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TO THE

MATTERS CONTAINED IN THIS VOLUME.

The references are to the STAR (*) pages.

ABATEMENT.

1. It is a bad mode of pleading, to unite pleas in abatement and pleas to the merits. And if after pleas in abatement, a defence be interposed, going to the merits of the controversy, the grounds alleged in abatement become thereby immaterial and are waived. *Sheppard* v. *Graves*, 505.
2. In this case, as in the preceding, it is decided, that where the plaintiff averred enough to show the jurisdiction of the court, and the defendant pleaded in abatement that the plaintiff was disabled from bringing the suit, on account of residence, it was incumbent upon the defendant to sustain the allegation by proof. *Same* v. *Same*, 512.
3. Until that was done, it was not necessary for the plaintiff to offer any evidence upon the subject. *Ib.*

ADMIRALTY.

1. Where a collision takes place between two vessels at sea, which is the result of inevitable accident, without the negligence or fault of either party, each vessel must bear its own loss. *Steinback* v. *Rae*, 532.

ANTE-NUPTIAL CONTRACTS.

See CHANCERY.

APPEAL.

See CHANCERY.

ATTACHNENT LAW OF MARYLAND.

1. Under the attachment law of Maryland, a share in the Baltimore Mexican Company, which had fitted out an expedition under General Mina, was not, in 1827, the subject of an attachment under a judgment, whether such a share was held by the garnishee under a power of attorney to collect the proceeds, or under an equitable assignment to secure a debt. *Deacon* v. *Oliver*, 610.
2. The answers of the garnishee to interrogatories filed, were literally correct. He had not in his hands any "funds, evidences of debt, stocks, certificates of stock," belonging to the debtor, nor "any acknowledgment by the Mexican government," on which an attachment could be laid. *Ib.*

BILLS AND NOTES.

See COMMERCIAL LAW.

CHANCERY.

1. An appeal will not lie to this court from a refusal of the court below to open a prior decree, and grant a rehearing. The decision of this point rests entirely in the sound discretion of the court below. *Wylie* v. *Coxe*, 1.
2. The case of *Brockett* v. *Brockett* (2 How., 240) explained. *Ib.*
3. Two appeals having been taken, one from the original decree, and the other from the refusal to open it, the latter must be dismissed, and the case stand for hearing upon the first appeal. *Ib.*
4. A motion for a mandate upon the court below, to carry the decree into execution, overruled. *Ib.*

CHANCERY—(*Continued.*)

5. A reargument of a case decided by this court will not be granted, unless a member of the court, who concurred in the judgment, desires it; and when that is the case, it will be ordered without waiting for the application of counsel. *Brown* v. *Aspden*, 25.
6. And this is so, whether the decree of the court below was affirmed by an equally divided court or a majority; or whether the case is one at common law or chancery. *Ib.*
7. The rules of the English Court of Chancery have not been adopted by this court. Those which are applicable to a court of original jurisdiction, are not appropriate to an appellate court. *Ib.*
8. A court of equity has jurisdiction of a bill against the administrator of a deceased debtor, and a person to whom real and personal property was conveyed by the deceased debtor, for the purpose of defrauding creditors. *Hagan* v. *Walker*, 29.
9. In such a case the court does not exercise an auxiliary jurisdiction to aid legal process, and consequently it is not necessary that the creditor should be in a condition to levy an execution, if the fraudulent obstacle should be removed. *Ib.*
10. It is proper to make a prior encumbrancer, who holds the legal title, a party to the bill, in order that the whole title may be sold under the decree; for the purpose of such a decree, the prior encumbrancer is a necessary party; but the court may order a sale subject to the encumbrance, without having the prior encumbrancer before it, and in fit cases it will do so. *Ib.*
11. If the prior encumbrancer is out of the jurisdiction, or cannot be joined without defeating it, it is a fit cause to dispense with his presence, and order a sale subject to his encumbrance, which will not be affected by the decree. *Ib.*
12. Where real estate is in the custody of a receiver, appointed by a court of chancery, a sale of the property under an execution issued by virtue of a judgment at law, is illegal and void. *Wiswall* v. *Sampson*, 52.
13. The proper modes of proceeding pointed out, to be pursued by any person who claims title to the property, either by mortgage, or judgment, or otherwise. *Ib.*
14. Where there was a judgment at law against a defendant in Mississippi, and he sought relief in equity, upon the ground that the consideration of the contract was the introduction of slaves into the State, and consequently illegal; a court of equity will not grant relief, because the complainant was *in pari delicto* with the other party. *Sample* v. *Barnes*, 70.
15. Moreover, such a defence would have been good at law, and the averments, that deception was practised to prevent the complainant from making the defence, are not sustained by the evidence in the case. And, further, after the judgment, the complainant gave a forthcoming bond, thus recognizing the validity of the judgment. *Ib.*
16. Where an antenuptial contract was alleged to have been made, and the affidavits of the parties claiming under it alleged that they never possessed or saw it; that they had made diligent inquiry for it, but were unable to learn its present existence or place of existence; that inquiry had been made of the guardian of one of the children, who said that he had never been in possession of it, and did not know where it was; that inquiry had been made at the recording offices in vain, and that the affiants believed it to be lost; secondary proof of its contents ought to have been admitted. *De Lane* v. *Moore*, 253.
17. Whether recorded or not, it was binding upon the parties. If recorded within the time prescribed by statute, or if reacknowledged and recorded afterwards, notice would thereby have been given to all persons of its effect. *Ib.*
18. If it was regularly recorded in one State, and the property upon which it acted was removed to another State, the protection of the contract would follow the property into the State into which it was removed. *Ib.*

CHANCERY—(*Continued.*)

19. But where no suit was brougn until eight or nine years after the death of the husband, and then the one which was brought was dismissed for want of prosecution; another suit against the executors who had divided the property, comes too late. *Ib.*
20. A court has a right to set aside its own judgment or decree, dismissing a bill in chancery, at the same term in which the judgment or decree was rendered, on discovering its own error in the law, or that the consent of the complainants to such dismissal was obtained by fraud. *Doss* v. *Tyack*, 298.
21. A verdict on an issue to try whether a sale was fraudulent, finding the same to be fraudulent, will not be set aside on a certificate or affidavit of some of the jurors, afterwards made, as to what they meant. *Ib.*
22. A Chancellor does not need a verdict to inform his conscience, when the answer denies fraud in the abstract, whilst it admits all the facts and circumstances necessary to constitute it, in the concrete. *Ib.*
23. Releases given by the complainants, in the present case, decided to cover the matters in controversy, and, therefore, to put an end to all claim by them; inasmuch as there is no proof that they were obtained by fraud or circumvention. *Perkins* v. *Fourniquet*, 313.
24. Where a title to land in the State of Coahuila and Texas was obtained in 1833, by a mother for, and in the name of her daughter, and, in 1836, the father of the daughter conveyed it away by a deed executed in Louisiana, this deed was properly set aside by the District Court of Texas. *Hoyt* v. *Hammekin*, 346.
25. It was not executed either according to the laws of Louisiana, or those of Coahuila and Texas. *Ib.*
26. Two statutes of Mississippi, one passed in 1843, and the other in 1846, provide that where the charter of a bank shall be declared forfeited, a trustee shall be appointed to take possession of its effects, and commissioners appointed to audit accounts against it. *Peale* v. *Phipps*, 368.
27. Where these steps had been taken, and the commissioners had refused to allow a certain account, the Circuit Court of the United States had no right to entertain a bill filed by the creditors to compel the trustee to pay the rejected account. There was a want of jurisdiction. *Ib.*
28. The cases upon this point examined. *Ib.*
29. A claim by the trustee, in re-convention, was not a waiver of the exception to the jurisdiction. *Ib.*
30. A will, executed in 1777, which devised certain lands in Maine, to trustees and their heirs to the use of Richard (the son of the testator) for life, remainder, for his life in case of forfeiture, to the trustee to preserve contingent remainders; remainder to the sons of Richard, if any, as tenants in common in tail, with cross remainders; remainder to Richard's daughter Elizabeth for life; remainder to trustees to preserve contingent remainders during her life; remainder to the sons of Elizabeth in tail,—did not vest the legal estate in fee simple in the trustees. The life estate of Richard, and the contingent remainders limited thereon, were legal estates. *Webster* v. *Cooper*, 489.
31. No duties were imposed on the trustees which could prevent the legal estate in these lands from vesting in the *cestuis que use;* and although such duties might have been required of them relating to other lands in the devise, yet this circumstance would not control the construction of the devise as to these lands. *Ib.*
32. The devise to Elizabeth for life, remainder to her sons as tenants in common, share and share alike, and to the heirs of their bodies, did not give an estate tail to Elizabeth, under the rule in *Shelly's case.* But upon her death, her son (the party to the suit) took as a purchaser, an estate tail in one moiety of the land, as a tenant in common with his brother. *Ib.*
33. One of the conditions of the devise was, that this party, as soon as he should come into possession of the lands, should take the name of the

CHANCERY—(*Continued.*)
testator. But as he had not yet come into possession, and it was a condition subsequent, of which only the person to whom the lands were devised over, could take advantage, a non-compliance with it was no defence, in an action brought to recover possession of the land. *Ib.*
34. The son, taking an estate tail at the death of Elizabeth, in 1845, could maintain a writ of entry, and until that time had no right of possession. Consequently, the adverse possession of the occupant only began then. *Ib.*
35. A bill in chancery will not lie for the purpose of perpetually enjoining a judgment, upon the ground that there was a false return in serving process upon one of the defendants. Redress must be sought in the court which gave the judgment, or in an action against the marshal. *Walker* v. *Robbins*, 584.
36. Moreover, the defendant in this case, by his actions, waived all benefit which he might have derived from the false return; and no defence was made on the trial at law, impeaching the correctness of the cause of action sued on, and in such a case, resort cannot be had to equity to supply the omission. *Ib.*
37. A society called Separatists, emigrated from Germany to the United States. They were very poor, and one of them, in 1817, purchased land in Ohio, for which he gave his bond, and took the title to himself. Afterwards, they adopted two constitutions, one in 1819, and one in 1824, which they signed, and in 1832 obtained an act of incorporation. The articles of association, or constitutions of 1819 and 1824, contained a renunciation of individual property. *Goesele* v. *Bimeler*, 590.
38. The heirs of one of the members who signed these conditions, and died in 1827, cannot maintain a bill of partition. *Ib.*
39. From 1817 to 1819, the contract between the members and the person who purchased the property, vested in parol, and was destitute of a consideration. No legal rights were vested in the members. *Ib.*
40. The ancestor of these heirs renounced all right of individual property, when he signed the articles, and did so upon the consideration that the society would support him in sickness and in health; and this was deemed by him an adequate compensation for his labor and property, contributed to the common stock. *Ib.*
41. The principles of the association were, that land and other property were to be acquired by the members, but they were not to be vested with the fee of the land. Hence at the death of one of them, no right of property descended to his heirs. *Ib.*
42. There is no legal objection to such a partnership; nor can it be considered a forfeiture of individual rights for the community to succeed to his share, because it was a matter of voluntary contract. *Ib.*
43. Nor do the articles of association constitute a perpetuity. The society exists at the will of its members, a majority of whom may at any time order a sale of the property, and break up the association. *Ib.*
44. The evidence shows that they are moral, religious, and industrious people. *Ib.*
45. Under the attachment laws of Maryland, a share in the Baltimore Mexican Company, which had fitted out an expedition under General Mina, was not, in 1827, the subject of an attachment under a judgment, whether such share was held by the garnishee under a power of attorney to collect the proceeds, or under an equitable assignment to secure a debt. *Deacon* v. *Oliver*, 610.
46. The answers of the garnishee to interrogatories filed, were literally correct. He has not in his hands any "funds, evidences of debt, stocks, certificates of stock," belonging to the debtor, nor "any acknowledgment by the Mexican government," on which an attachment could be laid. *Ib.*

COLLISION BY LAND AND WATER.
1. Where a suit was brought against a railroad company, by a person who was injured by a collision, it was correct in the court to instruct the

COLLISION BY LAND AND WATER—(*Continued.*)
jury, that if the plaintiff was lawfully on the road, at the time of the collision, and the collision and consequent injury to him were caused by the gross negligence of one of the servants of the defendants, then and there employed on the road, he was entitled to recover, notwithstanding the circumstances, that the plaintiff was a stockholder in the company, riding by invitation of the President, paying no fare, and not in the usual passenger cars. *P. & R. R. R. Co.* v. *Derby*, 468.

2. And also, that the fact that the engineer having the control of the colliding locomotive, was forbidden to run on that track at the time, and had acted in disobedience of such orders, was no defence to the action. *Ib.*
3. Where a collision takes place between two vessels at sea, which is the result of inevitable accident, without the negligence or fault of either party, each vessel must bear its own loss. *Steinback* v. *Rae*, 532.

COMMERCIAL LAW.

1. Under a policy insuring against the usual perils of the sea, including barratry, the underwriters are not liable to repay to the insured, damages paid by him to the owners of another vessel and cargo, suffered in a collision occasioned by the negligence of the master or mariners of the vessel insured. *Gen. M. Ins.* v. *Sherwood*, 352.
2. A policy cannot be so construed as to insure against all losses directly referable to the negligence of the master and mariners. But if the loss is caused by a peril of the sea, the underwriter is responsible, although the master did not use due care to avoid the peril. *Ib.*
3. It is of no consequence whether the date of a promissory note be at the beginning or end of it. *Sheppard* v. *Graves*, 505.
4. Where a warehouseman gave a receipt for wheat which he did not receive, and afterwards the quantity which he actually had was divided amongst the respective depositors, an action of replevin, brought by the assignee of the fictitious receipt, could not be maintained when, under it, one of these portions was seized. *Jackson* v. *Hale*, 525.
5. Evidence offered to show that the wheat in question was assigned to the defendant, was objected to by the plaintiff in the replevin; but such objection was properly overruled. The plaintiff had shown no title in himself. *Ib.*
6. So, also, evidence was admissible to show that the receiver of the fictitious certificate had never deposited any wheat in the warehouse. *Ib.*
7. The defendants in this case were the assignees of the original warehouseman, and were not responsible, unless it could be shown that wheat was deposited, which had come into their possession. *Ib.*

CONSTITUTIONAL LAW.

1. A State, under its general and admitted power to define and punish offences against its own peace and policy, may repel from its borders an unacceptable population, whether paupers, criminals, fugitives, or liberated slaves; and, consequently, may punish her citizens and others who thwart this policy, by harboring, secreting, or in any way assisting such fugitives. *Moore* v. *People of Illinois*, 13.
2. It is no objection to such legislation, that the offender may be liable to punishment under the act of Congress for the same acts, when injurious to the owner of the fugitive slave. *Ib.*
3. The case of *Prigg* v. *The Commonwealth of Pennsylvania*, (16 Peters, 539,) presented the following questions, which were decided by the court.
   1. That, under and by virtue of the Constitution of the United States, the owner of a slave is clothed with entire authority, in every State in the Union, to seize and recapture his slave, wherever he can do it without illegal violence or a breach of the peace.
   2. That the government of the United States is clothed with appropriate authority and functions to enforce the delivery, on claim of the owner, and has properly exercised it in the act of Congress of 12th February, 1793.

CONSTITUTIONAL LAW—(*Continued.*)

3. That any State law or regulation, which interrupts, impedes, limits, embarrasses, delays, or postpones, the right of the owner to the immediate possession of the slave, and the immediate command of his service, is void. *Ib.*
4. This court has not decided that State legislation, in aid of the claimant, and which does not directly or indirectly delay, impede, or frustrate the master in the exercise of his right under the Constitution, or in pursuit of his remedy given by the act of Congress, is void. *Ib.*
5. It belongs exclusively to the political department of the government to recognize or to refuse to recognize a new government in a foreign country, claiming to have displaced the old and established a new one. *Kennett* v. *Chambers*, 38.
6. Until the political department of the government acknowledged the independence of Texas, the Judiciary were bound to consider the old order of things as having continued. *Ib.*
7. While the government of the United States acknowledged its treaty of limits and of amity and friendship with Mexico as still subsisting and obligatory, no citizen of the United States could lawfully furnish supplies to Texas to enable it to carry on a war with Mexico. *Ib.*
8. A contract made in Cincinnati, after Texas declared itself independent, but before its independence was acknowledged by the United States, whereby the complainants agreed to furnish, and did furnish money to a General in the Texan army, to enable him to raise and equip troops to be employed against Mexico, was illegal and void, and cannot be enforced in a court of the United States. *Ib.*
9. The circumstance, that the Texan officer agreed, in consideration of these advances of money, to convey to them certain lands in Texas, of which he covenanted that he was then the owner, will not make the contract valid, when it appears upon the face of it, and by the averments in the bill, that the object and intention of the complainants, in advancing the money, was to assist Texas in its military operations. *Ib.*
10. A contract made in the United States, at that time, for the purchase of land in Texas, would have been valid even if the money was afterwards used to support hostilities with Mexico. But in this case it was not an ordinary purchase; but the object of the complainants, as avowed in the contract and the bill, was to aid Texas in its war with Mexico. *Ib.*
11. The contract being absolutely void by the laws of the United States at the time it was made, the circumstance that it was valid in Texas, and that Texas has since become a member of the Union, does not entitle the complainants to enforce it in the courts of the United States. *Ib.*
12. No contract can be enforced in the courts of the United States, no matter where made or where to be executed, if it is in violation of the laws of the United States, or is in contravention of the public policy of the government, or in conflict with subsisting treaties. *Ib.*
13. By the law of Pennsylvania, the River Delaware is a public navigable river, held by its joint sovereigns in trust for the public. *Rundle* v. *Delaware & Raritan Canal Co.*, 80.
14. Riparian owners, in that State, have no title to the river, or any right to divert its waters, unless by license from the States. *Ib.*
15. Such license is revocable, and in subjection to the superior right of the State, to divert the water for public improvements, either by the State directly, or by a corporation created for that purpose. *Ib.*
16. The proviso to the provincial acts of Pennsylvania and New Jersey, of 1771, does not operate as a grant of the usufruct of the waters of the river to Adam Hoops and his assigns, but only as a license, or toleration of his dam. *Ib.*
17. As, by the laws of his own State, the plaintiff could have no remedy against a corporation authorized to take the whole waters of the river for the purpose of canals, or improving the navigation, so, neither can he sustain a suit against a corporation created by New Jersey for the same purpose, who have taken part of the waters. *Ib.*

CONSTITUTIONAL LAW—(*Continued.*)

18. The plaintiffs, being but tenants at sufferance in the usufruct of the water to the two States who own the river as tenants in common, are not in a condition to question the relative rights of either to use its waters without the consent of the other. *Ib.*
19. This case is not intended to decide whether a first license, for private emolument, can support an action against a later licensee of either sovereign or both, who, for private purposes, diverts the water to the injury of the first. *Ib.*
20. The case of *League* v. *De Young & Brown*, (11 How., 185,) considered and again established, 79.
21. Under the tenth article of the treaty of 1842, between the United States and Great Britain, a warrant was issued by a commissioner, at the instance of the British Consul, for the apprehension of a person who, it was alleged, had committed an assault, with intent to murder, in Ireland. *In re Kaine*, 103.
22. The person being arrested, the Commissioner ordered him to be committed, for the purpose of abiding the order of the President of the United States. *Ib.*
23. A *habeas corpus* was then issued by the Circuit Court of the United States, the District Judge presiding, when, after a hearing, the writ was dismissed, and the prisoner remanded to custody. *Ib.*
24. A petition was then presented to the Circuit Judge, at his chambers, addressed to the Justices of the Supreme Court, and praying for a writ of *habeas corpus*, which was referred by the Circuit Judge, after a hearing, to the Justices of the Supreme Court, in bank, at the commencement of the next term thereof. *Ib.*
25. At the meeting of the court, a motion was made, with the papers and proceedings presented to the Circuit Judge annexed to the petition, for writs of *habeas corpus* and *certiorari* to bring up the defendant and the record from the Circuit Court, for the purpose of having the decision of that court examined. *Ib.*
26. The motion was refused; the writs prayed for denied, and the petition dismissed. *Ib.*
27. Where the Supreme Court of a State certified that there was "drawn in question the validity of statutes of the State of Ohio," &c., without naming the statutes, this was not enough to give jurisdiction to this court, under the 25th section of the Judiciary Act. *Lamb* v. *Walker*, 149.
28. Nor, in this case, would the court have had jurisdiction if the statutes had been named, because, —
29. In 1816, the Legislature of Ohio passed an "act to prohibit the issuing and circulation of unauthorized bank paper," and, in 1839, an act amendatory thereof; and the question was, whether or not a canal company, incorporated in 1837, was subject to these acts. In deciding that it was, the Supreme Court of Ohio only gave a construction to an act of Ohio, which neither of itself, nor by its application, involved in any way a repugnancy to the Constitution of the United States, by impairing the obligation of a contract. *Ib.*
30. The case of the *Commercial Bank of Cincinnati* v. *Buckingham's Executors* (5 How., 817), examined and sustained. *Ib.*
31. The State of Texas was admitted into the Union on the 29th of December, 1845, and from that day the laws of the United States were extended over it. *Calkin* v. *Cocke*, 227.
32. Consequently, on the 30th of January, 1846, the revenue laws of Texas were in force there, and goods seized for a non-compliance with those laws, were illegally seized. *Ib.*
33. In 1804, Congress passed an act (2 Stat. at L., 277), "making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," in which it reserved from sale a township in each one of three districts, to be located by the Secretary of the Treasury, for the use of a seminary of learning. *Trustees &c.* v. *Indiana*, 269.

CONSTITUTIONAL LAW—(*Continued.*)

34. In 1806, the Secretary of the Treasury located a particular township in the Vincennes district, for the use of that district; and when, in 1806, the territorial government incorporated a "Board of Trustees of the Vincennes University," the grant made in 1804 attached to this Board, although for the two preceding years there had been no grantee in existence. *Ib.*
35. Under the ordinance of 1787, made applicable to Indiana by an act of Congress, the territorial government of Indiana had power to pass this act of incorporation. *Ib.*
36. The language of the act of Congress, by which Indiana was admitted into the Union, did not vest the above township in the legislature of the State. *Ib.*
37. The Board of Trustees of the University was not a public corporation, and had no political powers. The donation of land for its support was like a donation by a private individual; and the legislature of the State could not rightfully exercise any power by which the trust was defeated. *Ib.*
38. In 1848, the Legislature of Maine passed an act declaring that no real or mixed action should be commenced or maintained against any person in possession of lands, where such person had been in actual possession for more than forty years, claiming to hold the same in his own right, and which possession should have been adverse, open, peaceable, notorious and exclusive. This act was passed two years after the suit was commenced. *Webster* v. *Cooper*, 489.
39. The effect of this act was to make the seisin of the occupant during the lifetime of Elizabeth, adverse against her son, when he had no right of possession. *Ib.*
40. This act, which thus purported to take away property from one man and vest it in another, was contrary to the constitution of the State of Maine, as expounded by the highest courts of law in that State. And as this court looks to the decisions of the courts of a State to explain its statutes, there is no reason why it should not also look to them to expound its constitution. *Ib.*
41. The River Penobscot is entirely within the State of Maine, from its source to its mouth. For the last eight miles of its course it is not navigable, but crossed by four dams erected for manufacturing purposes. Higher up the stream there was an imperfect navigation. *Veazie* v. *Moor*, 568.
42. A law of the State, granting the exclusive navigation of the upper river to a company who were to improve it, is not in conflict with the 8th section of the 1st article of the Constitution of the United States, and a license to carry on the coasting trade did not entitle a vessel to navigate the upper waters of the river. *Ib.*

CONTRACTS.

For ante-nuptial contracts, see CHANCERY.

1. It belongs exclusively to the political department of the government to recognize or to refuse to recognize a new government in a foreign country, claiming to having displaced the old and established a new one. *Kennett* v. *Chambers*, 38.
2. Until the political department of the government acknowledged the independence of Texas, the judiciary were bound to consider the old order of things as having continued. *Ib.*
3. While the government of the United States acknowledged its treaty of limits and of amity and friendship with Mexico as still subsisting and obligatory, no citizen of the United States could lawfully furnish supplies to Texas to enable it to carry on the war against Mexico. *Ib.*
4. A contract, made in Cincinnati, after Texas declared itself independent, but before its independence was acknowledged by the United States, whereby the complainants agreed to furnish, and did furnish money to a General in the Texan army, to enable him to raise and equip troops to be employed against Mexico, was illegal and void, and cannot be enforced in a court of the United States. *Ib.*

CONTRACTS—(*Continued.*)

5. The circumstance that the Texan officer agreed, in consideration of these advances of money, to convey to them certain lands in Texas, of which he covenanted that he was then the owner, will not make the contract valid when it appears upon the face of it, and by the averments in the bill, that the object and intention of the complainants in advancing the money was to assist Texas in its military operations. *Ib.*
6. A contract made in the United States at that time for the purchase of land in Texas, would have been valid even if the money was afterwards used to support hostilities with Mexico. But in this case it was not an ordinary purchase; but the object of the complainants, as avowed in the contract and the bill, was to aid Texas in its wars with Mexico. *Ib.*
7. The contract being absolutely void by the laws of the United States at the time it was made, the circumstance that it was valid in Texas, and that Texas has since become a member of the Union, does not entitle the complainants to enforce it in the courts of the United States. *Ib.*
8. No contract can be enforced in the courts of the United States, no matter where made or where to be executed, if it is in violation of the laws of the United States, or is in contravention of the public policy of the government or in conflict with subsisting treaties. *Ib.*
9. Where there was a judgment at law against a defendant in Mississippi, and he sought relief in equity, upon the ground that the consideration of the contract was the introduction of slaves into the State, and consequently illegal; a court of equity will not grant relief, because the complainant was *in pari delicto* with the other party. *Sample* v. *Barnes*, 70.
10. Moreover, such a defence would have been good at law, and the averments, that deception was practised to prevent the complainant from making the defence, are not sustained by the evidence in the case. And, further, after the judgment, the complainant gave a forthcoming bond, thus recognizing the validity of the judgment. *Ib.*
11. In 1834, Burden obtained a patent for a new and useful improvement in the machinery for manufacturing wrought nails and spikes, which he assigned to the Troy Iron and Nail Factory, and also covenanted that he would convey to that company any improvement which he might thereafter make. *Troy Iron and Nail Factory* v. *Corning*, 193.
12. In 1840, he made such an improvement, for making hook and brad-headed spikes, with a bending lever, which he assigned to the Troy Iron and Nail Factory, in 1848. *Ib.*
13. Before this last assignment, however, viz., in 1845, Burden made an agreement with Corning, Horner, and Winslow, in which, among other things, it was agreed, that both parties might thereafter manufacture and vend spikes of such kind and character as they saw fit, notwithstanding their conflicting claims. *Ib.*
14. Owing to the peculiar attitude of the parties to each other at the time of making this agreement, and the language used in it, it cannot be construed into a permission to Corning, Horner, and Winslow, to use the improved machinery patented by Burden in 1840; and the right to use it, having passed to the Troy Iron and Nail Factory, a perpetual injunction upon Corning, Horner, and Winslow will be decreed. *Ib.*
15. Where the marshal of the District of Columbia engaged the services of a clerk for a stipulated sum per annum, and the service continued without any new agreement, and the jury were instructed that they might imply a new agreement to pay the clerk at a different rate, this instruction was erroneous. There was nothing in the evidence from which the jury could imply such new agreement. *Nutt* v. *Minor*, 464.

COPY-RIGHT.

1. Where the copy-right of a map was taken out under the act of Congress, and the copperplate engraving seized and sold under an execution, the purchaser did not acquire the right to strike off and sell copies of the map. *Stephens* v. *Cady*, 528.

COPY-RIGHT—(*Continued.*)
2. The court below decided that an injunction to prevent such striking off and selling, could not issue, without a return of the purchase-money. This decision was erroneous. *Ib.*
3. A copy-right is a "property in notion, and has no corporeal tangible substance," and is not the subject of seizure and sale by execution. It can be reached by a creditor's bill in chancery, but in such case, the court would probably have to decree a transfer in the mode pointed out in the act of Congress. *Ib.*

CUSTOMS.
See DUTIES.

DEED.
1. In the State of Ohio, it is not a sufficient description of taxable lands to say, "Cooper, James, 5 acres, section 24, T. 4, F. R. 1." A deed made in consequence of a sale for taxes under such a description, is void. The courts of Ohio have so decided, and this court adopts their decision. *Raymond* v. *Longworth*, 76.

DELAWARE RIVER.
See PENNSYLVANIA.

DEVISES.
See WILLS.

DISTRICT OF COLUMBIA.
1. For some of the principles which govern sureties in bonds before the Orphan's Court, see *Ennis* v. *Smith*, 400.
2. A master builder, undertaker, or contractor, who undertakes by contract with the owner to erect a building, or some part or portion thereof, on certain terms, does not come within the letter or spirit of the act of Congress passed March 2, 1833, (4 Stat. at Large, 659,) entitled an act to secure to mechanics and others, payment for labor done and materials furnished in the erection of buildings in the District of Columbia. *Winder* v. *Caldwell*, 434.

DOMICIL.
1. General Kosciusko was sojourning in Switzerland when he died, but was domiciled in France, and had been for fifteen years. *Ennis* v. *Smith*, 401.
2. His declarations are to be received as proof that his domicil was in France. Such declarations have always been received, in questions of domicil, in the courts of France, in those of England, and in the courts of the United States. *Ib.*
3. The presumption of law is, that the domicil of origin is retained, until residence elsewhere has been shown by him who alleges a change of it. But residence elsewhere repels the presumption, and casts upon him who denies it to be a domicil of choice, the burden of disproving it. The place of residence must be taken to be a domicil of choice, unless it is proved that it was not meant to be a principal and permanent residence. Contingent events, political or otherwise, are not admissible proofs to show, where one removes from his domicil of origin for a residence elsewhere, that the latter was not meant to be a principal and permanent residence. But if one is exiled by authority from his domicil of origin, it is never presumed that he has abandoned all hope of returning back. The abandonment, however, may be shown by proof. General Kosciusko was not exiled by authority. He left Poland voluntarily, to obtain a civil status in France, which he conscientiously thought he could not enjoy in Poland, whilst it continued under a foreign dominion. *Ib.*

DUTIES—CUSTOM-HOUSE.
1. The State of Texas was admitted into the Union on the 29th of December, 1845, (9 Stat. at Large, 108,) and from that day the laws of the United States were extended over it. *Calkin & Co.* v. *Cocke*, 227.
2. Consequently, on the 30th of January, 1846, the revenue laws of Texas were not in force there, and goods seized for a non-compliance with those laws, were illegally seized. *Ib.*

EJECTMENT.

1. In the State of Ohio, it is not a sufficient description of taxable lands to say, "Cooper, James, 5 acres, section 24, T. 4, F. R. 1." A deed made in consequence of a sale for taxes under such a description is void. The courts of Ohio have so decided, and this court adopts their decision. *Raymond* v. *Longworth*, 76.
2. This court decided, in 8 Howard, 223, that the recitals in a patent for land, referring to titles of anterior date, were not of themselves sufficient to establish the titles thus recited. *Ib.*
3. The titles themselves being now produced, it is decided, that a permit given by the Lieutenant-Governor of Upper Louisiana, in 1799, to a person to form an establishment on the Mississippi, followed by actual possession and improvement, entitled the occupant to 640 acres, including his improvements, although the Indian title was not then extinguished. *Marsh* v. *Brooks*, 514.
4. It was not the practice of the Spanish government to make treaties with the Indian tribes, defining their boundaries; but to prevent settlements upon their lands without special permits: such permits, however, were usual. *Ib.*
5. The construction of the treaty between the United States and the Sac and Fox Indians, must be that the latter assented to an occupancy which was as notorious as their own. *Ib.*
6. The act of Congress, approved April 29, 1816 (3 Stat. at Large, 328), confirming certain claims to land, confirmed this one, although the Recorder of Land titles, in his report, made in 1815, had added these words, "if Indian title extinguished." These words were surplusage. *Ib.*

EQUITY.

See CHANCERY.

ERROR.

See JURISDICTION; PRACTICE.

ESTATES TAIL.

See WILLS.

EVIDENCE.

1. The court having erroneously refused to allow the plaintiff to offer a paper in evidence, as a disclaimer of part of a patent, afterwards refused to allow the defendants to offer the same paper in evidence for the purpose of prejudicing the plaintiffs' rights. This last refusal was correct. The reason given was erroneous; but this is not a sufficient cause for reversing the judgment. *Silsby* v. *Foote*, 219.
2. The courts of the United States have not the power to order a nonsuit against the wishes of the plaintiff. *Ib.*
3. Under a notice given by the defendant, that the invention claimed by the plaintiff was described in Ure's Dictionary of Arts, Manufactures, and Mines, and had been used by Andrew Ure, of London, it was not competent to give in evidence a very large book. The place in the book should have been specified. *Ib.*
4. Nor, under the notice, was the book competent evidence that Andrew Ure, of London, had a prior knowledge of the thing patented. The notice does not state the place where the same was used. *Ib.*
5. Where a certificate of deposit in a bank, payable at a future day, was handed over by a debtor to his creditor, it was no payment, unless there was an express agreement, on the part of the creditor, to receive it as such; and the question, whether there was or was not such an agreement, was one of fact, to be decided by the jury. *Downey* v. *Hicks*, 240.
6. The bank being insolvent when the certificate of deposit became due, there was no ground for imputing negligence in the collection of the debt by the holder, as no loss occurred to the original debtor. *Ib.*
7. If the evidence showed that, after the maturity of the certificate, the original debtor admitted his liability to make it good, the jury should have been instructed that this evidence conduced to prove that the certificate was not taken in payment. *Ib.*

EVIDENCE—(*Continued.*)

8. Where an antenuptial contract was alleged to have been made, and the affidavits of the parties claiming under it alleged that they never possessed or saw it; that they had made diligent inquiry for it, but were unable to learn its present existence or place of existence; that inquiry had been made of the guardian of one of the children, who said that he had never been in possession of it, and did not know where it was; that inquiry had been made at the recording offices in vain, and that the affiants believed it to be lost, secondary proof of its contents ought to have been admitted. *DeLane* v. *Moore*, 253.
9. Whether recorded or not, it was binding upon the parties. If recorded within the time prescribed by statute, or if reacknowledged and recorded afterwards, notice would thereby have been given to all persons of its effect. *Ib.*
10. If it was regularly recorded in one State, and the property upon which it acted was removed to another State, the protection of the contract would follow the property into the State into which it was removed. *Ib.*
11. But where no suit was brought until eight or nine years after the death of the husband, and then the one which was brought was dismissed for want of prosecution; another suit against the executors who had divided the property, comes too late. *Ib.*
12. Personal property, wherever it may be, is to be disturbed in case of intestacy, according to the law of the domicil of the intestate. This rule may be said to be a part of the *jus gentium*. *Ennis* v. *Smith*, 401.
13. What that law is when a foreign law applies, must be shown by proof of it, and in the case of written law, it will be sufficient to offer, as evidence, the official publication of the law, certified satisfactorily to be such. Unwritten foreign laws must be proved by experts. There is no general rule for authenticating foreign laws in the courts of other countries, except this, that no proof shall be received, "which presupposes better testimony behind, and attainable by the party." They may be verified by an oath, or by an exemplification of a copy under the great seal of the State or nation whose law it may be, or by a copy, proved to be a true copy by a witness who has examined and compared it with the original, or by the certificate of an officer authorized to give the law, which certificate must be duly proved. Such modes of proof are not exclusive of others, especially of codes and accepted histories of the law of a country. See also the cases of *Church* v. *Hubbart*, in 2 Cranch, 181, and *Talbot* v. *Seeman*, in 1 Cranch, 7. In this case, the Code Civil of France, with this indorsement, "Les Garde des Sceaux de France a la Cour Supreme des Etats Unis," was offered as evidence to prove that the law of France was for the distribution of the funds in controversy. This court ruled that such indorsement was a sufficient authentication to make the code evidence in this case, and in any other case in which it may be offered. By that code, the complainants named in this suit as the collateral relations of General Kosciusko, are entitled to receive the funds in controversy, in such proportions as are stated in the mandate of this court to the court below. *Ib.*
14. The documentary proofs in this cause, from the Orphans' Court, of the genealogy of the Kosciusko family, and of the collateral relationship of the persons entitled to a decree, and also of the wills of Kosciusko, are properly in evidence in this suit. *Ib.*
15. The record from Grodno is judicial; not a judgment *inter partes*, but a foreign judgment *in rem*, which is evidence of the facts adjudicated against all the world. *Ib.*
16. Where the contract between the owner and the builder, (who was also the carpenter,) stipulated for a forfeiture per diem in case the carpenter should delay the work, the court below ought to have allowed evidence of such delay to be given to the jury by the defendant, under a notice of set-off, and also evidence that the work and materials found and provided upon and for the building, were defective in quality and char-

EVIDENCE—(*Continued.*)
acter, and far inferior in value to what the contract and specification called for. *Winder* v. *Caldwell*, 434.
17. Where the marshal of the District of Columbia engaged the services of a clerk for a stipulated sum per annum, and the service continued without any new agreement, and the jury were instructed that they might imply a new agreement to pay the clerk at a different rate, this instruction was erroneous. There was nothing in the evidence from which the jury could imply such new agreement. *Nutt* v. *Minor*, 464.
18. The statute of frauds in Massachusetts, is substantially the same as that of 29 Car. 2, and declares that no contract for the sale of goods, &c., shall be valid, &c., "unless some note or memorandum in writing of the bargain be made, and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized." *Salmon Falls Co.* v. *Goddard*, 447.
19. The following memorandum, viz.: "Sept. 19, W. W. Goddard, 12 mos. 300 bales S. F. drills, 7¼; 190 cases blue do. 8¾. Credit to commence when ship sails; not after December 1st, delivered free of charge for truckage. The blues, if color satisfactory to purchasers. R. M. M. W. W. G."—is sufficient to take the case out of the statute. *Ib.*
20. If the terms are technical or equivocal on the face of the instrument, or made so by reference to extraneous circumstances, parol evidence of the usage and practice in the trade, is admissible to explain the meaning. *Ib.*
21. It was competent, also, to refer to the bill of parcels delivered for the purpose of explanation. It was made out and delivered by the seller, in the course of the fulfilment of the contract, acquiesced in by the buyer, and the goods ordered to be delivered after it was received. *Ib.*
22. Where a warehouseman gave a receipt for wheat which he did not receive, and afterwards the quantity which he actually had was divided amongst the respective depositors, an action of replevin, brought by the assignee of the fictitious receipt, could not be maintained when, under it, one of these portions was seized. *Jackson* v. *Hale*, 525.
23. Evidence offered to show that the wheat in question was assigned to the defendant, was objected to by the plaintiff in the replevin; but such objection was properly overruled. The plaintiff had shown no title in himself. *Ib.*
24. So, also, evidence was admissible to show that the receiver of the fictitious certificate had never deposited any wheat in the warehouse. *Ib.*
25. The defendants in this case were the assignees of the original warehouseman, and were not responsible, unless it could be shown that wheat was deposited, which had come into their possession. *Ib.*
26. Where an action was brought against the Commissioner of Patents for refusing to give copies of papers in his office, and no special damage was set out in the declaration, evidence of the professional pursuits of the applicant was not admissible. *Boyden* v. *Burke*, 575.
27. Where the application was made through a third person, letters of both parties to this third person were admissible in evidence, as part of the *res gesta*. *Ib.*

EXECUTION.
1. Where real estate is in the custody of a receiver, appointed by a court of chancery, a sale of the property under an execution, issued by virtue of a judgment at law, is illegal and void. *Wiswall* v. *Sampson*, 52.
2. The proper modes of proceeding pointed out, to be pursued by any person who claims title to the property, either by mortgage, or judgment, or otherwise. *Ib.*
3. Where the copy-right of a map was taken out under the act of Congress, and the copperplate engraving seized and sold under an execution, the purchaser did not acquire the right to strike off and sell copies of the map. *Stephens* v. *Cady*, 528.
4. The court below decided that an injunction to prevent such striking off and selling, could not issue, without a return of the purchase-money. This decision was erroneous. *Ib.*

EXECUTION—(*Continued.*)

5. A copy-right is a "property in notion, and has no corporeal tangible substance," and is not the subject of seizure and sale by execution. It can be reached by a creditor's bill in chancery, but in such case, the court would probably have to decree a transfer in the mode pointed out in the act of Congress. *Ib.*
6. A sale of land by a marshal, on a *venditioni exponas*, after he is removed from office, and a new marshal appointed and qualified, is not void. *Doolittle* v. *Bryan*, 563.
7. Such a sale being returned to the court, and confirmed by it on motion, and a deed ordered to be made to the purchaser at the sale, by the new marshal, such sale, being made, is valid. *Ib*

See ATTACHMENT LAWS OF MARYLAND.

EXECUTORS AND ADMINISTRATORS.

See WILLS.

FRAUDS, STATUTE OF.

1. The statute of frauds in Massachusetts is substantially the same as that of 29 Car. 2, and declares that no contract for the sale of goods, &c., shall be valid, &c., "unless some note or memorandum, in writing, of the bargain be made, and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized." *Salmon Falls Co.* v. *Goddard*, 447.
2. The following memorandum, viz.: "Sept. 19, W. W. Goddard, 12 mos. 300 bales S. F. drills, 7½; 190 cases blue do. 8¾. Credit to commence when ship sails; not after December 1st, delivered free of charge for truckage. The blues, if color satisfactory to purchasers. R. M. M. W. W. G."—is sufficient to take the case out of the statute. *Ib.*
3. If the terms are technical or equivocal on the face of the instrument, or made so by reference to extraneous circumstances, parol evidence of the usage and practice in the trade, is admissible to explain the meaning. *Ib.*
4. It was competent, also, to refer to the bill of parcels delivered for the purpose of explanation. It was made out and delivered by the seller, in the course of the fulfilment of the contract, acquiesced in by the buyer, and the goods ordered to be delivered after it was received. *Ib.*

INDIANA, STATE OF.

1. In 1804, Congress passed an act, (2 Stat. at Large, 277,) "making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," in which it reserved from sale a township in each one of three districts, to be located by the Secretary of the Treasury, for the use of a seminary of learning. *Trustees &c.* v. *Indiana*, 269.
2. In 1806, the Secretary of the Treasury located a particular township in the Vincennes district, for the use of that district; and when, in 1806, the territorial government incorporated a "Board of Trustees of the Vincennes University," the grant made in 1804 attached to this Board, although for the two preceding years there had been no grantee in existence. *Ib.*
3. Under the ordinance of 1787, made applicable to Indiana by an act of Congress, the territorial government of Indiana had power to pass this act of incorporation. *Ib.*
4. The language of the act of Congress, by which Indiana was admitted into the Union, did not vest the above township in the legislature of the State. *Ib.*
5. The Board of Trustees of the University was not a public corporation, and had no political powers. The donation of land for its support was like a donation by a private individual; and the legislature of the State could not rightfully exercise any power by which the trust was defeated. *Ib.*

INSURANCE.

1. Under a policy insuring against the usual perils of the sea, including

INSURANCE—(*Continued.*)
barratry, the underwriters are not liable to repay to the insured damages paid by him to the owners of another vessel and cargo, suffered in a collision occasioned by the negligence of the master or mariners of the vessel insured. *Gen. M. Ins. Co.* v. *Sherwood*, 352.
2. A policy cannot be so construed as to insure against all losses directly referable to the negligence of the master and mariners. But if the loss is caused by a peril of the sea, the underwriter is responsible, although the master did not use due care to avoid the peril. *Ib.*

INTEREST.
1. The sixty-second rule of this court, (13 Howard,) is as follows: "In cases where a writ of error is prosecuted to the Supreme Court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied from the date of the judgment below, until the same is paid, at the same rate that similar judgments bear interest, in the courts of the State where such judgment is rendered. The same rule shall be applied to decrees for the payment of money, in cases in Chancery, unless otherwise ordered by this court. This rule to take effect on the first day of December term, 1852. *Perkins* v. *Fourniquet*, 328.
2. Before this rule, interest was to be calculated at six per cent., from the date of the judgment in the Circuit Court to the day of affirmance here; and the confirmation of the report of the clerk, in the case of *Mitchell* v. *Harmony*, (13 Howard, 149,) was under the rules then existing. *Ib.*
3. So, also, where a case from Mississippi was affirmed, at December term, 1851, the mandate from this court should have been construed to allow interest at six per cent. from the date of the decree in the court below, to the date of the affirmance in this court. Therefore, it was erroneous either to allow six per cent. until paid, or to allow the current rate of interest in Mississippi, in addition to the six per cent. allowed by this court. *Ib.*
4. The several rules upon this subject examined and explained. *Ib.*

JUDGMENT.
1. A court has a right to set aside its own judgment or decree, dismissing a bill in chancery, at the same term in which the judgment or decree was rendered, on discovering its own error in the law, or that the consent of the complainants to such dismissal was obtained by fraud. *Doss* v. *Tyack*, 297.
2. A statute of Mississippi directs that where the defendant cannot be found, a writ of *capias ad respondendum* shall be served, by leaving a copy thereof with the wife of the defendant, or some free white person above the age of sixteen years, then and there being one of the family of the defendant, and found at his usual place of abode, or leaving a copy thereof at some public place, at the dwelling-house or other known place of residence of such defendant, he being from home, and no such free white person being found there willing to receive the same. *Harris* v. *Hardeman*, 334.
3. The Circuit Court of the United States adopted a rule that the *capias* should be served personally, or, if the defendant be not found, by leaving a copy thereof at his or her residence, or usual place of abode, at least twenty days before the return day thereof. *Ib.*
4. The marshal made the following return to a writ of *capias*: "Executed on the defendant Hardeman, by leaving a true copy at his residence." *Ib.*
5. This service was neither in conformity with the statute nor the rule. *Ib.*
6. Therefore, when the court gave judgment, by default, against Hardeman, and an execution was issued, upon which a forthcoming bond was given, and another execution issued, and at a subsequent day the court quashed the proceedings, and set aside the judgment by default, this order was correct. *Ib.*
7. When the judgment by default was given, the court was not in a condition to exercise jurisdiction over the defendant, because there was no regular service or process, actual or constructive. *Ib.*

JUDGMENT—(*Continued.*)
8. The cases upon this point, examined. *Ib.*
9. Moreover, when the proceedings were quashed, they were still *in fieri*, and not terminated; and any irregularity could be corrected, on motion. *Ib.*
10. A bill in chancery will not lie for the purpose of perpetually enjoining a judgment, upon the ground that there was a false return in serving process upon one of the defendants. Redress must be sought in the court which gave the judgment, or in an action against the marshal. *Walker* v. *Robbins*, 584.
11. Moreover, the defendant in this case, by his actions waived all benefit which he might have derived from the false return; and no defence was made on the trial at law, impeaching the correctness of the cause of action sued on, and, in such a case, resort cannot be had to equity to supply the omission. *Ib.*

JURISDICTION.
1. Where a motion was made, under the 12th section of the Judiciary Act, to remove a cause from the State Court to the Circuit Court of the United States, notwithstanding which the State Court retained cognizance of the case, and it was ultimately brought to this court under the 25th section of the Judiciary Act, a motion to dismiss it for want of jurisdiction cannot be sustained. The question will remain to be decided upon the full hearing of the case. *Kanouse* v. *Martin*, 23.
2. A court of equity has jurisdiction of a bill against the administrator of a deceased debtor, and a person to whom real and personal property was conveyed by a deceased debtor, for the purpose of defrauding creditors. *Hagan* v. *Walker*, 29.
3. In such a case, the court does not exercise an auxiliary jurisdiction to aid legal process, and consequently it is not necessary that the creditor should be in a condition to levy an execution, if the fraudulent obstacle should be removed. *Ib.*
4. It is proper to make a prior encumbrancer, who holds the legal title, a party to the bill, in order that the whole title may be sold under the decree; for the purpose of such a decree, the prior encumbrancer is a necessary party; but the court may order a sale subject to the encumbrance, without having the prior encumbrancer before it, and in fit cases it will do so. *Ib.*
5. If the prior encumbrancer is out of the jurisdiction, or cannot be joined without defeating it, it is a fit cause to dispense with his presence, and order a sale subject to his encumbrance, which will not be effected by the decree. *Ib.*
6. Under the tenth article of the treaty of 1842, between the United States and Great Britain, a warrant was issued by a commissioner, at the instance of the British Consul, for the apprehension of a person who, it was alleged, had committed an assault, with intent to murder, in Ireland. *In re Kaine*, 103.
7. The person being arrested, the Commissioner ordered him to be committed, for the purpose of abiding the order of the President of the United States. *Ib.*
8. A *habeas corpus* was then issued by the Circuit Court of the United States, the District Judge presiding, when, after a hearing, the writ was dismissed, and the prisoner remanded to custody. *Ib.*
9. A petition was then presented to the Circuit Judge, at his chambers, addressed to the Justice of the Supreme Court, and praying for a writ of *habeas corpus*, which was referred by the Circuit Judge, after a hearing, to the Justice of the Supreme Court, in bank, at the commencement of the next term thereof. *Ib.*
10. At the meeting of the court, a motion was made, with the papers and proceedings presented to the Circuit Judge annexed to the petition, for writs of *habeas corpus* and *certiorari* to bring up the defendant and the record from the Circuit Court, for the purpose of having the decision of that court examined. *Ib.*
11. The motion was refused; the writs prayed for denied, and the petition dismissed. *Ib.*

JUDGMENT—(*Continued.*)

12. Where the Supreme Court of a State certified that there was "drawn in question the validity of statutes of the State of Ohio," &c., without naming the statutes, this was not enough to give jurisdiction to this court, under the 25th section of the Judiciary Act. *Lawler* v. *Walker*, 149.
13. Nor, in this case, would the court have had jurisdiction if the statutes had been named, because,—
14. In 1816, the Legislature of Ohio passed an "act to prohibit the issuing and circulation of unauthorized bank paper," and, in 1839, an act amendatory thereof; and the question was, whether or not a canal company, incorporated in 1837, was subject to these acts. In deciding that it was, the Supreme Court of Ohio only gave a construction to an act of Ohio, which neither of itself, nor by its application, involved in any way a repugnancy to the Constitution of the United States, by impairing the obligation of a contract. *Ib.*
15. The case of the *Commercial Bank of Cincinnati* v. *Buckingham's Executors*, (5 How., 317,) examined and sustained. *Ib.*
16. Two statutes of Mississippi, one passed in 1843, and the other in 1846, provide that where the charter of a bank shall be declared forfeited, a trustee shall be appointed to take possession of its effects, and commissioners appointed to audit accounts against it. *Peale* v. *Phipps*, 368.
17. Where these steps had been taken, and the commissioners had refused to allow a certain amount, the Circuit Court of the United States had no right to entertain a bill filed by the creditors to compel the trustee to pay the rejected account. There was a want of jurisdiction. *Ib.*
18. The cases upon this point, examined. *Ib.*
19. A claim by the trustee, in re-convention, was not a waiver of the exception to the jurisdiction. *Ib.*
20. When a plea is filed to the jurisdiction of the court, upon the ground that the plaintiff is a resident of the same State with the defendant, it is incumbent on the defendant to prove the allegation. *Sheppard* v. *Graves*, 505.
21. Where the marshal of the District of Wisconsin attached property at the suit of creditors in New York, and then gave it up upon the execution of a bond to himself, for the use of those creditors, it was within the jurisdiction of the District Court of the United States for Wisconsin, to entertain a suit by the marshal, suing upon the bond for the New York creditors, against the claimants in Wisconsin, although both parties resided in the same State. *Huff* v. *Hutchinson*, 587.
22. The name of the marshal was merely formal; the real plaintiffs were averred to be citizens of New York. *Ib.*
23. It was not a good exception upon the ground of variation between the evidence and declaration, that the latter stated the bond to have been given to Hutchinson as marshal of the District of Wisconsin, and the former said the State of Wisconsin. They mean the same thing. *Ib.*
24. Judgments having been rendered for the plaintiffs in the attachment, by a court having jurisdiction over the subject, it was too late to object to those proceedings in a suit upon the bond, in which they were collaterally introduced. *Ib.*
25. The bond given to the marshal was in conformity with the statute. *Ib.*
26. The objections, that the declaration on the bond did not show the jurisdiction of the court in the attachment suit; that the verdict was entered for the amount due instead of the penalty of the bond, and that the recovery was for a sum greater than was claimed by the *ad damnum* in the declaration, were not sufficient for a new trial. *Ib.*

JURY.

1. Upon a trial in New York, a juror became ill, and was discharged before any evidence was given, and before the plaintiffs' counsel had concluded his opening address. The court ordered another juror to be sworn, and proceeded with the trial. The defendant cannot object to this. It is the practice in New York, and the Circuit Court had a right to follow it. *Silsby* v. *Foote*, 218.

JURY—(*Continued.*)

2. One of the specifications of the patent being for a combination of certain parts of mechanism necessary to produce the desired result, it was proper for the court to instruct the jury that the defendants had not infringed the patent, unless they had used all the parts embraced in the plaintiffs' combination; and the jury were to find what those parts were, and whether the defendants had used them. *Ib.*
3. When a claim does not point out and designate the particular elements which compose a combination, but only declares, as it properly may, that the combination is made up of so much of the described machinery as effects a particular result, it is a question of fact which of the described parts are essential to produce that result, and to this extent, not the construction of the claim, strictly speaking, but the application of the claim, should be left to the jury. *Ib.*
4. Where a certificate of deposit in a bank, payable at a future day, was handed over by a debtor to his creditor, it was no payment, unless there was an express agreement, on the part of the creditor, to receive it as such; and the question, whether there was or was not such an agreement, was one of fact, to be decided by the jury. *Downey* v. *Hicks*, 240.
5. The bank being insolvent when the certificate of deposit became due, there was no ground for imputing negligence in the collection of the debt by the holder, as no loss occurred to the original debtor. *Ib.*
6. If the evidence showed that, after the maturity of the certificate, the original debtor admitted his liability to make it good, the jury should have been instructed that this evidence conduced to prove that the certificate was not taken in payment. *Ib.*

LANDS, PUBLIC.

1. This court again decides, as in 11 Howard, 580, that under the acts of Congress of 1824 and 1844, the District Court had no power to act upon evidence of mere naked possession, unaccompanied by written evidence conferring, or professing to confer, a title of some description. *U. S.* v. *Heirs of Rilleaux*, 189.
2. By the treaty of 1763, the land in question passed from France to Great Britain; and the certificate of two French officers in 1765, certifying that the claimant had been for a long time in possession, furnished no evidence of title. No application was made to the British government for a grant. *Ib.*
3. A purchase from the Indians, whilst the province was under French authority, conveyed no title unless sanctioned by that authority. *Ib.*
4. In this case, also, there is no proof that the claimants are the heirs of the party originally in possession. *Ib.*
5. On the 25th of December, 1824, Cunningham applied to the Land-Office at Batesville, in Arkansas, to become the purchaser of a quarter section of land under a Cherokee certificate which had become vested in him. *Cunningham* v. *Ashley*, 377.
6. This application was refused upon the ground that two New Madrid certificates had been laid upon the land in 1820. The right under these certificates was claimed by Ashley. *Ib.*
7. In 1830, Cunningham said that Brumbach had an improvement on the same quarter section, which Brumbach assigned to Ashley. The law sanctioned the division of a quarter section, under such circumstances. *Ib.*
8. In 1831, Cunningham claimed a preëmption right under the act of 29th May, 1830. The claims under this act, and under the Cherokee float, were not inconsistent with each other. *Ib.*
9. In 1838, two floats were entered upon the same quarter section, viz.: one by Plummer, for the east half of it, under the act of 1830, and the supplemental act of 1832; the other for the west half by Jenbeau, under the act of 1834, and the circular of the General Land-Office of 1837. Patents were issued, and the title became vested in Ashley. *Ib.*
10. The title of Cunningham is better than that derived from these floats.

LANDS, PUBLIC—(*Continued.*)
The title under the New Madrid certificates is not decided in this case, or affected in any way by the decision. Cunningham is therefore entitled to the half of the quarter section which he claimed separately from Brumbach. *Ib.*
11. The patents obtained by Ashley and Beebe, being founded upon entries which were void, are void also, so far as they interfere with the pre-emptive right of Cunningham. *Ib.*
12. This court decided, in 8 Howard, 223, that the recitals in a patent for land, referring to titles of anterior date, were not in themselves sufficient to establish the titles thus recited. *Ib.*
13. The titles themselves being now produced, it is decided, that a permit given by the Lieutenant-Governor of Upper Louisiana, in 1799, to a person to form an establishment on the Mississippi, followed by actual possession and improvement, entitled the occupant to 640 acres, including his improvements, although the Indian title was not then extinguished. *Marsh* v. *Brooks*, 514.
14. It was not the practice of the Spanish government to make treaties with the Indian tribes, defining their boundaries; but to prevent settlements upon their lands without special permits: such permits, however, were usual. *Ib.*
15. The construction of the treaty between the United States and the Sac and Fox Indians, must be that the latter assented to an occupancy which was as notorious as their own. *Ib.*
16. The act of Congress, approved April 29, 1816, (3 Stat. at Large, 328,) confirming certain claims to land, confirmed this one, although the Recorder of Land Titles, in his report, made in 1815, had added these words, "if Indian title extinguished." These words were surplusage. *Ib.*

LIEN.
1. Where a *scire facias* was issued to enforce a lien upon a house under the lien law of the District of Columbia, there was no necessity to file a declaration. *Winder* v. *Caldwell*, 434.
2. Where the contract between the owner and the builder, (who was also the carpenter,) stipulated for a forfeiture per diem in case the carpenter should delay the work, the court below ought to have allowed evidence of such delay to be given to the jury by the defendant, under a notice of set-off, and also evidence that the work and materials found and provided upon and for the building, were defective in quality and character, and far inferior in value to what the contract and specifications called for. *Ib.*
3. A master builder, undertaker, or contractor, who undertakes by contract with the owner to erect a building, or some part or portion thereof, on certain terms, does not come within the letter or spirit of the act of Congress passed March 2, 1833, (4 Stat. at Large, 659,) entitled an act to secure to mechanics and others, payment for labor done and materials furnished in the erection of buildings in the District of Columbia. *Ib.*

MAINE, STATE OF.
See CONSTITUTIONAL LAW.

MANDAMUS.
1. A rule will be refused for the judges of the Circuit Court of the District of Columbia, to show cause why a *mandamus* should not issue, unless a case is presented which *primâ facie* requires the interposition of this court. *Ex parte Taylor*, 3.
2. Such a case is not presented where the Circuit Court decided that, under an act of Congress, an affidavit was sufficient to hold a party to special bail. That court had the power, by the act, to exercise its judicial discretion. *Ib.*
3. This act of Congress regulated the subject, and not the statute of Maryland, passed in 1715. *Ib.*
4. Where there was a blank in the record of the Circuit Court, in the taxa-

MANDAMUS—(*Continued.*)
tion of the costs recovered by the plaintiff, and the judgment being affirmed by this court, a mandate with the same blank went down to the Circuit Court; and a motion was there made to open the original judgment for the purpose of taxing the costs, which motion was refused by the court, such refusal cannot be reached by a *mandamus* from this court. *Ex parte Many*, 24.

5. The refusal of the court was not a ministerial act, but an exercise of judicial discretion. This court could issue a *mandamus* for the Circuit Court to proceed to judgment, but such a writ would not be appropriate to the present case. *Ib.*

MASTER AND SERVANT.

1. A master is liable for the tortious acts of his servant, when done in the course of his employment, although they may be done in disobedience of the master's order. *P. & R. R. R. Co.* v. *Derby*, 468.

NONSUIT.

1. The courts of the United States have not the power to order a nonsuit against the wishes of the plaintiff. *Silsby* v. *Foote*, 219.

PATENTS.

1. In a patent for improvements upon the machinery used for making pipes and tubes from lead or tin, when in a set or solid state, by forcing it, under great pressure, from out of a receiver, through apertures, dies, and cores, the claim of the patentees was thus stated: "What we claim as our invention, and desire to secure by letters-patent, is the combination of the following parts, above described, to wit, the core and bridge, or guide-piece, the chamber, and the die, when used to form pipes of metal, under heat and pressure, in the manner set forth, or in any other manner substantially the same." *Le Roy* v. *Tatham*, 156.
2. The Circuit Court charged the jury, "that the originality did not consist in the novelty of the machinery, but in bringing a newly-discovered principle into practical application, by which an useful article of manufacture is produced, and wrought pipe made as distinguished from cast pipe." *Ib.*
3. This instruction was erroneous. *Ib.*
4. Under the claim of the patent, the combination of the machinery must be novel. The newly-discovered principle, to wit, that lead could be forced by extreme pressure, when in a set or solid state, to cohere and form a pipe, was not in the patent, and the question whether it was or was not the subject of a patent, was not in the case. *Ib.*
5. In 1834, Burden obtained a patent for a new and useful improvement in the machinery for manufacturing wrought nails and spikes, which he assigned to the Troy Iron and Nail Factory, and also covenanted that he would convey to that company any improvement which he might thereafter make. *Troy Iron and Nail Factory* v. *Corning*, 193.
6. In 1840, he made such an improvement, for making hook and brad-headed spikes, with a bending-lever, which he assigned to the Troy Iron and Nail Factory, in 1848. *Ib.*
7. Before this last assignment, however, viz., in 1845, Burden made an agreement with Corning, Horner, and Winslow, in which, amongst other things, it was agreed, that both parties might thereafter manufacture and vend spikes of such kind and character as they saw fit, notwithstanding their conflicting claims. *Ib.*
8. Owing to the peculiar attitude of the parties to each other at the time of making this agreement, and the language used in it, it cannot be construed into a permission to Corning, Horner, and Winslow, to use the improved machinery patented by Burden in 1840; and the right to use it, having passed to the Troy Iron and Nail Factory, a perpetual injunction upon Corning, Horner, and Winslow will be decreed. *Ib.*
9. Under a notice given by the defendant that the invention claimed by the plaintiff was described in Ure's Dictionary of Arts, Manufactures, and Mines, and had been used by Andrew Ure, of London, it was not competent to give in evidence a very large book. The place in the book should have been specified. *Silsby* v. *Foote*, 219.

PATENTS—(*Continued.*)
10. Nor, under the notice, was the book competent evidence that Andrew Ure, of London, had a prior knowledge of the thing patented. The notice does not state the place where the same was used. *Ib.*
11. One of the specifications of the patent being for a combination of certain parts of mechanism necessary to produce the desired result, it was proper for the court to instruct the jury that the defendants had not infringed the patent, unless they had used all the parts embraced in the plaintiffs' combination; and the jury were to find what those parts were, and whether the defendants had used them. *Ib.*
12. When a claim does not point out and designate the particular elements which compose a combination, but only declares, as it properly may, that the combination is made up of so much of the described machinery as effects a particular result, it is a question of fact which of the described parts are essential to produce that result, and to this extent, not the construction of the claim, strictly speaking, but the application of the claim, should be left to the jury. *Ib.*
13. The patent for Woodworth's planing-machine was extended from 1842 to 1843, by the Board of Commissioners. *Bloomer* v. *McQuewan*, 539.
14. Under that extension, this court decided, in *Wilson* v. *Rousseau*, (4 How. 688,) that an assignee had a right to continue the use of the machine which he then had. *Ib.*
15. In 1845, Congress, by a special act, extended the time still further from 1849 to 1856. *Ib.*
16. Under that extension, an assignee has still the same right. *Ib.*
17. By the cases of *Evans* v. *Eaton*, (3 Wheat., 548,) and *Wilson* v. *Rousseau*, (4 How., 688,) these two propositions are settled, viz.:
    1. That a special act of Congress in favor of a patentee, extending the time beyond that originally limited, must be considered as ingrafted on the general law.
    2. That, under the general law in force when this special act of Congress was passed, a party who had purchased the right to use a planing-machine during the period to which the patent was first limited, was entitled to continue to use it during the extension authorized by that law, unless there is something in the law itself to forbid it. *Ib.*
18. But there is nothing in the act of Congress, passed in 1845, forbidding such use; and, therefore, the assignee has the right. *Ib.*
19. Where an action was brought against the Commissioner of Patents for refusing to give copies of papers in his office, and no special damage was set out in the declaration, evidence of the professional pursuits of the applicant was not admissible. *Boyden* v. *Burke*, 576.
20. Where the application was made through a third person, letters of both parties to this third person were admissible in evidence, as part of the *res gesta*. *Ib.*
21. Patents are public records, and it is the duty of the Commissioner to give authenticated copies to any person, on payment of the legal fees. *Ib.*
22. But the party entitled to such services must request their performance in a proper manner, and not accompany his demand with insult and abuse. *Ib.*
23. Hence, the Commissioner could not be held responsible for refusing to comply with a demand couched in such language. *Ib.*
24. But when a second application was made in a proper manner, the Commissioner ought to have complied with it. *Ib.*

PAYMENT.
See EVIDENCE.

PENNSYLVANIA.
1. By the law of Pennsylvania the River Delaware is a public navigable river, held by its joint sovereigns in trust for the public. *Rundle* v. *Delaware & Raritan Canal Co.*, 80.
2. Riparian owners, in that State, have no title to the river, or any right to divert its waters, unless by license from the States. *Ib.*

PENNSYLVANIA—(*Continued.*)

3. Such license is revocable, and in subjection to the superior right of the State, to divert the water for public improvements, either by the State directly, or by a corporation created for that purpose. *Ib.*
4. The proviso to the provincial acts of Pennsylvania and New Jersey, of 1771, does not operate as a grant of the usufruct of the waters of the river to Adam Hoops and his assigns, but only as a license or toleration of his dam. *Ib.*
5. As by the laws of his own State, the plaintiff could have no remedy against a corporation authorized to take the whole waters of the river for the purpose of canals, or improving the navigation; so, neither can he sustain a suit against a corporation created by New Jersey for the same purpose, who have taken part of the waters. *Ib.*
6. The plaintiffs being but tenants at sufferance in the usufruct of the water to the two States who own the river as tenants in common, are not in a condition to question the relative rights of either to use its waters without consent of the other. *Ib.*
7. This case is not intended to decide whether a first license, for private emolument, can support an action against a later licensee of either sovereign, or both, who, for private purposes, diverts the water to the injury of the first. *Ib.*

PLEAS AND PLEADINGS.

1. Where the declaration, in an action of assumpsit, contained the following counts: — 1. On a promissory note; 2. *Indebitatus assumpsit* for the hire of slaves; 3. An account stated; 4. *Quantum valebat* for the services of slaves; 5. Work and labor, goods sold and delivered, and money lent and advanced; 6. Money had and received; 7. An account stated; 8. A special agreement for the hire of slaves. And the defendant pleaded, — 1. The general issue; 2. Statute of limitations; 3. Payment. And the jury found a verdict for "the defendant upon the issue joined, as to the within note of four hundred and fifty-six dollars, and the within account"; this verdict, though informal, was sufficient to authorize to enter a general judgment for the defendant. *Downey* v. *Hicks*, 240.
2. In Texas, the technical forms of pleading, fixed by the common law, are dispensed with; but the principles which regulate the merits of a trial by ejectment, and the substance of a plea of title to such an action are preserved. *Christy* v. *Scott*, 282.
3. Therefore, where the plaintiff filed a petition, alleging that he was seised in his demesne as of fee of land, from which the defendant had ejected him, and the defendant pleaded that if the plaintiff had any paper title, it was under a certain grant which was not valid, this plea was bad. *Ib.*
4. So, also, was a plea denying the right of the plaintiff to remove his title, because he was not then a citizen of Texas. These pleas would have been appropriate objections to the plaintiff's title when produced upon the trial. *Ib.*
5. So, also, where, under a plea of the statute of limitations, the defendant claimed certain land by metes and bounds, and disclaimed all not included within them. There is nothing to show that the land so included was a part of the land claimed by the plaintiff. *Ib.*
6. So, also, where the plea was in substance, that the plaintiff had no good title against Texas, no title in the defendant being shown. For the action may have been maintainable, although the true title was not in the plaintiff. *Ib.*
7. Where a *scire facias* was issued to enforce a lien upon a house under the lien law of the District of Columbia, there was no necessity to file a declaration. *Winder* v. *Caldwell*, 434.
8. It is a bad mode of pleading to unite pleas in abatement, and pleas to the merits. And if, after pleas in abatement, a defence be interposed, going to the merits of the controversy, the grounds alleged in abatement become thereby immaterial and are waived. *Sheppard* v. *Graves*, 505.

PLEAS AND PLEADINGS—(*Continued.*)

9. When a plea is filed to the jurisdiction of the court upon the ground that the plaintiff is a resident of the same State with the defendant, it is incumbent on the defendant to prove the allegation. *Ib.*
10. It is of no consequence whether the date of a promissory note be at the beginning or end of it. *Ib.*
11. In this case, as in the preceding, it is decided that, where the plaintiff averred enough to show the jurisdiction of the court, and the defendant pleaded in abatement that the plaintiff was disabled from bringing the suit on account of residence, it was incumbent upon the defendant to sustain the allegation by proof. *Same* v. *Same*, 512.
12. Until that was done, it was not necessary for the plaintiff to offer any evidence upon the subject. *Ib.*
13. Where the marshal of the District of Wisconsin attached property at the suit of creditors in New York, and then gave it up upon the the execution of a bond to himself, for the use of those creditors, it was within the jurisdiction of the District Court of the United States for Wisconsin, to entertain a suit by the marshal, suing upon the bond for the New York creditors, against the claimants in Wisconsin, although both parties resided in the same State. *Huff* v. *Hutchinson*, 585.
14. The name of the marshal was merely formal; the real plaintiffs were averred to be citizens of New York. *Ib.*
15. It was not a good exception upon the ground of variation between the evidence and declaration, that the latter stated the bond to have been given to Hutchinson as marshal of the District of Wisconsin, and the former said the State of Wisconsin. They mean the same thing. *Ib.*
16. Judgment having been rendered for the plaintiffs in the attachment, by a court having jurisdiction over the subject, it was too late to object to those proceedings in a suit upon the bond, in which they were collaterally introduced. *Ib.*
17. The bond given to the marshal was in conformity with the statute. *Ib.*
18. The objections, that the declaration on the bond did not show the jurisdiction of the court in the attachment suit; that the verdict was entered for the amount due instead of the penalty of the bond, and that the recovery was for a sum greater than was claimed by the *ad damnum* in the declaration, were not sufficient for a new trial. *Ib.*

PRACTICE.

1. An appeal will not lie to this court from a refusal of the court below to open a prior decree, and grant a rehearing. The decision of this point rests entirely in the sound discretion of the court below. *Wylie* v. *Coxe*, 1.
2. The case of *Brockett* v. *Brockett* (2 How., 240), explained. *Ib.*
3. Two appeals having been taken, one from the original decree, and the other from the refusal to open it, the latter must be dismissed, and the case stand for hearing upon the first appeal. *Ib.*
4. A motion for a mandate upon the court below, to carry the decree into execution, overruled. *Ib.*
5. A rule will be refused for the judges of the Circuit Court of the District of Columbia, to show cause why a *mandamus* should not issue, unless a case is presented which *primâ facie* requires the interposition of this court. *Ex parte Taylor*, 3.
6. Such a case is not presented where the Circuit Court decided that, under an act of Congress, an affidavit was sufficient to hold a party to special bail That court had the power, by the act, to exercise its judicial discretion. *Ib.*
7. This act of Congress regulated the subject, and not the statute of Maryland, passed in 1715. *Ib.*
8. Where a motion was made, under the 12th section of the Judiciary Act, to remove a cause from a State Court to the Circuit Court of the United States, notwithstanding which the State Court retained cognizance of the case, and it was ultimately brought to this court under the 25th section of the Judiciary Act, a motion to dismiss it for want of

PRACTICE—(*Continued.*)
jurisdiction cannot be sustained. The question will remain to be decided upon the full hearing of the case. *Kanouse* v. *Martin*, 23.

9. Where there was a blank in the record of the Circuit Court, in the taxation of the costs recovered by the plaintiff, and the judgment being affirmed by this court, a mandate with the same blank went down to the Circuit Court; and a motion was there made to open the original judgment for the purpose of taxing the costs, which motion was refused by the court, such refusal cannot be reached by a *mandamus* from this court. *Ex parte Many*, 24.
10. The refusal of the court was not a ministerial act, but an exercise of judicial discretion. This court could issue a *mandamus* for the Circuit Court to proceed to judgment, but such a writ would not be appropriate to the present case. *Ib.*
11. A reargument of a case decided by this court will not be granted, unless a member of the court, who concurred in the judgment, desires it; and when that is the case, it will be ordered without waiting for the application of counsel. *Brown* v. *Aspden*, 25.
12. And this is so, whether the decree of the court below was affirmed by an equally divided court or a majority; or whether the case is one at common law or chancery. *Ib.*
13. The rules of the English Court of Chancery have not been adopted by this court. Those which are applicable to a court of original jurisdiction, are not appropriate to an appellate court. *Ib.*
14. Upon a trial in New York, a juror became ill, and was discharged before any evidence was given, and before the plaintiffs' counsel had concluded his opening address. The court ordered another juror to be sworn, and proceeded with the trial. The defendant cannot object to this. It is the practice in New York, and the Circuit Court had a right to follow it. *Silsby* v. *Foote*, 218.
15. The court having erroneously refused to allow the plaintiff to offer a paper in evidence, as a disclaimer of part of a patent, afterwards refused to allow the defendants to offer the same paper in evidence for the purpose of prejudicing the plaintiff's rights. This last refusal was correct. The reason given was erroneous; but this is not a sufficient cause for reversing the judgment. *Ib.*
16. The courts of the United States have not the power to order a nonsuit against the wishes of the plaintiff. *Ib.*
17. Where the declaration, in an action of assumpsit, contained the following counts: — 1. On a promissory note; 2. *Indebitatus assumpsit* for the hire of slaves; 3. An account stated; 4. *Quantum valebat* for the services of slaves; 5. Work and labor, goods sold and delivered, and money lent and advanced; 6. Money had and received; 7. An account stated; 8. A special agreement for the hire of slaves: And the defendant pleaded, — 1. The general issue; 2. Statute of limitations; 3. Payment; — and the jury found a verdict for "the defendant upon the issue joined as to the within note of four hundred and fifty-six dollars, and the within account" — this verdict, although informal, was sufficient to authorize to enter a general judgment for the defendant. *Downey* v. *Hicks*, 240.
18. An objection cannot be made in this court to a release under which a witness was sworn, unless the objection was made in the court below, and an exception taken. *Ib.*
19. The sixty-second rule of this court (13 How.) is as follows: "In cases where a writ of error is prosecuted to the Supreme Court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied from the date of the judgment below, until the same is paid, at the same rate that similar judgments bear interest, in the courts of the State where such judgment is rendered. The same rule shall be applied to decrees for the payment of money, in cases in Chancery, unless otherwise ordered by this court. This rule to take effect on the first day of December term, 1852. *Perkins* v. *Fourniquet*, 328.

PRACTICE—(*Continued.*)

20. Before this rule, interest was to be calculated at six per cent., from the date of the judgment in the Circuit Court to the day of affirmance here; and the confirmation of the report of the clerk, in the case of *Mitchell* v. *Harmony* (13 How., 149) was under the rules then existing. *Ib.*
21. So, also, where a case from Mississippi was affirmed, at December term, 1851, the mandate from this court should have been construed to allow interest at six per cent. from the date of the decree in the court below, to the date of the affirmance in this court. Therefore, it was erroneous either to allow six per cent. until paid, or to allow the current rate of interest in Mississippi, in addition to the six per cent. allowed by this court. *Ib.*
22. The several rules upon this subject examined and explained. *Ib.*
23. A statute of Mississippi directs that where the defendant cannot be found, a writ of *capias ad respondendum* shall be served, by leaving a copy thereof with the wife of the defendant, or some free white person above the age of sixteen years, then and there being one of the family of the defendant, and found at his usual place of abode, or leaving a copy thereof at some public place, at the dwelling-house or other known place of residence of such defendant, he being from home, and no such free white person being found there willing to receive the same. *Harris* v. *Hardeman*, 334.
24. The Circuit Court of the United States adopted a rule that the *capias* should be served personally, or, if the defendant be not found, by leaving a copy thereof at his or her residence, or usual place of abode, at least twenty days before the return day thereof. *Ib.*
25. The marshal made the following return to a writ of *capias*: "Executed on the defendant Hardeman, by leaving a true copy at his residence." *Ib.*
26. This service was neither in conformity with the statute nor the rule. *Ib.*
27. Therefore, when the court gave judgment, by default, against Hardeman, and an execution was issued, upon which a forthcoming bond was given, and another execution issued, and at a subsequent day the court quashed the proceedings, and set aside the judgment by default, this order was correct. *Ib.*
28. When the judgment by default was given, the court was not in a condition to exercise jurisdiction over the defendant, because there was no regular service of process, actual or constructive. *Ib.*
29. The cases upon this point, examined. *Ib.*
30. Moreover, when the proceedings were quashed, they were still *in fieri*, and not terminated; and any irregularity could be corrected, on motion. *Ib.*
31. A sale of land by a marshal, on a *venditioni exponas*, after he is removed from office, and a new marshal appointed and qualified, is not void. *Doolittle* v. *Bryan*, 563.
32. Such a sale being returned to the court, and confirmed by it on motion, and a deed ordered to be made to the purchaser at the sale, by the new marshal, such sale, being made, is valid. *Ib.*

PUBLIC LANDS.

See LANDS, PUBLIC.

RAILROADS.

1. Where a suit was brought against a railroad company, by a person who was injured by a collision, it was correct in the court to instruct the jury, that if the plaintiff was lawfully on the road, at the time of the collision, and the collision and consequent injury to him were caused by the gross negligence of one of the servants of the defendants, then and there employed on the road, he was entitled to recover, notwithstanding the circumstances that the plaintiff was a stockholder in the company, riding by invitation of the President, paying no fare, and not in the usual passenger cars. *P. & R. R. R. Co.* v. *Derby*, 468.
2. And also, that the fact that the engineer having the control of the colliding locomotive, was forbidden to run on that track at the time, and

RAILROADS—(*Continued.*)
had acted in disobedience of such orders, was no defence to the action. *Ib.*
3. A master is liable for the tortious acts of his servant, when done in the course of his employment, although they may be done in disobedience of the master's orders. *Ib.*

RELEASES.
1. Releases given by the complainants, in the present case, decided to cover the matters in controversy, and, therefore, to put an end to all claim by them; inasmuch as there is no proof that they were obtained by fraud or circumvention. *Perkins* v. *Fourniquet*, 313.

REPLEVIN.
See Commercial Law.

SET-OFF.
See Evidence.

SLAVES, FUGITIVE.
See Constitutional Law.

STATUTE OF FRAUDS.
See Frauds.

SURETIES UPON EXECUTORS' BONDS.
See Wills.

TEXAS.
1. The case of *League* v. *De Young and Brown*, (11 How., 185,) considered and again established, 79.
2. The State of Texas was admitted into the Union on the 29th of December, 1845, (9 Stat. at Large, 108,) and from that day the laws of the United States were extended over it. *Calkin & Co.* v. *Cocke*, 227.
3. Consequently, on the 30th of January, 1846, the revenue laws of Texas were not in force there, and goods seized for a non-compliance with those laws, were illegally seized. *Ib.*
4. In Texas, the technical form of pleading, fixed by the common law, are dispensed with, but the principles which regulate the merits of a trial by ejectment, and the substance of a plea of title to such an action, are preserved. *Christy* v. *Scott*, 282.
5. Therefore, where the plaintiff filed a petition alleging that he was seised in his demesne as of fee of land from which the defendant had ejected him, and the defendant pleaded, that if the plaintiff had any paper title, it was under a certain grant which was not valid, this plea was bad. *Ib.*
6. So also was a plea denying the right of the plaintiff to receive his title, because he was not then a citizen of Texas. These pleas would have been appropriate objections to the plaintiff's title when produced upon the trial. *Ib.*
7. So also where, under a plea of the statute of limitations, the defendant claimed certain lands by metes and bounds, and disclaimed all not included within them. There is nothing to show that the land so included, was part of the land claimed by the plaintiff. *Ib.*
8. So also where the plea was in substance that the plaintiff had no good title against Texas, no title in the defendant being shown. For the action may have been maintainable, although the true title was not in the plaintiff. *Ib.*
9. Where a title to land in the State of Coahuila and Texas, was obtained in 1833, by a mother for, and in the name of her daughter, and, in 1836, the father of the daughter conveyed it away by a deed executed in Louisiana, this deed was properly set aside by the District Court of Texas. *Hoyt* v. *Hammekin*, 346.
10. It was not executed either according to the laws of Louisiana, or those of Coahuila and Texas. *Ib.*

VENDITIONI EXPONAS.
See Execution.

VERDICT.
1. A verdict on an issue to try whether a sale was fraudulent finding the

VERDICT—(*Continued.*)
same to be fraudulent, will not be set aside on a certificate or affidavit of some of the jurors, afterwards made, as to what they meant. *Doss* v. *Tyack*, 298.
2. A Chancellor does not need a verdict to inform his conscience, when the answer denies fraud in the abstract, whilst it admits all the facts and circumstances necessary to constitute it, in the concrete. *Ib.*

WILLS.
1. James Bosley, in his will, after sundry specific devises and bequests, devised and bequeathed all his lands and other real estate in Baltimore, Cecil, and Alleghany counties, in Maryland, and also in Florida, and his house and lot in Santa Croix, and all the real estate he might have elsewhere, to his wife Elizabeth, her heirs and assigns, in trust, to sell the same and divide the net proceeds thereof, with all the residue of his estate, equally between herself and the children of his brother. *Bosley* v. *Bosley*, 390.
2. After making his will, he sold all of the lands particularly mentioned in the residuary clause of the will above stated, except some lands lying in Baltimore county. At the time of making the codicil hereafter mentioned, he held some of the proceeds of these sales in bonds and other securities, and with the residue had purchased other property. *Ib.*
3. He afterwards made a codicil, by which he devised his summer residence, in Baltimore county, to his wife, and also the securities he held for the lands sold in Cecil county, and directed all the property he had acquired after the date of his will to be sold, and the proceeds to be equally divided between his wife and her sister Margaret. Then followed a residuary clause, in the following words: "Lastly, my pew in St. Paul's Church, and all my other property, real or personal, and all money in bank belonging to me at the time of my decease, I give, devise, and bequeathe unto my said wife Elizabeth and her heirs, forever; and I ratify and confirm my said last will in everything, except where the same is hereby revoked and altered, as aforesaid." *Ib.*
4. The residuary clause in this codicil is inconsistent with that in the will, and consequently revokes it. But the devise of the property specifically mentioned in the will, is not revoked by the clause in the codicil. *Ib.*
5. After the execution of the codicil, the testator agreed to lease some land for the term of ninety-nine years, renewable forever, a ground rent being reserved upon the same. The lessee was to pay cash for a part, and the residue of the purchase-money was to remain on interest, as ground rent, which the lessee could extinguish at any time by the payment of the principal sum. *Ib.*
6. This property was a part of that which was specifically mentioned in the will, and not revoked by the clause in the codicil. *Ib.*
7. But the conduct of the testator, in making this agreement, so altered the condition of the property, that it amounted to a revocation of the devise, and manifests an intention, on his part, when taken in connection with other circumstances of the case, to give it to his wife under the residuary clause in the codicil. *Ib.*
8. General Kosciusko made four wills. One in the United States, in 1798; another in Paris, in 1806; the third and fourth were made at Soleure, in Switzerland, whilst he was sojourning there in 1816 and 1817. *Ennis* v. *Smith*, 400.
9. The first and second wills were revoked by the third, and he died intestate as to his estate in the United States. *Ib.*
10. But the first will, before it was known that he had made the others, was probated by Mr. Jefferson, in Virginia, and when Mr. Jefferson learned that the General had made other wills, he transferred the fund to the Orphans' Court of the District of Columbia. The Orphans' Court managed the fund for some time, and then Benjamin L. Lear was appointed the administrator of Kosciusko, with the will annexed. He

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died leaving a will, and George Bomford, one of his executors. Bomford qualified as such, and afterwards became the administrator of Kosciusko *de bonis non*. He took into his possession, as executor, the estate of Lear, and also the funds of Kosciusko, which had been administered by Lear, and first made his return to the Orphans' Court of the administered funds of Kosciusko, as executor of Lear. Afterwards they were returned by him to the Orphans' Court, as administrator *de bonis non* of Kosciusko. The Orphans' Court, deeming that his sureties, as administrator *de bonis non* of Kosciusko, were insufficient, or that they were not liable for any waste of them, on account of the funds having been received by him as executor of Lear, and not as administrator *de bonis non*, called upon him for other sureties, under the act of Congress of the 20th February, 1846. He complied with the call, and gave as sureties, Stott, Carrico, and George C. Bomford, and Gideon, Ward, and Smith. *Ib.*

11. The original bonds of Bomford were given to the Orphans' Court, under the law of Maryland, which prevailed without alteration in that part of the District of Columbia which had been ceded by Maryland, until Congress passed the act of the 20th February, 1846. The defendants, Stott, Carrico, and George C. Bomford, and Smith, Ward, and Gideon, became the sureties of Bomford, as administrator *de bonis non* of Kosciusko, under the act of the 20th February, 1846. *Ib.*
12. In the State of Maryland, if an executor or administrator changes any part of an estate from what it was into something else, it is said to be administered. If an administrator *de bonis non* possesses himself of such changed estate, of whatever kind it may be, and charges himself with it as assets, his sureties to his original bond, as administrator *de bonis non*, are not liable for his waste of them. They are only liable for such assets of the deceased as remain in specie, unadministered by his predecessor in the administration. Such is the law of Maryland, applicable to the sureties of Bomford, in the bond given when he was appointed administrator *de bonis non* of Kosciusko. *Ib.*
13. But when other sureties are called for by the Orphans' Court, under the third section of the act of February 20, 1846, and are given, they do not bear the same relation to the administrator that his original sureties did, and they will be bound for the waste of their principal to the amount of the estate or funds, which he has charged himself by his return to the Orphans' Court, as administrator *de bonis non*, when it called for additional sureties, and for such as the administrator may afterwards receive. *Ib.*
14. The bonds taken by the Orphans' Court in this case were properly taken, under the act of the 20th February, 1846. *Ib.*
15. General Kosciusko's Olographic will, of 1816, contains a revoking clause of all other wills previously made by him, and not having disposed of his American funds in that will, nor in the will of 1817, he died intestate as to such funds. The second article in the will of 1817, "Je légue tous mes effets, ma voiture, et mon cheval y comprise à Madame et à Monsieur Zavier Zeltner, les homme ce dessus," record 105, is not a residuary bequest to them of the rest of the estate, not specifically disposed of in the wills of 1816 and 1817. *Ib.*
16. General Kosciusko was sojourning in Switzerland when he died, but was domiciled in France, and had been for fifteen years. *Ib.*
17. His declarations are to be received as proof that his domicil was in France. Such declarations have always been received, in questions of domicil, in the courts of France, in those of England, and in the courts of the United States. *Ib.*
18. The presumption of law is, that the domicil of origin is retained, until residence elsewhere has been shown by him who alleges a change of it. But residence elsewhere repels the presumption, and casts upon him who denies it to be a domicil of choice, the burden of disproving it. The place of residence must be taken to be a domicil of choice, unless

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it is proved that it was not meant to be a principal and permanent residence. Contingent events, political or otherwise, are not admissible proofs to show, where one removes from his domicil of origin for a residence elsewhere, that the latter was not meant to be a principal and permanent residence. But if one is exiled by authority from his domicil of origin, it is never presumed that he has abandoned all hope of returning back. The abandonment, however, may be shown by proof. General Kosciusko was not exiled by authority. He left Poland voluntarily, to obtain a civil status in France, which he conscientiously thought he could not enjoy in Poland, whilst it continued under a foreign dominion. *Ib.*

19. Personal property, wherever it may be, is to be disturbed in case of intestacy, according to the law of the domicil of the intestate. This rule may be said to be a part of the *jus gentium*. *Ib.*

20. What that law is when a foreign law applies, must be shown by proof of it, and in the case of written law, it will be sufficient to offer, as evidence, the official publication of the law, certified satisfactorily to be such. Unwritten foreign laws must be proved by experts. There is no general rule for authenticating foreign laws in the courts of other countries, except this, that no proof shall be received, "which presupposes better testimony behind, and attainable by the party." They may be verified by an oath, or by an exemplification of a copy under the great seal of the State or nation whose law it may be, or by a copy proved to be a true copy by a witness who has examined and compared it with the original, or by the certificate of an officer authorized to give the law, which certificate must be duly proved. Such modes of proof are not exclusive of others, especially of codes and accepted histories of the law of a country. See also the cases of *Church* v. *Hubbart*, in 2 Cranch, 181, and *Talbot* v. *Seeman*, in 1 Cranch, 7. In this case, the Code Civil of France, with this indorsement, "Les Garde des Sceaux de France a la Cour Supreme des Etats Unis," was offered as evidence to prove that the law of France was for the distribution of the funds in controversy. This court ruled that such indorsement was a sufficient authentication to make the code evidence in this case, and in any other case in which it may be offered. By that code, the complainants named in this suit as the collateral relations of General Kosciusko, are entitled to receive the funds in controversy, in such proportions as are stated in the mandate of this court to the court below. *Ib.*

21. The documentary proofs in this cause, from the Orphans' Court, of the genealogy of the Kosciusko family, and of the collateral relationship of the persons entitled to a decree, and also of the wills of Kosciusko, are properly in evidence in this suit. *Ib.*

22. The record from Grodno is judicial; not a judgment *inter partes*, but a foreign judgment *in rem*, which is evidence of the facts adjudicated against all the world. *Ib.*

23. A will executed in 1777, which devised certain lands in Maine to trustees and their heirs, to the use of Richard (the son of the testator) for life, remainder for his life, in case of forfeiture, to the trustees, to preserve contingent remainders; remainder to the sons of Richard, if any, as tenants in common in tail, with cross remainders; remainder to Richard's daughter, Elizabeth, for life; remainder to trustees, to preserve contingent remainders during her life; remainder to the sons of Elizabeth in tail, — did not vest the legal estate in fee simple in the trustees. The life estate of Richard, and the contingent remainders limited thereon, were legal estates. *Webster* v. *Cooper*, 488.

24. No duties were imposed on the trustees which could prevent the legal estate in these lands from vesting in the *cestuis que use;* and although such duties might have been required of them relating to other lands in the devise, yet this circumstance would not control the construction of the devise as to these lands. *Ib.*

25. The devise to Elizabeth for life, remainder to her sons, as tenants in

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common, share and share alike, and to the heirs of their bodies, did not give an estate tail to Elizabeth, under the rule in *Shelly's case.* But upon her death, her son (the party to the suit) took, as a purchaser, an estate tail in one moiety of the land, as a tenant in common with his brother. *Ib.*

26. One of the conditions of the devise was, that this party, as soon as he should come into possession of the lands, should take the name of the testator. But as he had not yet come into possession, and it was a condition subsequent, of which only the person to whom the lands were devised over, could take advantage, a non-compliance with it was no defence, in an action brought to recover possession of the land. *Ib.*
27. The son, taking an estate tail at the death of Elizabeth, in 1845, could maintain a writ of entry, and until that time had no right of possession. Consequently, the adverse possession of the occupant only began then. *Ib.*
28. In 1848, the Legislature of Maine passed an act declaring that no real or mixed action should be commenced or maintained against any person in possession of lands, where such person had been in actual possession for more than forty years, claiming to hold the same in his own right, and which possession should have been adverse, open, peaceable, notorious, and exclusive. This act was passed two years after the suit was commenced. *Ib.*
29. The effect of this act was to make the seisin of the occupant during the lifetime of Elizabeth, adverse against her son, when he had no right of possession. *Ib.*
30. This act, which thus purported to take away property from one man and vest it in another, was contrary to the constitution of the State of Maine, as expounded by the highest courts of law in that State. And as this court looks to the decisions of the courts of a State to explain its statutes, there is no reason why it should not also look to them to expound its constitution. *Ib.*