purchaser

ASSIGNMENT—(*Continued.*)
for a valuable consideration without notice, and his claim must be set aside. *Ib.*
4. Lindsey's having assigned this judgment to a third person, and then taken a re-assignment of it, does not vary the case. He stands then in his original position. *Ib.*

BAIL.
See PRACTICE.

BANKRUPTCY.
1. An appeal does not lie to this court, from the decision of a District Court in a case of bankruptcy. *Crawford* v. *Points*, 11.
2. Even if it would, the decree of the District Court in this case is not a final decree. *Ib.*
3. Where a bill in chancery was filed by the assignee of a bankrupt, claiming certain shares of bank stock, the same being also claimed by the bank and by other persons who were all made defendants, and the answer of the bank set forth apparently valid titles to the stock, which were not impeached by the complainant in the subsequent proceedings in the cause, nor impeached by the other defendants, the Circuit Court decreed correctly in confirming the title of the bank. *Buckingham* v. *McLean*, 152.
4. A power of attorney to confess a judgment is a security within the second section of the Bankrupt Act, 5 Stat. at Large, 442. *Ib.*
5. And this security is void if given by the debtor in contemplation of bankruptcy. But by these terms is meant an act of bankruptcy on an application by himself to be decreed a bankrupt, and not a mere state of insolvency. *Ib.*
6. In this case there is evidence enough to show that the debtor contemplated a legal bankruptcy when the power of attorney was given. *Ib.*

BILL OF EXCEPTIONS.
1. Where the only exceptions taken in the court below were to the refusals of the court to continue the case to the next term; and it appears that the continuance asked for below and the suing out the writ of error were only for the purpose of delaying the payment of a just debt, and no counsel appeared in this court on that side, the 17th rule will be applied and the judgment of the court below be affirmed with ten per cent. interest. *Barrow* v. *Hill*, 54.
2. In a trial in Louisiana, where the judge tried the whole case without the intervention of a jury, a bill of exceptions to the admission of testimony by the judge, cannot be sustained in this court. *Weems* v. *George*, 190.

BILLS OF EXCHANGE AND PROMISSORY NOTES.
See COMMERCIAL LAW.

BOND.
1. In a suit upon a postmaster's bond, when treasury transcripts are offered in evidence, it is not necessary that they should contain the statements of credits claimed by the postmaster, and disallowed, in whole or in part, by the officers of the government. *U. S.* v. *Hodge et al.*, 478.
2. Nor is it a reason for rejecting the transcripts as evidence, that the items charged in the account, as balances of quarterly returns, did not purport, on the face of said accounts, to be balances acknowledged by the postmaster, nor were supported by proper vouchers; but merely purported to be balances of said quarterly returns, as audited and adjusted by the officers of the government. The objection applied, if at all, to the accuracy of the accounts, and not to their admission as evidence. *Ib.*
3. The basis of an action against a postmaster is his bond and its breaches; and not the transcripts nor the quarterly returns, which are made evidence by the statute. *Ib.*

BOUNDARIES.
1. In 1802, when Georgia ceded her back lands to the United States, she had jurisdiction over the whole of the Chattahoochee River, from its

BOUNDARIES—(*Continued.*)
source to the thirty-first degree of north latitude. *Howard* v. *Ingersoll*, 381.
2. The rule is that, where a power possesses a river, and cedes the territory on the other side of it, making the river the boundary, that power retains the river, unless there is an express stipulation for the relinquishment of the rights of soil and jurisdiction over the bed of such river. *Ib.*
3. When Georgia ceded to the United States all the land situated on the west of a line running along the western bank of the Chattahoochee River, she retained the bed of the river and all the land to the east of the line above mentioned. *Ib.*
4. The river flows in a channel, between two banks, from fifteen to twenty feet high, between the bottom of which and the water, when the river is at a low stage, there are shelving shores, from fifty to sixty yards in width. *Ib.*
5. The boundary line runs up the river, on and along its western bank, and the jurisdiction of Georgia in the soil extends over to the line which is washed by the water, wherever it covers the bed of the river within its banks. *Ib.*

CHANCERY.
See JURISDICTION.
1. Where two partners assigned all their partnership property to a trustee with certain instructions how to dispose of it, and afterwards agreed between themselves to appoint an arbitrator, recognizing in their bonds the directions given to the trustee, the arbitrator had no right to deviate from these directions, and make other disposition of the property. *McCormick* v. *Gray*, 27.
2. The reason given by the arbitrator, that he preferred creditors before awarding a certain sum to one of the partners, is insufficient. *Ib.*
3. Nor had the arbitrator a right to depart, in any particular, from the arrangement of the property which the partners had designated in their deed to the trustee. *Ib.*
4. Where there was a contract for the sale of land for the purchase of which indorsed notes were given, but before the time arrived for the making of a deed, the purchaser failed, and the liability to pay the note became fixed upon the indorser; and a new contract was made between the vendor and the indorser, that, in order to protect the indorser, he should be substituted in place of the original purchaser, fresh notes being given and the time of payment extended, evidence was admissible to show that the latter contract was a substitute for the former. *Bradford* v. *Union Bank of Tennessee*, 57.
5. A part of the land having been sold for taxes whilst the first set of notes was running to maturity, (the vendee having been put into possession,) and the vendor being ignorant of that fact when the contract of substitution was made, all that the indorser can claim of the vendor, is a deed for the land subject to the incumbrances arising from the tax-sales. The notes given for the substituted contract must be paid. *Ib.*
6. The indorser having filed a bill for a specific performance upon the title-bond, which he had received from the vendor, this court will not content itself with dismissing his bill without prejudice, and thus give rise to further litigation, but proceed to pass a final decree, founded on the above principles. *Ib.*
7. The legislature of Virginia incorporated the stockholders of the Richmond, Fredericksburg, and Potomac Railroad Company, and in the charter pledged itself not to allow any other railroad to be constructed between those places, or any portion of that distance; the probable effect would be to diminish the number of passengers travelling between the one city and the other upon the railroad authorized by that act, or to compel the said company, in order to retain such passengers, to reduce the passage-money. *Richmond Railroad Company* v. *Louisa Railroad Company*, 71.

CHANCERY—(*Continued.*)

8. Afterwards the legislature incorporated the Louisa Railroad Company, whose road came from the West and struck the first-named company's track nearly at right angles, at some distance from Richmond; and the legislature authorized the Louisa Railroad Company to cross the track of the other, and continue their road to Richmond. *Ib.*
9. In this latter grant, the obligation of the contract with the first company is not impaired within the meaning of the Constitution of the United States. *Ib.*
10. In the first charter, there was an implied reservation of the power to incorporate companies to transport other articles than passengers; and if the Louisa Railroad Company should infringe upon the rights of the Richmond Company, there would be a remedy at law, but the apprehension of it will not justify an injunction to prevent them from building their road. *Ib.*
11. Nor is the obligation of the contract impaired by crossing the road. A franchise may be condemned in the same manner as individual property. *Ib.*
12. The Statute of Frauds in the State of Alabama declares void conveyances made for the purpose of hindering or defrauding creditors of their just debts. *Parish* v. *Murphree*, 93.
13. Where a person made a settlement upon his wife and children, owing at that time a large sum of money, for which he was soon afterwards sued, and became insolvent, these circumstances, with other similar ones, are sufficient to set aside the deed as being fraudulent within the statute. *Ib.*
14. Where a defendant in error or an appellee wishes to have a case dismissed because no citation has been served upon him, his counsel should give notice of the motion when his appearance is entered, or at the same term; and also that his appearance is entered for that purpose. A general appearance is a waiver of the want of notice. *Buckingham* v. *McLean*, 150.
15. An appeal in equity brings up all the matters which were decided in the Circuit Court to the prejudice of the appellant; including a prior decree of that court from which an appeal was then taken, but which appeal was dismissed under the rules of this court. *Ib.*
16. Where a bill in chancery was filed by the assignee of a bankrupt, claiming certain shares of bank stock, the same being also claimed by the bank and by other persons who were all made defendants, and the answer of the bank set forth apparently valid titles to the stock, which were not impeached by the complainant in the subsequent proceedings in the cause, nor impeached by the other defendants, the Circuit Court decreed correctly in confirming the title of the bank. *Buckingham* v. *McLean*, 151.
17. A power of attorney to confess a judgment is a security within the second section of the Bankrupt Act, 5 Stat. at Large, 442. *Ib.*
18. And this security is void if given by the debtor in contemplation of bankruptcy. But by these terms is meant an act of bankruptcy on an application by himself to be decreed a bankrupt, and not a mere state of insolvency. *Ib.*
19. In this case there is evidence enough to show that the debtor contemplated a legal bankruptcy when the power of attorney was given. *Ib.*
20. It is not usury in a bank which has power by its charter to deal in exchange, to charge the market rates of exchange upon time bills. *Ib.*
21. Where a person desired to purchase land from a party who was ignorant that he had any title to it, or where the land was situated; and the purchaser made fraudulent representations as to the quantity and quality of the land, and also, as to a lien which he professed to have for taxes which he had paid; and finally bought the land for a grossly inadequate price, the sale will be set aside. *Tyler et ux.* v. *Black*, 231.
22. In equity, where a creditor agrees to receive specific articles in satisfaction of a debt, even although it be a debt upon bond, secured by mort-

CHANCERY—(*Continued.*)
gage, he will be held to the performance of his agreement. *Very* v. *Levy*, 345.
23. But, in order to bring a case within this principle, there must be,—
1. An agreement not inequitable in its terms and effect.
2. A valuable consideration for such agreement.
3. A readiness to perform, and the absence of laches, on the part of the debtor. *Ib.*
24. Where the agreement to receive payment in goods was made by a person who acted under a power of attorney from the creditor, authorizing him to trade, sell, and dispose of notes, bills, bonds, or mortgages, and, under this power, a partial payment was received in goods, which was afterwards recognized as a payment by the creditor, the power was sufficient to authorize an agreement to receive the remaining amount, also in goods, at any time when called for within twelve months, especially as the bond had yet four years to run. *Ib.*
25. This agreement was not inequitable; there was a valuable consideration for it; and the debtor was always ready to comply with it, on his part. *Ib.*
26. The creditor cannot now allege fraud in his debtor. It is not charged in the bill; and, although he may not have known of the agreement when the bill was framed, yet, when the answer came in, he might have amended his bill, and charged fraud. *Ib.*
27. Real property, in Louisiana, was bound by a judicial mortgage. *Fowler* v. *Hart*, 401.
28. The owners of the property then took the benefit of the Bankrupt Act of the United States. *Ib.*
29. A creditor of the bankrupt then filed a petition against the assignee, alleging that he had a mortgage upon the same property, prior in date to the judicial mortgage, but that, by some error, other property had been named, and praying to have the error corrected. Of this proceeding the judgment creditor had no notice. *Ib.*
30. The court being satisfied of the error, ordered the mortgage to be reformed, and thus gave the judgment creditor the second lien instead of the first; and then decreed that the property should be sold free of all incumbrances. Of this proceeding, and also of the distribution of the proceeds of sale, the judgment credior had notice, but omitted to protect his rights. *Ib.*
31. In consequence of this neglect, he cannot afterwards assert his claim against a purchaser, who has bought the property as being free from all incumbrances. *Ib.*
32. The following paper, viz.,—
"The President or Cashier of the Planters and Merchants Bank will please hold, subject to the order of Mr. J. G. Lindsey, all the debts referred to in the inclosed letter from Mr. McFarlin, except the two drafts of McCollier Minge, upon the Messrs. Ellicotts, of Baltimore, which, when collected, please place to my credit"—imports an authority to Lindsey to control the settlement and collection of these several demands; but not necessarily a transfer of the title to or interest in them. *Rogers* v. *Lindsey*, 441.
33. The circumstances of the case favor this construction. Lindsey had become personally responsible for a sum of money, which these debts were intended in part to meet. As an honest transaction, it would answer all purposes, if he had only a power to collect the debts. *Ib.*
34. Where Lindsey, under this power, assigned an interest in one of these judgments, and the bill charged that the assignee knew of the interest of the original creditor, which the assignee, in his answer, did not deny, he failed to bring himself within the rules which protect a purchaser for a valuable consideration without notice, and his claim must be set aside. *Ib.*
35. Lindsey's having assigned this judgment to a third person, and then taken a reassignment of it, does not vary the case. He stands then in his original position. *Ib.*

COLLISION OF VESSELS.
See ADMIRALTY.
COMMERCIAL LAW.
See ADMIRALTY.
1. It is not usury in a bank which has power by its charter to deal in exchange, to charge the market rates of exchange upon time bills. *Buckingham* v. *McLean*, 152.
2. Where an action was brought against certain persons for giving a commercial letter of recommendation with intention to defraud and deceive, whereby the party to whom the letter was addressed gave credit and sustained a loss, the question for the jury ought to have been whether or not there was fraud and an intention to deceive, in giving the letter. *Lord* v. *Goddard*, 198.
3. If there was no such intention, if the parties honestly stated their own opinion, believing at the time that they stated the truth, they are not liable in this form of action, although the representation turned out to be entirely untrue. *Ib.*
4. A statute of Ohio declares all promissory notes, drawn for a sum certain, payable to any person or order, or to any person or his assignees, negotiable by indorsement. *Miller* v. *Austen*, 218.
5. The following paper, namely,—
"No. 959. Mississippi Union Bank, Jackson, Miss., February 8, 1840. I hereby certify that Hugh Short has deposited in this bank, payable twelve months from 1st May, 1839, with five per cent. interest till due, fifteen hundred dollars, for the use of Henry Miller, and payable only to his order, upon the return of this certificate. $1,500. Wm. P. Grayson, Cashier,"—was negotiable by indorsement under the statute, and the indorsee had a right to maintain an action against an indorser. *Ib.*
6. In a suit by the indorsee against the indorser of a bill, where the defence was usury, the drawer and drawee were incompetent witnesses, when offered to prove certain facts, which, when taken in conjunction with certain other facts, to be proved by other witnesses, would invalidate the instrument. *Saltmarsh* v. *Tuthill*, 229.
7. Being incompetent witnesses to establish the whole defence, they are also incompetent to establish a part. *Ib.*
CONSTITUTIONAL LAW.
1. The bills of a banking corporation, which has corporate property, are not bills of credit within the meaning of the Constitution, although the State which created the bank is the only stockholder, and pledges its faith for the ultimate redemption of the bills. *Darrington* v. *Bank of Alabama*, 12.
2. The principles established in the cases of 3 How., 212, and 9 How., 477, again affirmed, viz., that after the admission of Alabama into the Union as a State, Congress could make no grant of land situated between high and low water marks. *Doe* v. *Beebe*, 25.
3. The treaty of 1819, between the United States and Spain, contains the following stipulation, viz.: —
"The United States shall cause satisfaction to be made for the injuries, if any, which by process of law shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida." *United States* v. *Ferreira*, 40.
4. Congress, by two acts passed in 1823 and 1834, (3 Stat. at Large, 768, and 6 Stat. at Large, 569,) directed the judge of the Territorial Court of Florida to receive, examine, and adjudge all cases of claims for losses, and report his decisions, if in favor of the claimants, together with the evidence upon which they were founded, to the Secretary of the Treasury, who, on being satisfied that the same was just and equitable, within the provisions of the treaty, should pay the amount thereof; and by an act of 1849, (9 Stat. at Large, p. 788,) Congress directed the judge of the District Court of the United States for the Northern

CONSTITUTIONAL LAW—(*Continued.*)
District of Florida, to receive and adjudicate certain claims in the manner directed by the preceding acts. *Ib.*
5. From the award of the district judge, an appeal does not lie to this court. *Ib.*
6. As the treaty itself designated no tribunal to assess the damages, it remained for Congress to do so by referring the claims to a commissioner according to the established practice of the government in such cases. His decision was not the judgment of a court, but a mere award, with a power to review it, conferred upon the Secretary of the Treasury. *Ib.*
7. The legislature of Virginia incorporated the stockholders of the Richmond, Fredericksburg, and Potomac Railroad Company, and in the charter pledged itself not to allow any other railroad to be constructed between those places, or any portion of that distance; the probable effect would be to diminish the number of passengers travelling between the one city and the other upon the railroad authorized by that act, or to compel the said company, in order to retain such passengers, to reduce the passage-money. *Richmond Railroad Company* v. *Louisa Railroad Company*, 71.
8. Afterwards the legislature incorporated the Louisa Railroad Company, whose road came from the West and struck the first-named company's track nearly at right angles, at some distance from Richmond; and the legislature authorized the Louisa Railroad Company to cross the track of the other, and continue their road to Richmond. *Ib.*
9. In this latter grant, the obligation of the contract with the first company is not impaired within the meaning of the Constitution of the United States. *Ib.*
10. In the first charter, there was an implied reservation of the power to incorporate companies to transport other articles than passengers; and if the Louisa Railroad Company should infringe upon the rights of the Richmond Company, there would be a remedy at law, but the apprehension of it will not justify an injunction to prevent them from building their road. *Ib.*
11. Nor is the obligation of the contract impaired by crossing the road. A franchise may be condemned in the same manner as individual property. *Ib.*
12. During the war between the United States and Mexico, where a trader went into the adjoining Mexican provinces which were in possession of the military authorities of the United States, for the purpose of carrying on a trade with the inhabitants which was sanctioned by the executive branch of the government, and also by the commanding military officer, it was improper for an officer of the United States to seize the property upon the ground of trading with the enemy. *Mitchell* v. *Harmony*, 115.
13. Private property may be taken by a military commander to prevent it from falling into the hands of the enemy, or for the purpose of converting it to the use of the public; but the danger must be immediate and impending, or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. *Ib.*
14. The facts, as they appeared to the officer, must furnish the rule for the application of these principles. *Ib.*
15. But the officer cannot take possession of private property for the purpose of insuring the success of a distant expedition upon which he is about to march. *Ib.*
16. Whether or not the owner of the goods resumed the possession of them at any time after their seizure, was a fact for the jury. In this case, they found that he did not resume the possession, and in this they were sustained by legal evidence. *Ib.*
17. The officer who made the seizure cannot justify his trespass by showing

CONSTITUTIONAL LAW—(*Continued.*)
the orders of his superior officer. An order to commit a trespass can afford no justification to the person by whom it was executed. *Ib.*
18. The trespass was committed out of the limits of the United States. But an action for it may be maintained in the Circuit Court for any district in which the defendant may be found upon process against him, where the citizenship of the respective parties gives jurisdiction to a court of the United States. *Ib.*
19. The courts of the United States, under the Constitution and laws, have equity jurisdiction. Unless the general principles of equity have been modified by the laws or usages of a particular State, those general principles will be carried out everywhere in the same manner, and equity jurisprudence be the same, when administered by the courts of the United States, in all the States. *Neves et al.* v. *Scott*, 268.
20. Hence, the decision of a State court, in a case which involved only the general principles of equity, and was not controlled by local law or usage, is not binding as authority upon this court. *Ib.*
21. In the case of *Neves et al.* v. *Scott et al.*, reported in 9 How., 196, this court decided two points,—one, that volunteers could, in that case, claim the interference of chancery to enforce the marriage articles in question; and the other, that the articles constituted an executed trust. *Ib.*
22. The Supreme Court of Georgia does not agree with this court upon the first point. Nevertheless, this court does not change its decision. *Ib.*
23. Moreover, the second point, upon which this court rested the case, does not appear to have been brought before the Supreme Court of Georgia; and, of course, it expressed no opinion upon the point. *Ib.*
24. In 1802, when Georgia ceded her back lands to the United States, she had jurisdiction over the whole of the Chattahoochee River, from its source to the thirty-first degree of north latitude. *Howard et al.* v. *Ingersoll*, 381.
25. The rule is that, where a power possesses a river, and cedes the territory on the other side of it, making the river the boundary, that power retains the river, unless there is an express stipulation for the relinquishment of the rights of the soil and jurisdiction over the bed of such river. *Ib.*
26. When Georgia ceded to the United States all the land situated on the west of a line running along the western bank of the Chattahoochee River, she retained the bed of the river and all the land to the east of the line above mentioned. *Ib.*
27. The river flows in a channel, between two banks, from fifteen to twenty feet high, between the bottom of which and the water, when the river is at a low stage, there are shelving shores, from thirty to sixty yards each in width. *Ib.*
28. The boundary-line runs along the top of this high western bank, leaving the bed of the river and the western shelving shore within the jurisdiction of Georgia. *Ib.*
29. The State of Pennsylvania having constructed lines of canal and railroad, and other means of travel and transportation, which would be injured in their revenues by the obstruction in the River Ohio, created by a bridge at Wheeling, has a sufficiently direct interest to sustain an application to this court, in the exercise of original jurisdiction, for an injunction to remove the obstruction. The remedy at law would be incomplete. *Pennsylvania* v. *Wheeling Bridge*, 519.
30. It is admitted that the Federal courts have no jurisdiction of common-law offences, and that there is no abstract, pervading principle, of the common law of the Union under which this court can take jurisdiction; and that the case under consideration is subject to the same rules of action as if the suit had been commenced in the Circuit Court for the District of Virginia. *Ib.*
31. But chancery jurisdiction is conferred on the courts of the United States by the Constitution, under certain limitations; and, under these limitations, the usages of the High Court of Chancery, in England, which

CONSTITUTIONAL LAW—(*Continued.*)
have been adopted as rules by this court, furnish the chancery law which is exercised in all the States, and even in those where no State chancery system exists. *Ib.*
32. Under this system, where relief can be given by the English chancery, similar relief may be given by the courts of the Union. *Ib.*
33. An indictment against a bridge, as a nuisance, by the United States, could not be sustained; but a proceeding against it, on the ground of a private and irreparable injury, may be sustained, at the instance of an individual or a corporation, either in the Federal or State courts. *Ib.*
34. In case of nuisance, if the obstruction be unlawful and the jury irreparable, by a suit at common law, the injured party may claim the extraordinary protection of a court of chancery. *Ib.*
35. The Ohio is a navigable stream, subject to the commercial power of Congress, which has been exercised over it; and, if the act of Virginia authorized the structure of the bridge, so as to obstruct navigation, it would afford no justification to the bridge company. *Ib.*
36. Congress has sanctioned the compact made between Virginia and Kentucky, viz., "That the use and navigation of the River Ohio, so far as the territory of Virginia or Kentucky is concerned, shall be free and common to the citizens of the United States." This compact is obligatory, and can be carried out by this court. *Ib.*
37. Where there is a private injury from a public nuisance, a court of equity will interfere by injunction. *Ib.*
38. In this case, the bridge is a nuisance. This is shown by measuring the height of the bridge, and of the water, and of the chimneys of the boats. The report of the commissioner, appointed by this court to ascertain these facts, is equivalent to the verdict of a jury. *Ib.*
39. The report of the commissioner adverted to and commented upon; the extent of injury sustained by the boats explained; and the importance shown of maintaining the navigation of the river. *Ib.*
40. If a structure be declared to be a nuisance, there is no room for a calculation and comparison between the injuries and benefits which it produces. *Ib.*
41. Therefore, unless there be an elevation of the lowest parts of the bridge for three hundred feet over the channel of the river — not less than one hundred and eleven feet from the low water-mark, the flooring of the bridge descending from the termini of the elevation at the rate of four feet in the hundred — or some other plan shall be adopted which shall relieve the navigation from obstruction, on or before the first of February next, — the bridge must be abated. *Ib.*
42. (In consequence of the intimation above alluded to, viz., "that some other plan might be adopted" than elevating the bridge, the court, at the request of the counsel for the Bridge Company, referred the matter to an engineer. After receiving his report, the court decided as follows.) *Ib.*
43. The Bridge Company may, upon their own responsibility, try whether the western channel can be improved and made passable, by means of a draw, so as to afford a safe and unobstructed navigation for the largest class of boats, having chimneys eighty feet high, when they cannot pass under the suspension-bridge. This is to be done, if at all, before the first Monday of February next, on which day the plaintiff may move the court on the subject of the decree. *Ib.*

CONSTRUCTION OF STATUTES.
See STATUTES.

CONTRACT.
1. Where there was a contract for the sale of land for the purchase of which indorsed notes were given, but before the time arrived for the making of a deed, the purchaser failed, and the liability to pay the note became fixed upon the indorser; and a new contract was made between the vendor and the indorser, that, in order to protect the

CONTRACT—(*Continued.*)
indorser, he should be substituted in place of the original purchaser, fresh notes being given and the time of payment extended, evidence was admissible to show that the latter contract was a substitute for the former. *Bradford* v. *Union Bank of Tennessee*, 57.

2. A part of the land having been sold for taxes whilst the first set of notes was running to maturity, (the vendee having been put into possession,) and the vendor being ignorant of that fact when the contract of substitution was made, all that the indorser can claim of the vendor, is a deed for the land subject to the incumbrances arising from the tax-sales. The notes given for the substituted contract must be paid. *Ib.*
3. The indorser having filed a bill for a specific performance upon the title-bond, which he had received from the vendor, this court will not content itself with dismissing his bill without prejudice, and thus give rise to further litigation, but proceed to pass a final decree, founded on the above principles. *Ib.*
4. Where the covenant purported to be made between two persons by name, of the first part, and the corporate company, of the second part, and only one of the persons of the first part signed the instrument, and the covenant ran between the party of the first part and the party of the second part, it was proper for the person who had signed on the first part to sue alone; because the covenant enured to the benefit of those who were parties to it. *Philadelphia, Wilmington, & Baltimore Railroad Company* v. *Howard*, 308.
5. In this particular case, a covenant to finish the work by a certain day, on the one part, and a covenant to pay monthly on the other part, were distinct and independent covenants. And a right in the company to annul the contract at any time, did not include a right to forfeit the earnings of the other party, for work done prior to the time when the contract was annulled. *Ib.*
6. A covenant to do the work according to a certain schedule, which schedule mentioned that it was to be done according to the directions of the engineer, bound the company to pay for the work, which was executed according to such directions, although a profile was departed from which was made out before the contract was entered into. *Ib.*
7. So, also, where the contract was, to place the waste earth where ordered by the engineer, it was the duty of the engineer to provide a convenient place; and if he failed to do so, the other party was entitled to damages. *Ib.*
8. Where the contract authorized the company to retain fifteen per cent. of the earnings of the contractor, this was by way of indemnity, and not forfeiture; and they were bound to pay it over, unless the jury should be satisfied that the company had sustained an equivalent amount of damage by the default, negligence, or misconduct of the contractor. *Ib.*
9. Where, in the progress of the work, the contractor was stopped by an injunction issued by a court of chancery, he was entitled to recover damages for the delay occasioned by it, unless the jury should find that the company did not use reasonable diligence to obtain a dissolution of the injunction. *Ib.*
10. If the company annulled the contract merely for the purpose of having the work done cheaper, or for the purpose of oppressing and injuring the contractor, he was entitled to recover damages for any loss of profit he might have sustained; and of the reasons which influenced the company, the jury were to be the judges. *Ib.*
11. In equity, where a creditor agrees to receive specific articles in satisfaction of a debt, even although it be a debt upon bond, secured by mortgage, he will be held to the performance of his agreement. *Very* v. *Levy*, 345.
12. But, in order to bring a case within this principle, there must be,—
    1. An agreement not inequitable in its terms and effect.

CONTRACT—(*Continued.*)
2. A valuable consideration for such agreement.
3. A readiness to perform, and the absence of laches, on the part of the debtor. *Ib.*
13. Where the agreement to receive payment in goods was made by a person who acted under a power of attorney from the creditor, authorizing him to trade, sell, and dispose of notes, bills, bonds, or mortgages, and, under this power, a partial payment was received in goods, which was afterwards recognized as a payment by the creditor, the power was sufficient to authorize an agreement to receive the remaining amount, also, in goods, at any time when called for within twelve months, especially as the bond had yet four years to run. *Ib.*
14. This agreement was not inequitable; there was a valuable consideration for it; and the debtor was always ready to comply with it, on his part. *Ib.*
15. The creditor cannot now allege fraud in his debtor. It is not charged in the bill; and, although he may not have known of the agreement when the bill was framed, yet, when the answer came in, he might have amended his bill, and charged fraud. *Ib.*

COSTS.
1. Where there was a sale of an undivided moiety of a tract of land, and the purchaser undertook to extinguish certain liens upon it, which he failed to do; and in consequence of such failure the liens were enforced, and had to be paid by the heirs of the original owner, a suit by these heirs against the purchaser to recover damages for the non-fulfilment of his contract to extinguish the liens, was not within the prohibition of the 11th section of the Judiciary Act, 1 Stat. at Large, 78. The heirs, being aliens, had a right to sue in the Circuit Court. *Weems* v. *George*, 190.
2. The extinguishment of the liens by the heirs of the original owner, was effected by process of law and attended with costs. It was proper that these costs also, as well as the amount of the liens, should be recovered by the heirs from the defaulting party who had failed to fulfil his contract. The article, 1929 of the code of Louisiana, does not include this case, but it is included within article 1924. *Ib.*
3. The suit being brought by the owner of a mill-dam below, against the owners of a mill above, for forcibly taking down a part of the dam, upon the allegation that it injured the mill above, it was proper for the court to charge the jury, that, if they found for the plaintiff, upon the ground that his dam caused no injury to the mill above, they should allow, in damages, the cost of restoring so much of the dam as was taken down, and compensation for the necessary delay of the plaintiff's mill; and they might also allow such sum for the expenses of prosecuting the action, over and above the taxable costs, as they should find the plaintiff had necessarily incurred, for counsel-fees, and the pay of engineers in making surveys, &c. *Day* v. *Woodworth*, 363.
4. But if they should find for the plaintiff, on the ground that the defendants had taken down more of the dam than was necessary to relieve the mill above, then, they would allow in damages the cost of replacing such excess, and compensation for any delay or damage occasioned by such excess; but not any thing for counsel-fees or extra compensation to engineers, unless the taking down of such excess was wanton and malicious. *Ib.*
5. In actions of trespass, and all actions on the case for torts, a jury may give exemplary or vindictive damages, depending upon the peculiar circumstances of each case. But the amount of counsel-fees, as such, ought not to be taken as the measure of punishment, or a necessary element in its infliction. *Ib.*
6. The doctrine of costs explained. *Ib.*
7. Whether the verdict would carry costs or not, was a question with which the jury had nothing to do. *Ib.*

COVENANT.
See CONTRACT.
CUSTOM-HOUSES.
See DUTIES.
DEBTOR AND CREDITOR.
1. In equity, where a creditor agrees to receive specific articles in satisfaction of a debt, even although it be a debt upon bond, secured by mortgage, he will be held to the performance of his agreement. *Very* v. *Levy*, 345.
2. But, in order to bring a case within this principle, there must be,—
   1. An agreement not inequitable in its terms and effect.
   2. A valuable consideration for such agreement.
   3. A readiness to perform, and the absence of laches, on the part of the debtor. *Ib.*
3. Where the agreement to receive payment in goods was made by a person who acted under a power of attorney from the creditor, authorizing him to trade, sell, and dispose of notes, bills, bonds, or mortgages, and, under this power, a partial payment was received in goods, which was afterwards recognized as a payment by the creditor, the power was sufficient to authorize an agreement to receive the remaining amount, also in goods, at any time when called for within twelve months, especially as the bond had yet four years to run. *Ib.*
4. This agreement was not inequitable; there was a valuable consideration for it; and the debtor was always ready to comply with it, on his part. *Ib.*
5. The creditor cannot now allege fraud in his debtor. It is not charged in the bill; and, although he may not have known of the agreement when the bill was framed, yet, when the answer came in, he might have amended his bill, and charged fraud. *Ib.*

DEED.
1. Where a deed, executed in Wisconsin, and attested by the seal of a court, stamped upon the paper, instead of wax or a wafer, was offered in evidence upon a trial in Arkansas, it was properly received. *Pillow* v. *Roberts*, 472.
2. Where a deed from the sheriff, for land sold at a tax-sale, recited an assessment for taxes which remained unpaid; the advertisement of the land, and offering it for sale; its being struck down to the highest bidder, who paid the purchase-money and received a certificate; this deed ought to have been received in evidence. The law of Arkansas says, that the deed shall be evidence of the regularity and legality of the sale. *Ib.*
3. But, even if this deed had been insufficient as a proof title, it ought to have been received, in connection with proof of possession, to establish a defence under the statute of limitations. *Ib.*
4. Possession under this deed would have been sufficient proof for adverse possession. *Ib.*

DUTIES.
1. The tariff law of 1846, passed on the 30th of July (9 Stat. at Large, 42) contains no special mention of imported sheepskins, dried with the wool remaining on them. *De Forest* v. *Lawrence*, 274.
2. They must be regarded as a non-enumerated article, and charged with a duty of twenty per cent. *ad valorem*. *Ib.*
3. The tariff law of July 30, 1846 (9 Stat. at Large, 42), reduced the duties on imported coal, and was to take effect on the 2d of December, 1846. The sixth section provided that all goods, which might be in the public stores on that day, should pay only the reduced duty. *Tremlett* v. *Adams*, 295.
4. On the 6th of August, 1846 (9 Stat. at Large, 53), Congress passed the Warehousing Act, authorizing importers, under certain circumstances, to deposit their goods in the public stores, and to draw them out and pay the duties at any time within one year. *Ib.*
5. But this right was confined to a port of entry, unless extended, by regulation of the Secretary of the Treasury to a port of delivery. *Ib.*

DUTIES—(*Continued.*)

6. Therefore, where New Bedford was the port of entry, and Wareham a port of delivery, the collector of New Bedford (acting under the directions of the Secretary of the Treasury) was right in refusing coal to be entered for warehousing at Wareham. *Ib.*
7. Where an importer deposited a sum of money, as estimated duties, with the collector, which, upon adjustment, was found to exceed the true duty by a small amount, and the collector offered to pay it back, but the importer refused to receive it, the existence of this small balance is not sufficient reason for reversing the judgment of the Circuit Court, which was in favor of the collector. *Ib.*
8. By the Tariff of 1846, the duty of one hundred per cent., *ad valorem*, upon brandy, ought to be charged only upon the quantity actually imported, and not on the contents stated in the invoices. *Lawrence* v. *Caswell*, 488.
9. Duties illegally exacted are those which are paid under protest, and where there is an appeal to the judicial tribunals. *Ib.*
10. The Revenue Act of 1799 (1 Stat. at Large, 672) directed that an allowance of two per cent. for leakage should be made on the quantity of liquors which were subject to duty by the gallon. Where brandy was subjected to a duty *ad valorem*, it was no longer within the provisions of this act, and the allowance of two per cent. ceased. *Ib.*

EJECTMENT.

1. On the 15th of May, 1820, Congress passed an act (3 Stat. at Large, 605), for the benefit of the inhabitants of the village of Peoria, by which every person claiming a lot in the village was to give notice to the Register of the Land-Office, whose report was to be laid before Congress. *Ballance* v. *Forsyth*, 18.
2. On the 3d of March, 1823, Congress passed another act (3 Stat. at Large, 786), granting to each of the French and Canadian inhabitants, and other settlers, according to the report, the lot upon which they had settled; and directed the surveyor of the public lands to make a plat of the lots, for which patents were to be issued to the claimants. *Ib.*
3. This survey and plat were not made until April and May, 1837. *Ib.*
4. In November, 1837, a person, who was not a settler, purchased at the Land-Office, at private entry, the fractional quarter of land which included some of the above lots, and soon afterwards obtained a patent. Both the certificate and patent reserved the rights of the claimant under the act of Congress above mentioned. *Ib.*

   In 1845 and 1847, these claimants obtained patents. *Ib.*
6. They were entitled to recover in ejectment from the persons who held under the private entry and patent. *Ib.*
7. The title of the plaintiffs was not divested by a tax sale in 1843. The whole fractional quarter section was taxed, and one acre off of the east side sold. This sale was irregular. *Ib.*

ESTOPPEL.

If the defendants had relied upon the paper in question to defeat the plaintiff in a former suit, they are estopped from denying its validity in this suit. It was not necessary to plead the estoppel, because the state of the pleadings would not have justified such a plea. *Philadelphia, Wilmington, & Baltimore Railroad Co.* v. *Howard*, 308.

EVIDENCE.

1. Where there was a contract for the sale of land, for the purchase of which indorsed notes were given, but before the time arrived for the making of a deed, the purchaser failed, and the liability to pay the note became fixed upon the indorser; and a new contract was made between the vendor and the indorser, that, in order to protect the indorser, he should be substituted in place of the original purchaser, fresh notes being given and the time of payment extended, evidence was admissible to show that the latter contract was a substitute for the former. *Bradford* v. *Union Bank of Tennessee*, 57.
2. In a suit by the indorsee against the indorser of a bill, where the defence was usury, the drawer and drawee were incompetent witnesses, when

EVIDENCE—(*Continued.*)
offered to prove certain facts, which, when taken in conjunction with certain other facts, to be proved by other witnesses, would invalidate the instrument. *Saltmarsh* v. *Tuthill*, 229.

3. Being incompetent witnesses to establish the whole defence, they are also incompetent to establish a part. *Ib.*
4. In a case of collision upon the River Mississippi, between the steamboats Iowa and Declaration, whereby the Iowa was sunk, the weight of evidence was, that the Iowa was in fault, and the libel filed by her owners against the owners of the Declaration was properly dismissed. *Walsh* v. *Rogers*, 283.
5. *Ex parte* depositions, under the act of 1789, without notice, ought not to be taken, unless in circumstances of absolute necessity, or in cases of mere formal proof or of some isolated fact. *Ib.*
6. In Maryland, the clerk of a county court was properly admitted to prove the verity of a copy of the docket-entries made by him as clerk, because, by a law of Maryland, no technical record was required to be made. *Philadelphia, Wilmington, & Baltimore Railroad Company* v. *Howard*, 307.
7. And, moreover, the fact which was to be proved being merely the pendency of an action, proof that the entry was made on the docket by the proper officer, was proof that the action was pending, until the other party could show its termination. *Ib.*
8. Where the question was, whether or not the paper declared upon bore the corporate seal of the defendants, (an incorporated company,) evidence was admissible to show that, in a former suit, the defendants had treated and relied upon the instrument, as one bearing the corporate seal. And it was admissible, although the former suit was not between the same parties; and although the former suit was against one of three corporations, which had afterwards become merged into one, which one was the present defendant. *Ib.*
9. The admission of the paper as evidence only left the question to the jury. The burden of proof still remained upon the plaintiff. *Ib.*
10. The evidence of the president of the company, to show that there was an understanding between himself and the plaintiff, that another person should also sign the paper before it became obligatory, was not admissible, because the understanding alluded to did not refer to the time when the corporate seal was affixed, but to some prior time. *Ib.*
11. In order to show that the paper in question bore the seal of the corporation, it was admissible to read in evidence the deposition of the deceased officer of the corporation, who had affixed the seal, and which deposition had been taken by the defendants in the former suit. *Ib.*
12. In an action of trespass, for forcibly invading a plantation, carrying off some slaves, and frightening others away, it was proper for the plaintiff to give in evidence the consequential damages which resulted to his wood and corn. *McAfee* v. *Crofford*, 447.
13. It was proper, also, to allow the defendant to give in evidence a judgment against the owner of the plantation, as principal, and himself as surety, and his own payment of that judgment. It was allowable, both as an explanation of his motives, and to show how much he had paid; both reasons concurring to mitigate the damages. *Ib.*
14. Evidence was also allowable to show that arrangements had been entered into between the principal and surety, whereby time would be given for the payment of the debt. This was allowable, as a palliation of the conduct of the principal in removing his slaves without the State. *Ib.*
15. Evidence was also admissible to show that the surety had not been compelled to pay the debt by showing that the creditor had been enjoined from collecting it. This was admissible, in order to rebut the evidence previously offered on the other side. *Ib.*
16. It was proper for the court to charge the jury that, in assessing damages, they had a right to take into consideration all the circumstances. *Ib.*

EVIDENCE—(*Continued.*)
17. The relations or privity between executors and their testators in Louisiana, do not differ from those which exist at common law. *Hill* v. *Tucker*, 458.
18. The interest of an executor in the testator's estate is what the testator gives him; that of an administrator, only that which the law of his appointment enjoins. *Ib.*
19. Hence, executors in different States are, as regards the creditors of the testator, executors in privity, bearing to the creditors the same responsibilities as if there was only one executor. *Ib.*
20. Although a judgment obtained against an executor in one State is not conclusive upon an executor in another State, yet it may be admissible in evidence to show that the demand had been carried into judgment, and that the other executors were precluded by it from pleading prescription or the statute of limitations upon the original cause of action. *Ib.*
21. Therefore, where a person appointed executors in Virginia, and also in Louisiana, and the creditors obtained judgments against the Virginian executors, without being able to obtain payment, and then sued the executors in Louisiana, the Virginian judgments were admissible evidence for the above-mentioned purposes. *Ib.*
22. The law of Louisiana bars, by prescription, all actions brought upon instruments negotiable or transferable by indorsement or delivery, unless such actions are brought within five years. But this does not include due-bills or judgments. *Ib.*
23. Where a deed, executed in Wisconsin, and attested by the seal of a court, stamped upon the paper, instead of wax or a wafer, was offered in evidence upon a trial in Arkansas, it was properly received. *Pillow* v. *Roberts*, 472.
24. Where a deed from the sheriff, for land sold at a tax-sale, recited an assessment for taxes which remained unpaid; the advertisement of the land, and offering it for sale; its being struck down to the highest bidder, who paid the purchase-money and received a certificate; this deed ought to have been received in evidence. The law of Arkansas says, that the deed shall be evidence of the regularity and legality of the sale. *Ib.*
25. But, even if this deed had been insufficient as a proof title, it ought to have been received, in connection with proof of possession, to establish a defence under the statute of limitations. *Ib.*
26. Possession under this deed would have been insufficient proof for adverse possession. *Ib.*
27. In a suit upon a postmaster's bond, when treasury transcripts are offered in evidence, it is not necessary that they should contain the statements of credits claimed by the postmaster, and disallowed, in whole or in part, by the officers of the government. *United States* v. *Hodge et al.*, 478.
28. Nor is it a reason for rejecting the transcripts as evidence, that the items charged in the accounts, as balances of quarterly returns, did not purport, on the face of said accounts, to be balances acknowledged by the postmaster, nor were supported by proper vouchers; but merely purported to be the balances of said quarterly returns, as audited and adjusted by the officers of the government. The objection applied, if at all, to the accuracy of the accounts, and not to their admission as evidence. *Ib.*
29. The basis of an action against a postmaster is his bond and its breaches; and not the transcripts nor the quarterly returns, which are made evidence by the statute. *Ib.*

EXECUTORS.
1. The relations of privity between executors and their testators in Louisiana do not differ from those which exist at common law. *Hill* v. *Tucker*, 458.
2. The interest of an executor in the testator's estate is what the testator

EXECUTORS—(*Continued.*)
gives him; that of an administrator, only that which the law of his appointment enjoins. *Ib.*
3. Hence, executors in different States are, as regards the creditors of the testator, executors in privity, bearing to the creditors the same responsibilities as if there was only one executor. *Ib.*
4. Although a judgment obtained against an executor in one State is not conclusive upon an executor in another State, yet it may be admissible in evidence to show that the demand had been carried into judgment, and that the other executors were precluded by it from pleading prescription or the statute of limitations upon the original cause of action. *Ib.*
5. Therefore, when a person appointed executors in Virginia, and also in Louisiana, and the creditors obtained judgments against the Virginian executors, without being able to obtain payment, and then sued the executors in Louisiana, the Virginian judgments were admissible evidence for the above-mentioned purposes. *Ib.*
6. The law of Louisiana bars, by prescription, all actions brought upon instruments negotiable or transferable by indorsement or delivery, unless such actions are brought within five years. But this does not include due-bills or judgments. *Ib.*

FRAUD.
See CHANCERY.

FRAUDS, STATUTE OF.
1. The Statute of frauds, in the State of Alabama, declares void conveyances made for the purpose of hindering or defrauding creditors of their just debts. *Parish* v. *Murphree*, 93.
2. Where a person made a settlement upon his wife and children, owing at that time a large sum of money, for which he was soon afterwards sued, and became insolvent, these circumstances, with other similar ones, are sufficient to set aside the deed as being fraudulent within the statute. *Ib.*

GEORGIA.
1. In 1802, when Georgia ceded her back lands to the United States, she had jurisdiction over the whole of the Chattahoochee River, from its source to the thirty-first degree of north latitude. *Howard et al.* v. *Ingersoll*, 381.
2. The rule is, that where a power possesses a river, and cedes the territory on the other side of it, making the river the boundary, that power retains the river, unless there is an express stipulation for the relinquishment of the rights of soil and jurisdiction over the bed of such river. *Ib.*
3. When Georgia ceded to the United States all the land situated on the west of a line running along the western bank of the Chattahoochee River, she retained the bed of the river and all the land to the east of the line above mentioned. *Ib.*
4. The river flows in a channel, between two banks, from fifteen to twenty feet high, between the bottom of which and the water, when the river is at a low stage, there are shelving shores, from thirty to sixty yards each in width. *Ib.*
5. The boundary-line runs along the top of this high western bank, leaving the bed of the river and the western shelving shore within the jurisdiction of Georgia. *Ib.*

GUARANTY.
1. Where an action was brought against certain persons for giving a commercial letter of recommendation with intention to defraud and deceive, whereby the party to whom the letter was addressed gave credit and sustained a loss, the question for the jury ought to have been whether or not there was fraud and an intention to deceive, in giving the letter. *Lord* v. *Goddard*, 198.
2. If there was no such intention, if the parties honestly stated their own opinion, believing at the time that they stated the truth, they are not

GUARANTY—(*Continued.*)
liable in this form of action, although the representation turned out to be entirely untrue. *Ib.*

INJUNCTION.

1. The State of Pennsylvania having constructed lines of canal and railroad, and other means of travel and transportation, which would be injured in their revenues by the obstruction in the River Ohio, created by a bridge at Wheeling, has a sufficiently direct interest to sustain an application to this court, in the exercise of original jurisdiction, for an injunction to remove the obstruction. The remedy at law would be incomplete. *State of Pennsylvania* v. *Wheeling &c. Bridge*, 518.

See CHANCERY.

INTEREST.

1. Under the 18th rule of this court, the mode of calculating interest, when a judgment of the Circuit Court is affirmed, is to compute it at the rate of six per cent. per annum, from the day when judgment was signed in the Circuit Court until paid. (See report of the clerk and order of court at the end of this case.) *Mitchell* v. *Harmony*, 115.

JUDGMENT.

1. By the laws of Mississippi, deeds of trust and mortgages are valid, as against creditors and purchasers, only from the time when they are recorded. *Taylor* v. *Doe*, 288.
2. A judgment is a lien from the time of its rendition. *Ib.*
3. Therefore, where a judgment was rendered, in the interval between the execution and recording of a deed, it was a lien upon the land of the debtor. *Ib.*
4. A *fieri facias*, being issued upon this judgment, was levied upon the land; but, before the issuing of a *venditioni exponas*, the debtor died. *Ib.*
5. It was not necessary to revive the judgment by a *scire facias;* but the sheriff who had thus levied upon the land could proceed to sell it, under a *venditioni exponas;* and a purchaser, under this sale, could not be ejected by a claimant under the deed given by the debtor. *Ib.*
6. How far a judgment against executors in one State is evidence against other executors of the same person in another State. See *Hill* v. *Tucker*, 458.

JURISDICTION.

1. An appeal does not lie to this court, from the decision of a District Court, in a case of bankruptcy. *Crawford* v. *Points*, 11.
2. Even if it would, the decree of the District Court in this case is not a final decree. *Ib.*
3. The treaty of 1819, between the United States and Spain, contains the following stipulation, viz.:
"The United States shall cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida." *United States* v. *Ferreira*, 40.
4. Congress, by two acts, passed in 1823 and 1824 (3 Stat. at Large, 768, and 6 Stat. at Large, 569), directed the judge of the Territorial Court of Florida to receive, examine, and adjudge all cases of claims for losses, and report his decisions, if in favor of the claimants, together with the evidence upon which they were founded, to the Secretary of the Treasury, who, on being satisfied that the same was just and equitable, within the provisions of the treaty, should pay the amount thereof; and, by an act of 1849 (9 Stat. at Large, 788), Congress directed the judge of the District Court of the United States for the Northern District of Florida, to receive and adjudicate certain claims in the manner directed by the preceding acts. *Ib.*
5. From the award of the district judge, an appeal does not lie to this court. *Ib.*
6. As the treaty itself designated no tribunal to assess the damages, it

JURISDICTION—(*Continued.*)
remained for Congress to do so, by referring the claims to a commissioner, according to the established practice of the government in such cases. His decision was not the judgment of a court, but a mere award, with a power to review it conferred upon the Secretary of the Treasury. *Ib.*
7. By the eleventh section of the Judiciary Act (1 Stat. at Large, 78), no action can be brought in the Federal courts upon a promissory note, or other chose in action, by an assignee, unless the action could have been maintained if there had been no assignment. But an indorsee may sue his own immediate indorser. *Coffee* v. *Planters Bank*, 183.
8. Hence, where an action was brought by an indorsee upon checks which had been indorsed from one person to another, in the same State, and some of the counts of the declaration traced the title through these indorsements, no recovery could have been had upon those counts. *Ib.*
9. But the declaration also contained the common money counts; and, upon the trial, these were the only counts which remained, all the rest having been stricken out. The suit against the maker, and also against all the indorsers, except one, had been discontinued. *Ib.*
10. The statute of the State where the trial took place authorized a suit upon such an instrument as if it were a joint and several contract. *Ib.*
11. The dismissal of the suit against all the indorsers, except one, and the striking out of all the counts against him, except the common money counts, freed the judgment against him from all objection; and, therefore, when brought up for review upon a writ of error, it must be affirmed. *Ib.*
12. Where there was a sale of an undivided moiety of a tract of land, and the purchaser undertook to extinguish certain liens upon it, which he had failed to do; and, in consequence of such failure, the liens were enforced, and had to be paid by the heirs of the original owner, a suit by these heirs against the purchaser, to recover damages for the non-fulfilment of his contract to extinguish the liens, was not within the prohibition of the 11th section of the Judiciary Act, 1 Stat. at Large, 78. The heirs, being aliens, had a right to sue in the Circuit Court. *Weems* v. *George*, 190.
13. The act of June 17, 1844, (5 Stat. at Large, 676,) reviving the act of 1844, gives jurisdiction to the District Courts in cases only where the title set up to lands, under grants from former governments, is equitable and inchoate, and where there is no grant purporting to convey a legal title. *United States* v. *McCullagh*, 216.
14. Grants from the British government, as well as those of France and Spain, are equally within this restriction. *Ib.*
15. The courts of the United States, under the Constitution and laws, have equity jurisdiction. Unless the general principles of equity have been modified by the laws or usages of a particular State, those general principles will be carried out everywhere in the same manner, and equity jurisprudence be the same, when administered by the courts of the United States, in all the States. *Neves et al.* v. *Scott et al.*, 268.
16. Hence, the decision of a State court, in a case which involved only the general principles of equity, and was not controlled by local law or usage, is not binding as authority upon this court. *Ib.*
17. In the case of *Neves et al.* v. *Scott et al.*, reported in 9 Howard, 196, this court decided two points,—one, that volunteers could, in that case, claim the interference of chancery to enforce the marriage articles in question; and the other, that the articles constituted an executed trust. *Ib.*
18. The Supreme Court of Georgia does not agree with this court upon the first point. Nevertheless, this court does not change its decision. *Ib.*
19. Moreover, the second point upon which this court rested the case does not appear to have been brought before the Supreme Court of Georgia; and of course, it expressed no opinion upon the point. *Ib.*
20. During the war with Mexico, the Admittance, an American vessel, was

JURISDICTION—(*Continued.*)
seized in a port of California, by the commander of a vessel of war of the United States, upon suspicion of trading with the enemy. She was condemned, as a lawful prize, by the chaplain belonging to one of the vessels of war upon that station, who had been authorized by the President of the United States to exercise admiralty jurisdiction in cases of capture. *Jecker et al.* v. *Montgomery*, 498.

21. The owners of the cargo filed a libel against the captain of the vessel of war, in the Admiralty Court for the District of Columbia. Being carried to the Circuit Court, it was decided:
    1. That the condemnation in California was invalid as a defence for the captors.
    2. That the answer of the captors, having averred sufficient probable cause for the seizure of the cargo, and the libellants having demurred to this answer, upon the ground that the District Court had no right to adjudicate, because the property had not been brought within its jurisdiction, the demurrer was overruled, and judgment was entered against the libellants. *Ib.*
22. The judgment of the Circuit Court, upon the first point, was correct, and upon the second point, erroneous. *Ib.*
23. The Prize Court established in California was not authorized by the laws of the United States or the laws of nations. *Ib.*
24. The grounds alleged for the seizure of the vessel and cargo in the answer, viz., that the vessel sailed from New Orleans with the design of trading with the enemy, and did, in fact, hold illegal intercourse with them, are sufficient to subject both to condemnation, if they are supported by testimony. *Ib.*
25. And if they were liable to capture and condemnation, the reasons assigned in the answer for not bringing them into a port of the United States and libelling them for condemnation, viz., that it was impossible to do so consistently with the public interests, are sufficient, if supported by proof, to justify the captors in selling vessel and cargo in California, and to exempt them from damages on that account. *Ib.*
26. The Admiralty Court in the district had jurisdiction of the case, and it was the duty of the court to order the captors to institute proceedings in that court, to condemn the property as prize, by a day to be named in the order; and, in default thereof, to be proceeded against upon the libel for an unlawful seizure. *Ib.*
27. The Admiralty Court, in the District of Columbia, had jurisdiction of such a libel for condemnation, although the property was not brought within its jurisdiction; and, if they found it liable to condemnation, might proceed to condemn it, although it was not brought within the custody or control of the court. *Ib.*
28. The necessity of proceeding to condemn as prize, does not arise from any difference between the Instance Court and the Prize Court, as known in England. The same court here possesses the instance and prize jurisdiction. But because the property of the neutral is not divested by the capture, but by the condemnation in a prize court; and it is not divested until condemnation, although, when condemned, the condemnation relates back to the capture. *Ib.*
29. As this libel is for the restitution of the property or the proceeds, probable cause of seizure is no defence. It is a good defence against a claim for damages when the property has been restored, or lost after seizure, without the fault of the captor. But, while the property or proceeds is withheld by the captor, and claimed as prize, probable cause of seizure is no defence. *Ib.*
30. The Circuit Court, therefore, erred in deciding that probable cause of seizure was a good defence. *Ib.*
31. The State of Pennsylvania having constructed lines of canal and railroad, and other means of travel and transportation, which would be injured in their revenues by the obstruction in the River Ohio, created by a bridge at Wheeling, has a sufficiently direct interest to sustain an

JURISDICTION—(*Continued.*)
application to this court, in the exercise of original jurisdiction, for an injunction to remove the obstruction. The remedy at law would be incomplete. *Pennsylvania* v. *Wheeling Bridge*, 519.

32. It is admitted that the Federal courts have no jurisdiction of common-law offences, and that there is no abstract, pervading principle of the common law of the Union under which this court can take jurisdiction; and that the case under consideration is subject to the same rules of action as if the suit had been commenced in the Circuit Court for the District of Virginia. *Ib.*
33. But chancery jurisdiction is conferred on the courts of the United States by the Constitution, under certain limitations; and under these limitations, the usages of the High Court of Chancery, in England, which have been adopted as rules by this court, furnish the chancery law which is exercised in all the States, and even in those where no State chancery system exists. *Ib.*
34. Under this system, where relief can be given by the English chancery, similar relief may be given by the courts of the Union. *Ib.*
35. An indictment against a bridge, as a nuisance, by the United States, could not be sustained; but a proceeding against it, on the ground of a private and irreparable injury, may be sustained, at the instance of an individual or a corporation, either in the Federal or State courts. *Ib.*
36. In case of nuisance, if the obstruction be unlawful and the injury irreparable, by a suit at common law, the injured party may claim the extraordinary protection of a court of chancery. *Ib.*
37. The Ohio is a navigable stream, subject to the commercial power of Congress, which has been exercised over it; and, if the act of Virginia authorized the structure of the bridge, so as to obstruct navigation, it would afford no justification to the Bridge Company. *Ib.*
38. Congress has sanctioned the compact made between Virginia and Kentucky, viz., "That the use and navigation of the River Ohio, so far as the territory of Virginia or Kentucky is concerned, shall be free and common to the citizens of the United States." This compact is obligatory, and can be carried out by this court. *Ib.*
39. Where there is a private injury from a public nuisance, a court of equity will interfere by injunction. *Ib.*
40. In this case, the bridge is a nuisance. This is shown by measuring the height of the bridge, and of the water, and of the chimneys of the boats. The report of the commissioner appointed by this court to ascertain these facts, is equivalent to the verdict of a jury. *Ib.*
41. The report of the commissioner adverted to and commented upon; the extent of injury sustained by the boats explained; and the importance shown of maintaining the navigation of the river. *Ib.*
42. If a structure be declared to be a nuisance, there is no room for a calculation and comparison between the injuries and benefits which it produces. *Ib.*
43. Therefore, unless there be an elevation of the lowest parts of the bridge, for three hundred feet over the channel of the river — nor less than one hundred and eleven feet from the low-water mark, the flooring of the bridge descending from the termini of the elevation at the rate of four feet in the hundred — or some other plan shall be adopted which shall relieve the navigation from obstruction, on or before the first of February next, — the bridge must be abated. *Ib.*
44. (In consequence of the intimation above alluded to, viz., "that some other plan might be adopted," than elevating the bridge, the court, at the request of the counsel for the Bridge Company, referred the matter to an engineer. After receiving his report, the court decided as follows.) *Ib.*
45. The Bridge Company may, upon their own responsibility, try whether the western channel can be improved and made passable, by means of a draw, so as to afford a safe and unobstructed navigation for the largest class of boats, having chimneys eighty feet high, when they

JURISDICTION—(*Continued.*)
cannot pass under the suspension-bridge. This is to be done, if at all, before the first Monday of February next, on which day the plaintiff may move the court on the subject of the decree. *Ib.*

LANDS, PUBLIC.

1. Where a grant of land, in Louisiana, was made by the Spanish governor, in February, 1799, but no possession was ever taken by the grantee, during the existence of the Spanish government, or since the cession to the United States; and no proof of the existence of the grant until 1835, when the grantee sold his interest to a third person; the presumption arising from this neglect is, that the grant, if made, had been abandoned. *United States* v. *Hughes*, 1.
2. The regulations of Gayoso, who made the grant, were, that the settler should forfeit the land, if he failed to establish himself upon it within one year, and put under labor ten arpents in every hundred within three years. *Ib.*
3. The court again decides, as in the preceding case, that, where a Spanish grant was made in 1798, and no evidence was offered that possession was taken under the grant, nor any claim of right or title made under it until 1837, nor any evidence given to account for the neglect, the presumption is that the claim had been abandoned. *Ib.*, 47.
4. In this case, also, there was no proof that the persons who purported to convey as heirs, were actually the heirs of the party whom they professed to represent. *Ib.*
5. This court again decides, as in 9 How., 127, and 10 How., 609, that French grants of land in Louisiana, made after the treaty of Fontainbleau, by which Louisiana was ceded to Spain, are void, unless confirmed by the Spanish authorities before the cession to the United States. *United States* v. *Pillerin et al.*, 9.
6. But, if there has been continued possession under the grants, so as to lay the foundation for presuming a confirmation by Spain, then the cases are not included within the acts of 1824 and 1844, which look only to incohate and equitable titles. The District Court of the United States has, therefore, no jurisdiction. *Ib.*
7. On the 15th of May, 1820, Congress passed an act (3 Stat. at Large, 605,) for the benefit of the inhabitants of the village of Peoria, by which every person claiming a lot in the village, was to give notice to the Register of the Land-Office, whose report was to be laid before Congress. *Ballance* v. *Forsyth*, 18.
8. On the 3d of March, 1823, Congress passed another act, (3 Stat. at Large, 786,) granting to each of the French and Canadian inhabitants, and other settlers, according to the report, the lot upon which they had settled; and directed the surveyor of the public lands to make a plat of the lots for which patents were to be issued to the claimants. *Ib.*
9. This survey and plat were not made until April and May, 1837. *Ib.*
10. In November, 1837, a person who was not a settler, purchased at the Land-Office, at private entry, the fractional quarter of land which included some of the above lots, and soon afterwards obtained a patent. Both the certificate and patent reserved the rights of the claimant, under the acts of Congress above mentioned. *Ib.*
11. In 1845 and 1847, these claimants obtained patents. *Ib.*
12. They were entitled to recover in ejectment from the persons who held under the private entry and patent. *Ib.*
13. The title of the plaintiffs was not divested by a tax-sale, in 1843. The whole fractional quarter-section was taxed, and one acre off of the east side sold. This sale was irregular. *Ib.*
14. The principles established in the cases of 3 How., 212, and 9 How., 477, again affirmed, viz., that, after the admission of Alabama into the Union as a State, Congress could make no grant of land situated between high and low water marks. *Doe* v. *Beebe*, 25.
15. The act of June 17, 1844, (5 Stat. at Large, 676,) reviving the act of 1844, gives jurisdiction to the District Courts in cases only where the

LANDS, PUBLIC—(*Continued.*)
title set up to lands, under grants from former governments, is equitable and inchoate, and where there is no grant purporting to convey a legal title. *United States* v. *McCullagh*, 216.
16. Grants from the British government, as well as those of France and Spain, are equally within this restriction. *Ib.*
17. On the 20th of May, 1826, Congress passed an act (4 Stat. at Large, 179,) giving school lands to such townships, in the various land districts of the United States, as had not been before provided for, which were to be selected for such townships by the Secretary of the Treasury, out of any unappropriated public lands, within the land district where the township was situated for which the selection was made. *Campbell et al.* v. *Doe*, 244.
18. The Secretary of the Treasury, through the Land-Office, directed the Registers to make selections and return lists thereof, to be submitted to him for his approbation. *Ib.*
19. Under this direction, the land in question was selected and reserved from sale. *Ib.*
20. Afterwards, the Register withdrew the selection, by authority of the Commissioner of the Land-Office, and permitted a person to enter and take it up, this person knowing the circumstances under which it had been reserved from sale. *Ib.*
21. Finally, the Secretary of the Treasury selected the land in question, under the authority given to him by the act of 1826. *Ib.*
22. This selection was good, and conferred a title, overruling the intermediate entry. *Ib.*
23. In 1795, Baron de Carondelet, the Governor-General of Louisiana, made a grant of land on the Mississippi River, upon condition that a road and clearing should be made within one year, and an establishment made on the land within three years. *Heirs of De Villemont* v. *United States*, 261.
24. Neither of these conditions was complied with, nor was possession taken under the grant, until after the cession of the country to the United States. *Ib.*
25. The excuses for these omissions, namely, that the grantee was commandant at the post of Arkansas, and that the Indians were hostile, are not satisfactory, because the grantee must have known these circumstances when he obtained the grant. *Ib.*
26. According to the principles established in the preceding case of *Glenn and Thruston* v. *The United States*, the Spanish authorities would not have confirmed this grant, neither can this court confirm it. *Ib.*
27. Moreover, in this case, the land claimed cannot be located by a survey. *Ib.*
28. In 1796, when Delassus was commandant of the port of New Madrid, he exercised the powers of subdelegate, and had authority under the instructions of the Governor-General of Louisiana, to make conditional grants of land. *Glenn et al.* v. *United States*, 250.
29. He made a grant to Clamorgan, who stipulated, upon his part, that he would introduce a colony from Canada, for the purpose of cultivating hemp and making cordage. *Ib.*
30. This obligation he entirely failed to perform. *Ib.*
31. By the laws and ordinances of Spanish colonial government, (which this court is bound, under the act of 1844, to adopt, as one of their rules of decision,) this condition had to be performed before Clamorgan could become possessed of a perfect title. *Ib.*
32. The difference between this case and that of the Arredondo explained. *Ib.*
33. If the Spanish Governor would have refused to complete the title, this court, acting under the laws of Congress, must also decline to confirm it. *Ib.*
34. After the cession of the province of Louisiana to the United States, Clamorgan could not legally have taken any steps to fulfil his condi-

LANDS, PUBLIC (*Continued.*)
tion. He was forbidden by law. By the treaty of cession, no particular time was allowed for grantees to complete their imperfect grants. It was left to the political department of the government, and Congress accordingly acted upon the subject. *Ib.*
35. The 3d day of March, 1804, was the time fixed by Congress, and the grant must now be judged of as it stood upon that day. *Ib.*

LIEN.
1. By the laws of Mississippi, deeds of trust and mortgages are valid, as against creditors and purchasers, only from the time when they are recorded. *Taylor* v. *Doe*, 288.
2. A judgment is a lien from the time of its rendition. *Ib.*
3. Therefore, where a judgment was rendered, in the interval between the execution and recording of a deed, it was a lien upon the land of the debtor. *Ib.*
4. A *fieri facias*, being issued upon this judgment, was levied upon the land; but, before the issuing of a *venditioni exponas*, the debtor died. *Ib.*
5. It was not necessary to revive the judgment by a *scire facias;* but the sheriff who had thus levied upon the land could proceed to sell it, under a *venditioni exponas;* and a purchaser under this sale could not be ejected by a claimant under the deed given by the debtor. *Ib.*
6. Real property, in Louisiana, was bound by a judicial mortgage. *Fowler* v. *Hart*, 373.
7. The owners of the property then took the benefit of the Bankrupt Act of the United States. *Ib.*
8. A creditor of the bankrupt then filed a petition against the assignee, alleging that he had a mortgage upon the same property, prior in date to the judicial mortgage, but that, by some error, other property had been named, and praying to have the error corrected. Of this proceeding the judgment creditor had no notice. *Ib.*
9. The court being satisfied of the error, ordered the mortgage to be reformed, and thus gave the judgment creditor the second lien instead of the first; and then decreed that the property should be sold free of all incumbrances. Of this proceeding, and also of the distribution of the proceeds of sale, the judgment creditor had notice, but omitted to protect his rights. *Ib.*
10. In consequence of this neglect, he cannot afterwards assert his claim against a purchaser, who has bought the property as being free from all incumbrances. *Ib.*

MORTGAGE.
See LIEN.

NUISANCE.
See CHANCERY.

PARTNERSHIP.
1. Partners have the right, *inter sese*, to control the disposition of the firm assets, and to appropriate them to the payment of a claim by one partner on the firm. *McCormick* v. *Gray*, 26.
2. Where two partners assigned all their partnership property to a trustee with certain instructions how to dispose of it, and afterwards agreed between themselves to appoint an arbitrator, recognizing in their bonds the directions given to the trustee, the arbitrator had no right to deviate from these directions, and make other disposition of the property. *Ib.*
3. The reason given by the arbitrator, that he preferred creditors before awarding a certain sum to one of the partners is insufficient. *Ib.*
4. Nor had the arbitrator a right to depart, in any particular, from the arrangement of the property which the partners had designated in their deed to the trustee. *Ib.*
5. Though an award may be good in part and bad in part, yet the part allowed to stand must not be affected by a departure from the terms of the submission. *Ib.*

PENALTY.
1. The fourth section of the act of Congress, approved on the 12th day of February, 1793, (1 Stat. at Large, 302,) entitled "An act respecting

PENALTY—(*Continued.*)
fugitives escaping from justice, and persons escaping from the service of their masters," is repealed, so far as relates to the penalty, by the act of Congress approved September 18th, 1850, (9 Stat. at Large, 462,) entitled "An act to amend, and supplementary to, the above act." *Norris* v. *Crocker*, 429.
2. Therefore, where an action for the recovery of the penalty prescribed in the act of 1793 was pending at the time of the repeal, such repeal is a bar to the action. *Ib.*

PLEAS AND PLEADINGS.
1. Where a declaration contained two counts, one of which set out an injunction-bond, with the condition thereto annexed, and averred a breach, and the second count was merely for the debt in the penalty; and the pleas were all applicable to the first count, which was upon the trial stricken out by the plaintiff, and the court gave judgment on the second count for want of a plea, this judgment was proper, and must be affirmed. *Hogan* v. *Ross*, 173.
2. By the eleventh section of the Judiciary Act, (1 Stat. at Large, 78,) no action can be brought in the Federal courts upon a promissory note, or other chose in action, by an assignee, unless the action could have been maintained if there had been no assignment. But an indorsee may sue his own immediate indorser. *Coffee* v. *Planters Bank*, 183.
3. Hence, where an action was brought by an indorsee upon checks which had been indorsed from one person to another, in the same State, and some of the counts of the declaration traced the title through these indorsements, no recovery could have been had upon those counts. *Ib.*
4. But the declaration also contained the common money counts; and, upon the trial, these were the only counts which remained, all the rest having been stricken out. The suit against the maker, and also against all the indorsers, except one, had been discontinued. *Ib.*
5. The statute of the State where the trial took place authorized a suit upon such an instrument as if it were a joint and several contract. *Ib.*
6. The dismissal of the suit against all the indorsers, except one, and the striking out of all the counts against him, except the common money counts, freed the judgment against him from all objection; and, therefore, when brought up for review upon a writ of error, it must be affirmed. *Ib.*
7. In Maryland, it is correct to take a recognizance of bail before two justices of the peace. *Morsell* v. *Hall*, 212.
8. Where a *scire facias* was issued against special bail, who pleaded two pleas, to the first of which the plaintiff took issue, and demurred to the second; and the cause went to trial upon that state of the pleadings without a joinder in demurrer; and the court gave a general judgment for the plaintiff; this was not error. *Ib.*
9. The refusal or omission to join in demurrer was a waiver of the plea demurred to. *Ib.*
10. In this case, if the plea had been before the court, it was bad; because, being a plea that the note was paid before the original judgment, it called upon the party to prove a second time what had been once settled by a judgment. The omission of the court to render a judgment upon the plea could not be assigned as error. *Ib.*
11. A judgment of a court, upon a motion to enter an *exoneretur* of bail, is not the proper subject of a writ of error. *Ib.*
12. Where the covenant purported to be made between two persons by name of the first part, and the corporate company, of the second part, and only one of the persons of the first part signed the instrument, and the covenant ran between the party of the first part and the party of the second part, it was proper for the person who had signed on the first part to sue alone; because the covenant enured to the benefit of those who were parties to it. *Philadelphia, Wilmington, & Baltimore Railroad Company* v. *Howard*, 308.

POSTMASTER'S BOND.
See BOND.

POWER OF ATTORNEY.
See CONTRACT and ASSIGNMENT.
PRACTICE.
1. Where the only exceptions taken in the court below were to the refusals of the court to continue the case to the next term; and it appears that the continuance asked for below and the suing out the writ of error were only for the purpose of delaying the payment of a just debt, and no counsel appeared in this court on that side, the 17th rule will be applied and the judgment of the court below be affirmed with ten per cent. interest. *Barrow* v. *Hill*, 54.
2. In some of the States, it is the practice for the court to express the opinion upon facts, in a charge to the jury. In these States, it is not improper for the Circuit Court of the United States to follow the same practice. *Mitchell* v. *Harmony*, 115.
3. Where a defendant in error or an appellee wishes to have a case dismissed because no citation has been served upon him, his counsel should give notice of the motion when his appearance is entered, or at the same term; and also that his appearance is entered for that purpose. A general appearance is a waiver of the want of notice. *Buckingham* v. *McLean*, 150.
4. An appeal in equity brings up all the matters which were decided in the Circuit Court to the prejudice of the appellant; including a prior decree of that court from which an appeal was then taken, but which appeal was dismissed under the rules of this court. *Ib.*
5. In a trial in Louisiana, where the judge tried the whole case without the intervention of a jury, a bill of exceptions to the admission of testimony by the judge, cannot be sustained in this court. *Weems* v. *George*, 190.
6. In Maryland, it is correct to take a recognizance of bail before two justices of the peace. *Morsell* v. *Hall*, 212.
7. Where a *scire facias* was issued against special bail, who pleaded two pleas, to the first of which the plaintiff took issue, and demurred to the second; and the cause went to trial upon that state of the pleadings without a joinder in demurrer; and the court gave a general judgment for the plaintiff; this was not error. *Ib.*
8. The refusal or omission to join in demurrer was a waiver of the plea demurred to. *Ib.*
9. In this case, if the plea had been before the court, it was bad; because, being a plea that the note was paid before the original judgment, it called upon the party to prove a second time what had been once settled by a judgment. The omission of the court to render a judgment upon the plea could not be assigned as error. *Ib.*
10. A judgment of a court upon a motion to enter an *exoneretur* of bail is not the proper subject of a writ of error. *Ib.*
11. Where an action of trespass *quare clausum fregit* was brought, and the defendants justified, and the court allowed the defendants, upon the trial, to open and close the argument, this ruling of the court is not a proper subject for a bill of exceptions. *Day* v. *Woodworth*, 363.
SHIPS OR VESSELS, COLLISION OF.
See ADMIRALTY.
STATUTES, CONSTRUCTION OF.
1. The fourth section of the act of Congress, approved on the 12th day of February, 1793, (1 Stat. at Large, 302,) entitled "An act respecting fugitives escaping from justice, and persons escaping from the service of their masters," is repealed, so far as relates to the penalty, by the act of Congress approved September 18th, 1850, (9 Stat. at Large, 462,) entitled "An act to amend, and supplementary to, the above act." *Norris* v. *Crocker*, 429.
2. Therefore, where an action for the recovery of the penalty prescribed in the act of 1793 was pending at the time of the repeal, such repeal is a bar to the action. *Ib.*
TARIFF.
See DUTIES.

TREATIES.

1. The treaty of 1819, between the United States and Spain, contains the following stipulation, viz.:—
"The United States shall cause satisfaction to be made for the injuries, if any, which by process of law shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida." *U. S.* v. *Ferreira*, 40.
2. Congress, by two acts passed in 1823 and 1834, (3 Stat. at L., 768, and 6 Stat. at L., 569,) directed the judge of the Territorial Court of Florida to receive, examine, and adjudge all cases of claims for losses, and report his decisions, if in favor of the claimants, together with the evidence upon which they were founded, to the Secretary of the Treasury, who, on being satisfied that the same was just and equitable, within the provisions of the treaty, should pay the amount thereof; and by an act of 1849, (9 Stat at L., p. 788,) Congress directed the judge of the District Court of the United States for the Northern District of Florida, to receive and adjudicate certain claims in the manner directed by the preceding acts. *Ib.*
3. From the award of the district judge, an appeal does not lie to this court. *Ib.*
4. As the treaty itself designated no tribunal to assess the damages, it remained for Congress to do so by referring the claims to a commissioner according to the established practice of the government in such cases. His decision was not the judgment of a court, but a mere award, with a power to review it, conferred upon the Secretary of the Treasury. *Ib.*

TRESPASS.

1. Where an action of trespass *quare clausum fregit* was brought, and the defendants justified, and the court allowed the defendants, upon the trial, to open and close the argument, this ruling of the court is not a proper subject for a bill of exceptions. *Day* v. *Woodworth*, 363.
2. The suit being brought by the owner of a mill-dam below, against the owners of a mill above, for forcibly taking down a part of the dam, upon the allegation that it injured the mill above, it was proper for the court to charge the jury, that, if they found for the plaintiff, upon the ground that his dam caused no injury to the mill above, they should allow, in damages, the cost of restoring so much of the dam as was taken down, and compensation for the necessary delay of the plaintiff's mill; and they might also allow such sum for the expenses of prosecuting the action, over and above the taxable costs, as they should find the plaintiff had necessarily incurred, for counsel fees, and the pay of engineers in making surveys, &c. *Ib.*
3. But if they should find for the plaintiff, on the ground that the defendants had taken down more of the dam than was necessary to relieve the mill above, then, they would allow in damages the cost of replacing such excess, and compensation for any delay or damage occasioned by such excess; but not any thing for counsel-fees or extra compensation to engineers, unless the taking down of such excess was wanton and malicious. *Ib.*
4. In actions of trespass, and all actions on the case for torts, a jury may give exemplary or vindictive damages, depending upon the peculiar circumstances of each case. But the amount of counsel-fees, as such, ought not to be taken as the measure of punishment, or a necessary element in its infliction. *Ib.*
5. The doctrine of costs explained. *Ib.*
6. Whether the verdict would carry costs or not, was a question with which the jury had nothing to do. *Ib.*
7. In an action of trespass, for forcibly invading a plantation, carrying off some slaves, and frightening others away, it was proper for the plaintiff to give in evidence the consequential damages which resulted to his wood and corn. *McAfee* v. *Crofford*, 447.
8. It was proper, also, to allow the defendant to give in evidence a judgment against the owner of the plantation, as principal, and himself as

TRESPASS—(*Continued.*)
surety, and his own payment of that judgment. It was allowable, both as an explanation of his motives, and to show how much he had paid; both reasons concurring to mitigate the damages. *Ib.*
9. Evidence was also allowable to show that arrangements had been entered into between the principal and surety, whereby time would be given for the payment of the debt. This was allowable, as a palliation of the conduct of the principal in removing his slaves without the State. *Ib.*
10. Evidence was also admissible to show that the surety had not been compelled to pay the debt, by showing that the creditor had been enjoined from collecting it. This was admissible, in order to rebut the evidence previously offered on the other side. *Ib.*
11. It was proper for the court to charge the jury that, in assessing damages, they had a right to take into consideration all the circumstances. *Ib.*

VENDITIONI EXPONAS.
See LIEN.

VENDOR AND PURCHASER.
1. Where there was a contract for the sale of land for the purchase of which indorsed notes were given, but before the time arrived for the making of a deed, the purchaser failed, and the liability to pay the note became fixed upon the indorser, and a new contract was made between the vendor and the indorser, that, in order to protect the indorser, he should be substituted in place of the original purchaser, fresh notes being given and the time of payment extended, evidence was admissible to show that the latter contract was a substitute for the former. *Bradford* v. *Union Bank of Tennessee*, 57.
2. A part of the land having been sold for taxes whilst the first set of notes was running to maturity, (the vendee having been put into possession,) and the vendor being ignorant of that fact when the contract of substitution was made, all that the indorser can claim of the vendor, is a deed for the land subject to the incumbrances arising from the tax-sales. The notes given for the substituted contract must be paid. *Ib.*
3. The indorser having filed a bill for a specific performance upon the title-bond, which he had received from the vendor, this Court will not content itself with dismissing his bill without prejudice, and thus give rise to further litigation, but proceed to pass a final decree, founded on the above principles. *Ib.*
4. Where there was a sale of an undivided moiety of a tract of land, and the purchaser undertook to extinguish certain liens upon it, which he failed to do; and in consequence of such failure the liens were enforced, and had to be paid by the heirs of the original owner, a suit by these heirs against the purchaser to recover damages for the non-fulfilment of his contract to extinguish the liens, was not within the prohibition of the 11th section of the Judiciary Act, 1 Stat. at L., 78. The heirs, being aliens, had a right to sue in the Circuit Court. *Weems* v. *George*, 190.
5. The extinguishment of the liens by the heirs of the original owner, was effected by process of law and attended with costs. It was proper that these costs also, as well as the amount of the liens, should be recovered by the heirs from the defaulting party who had failed to fulfil his contract. The article, 1929 of the code of Louisiana, does not include this case, but it is included within article 1924. *Ib.*
6. Where a person desired to purchase land from a party who was ignorant that he had any title to it, or where the land was situated; and the purchaser made fraudulent representations as to the quantity and quality of the land, and also, as to a lien which he professed to have for taxes which he had paid; and finally bought the land for a grossly inadequate price, the sale will be set aside. *Tyler* v. *Black*, 230.

WAREHOUSE LAW.
See DUTIES.

WHEELING BRIDGE.
See CONSTITUTIONAL LAW.