INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

The references are to the STAR (*) pages.

APPEAL.

1. Where the respondent in a chancery suit in the Circuit Court took two grounds of defence, and the judge, in giving his reasons for a decree dismissing the bill, upon one of the two grounds, expressed his opinion that the respondent had not established the other ground, he cannot appeal from this as a part of the decree. *Corning et al.* v. *The Troy Iron and Nail Factory*, 451.
2. The decree was in the respondent's favor, dismissing the bill with costs, and no appeal lies from an opinion expressed by the judge upon the facts of the case, not affecting the decree. *Ib.*
3. Moreover, the decree complained of has already been argued before this court upon the appeal of the other party, and both grounds of defence decided to be insufficient, and the decree reversed. There is, therefore, no such decree as that appealed from. *Ib.*
4. Besides, the court below has not acted upon the mandate and entered a final decree; therefore there is no final decree to appeal from. *Ib.*

ARBITRATION.

See AWARD.

ARKANSAS.

See CONSTITUTIONAL LAW.

1. In June, 1844, Congress passed an act, by virtue of which the Circuit Court of the United States for the District of Arkansas was vested with power to try offences committed within the Indian country. *United States* v. *Dawson*, 467.
2. In July, 1844, it was alleged that a murder was committed in that country. *Ib.*
3. In April, 1845, an indictment was found by a grand jury, in the Circuit Court of the United States for the District of Arkansas, against a person charged with committing the murder. *Ib.*
4. In March, 1851, Congress passed an act erecting nine of the Western counties and the Indian country into a new judicial district, directing the judge to hold two terms there, and giving him jurisdiction of all causes, civil or criminal, except appeals and writs of error, which are cognizable before a Circuit Court of the United States. *Ib.*
5. The residue of the State remained a judicial district to be styled the Eastern District of Arkansas. *Ib.*
6. This act of Congress did not take away the power and jurisdiction of the Circuit Court of the United States for the Eastern District to try the indictment pending. *Ib.*

ATTORNEY.

1. Where a contract was made with an attorney for the prosecution of a claim against Mexico for a stipulated proportion of the amount recovered, and services were rendered, the death of the owner of the claim did not dissolve the contract, but the compensation remained a lien upon the money when recovered. *Wylie* v. *Coxe*, 415.
2. A court of equity can exercise jurisdiction over the case if a more adequate remedy can be thus obtained than in a court of law. *Ib.*

AWARD.

1. In the settlement of complicated partnership accounts by means of an arbitrator, Bispham was charged with one half of certain custom-house bonds, which Archer, the other partner, was liable to pay, and which obligations had been incurred on partnership account. *Bispham* v. *Price*, 162.
2. There was a reservation in the settlement as to certain liabilities, but this one was not included. *Ib.*
3. Archer's estate was afterwards exonerated from the payment of these bonds by a decision of this court, reported in 9 How., 83. *Ib.*
4. A bill cannot be brought by Bispham against Archer's executor, to refund one half of the amount of the bonds, upon the ground that Archer had never paid it. *Ib.*
5. The reference to an arbitrator was lawful, and his award included many items which were the subject of estimates. It was accepted as perfectly satisfactory, and acquiesced in as such until long after the death of Archer. *Ib.*
6. No fraud or mistake is charged in the bill; and if an error of judgment occurred, by which the chance was overrated, that the custom-house bonds would be enforced against Archer, this does not constitute a ground for the interference of a court of equity. *Ib.*
7. The statute of limitations, also, is a bar to the claim. *Ib.*

BALTIMORE.

For McDonogh's Will, see "Wills."

BANKS.

See Constitutional Law.

BILL OF EXCEPTIONS.

1. In order to make a bill of exceptions valid, it must appear by the transcript not only that the instructions were given or refused at the trial, but also that the party who complains of them excepted to them while the jury were at the bar. *Phelps* v. *Mayer*, 160.
2. The bill of exceptions need not be drawn out in form and signed before the jury retire; but it must be taken in open court, and must appear by the certificate of the judge who authenticates it, to have been so taken. *Ib.*
3. Hence, when the verdict was rendered on the 13th December, and on the next day the plaintiff came into court and filed his exception, it is not properly before this court. And no error being assigned or appearing in the other proceedings, the judgment of the Circuit Court must be affirmed, with costs. *Ib.*

BILLS AND NOTES.

See Commercial Law.

BONDS.

1. When the bonds of collectors of the customs begin to be effective, see *Broome* v. *United States*, 143.
2. Where a clerk of a court was sued upon his official bond, and the breach alleged was, that he had surrendered certain goods without taking a bond with good and sufficient securities, and the plea was, that the bond which had been taken was assigned to the plaintiffs, who had brought suit, and received large sums of money in discharge of the bond,—this plea was sufficient, and a demurrer to it was properly overruled. *Bevins* v. *Ramsey*, 179.

CHANCERY.

1. Where a widow filed a bill in chancery, complaining that, immediately upon the death of her husband, the son of that husband, together with another person, had imposed upon her by false representations, and induced her to part with all her right in her husband's estate for an inadequate price, the evidence in the case did not sustain the allegation. *Eyre et al.* v. *Potter et al.*, 42.
2. It is not alleged to be a case of constructive fraud, arising out of the relative position of the parties towards each other, but of actual fraud. *Ib.*

CHANCERY—(*Continued.*)
3. The answers deny the fraud, and are made more emphatic by the complainants having put interrogatories to be answered by the defendants, and the evidence sustains the answers. *Ib.*
4. It will not do to set up mere inadequacy of price as a cause for annulling a contract made by persons competent and willing to contract; and, besides, there were other considerations acting upon the widow to induce her to make the contract. *Ib.*
5. The testimony offered to prove the mental imbecility of the widow, should be received with great caution, and is not sufficient. *Ib.*
6. In the settlement of complicated partnership accounts by means of an arbitrator, Bispham was charged with one half of certain custom-house bonds, which Archer, the other partner, was liable to pay, and which obligations had been incurred on partnership account. *Bispham* v. *Price*, 162.
7. There was a reservation in the settlement as to certain liabilities, but this one was not included. *Ib.*
8. Archer's estate was afterwards exonerated from the payment of these bonds by a decision of this court, reported in 9 How., 83. *Ib.*
9. A bill cannot be brought by Bispham against Archer's executor, to refund one half of the amount of the bonds, upon the ground that Archer had never paid it. *Ib.*
10. The reference to an arbitrator was lawful, and his award included many items which were the subject of estimates. It was accepted as perfectly satisfactory, and acquiesced in as such until long after the death of Archer. *Ib.*
11. No fraud or mistake is charged in the bill; and if an error of judgment occurred, by which the chance was overrated that the custom-house bonds would be enforced against Archer, this does not constitute a ground for the interference of a court of equity. *Ib.*
12. The statute of limitations, also, is a bar to the claim. *Ib.*
13. The Michigan Central Railroad Company, established in Michigan, made an agreement with the New Albany and Salem Railroad Company, established in Indiana, that the former would build and work a road in Indiana, under the charter of the latter. *Northern Indiana Railroad Company* v. *Michigan Central Railroad Company*, 233.
14. Another company, also established in Indiana, called the Northern Indiana Railroad Company, claiming an exclusive right to that part of Indiana, filed a bill in the Circuit Court of the United States for the district of Michigan, against the Michigan Company, praying an injunction to prevent the construction of the road under the above agreement. *Ib.*
15. The Circuit Court had no jurisdiction over such a case. *Ib.*
16. The subject-matter of the controversy lies beyond the limits of the district, and where the process of the court cannot reach the *locus in quo*. *Ib.*
17. Moreover, the rights of the New Albany Company are seriously involved in the controversy, and they are not made parties to the suit. The act of Congress, providing for the non-joinder of parties who are not inhabitants of the district, does not apply to such a case as the present. *Ib.*
18. Black, as agent for the owners, contracted to sell a large quantity of land in Maine, which contract was assigned by the vendee, until it came, through mesne assignments, into the hands of Miller and others. *Garrow* v. *Davis*, 272.
19. Payments were made from time to time on account; but at length, in consequence of a failure to make the payments stipulated in the contract, and by virtue of a clause contained in it, the contract became void. *Ib.*
20. In this state of things, Miller employed one Paulk to ascertain from Black the lowest price that he would take for the land, and then to sell to others for the highest price that he could get. *Ib.*
21. Paulk sold and assigned the contract to Davis for $1,050. *Ib.*
22. Upon the theory that Paulk and Davis entered into a fraudulent combi-

CHANCERY—(*Continued.*)
nation, still, Miller and others are not entitled to demand that a court of equity should consider Davis as a trustee of the lands for their use. They had no interest in them, legal or equitable, nor any thing but a good will, which alone was the subject-matter of the fraud, if there was any. *Ib.*
23. But the evidence shows that this good will did not exist; for Black was not willing to sell to Miller and others for a less price than to any other person. *Ib.*
24. Although Paulk represented himself to be acting for Miller and others, when in reality he was representing Davis, yet he did not obtain the land at a reduced price thereby; but, on the contrary, at its fair market value. *Ib.*
25. The charges of fraud in the bill are denied in the answers, and the evidence is not sufficient to sustain the allegations. *Ib.*
26. Where the respondent in a chancery suit in the Circuit Court took two grounds of defence, and the judge, in giving his reasons for a decree dismissing the bill, upon one of the two grounds, expressed his opinion that the respondent had not established the other ground, he cannot appeal from this as a part of the decree. *Corning* v. *Troy Iron and Nail Factory*, 451.
27. The decree was in respondent's favor, dismissing the bill with costs, and no appeal lies from an opinion expressed by the judge upon the facts of the case, not affecting the decree. *Ib.*
28. Moreover, the decree complained of has already been argued before this court upon the appeal of the other party, and both grounds of defence decided to be insufficient, and the decree reversed. There is, therefore, no such decree as that appealed from. *Ib.*
29. Besides, the court below has not acted upon the mandate and entered a final decree; therefore there is no final decree to appeal from. *Ib.*
30. Where land was sold in New Jersey by order of the Orphans' Court of one of the counties, the conveyance was made not to the actual bidders, but to a person whom they appointed to represent them. *Kearney* v. *Taylor*, 494.
31. Afterwards, the Supreme Court of the State having decided that such a practice was irregular, the legislature passed a law enacting that, upon proof of the absence of fraud, such deeds might be given in evidence. This cured the defect in the title. *Ib.*
32. The purchasers were a company organized for the purpose of improving the land, and in their purchase there was neither actual or constructive fraud. *Ib.*
33. The law examined with respect to the bidding of associations at sales by public auction. *Ib.*
34. In this instance the price obtained was greater than any previous estimate of the value of the property. *Ib.*
35. There was no constructive fraud because, according to the evidence, the guardian of the minor children and the commissioners who decided that the property ought to be sold, did not become interested in the company until some time after the sale. *Ib.*
36. The circumstance that these persons became interested in the company before the first half of the purchase-money was due, is not a sufficient reason for setting aside the sale. *Ib.*
37. According to the preponderance of the evidence, the grave charge that the auctioneer who made the sale was one of the company, is not sustained. *Ib.*
38. Where the assignors of a patent-right were joined with the assignee for a particular locality, in a bill for an injunction to restrain a defendant from the use of the machine patented, and the defendant raised, in this court, and after a final decree, an objection arising from a misjoinder of parties, the objection comes too late. *Livingston* v. *Woodworth*, 546.
39. Moreover, in the present case, the parties consented to the decree under which the account in controversy was adjusted. *Ib.*

CHANCERY—(*Continued.*)
40. That consent having been given, however, to a decree by which an account should be taken of gains and profits, according to the prayer of the bill, the defendant was not precluded from objecting to the account upon the ground that it went beyond the order. *Ib.*
41. The report having been recommitted to the master, with instructions to ascertain the amount of profits which might have been realized with due diligence, and the master having framed his report upon the theory of awarding damages, this report, and the order of the court confirming it, were both erroneous. *Ib.*
42. Under the circumstances of this case, the decree should have been for only the actual gains and profits during the time when the machine was in operation, and during no other period. *Ib.*

CHARTERS.
See CONSTITUTIONAL LAW.

COLLECTOR.
See CUSTOMS, &c.

COMMERCIAL LAW.
1. Where a note was given in the District of Columbia on the 11th of March, payable sixty days after date, and notice of its non-payment was given to the indorser on the 15th of May, (being Monday,) the notice was not in time. *Adams* v. *Otterback*, 539.
2. Although evidence was given that since 1846, the bank which was the holder of the note, had changed the preëxisting custom, and had held the paper until the fourth day of grace, giving notice to the indorser on Monday, when the note fell due on Sunday. This was not sufficient to establish an usage. *Ib.*
3. An usage, to be binding, must be general, as to place, and not confined to a particular bank, and, in order to be obligatory must have been acquiesced in, and become notorious. *Ib.*

CONSTITUTIONAL LAW.
1. In 1836, the Legislature of Arkansas incorporated a bank, with the usual banking powers of discount, deposit, and circulation, the State being the sole stockholder. *Curran* v. *State of Arkansas*, 304.
2. The bank went into operation, and issued bills in the usual form, but in November, 1839, suspended specie payments. *Ib.*
3. Afterwards, the legislature passed several acts of the following description:
   1843, January, continuing the corporate existence of the bank, and subjecting its affairs to the management of a financial receiver and an attorney, who were directed to cancel certain bonds of the State, held by the bank, for money borrowed by the State, and reduce the State's capital in the bank by an equal amount.
   1843, February, directing the officers to transfer to the State a certain amount of specie, for the purpose of paying the members of the legislature.
   1845, January, requiring the officers to receive the bonds of the State, which had been issued as part of the capital of the bank, in payment for debts due to the bank.
   1845, January, another act, taking away certain specie and par funds for the purpose of paying members of the legislature, and placing other funds to the credit of the State, subject to be drawn out by appropriation.
   1846, vesting in the State all titles to real estate or other property taken by the bank in payment for debts due to it.
   1849, requiring the officers to receive, in payment of debts due to the bank, not only the bonds of the State, which had been issued to constitute the capital of the bank, but those, also, which had been issued to constitute the capital of other banking corporations, which were then insolvent. *Ib.*
4. Upon general principles of law, a creditor of an insolvent corporation can pursue its assets into the hands of all other persons, except *bonâ*

CONSTITUTIONAL LAW—(*Continued.*)

fide creditors or purchasers, and there is nothing in the character of the parties in the present case, or in the laws transferring the property, to make it an exception to the general rule. For the Supreme Court of Arkansas has decided that the State can be sued in this case. *Ib.*

5. The bills of the bank being payable on demand, there was a contract with the holder to pay them; and these laws, which withdrew the assets of the bank into a different channel, impaired the obligation of this contract. *Ib.*
6. Nor does the repeal or modification of the charter of the bank by the legislature prevent this conclusion from being drawn. But in this case the charter of the bank has never been repealed. *Ib.*
7. Besides the contract between the bill-holder and the bank, there was a contract between the bill-holder and the State, which had placed funds in the bank for the purpose of paying its debts, and which had no right to withdraw those funds after the right of a creditor to them had accrued. *Ib.*
8. The State had no right to pass these laws, under the circumstances, either as a creditor of the bank, or as a trustee taking possession of the real estate for the benefit of all the creditors. *Ib.*
9. The several laws examined. *Ib.*
10. The Supreme Court of the State held these laws to be valid, and consequently, the jurisdiction of this court attaches under the 25th section of the judiciary act. *Ib.*
11. The soil under the public navigable waters of East New Jersey belongs to the State and not to the proprietors. This court so decided in the case of *Martin* v. *Waddell*, 16 Pet., 367; and the principle covers a case where land has been reclaimed from the water under an act of the legislature. *Den* v. *Jersey Company*, 426.

CONTRACT.

1. Black, as agent for the owners, contracted to sell a large quantity of land in Maine, which contract was assigned by the vendee, until it came, through mesne assignments, into the hands of Miller and others. *Garrow* v. *Davis*, 272.
2. Payments were made from time to time on account; but at length, in consequence of a failure to make the payments stipulated in the contract, and by virtue of a clause contained in it, the contract became void. *Ib.*
3. In this state of things, Miller employed one Paulk to ascertain from Black the lowest price that he would take for the land, and then to sell to others for the highest price that he could get. *Ib.*
4. Paulk sold and assigned the contract to Davis for $1,050. *Ib.*
5. Upon the theory that Paulk and Davis entered into a fraudulent combination, still, Miller and others are not entitled to demand that a court of equity should consider Davis as a trustee of the lands for their use. They had no interest in them, legal or equitable, nor any thing but a good will, which alone was the subject-matter of the fraud, if there was any. *Ib.*
6. But the evidence shows that this good will did not exist; for Black was not willing to sell to Miller and others for a less price than to any other person. *Ib.*
7. Although Paulk represented himself to be acting for Miller and others, when in reality he was representing Davis, yet he did not obtain the land at a reduced price thereby; but, on the contrary, at its fair market value. *Ib.*
8. The charges of fraud in the bill are denied in the answers, and the evidence is not sufficient to sustain the allegations. *Ib.*
9. The city of New Orleans sold a lot in the city for a certain sum of money, the payment of which was not exacted, but the interest of it, payable quarterly, remained as a ground rent upon the lot. It was further stipulated, that if two of these payments should be in arrear, the city should proceed judicially for the recovery of possession, with damages, and the vendees were to forfeit their title. *Anderson* v. *Bock*, 323.

CONTRACT—(*Continued.*)
10. Six years afterwards, the city conveyed the same lot to another person, who transferred it to an assignee. *Ib.*
11. The title of the first vendee could not be divested without some judicial proceeding, and the dissolution of the contract could not be inferred merely from the fact that the city had made a second conveyance. *Ib.*
12. Therefore, the deed to the second vendee, and from him to his assignee, were not, of themselves, evidence to support the plea of prescription. The city, not having resumed its title in the regular mode, could not transfer either a lawful title or possession to its second vendee. *Ib.*

CUSTOMS, COLLECTORS OF THE.
1. The act of Congress, passed on 2d March, 1799, (1 Stat. at Large, 705,) requires the bond given by a collector of the customs to be approved by the Comptroller of the Treasury. *Broome* v. *United States*, 143.
2. But the date of such approval is not conclusive evidence of the commencement of the period when the bond began to run. On the contrary, it begins to be effective from the moment when the collector and his sureties part with it in the course of transmission. *Ib.*
3. Hence, where the surety upon the bond of a collector in Florida, died upon the 24th of July, and the approval of the comptroller was not written upon the bond until the 31st of July, it was properly left to the jury to ascertain the time when the collector and his sureties parted with the bond to be sent to Washington; and they were instructed that, before they could find a verdict for the surety, they must be satisfied from the evidence that the bond remained in the hands of the collector, or the sureties, until after the 24th of July. *Ib.*
4. Collectors are often disbursing officers; and they and their sureties are responsible for the money which a collector receives from his predecessor in office; and also for money transmitted to him by another contractor upon his representation and requisition that it was necessary to defray the current expenses of his office, and advanced for that purpose. *Ib.*

CUSTOM.
See USAGE.

DEED.
1. The city of New Orleans sold a lot in the city for a certain sum of money, the payment of which was not exacted, but the interest of it, payable quarterly, remained as a ground rent upon the lot. It was further stipulated, that if two of these payments should be in arrear, the city could proceed judicially for the recovery of possession, with damages, and the vendees were to forfeit their title. *Anderson* v. *Bock*, 323.
2. Six years afterwards, the city conveyed the same lot to another person, who transferred it to an assignee. *Ib.*
3. The title of the first vendee could not be divested without some judicial proceeding, and the dissolution of the contract could not be inferred merely from the fact that the city had made a second conveyance. *Ib.*
4. Therefore, the deed to the second vendee, and from him to his assignee, were not, of themselves, evidence to support the plea of prescription. The city, not having resumed its title in the regular mode, could not transfer either a lawful title or possession to its second vendee. *Ib.*

ERROR.
1. Where a case was decided in a State court against a party, who was ordered to convey certain land, and he brought the case up to this court upon the ground that the contract for the conveyance of the land was contrary to the laws of the United States, this is not enough to give jurisdiction to this court under the 25th section of the judiciary act. *Walworth* v. *Kneeland*, 348.
2. The State court decided against him upon the ground that the opposite party was innocent of all design to contravene the laws of the United States. *Ib.*
3. But even if the State court had enforced a contract, which was fraudulent and void, the losing party has no right which he can enforce in this court, which cannot therefore take jurisdiction over the case. *Ib.*

ERROR—(*Continued.*)

4. A person was sued in the Territorial court of Florida. After the admission of Florida as a State, the case was transferred to a State court. The defendant appeared, and pleaded the general issue. The verdict was given against him. He then moved in arrest of judgment, upon the ground that the case ought to have been transferred to the District Court of the United States, instead of a State court. The motion was overruled, and judgment entered up against him. Upon an appeal to the Supreme Court of Florida, this judgment was affirmed. This court has no jurisdiction under the 25th section of the judiciary act, to review that decision. *Carter* v. *Bennett*, 354.
5. What the State court decided, was the motion in arrest of judgment, where the record only is examined, and no new evidence admitted. There was nothing in the pleadings to show that the defendant was a citizen of Georgia, and no defect of jurisdiction was apparent. *Ib.*
6. The defendant might have pleaded in abatement, that he was a citizen of Georgia, but not having done so, it was too late to introduce the matter upon a motion in arrest of judgment. *Ib.*
7. As it does not appear, therefore, that the Supreme Court of the State must have decided adversely to the party now claiming the interposition of this court, and decided so upon the construction of an act of Congress, the writ of error must be dismissed for want of jurisdiction. *Ib.*

EVIDENCE.

1. In a suit brought for an infringement of a patent-right, the defendant ought to be allowed to give in evidence the patent under which he claims, although junior to the plaintiff's patent. *Corning* v. *Burden*, 252.
2. Burden's patent, for "a new and useful machine for rolling puddler's balls and other masses of iron in the manufacture of iron," was a patent for a machine, and not a process, although the language of the claim was equivocal. *Ib.*
3. The difference explained between a process and a machine. *Ib.*
4. Hence, it was erroneous for the Circuit Court to exclude evidence offered to show that the practical manner of giving effect to the principle embodied in the machine of the defendants was different from that of Burden, the plaintiff; that the machine of the defendants produced a different mechanical result from the other; and that the mechanical structure and mechanical action of the two machines were different. *Ib.*
5. Evidence offered as to the opinion of the witness upon the construction of the patent, whether it was for a process or a machine, was properly rejected. *Ib.*
6. A statute of Mississippi, passed in 1846, declares that no record of any judgment recovered in a foreign court against a citizen of that State, shall be received as evidence after the expiration of three years from the time of the rendition of such judgment, without the limits of the State. *Murray* v. *Gibson*, 421.
7. This statute has no application to judgments rendered before its passage. Hence, where it was pleaded as a defence in a suit brought upon a judgment recovered in Louisiana, in 1844, the plea was bad and a demurrer to it sustained. *Ib.*

EXCEPTIONS.

See Bill of Exceptions.

EXECUTION.

1. Three judgments were entered up against a debtor on the same day. One of the creditors issued a *capias ad satisfaciendum* in February, and the other two issued writs of *fieri facias* upon the same day, in the ensuing month of March. Under the *ca. sa.* the defendant was taken and imprisoned, until discharged by due process of law. The plaintiff then obtained leave to issue a *fi. fa.*, which was levied upon the same land previously levied upon. The marshal sold the property under all the writs. The executions of the first *fi. fa.* creditors are entitled to be first satisfied out of the proceeds of sale. *Rockhill* v. *Hanna*, 189.
2. Each creditor having elected a different remedy, is entitled to a precedence in that which he has elected. *Ib.*

EXECUTION—(*Continued.*)
3. Besides, the *ca. sa.* creditor, by imprisoning the debtor, postponed his lien, because it may happen, under certain circumstances, that the judgment is forever extinguished. If these do not happen, his lien is not restored as against creditors who have obtained a precedence during such suspension. *Ib.*
4. A plaintiff in a judgment, having the defendant in execution under a *ca. sa.*, entered into an agreement with him that the plaintiff should, without prejudice to his rights and remedies against the defendant, permit him to be forthwith discharged from custody under the process, and that the defendant should go to the next session of the Circuit Court of the United States, and on the law side of that court make up an issue with the plaintiff, to try the question whether the defendant was possessed of the means, in or out of a certain marriage settlement, of satisfying the judgment against him. *Magniac* v. *Thompson*, 281.
5. The debtor was released; the issue made up; the cause tried in the Circuit Court; brought to this court, and reported in 7 Peters, 348. *Ib.*
6. By suing out the *ca. sa.*, taking the defendant into custody, entering into the arrangement above mentioned, and discharging the defendant from custody, the plaintiff, in all legal intendment, admitted satisfaction of his demand, released the defendant from all liability therefor, and destroyed every effect of his judgment as the foundation of legal rights. *Ib.*
7. In such a state of things, a court of equity will not interfere at the instance of the plaintiff. *Ib.*
8. The allegation of fraud in the marriage contract is not sustained by the evidence; nor was the refusal of the defendant to apply the property which accrued to him upon the death of his wife, to the discharge of the debt, a violation of the agreement under which he was released. *Ib.*
9. The averment in the bill, that the rights of the plaintiff under the judgment remained unimpaired, is incompatible with a right to resort to a court of equity. *Ib.*

FRAUD.
1. Where a widow filed a bill in chancery, complaining that immediately upon the death of her husband, the son of that husband, together with another person, had imposed upon her by false representations, and induced her to part with all her right in her husband's estate for an inadequate price, the evidence in the case did not sustain the allegation. *Eyre et al.* v. *Potter*, 42.
2. It is not alleged to be a case of constructive fraud, arising out of the relative position of the parties towards each other, but of actual fraud. *Ib.*
3. The answers deny the fraud and are made more emphatic by the complainant's having put interrogatories to be answered by the defendants, and the evidence sustains the answers. *Ib.*
4. It will not do to set up mere inadequacy of price as a cause for annulling a contract made by persons competent and willing to contract, and, besides, there were other considerations acting upon the widow to induce her to make the contract. *Ib.*
5. The testimony offered to prove the mental imbecility of the widow, should be received with great caution, and is not sufficient. *Ib.*

INDIAN COUNTRY.
See JURISDICTION.

INTERVENTION.
1. A person cannot intervene here who was no party to the suit in the court below. *United States* v. *Patterson*, 10.

JUDGMENT.
1. A plaintiff in a judgment, having the defendant in execution under a *ca. sa.*, entered into an agreement with him that the plaintiff should, without prejudice to his rights and remedies against the defendant, permit him to be forthwith discharged from custody under the process, and that the defendant should go to the next session of the Circuit Court of the United States, and on the law side of that court make up

JUDGMENT—(*Continued.*)
an issue with the plaintiff, to try the question whether the defendant was possessed of the means, in or out of a certain marriage settlement, of satisfying the judgment against him. *Magniac* v. *Thompson*, 281.
2. The debtor was released; the issue made up; the cause tried in the Circuit Court; brought to this court, and reported in 7 Peters, 348. *Ib.*
3. By suing out the *ca. sa.*, taking the defendant into custody, entering into the arrangement above mentioned, and discharging the defendant from custody, the plaintiff, in all legal intendment, admitted satisfaction of his demand, released the defendant from all liability therefor, and destroyed every effect of his judgment as the foundation of legal rights. *Ib.*
4. In such a state of things, a court of equity will not intefere at the instance of the plaintiff. *Ib.*
5. The allegation of fraud in the marriage contract is not sustained by the evidence; nor was the refusal of the defendant to apply the property which accrued to him upon the death of his wife, to the discharge of the debt, a violation of the agreement under which he was released. *Ib.*
6. The averment in the bill, that the rights of the plaintiff under the judgment remained unimpaired, is incompatible with a right to resort to a court of equity. *Ib.*

JURISDICTION.
1. Where a citizen of New Jersey was sued in a State court in New York, and filed his petition to remove the case into the Circuit Court of the United States, offering a bond with surety, the amount claimed in the declaration being one thousand dollars, it became the duty of the State court to accept the surety, and proceed no further in the cause. *Kanouse* v. *Martin*, 198.
2. Consequently, it was erroneous to allow the plaintiff to amend the record, and reduce his claim to four hundred and ninety-nine dollars. *Ib.*
3. The case having gone on to judgment, and been carried by writ of error to the Superior Court, without the petition for removal into the Circuit Court of the United States, it was the duty of the Superior Court to go behind the technical record, and inquire whether or not the judgment of the court below was erroneous. *Ib.*
4. The defendant was not bound to plead to the jurisdiction of the court below; such a step would have been inconsistent with his right, that all proceedings should cease when his petition for removal was filed. *Ib.*
5. The Superior Court being the highest court to which the case could be carried, a writ of error lies to examine its judgment, under the 25th section of the judiciary act. *Ib.*
6. The Michigan Central Railroad Company, established in Michigan, made an agreement with the New Albany and Salem Railroad Company, established in Indiana, that the former would build and work a road in Indiana, under the charter of the latter. *Northern Indiana Railroad Company* v. *Michigan Central Railroad Company*, 233.
7. Another company, also established in Indiana, called the Northern Indiana Railroad Company, claiming an exclusive right to that part of Indiana, filed a bill in the Circuit Court of the United States for the district of Michigan, against the Michigan Company, praying an injunction to prevent the construction of the road under the above agreement. *Ib.*
8. The Circuit Court had no jurisdiction over such a case. *Ib.*
9. The subject-matter of the controversy lies beyond the limits of the district, and where the process of the court cannot reach the *locus in quo*. *Ib.*
10. Moreover, the rights of the New Albany Company are seriously involved in the controversy, and they are not made parties to the suit. The act of Congress, providing for the non-joinder of parties who are not inhabitants of the district, does not apply to such a case as the present. *Ib.*
11. In 1836, the Legislature of Arkansas incorporated a bank, with the usual banking powers of discount, deposit, and circulation, the State being the sole stockholder. *Curran* v. *State of Arkansas*, 304.

JURISDICTION—(*Continued.*)
12. The bank went into operation, and issued bills in the usual form, but in November, 1839, suspended specie payments. *Ib.*
13. Afterwards the legislature passed several acts of the following description:
    1843, January, continuing the corporate existence of the bank, and subjecting its affairs to the management of a financial receiver and an attorney, who were directed to cancel certain bonds of the State, held by the bank, for money borrowed by the State, and reduce the State's capital in the bank by an equal amount. *Ib.*
    1843, February, directing the officers to transfer to the State a certain amount of specie, for the purpose of paying the members of the legislature. *Ib.*
    1845, January, requiring the officers to receive the bonds of the State, which had been issued as part of the capital of the bank, in payment for debts due to the bank. *Ib.*
    1845, January, another act, taking away certain specie and par funds for the purpose of paying members of the legislature, and placing other funds to the credit of the State, subject to be drawn out by appropriation. *Ib.*
    1846, vesting in the State all titles to real estate or other property taken by the bank in payment for debts due to it. *Ib.*
    1849, requiring the officers to receive, in payment for debts due to the bank, not only the bonds of the State, which had been issued to constitute the capital of the bank, but those, also, which had been issued to constitute the capital of other banking corporations, which were then insolvent. *Ib.*
14. Upon general principles of law, a creditor of an insolvent corporation can pursue its assets into the hands of all other persons, except *bonâ fide* creditors or purchasers, and there is nothing in the character of the parties in the present case, or in the laws transferring the property, to make it an exception to the general rule. For the Supreme Court of Arkansas has decided that the State can be sued in this case. *Ib.*
15. The bills of the bank being payable on demand, there was a contract with the holder to pay them; and these laws, which withdrew the assets of the bank into a different channel, impaired the obligation of this contract. *Ib.*
16. Nor does the repeal or modification of the charter of the bank by the legislature prevent this conclusion from being drawn. But in this case the charter of the bank has never been repealed. *Ib.*
17. Besides the contract between the bill-holder and the bank, there was a contract between the bill-holder and the State, which had placed funds in the bank for the purpose of paying its debts, and which had no right to withdraw those funds after the right of a creditor to them had accrued. *Ib.*
18. The State had no right to pass these laws, under the circumstances, either as a creditor of the bank, or as a trustee taking possession of the real estate for the benefit of all the creditors. *Ib.*
19. The several laws examined. *Ib.*
20. The Supreme Court of the State held these laws to be valid, and consequently, the jurisdiction of this court attaches under the 25th section of the judiciary act. *Ib.*
21. Where a case was decided in a State court against a party, who was ordered to convey certain land, and he brought the case up to this court upon the ground that the contract for the conveyance of the land was contrary to the laws of the United States, this is not enough to give jurisdiction to this court under the 25th section of the judiciary act. *Walworth* v. *Kneeland*, 348.
22. The State court decided against him upon the ground that the opposite party was innocent of all design to contravene the laws of the United States. *Ib.*
23. But even if the State court had enforced a contract, which was fraudu-

JURISDICTION—(*Continued.*)
lent and void, the losing party has no right which he can enforce in this court, which cannot therefore take jurisdiction over the case. *Ib.*
24. Where a contract was made with an attorney for the prosecution of a claim against Mexico for a stipulated proportion of the amount recovered, and services were rendered, the death of the owner of the claim did not dissolve the contract, but the compensation remained a lien upon the money when recovered. *Wylie* v. *Coxe*, 416.
25. A court of equity can exercise jurisdiction over the case if a more adequate remedy can be thus obtained than in a court of law. *Ib.*
26. The want of jurisdiction should have been alleged in the court below, either by plea or answer, if the defendant intended to avail himself of it. It is too late to urge it in an appellate court, unless it appears on the face of the proceedings. *Ib.*
27. A person was sued in the territorial court of Florida. *Carter* v. *Bennett*, 354.
28. After the admission of Florida as a State, the case was transferred to a State court. *Ib.*
29. The defendant appeared, and pleaded the general issue. *Ib.*
30. The verdict was given against him. *Ib.*
31. He then moved in arrest of judgment, upon the ground that the case ought to have been transferred to the District Court of the United States, instead of a State court. *Ib.*
32. The motion was overruled, and judgment entered up against him. *Ib.*
33. Upon an appeal to the Supreme Court of Florida, this judgment was affirmed. *Ib.*
34. This court has no jurisdiction under the 25th section of the judiciary act, to review that decision. *Ib.*
35. What the State court decided was the motion in arrest of judgment, where the record only is examined, and no new evidence admitted. There was nothing in the pleadings to show that the defendant was a citizen of Georgia, and no defect of jurisdiction was apparent. *Ib.*
36. The defendant might have pleaded in abatement, that he was a citizen of Georgia, but not having done so, it was too late to introduce the matter upon a motion in arrest of judgment. *Ib.*
37. As it does not appear, therefore, that the Supreme Court of the State must have decided adversely to the party now claiming the interposition of this court, and decided so upon the construction of an act of Congress, the writ of error must be dismissed for want of jurisdiction. *Ib.*
38. In June, 1884, Congress passed an act, by virtue of which the Circuit Court of the United States for the District of Arkansas, was vested with power to try offences committed within the Indian country. *United States* v. *Dawson*, 467.
39. In July, 1844, it was alleged that a murder was committed in that country. *Ib.*
40. In April, 1845, an indictment was found by the grand jury, in the Circuit Court of the United States for the District of Arkansas, against a person charged with committing the murder. *Ib.*
41. In March, 1851, Congress passed an act erecting nine of the Western counties and the Indian country into a new judicial district, directing the judge to hold two terms there, and giving him jurisdiction of all causes, civil or criminal, except appeals and writs of error, which are cognizable before a Circuit Court of the United States. *Ib.*
42. The residue of the State remained a judicial district to be styled the Eastern District of Arkansas. *Ib.*
43. This act of Congress did not take away the power and jurisdiction of the Circuit Court of the United States for the Eastern District to try the indictment pending. *Ib.*

LANDS—PUBLIC.
1. Two grants of land in the country known as the neutral territory, lying between the Sabine River and the Arroyo Hondo, confirmed, namely,

LANDS, PUBLIC—(*Continued.*)
one for La Nana, granted in 1798, and the other for Los Ormegas granted in 1795. *United States* v. *Davenport's Heirs*, 1.
2. These grants were made by the commandant of the Spanish post of Nacogdoches, who at that time had power to make inchoate grants. *Ib.*
3. In both cases, the grants had defined metes and bounds, and the grantees were placed in possession by a public officer, and exercised many acts of ownership. *Ib.*
4. The evidence of the grants was copies made by the commandant of the post, and also copies made by the land-office in Texas. These copies, under the circumstances, are sufficient. *Ib.*
5. At the date of these grants, it was necessary to obtain the ratification of the civil and military governor before the title became perfected. This not having been done in the present case, the title was imperfect, although the petition alleges that it was perfect, and the District Court had jurisdiction under the acts of 1824 and 1844. *Ib.*
6. But the District Court ought not to have decreed that floats should issue where the United States had sold portions of the land, because these vendees were not made parties to the proceedings. *Ib.*
7. A claimant of a share of the grants spoken of in the preceding case, having failed to produce evidence of the right of his grantor to convey to him, cannot have a decree in his favor. *United States* v. *Patterson*, 10.
8. A person cannot intervene here who was no party to the suit in the District Court. And even if the practice of this court sanctioned such intervention, there is nothing to show his right to do so in this case. *Ib.*
9. The heirs of D'Auterieve claimed a tract of land near the river Mississippi, upon two grounds, viz. 1st, Under a grant to Duvernay, by the Western or Mississippi Company, in 1717, and a purchase from him by D'Auterieve, the ancestor, accompanied by the possession and occupation of the tract from 1717 to 1780: and 2d, Under an order of survey of Unzaga, Governor of the province of Louisiana, in 1772, an actual survey made, and a confirmation thereof by the governor. *United States* v. *D'Auterieve*, 14.
10. With respect to the first ground of title, there is no record of the grant to Duvernay, nor any evidence of its extent. It is therefore without boundaries or location; and, if free from these objections, it would be a perfect title, and therefore not within the jurisdiction of the District Court, under the acts of 1824 and 1844. *Ib.*
11. With respect to the second ground of title, if the proceedings of Unzaga be regarded as a confirmation of the old French grant, then the title would become a complete one, and beyond the jurisdiction of the District Court. *Ib.*
12. If they are regarded as an incipient step in the derivation of a title under the Spanish government, then the survey did not extend to the back lands, which are the property in question, but only included the front upon the river, which was surrendered to the governor in 1780. *Ib.*
13. Neither the upper or lower side line, nor the field notes, justify the opinion that the survey included the back lands. A letter addressed to Unzaga by the surveyor is so ambiguous, that it must be controlled by the field notes and map. *Ib.*
14. The neglect of the parties to set up a claim, from 1780 to 1821, and the acts of the Spanish government, in granting concessions within the limits now claimed, furnish a presumption of the belief of the parties, that the whole property was surrendered in 1780. *Ib.*
15. Under the laws of 1824 and 1844, relating to the confirmation of land titles, where a claimant filed his petition, alleging a patent under the French government of Louisiana, confirmed by Congress, and claiming floats for land which had been sold, within his grant, by the United States to other persons, the mere circumstance, that the court had jurisdiction to decree floats in cases of incomplete titles, did not give it jurisdiction to decree floats in cases of complete titles. *United States* v. *Roselius et al.*, 31.

LANDS, PUBLIC—(*Continued.*)

16. This title having been confirmed by Congress, without any allowance for the sales of lands included within it, the confirmation must be considered as a compromise accepted by the other party who thereby relinquished his claim to floats. *Ib.*
17. If the title be considered as a perfect title, this court has already adjudged (9 Howard, 143) that the District Court had no jurisdiction over such titles. *Ib.*
18. The claimant in this case prayed that the side lines of his tract might be widened by diverging instead of parallel lines; but this court, in this same case, formerly (3 Howard, 693) recognized the validity of a decree of the Supreme Court of Louisiana, which decided that the lines should be parallel, and not divergent. The District Court of the United States ought to have conformed its judgment to this opinion. *Ib.*
19. Moreover, the claimant in this case did not state in his petition what lands had been granted by the United States, nor to whom, nor did he make the grantees parties; all of which ought to have been done before he could have been entitled to floats. *Ib.*
20. Where a party claimed title to a tract of land in Louisiana, under a judicial sale in 1760, and alleged that he and those under whom he claimed, had been in peaceable possession ever since the sale, a case of perfect title is presented which is not within the jurisdiction of the District Court, under the acts of 1824 and 1844. *Ib.*
21. Upon the sufficiency of the evidence to sustain the title, no opinion is expressed. *Ib.*
22. A grant of land in Louisiana, by the French authorities, in 1764, is void. The province was ceded to Spain in 1762. (See 10 Howard, 610.) *United States* v. *Ducros*, 38.
23. In 1793, certain legal proceedings were had before Baron de Carondelet, in his judicial capacity, wherein the property now claimed is described as part of the estate of the grantor of the present claimant. But this did not amount to a confirmation of the title in his political character; and if it did, the title would be a perfect one, and beyond the jurisdiction of the District Court, under the acts of 1824 and 1844. *Ib.*
24. By two acts, passed in 1820 and 1823, Congress granted a lot in the village of Peoria, in the State of Illinois, to each settler who "had not heretofore received a confirmation of claim or donation of any tract of land or village lot from the United States. *Forsyth* v. *Reynolds*, 358.
25. Lands granted to settlers in Michigan, prior to the surrender of the western posts by the British government, and which grants were made out to carry out Jay's treaty in 1794, were not donations so as to exclude a settler in Peoria from the benefit of the two acts of Congress above mentioned. *Ib.*
26. In 1841, Congress passed an act (5 Stat. at Large, 455) declaring that there shall be granted to each State, &c. (Louisiana being one), five hundred thousand acres of land. *Foley* v. *Harrison*, 433.
27. This act did not convey the fee to any lands whatever; but left the land system of the United States in full operation as to regulation of titles, so as to prevent conflicting entries. *Ib.*
28. Hence, where a plaintiff claimed under a patent from the State of Louisiana, and entries only in the United States office; and the defendant claimed under patents from the United States, the title of the latter is the better in a petitory action. *Ib.*
29. The defendant has also the superior equity; because his entries were prior in time to those of the plaintiff, and the decision of a board, consisting of the Secretary of the Treasury, the Attorney-General, and the Commissioner of the Land Office, to whom the matter had been referred by an act of Congress, was in favor of the defendant. *Ib.*
30. The several acts of Congress, passed in relation to claims to land in Missouri, under Spanish concessions, reserved such lands from sale from time to time. But there was an intermission of such legislation from the 29th of May, 1829, to the 9th of July, 1832; and, during this inter-

LANDS, PUBLIC—(*Continued.*)
val, lands so claimed were upon the footing of other public lands, as to sale, entry, and so forth. *Delauriere* v. *Emison*, 525.
31. By an act of the 6th of March, 1820, (3 Stat. at L., 545,) Congress gave a certain amount of land to the State of Missouri, to be selected by the legislature thereof, on or before the 1st of January, 1825; and by another act, passed on the 3d of March, 1831, (4 Stat. at L., 492,) the legislature were authorized to sell this land. *Ib.*
32. Before the 1st of January, 1825, the legislature selected certain lands, which were then claimed under Spanish concessions, and reserved from sale under the acts of Congress first mentioned. *Ib.*
33. In November, 1831, the land so selected was sold by the legislature, in conformity with the act of Congress of the preceding March. *Ib.*
34. This sale having been made in the interval between May, 1829, and July, 1832, conveyed a valid title, although the claimant to the same land was subsequently confirmed in his title by Congress, in 1836. *Ib.*

LEASE.
1. When broken, the lessor must recover possession and regain title by a judicial proceeding. *Anderson* v. *Bock*, 323.

LOUISIANA.
1. McDonogh, a citizen of Louisiana, made a will, in which, after bequeathing certain legacies not involved in the present controversy, he gave, willed, and bequeathed all the rest, residue, and remainder of his property to the corporations of the cities of New Orleans and Baltimore forever, one half to each, for the education of the poor in those cities. *McDonogh's Executors* v. *Murdoch*, 367.
2. The estate was to be converted into real property, and managed by six agents, three to be appointed by each city. *Ib.*
3. No alienation of this general estate was ever to take place, under penalty of forfeiture, when the States of Maryland and Louisiana were to become his residuary devisees for the purpose of educating the poor of those States. *Ib.*
4. Although there is a complexity in the plan by which the testator proposed to effect his purpose, yet his intention is clear to make the cities his legatees; and his directions about the agency are merely subsidiary to the general objects of his will, and whether legal and practicable, or otherwise, can exert no influence over the question of its validity. *Ib.*
5. The city of New Orleans, being a corporation established by law, has a right to receive a legacy for the purpose of exercising the powers which have been granted to it, and amongst these powers and duties is that of establishing public schools for gratuitous education. *Ib.*
6. The civil and English law upon this point compared:
The dispositions of the property in this will are not "substitutions, or *fidei commissa*," which are forbidden by the Louisiana code. *Ib.*
7. The meaning of those terms explained and defined:
The testator was authorized to define the use and destination of his legacy. *Ib.*
8. The conditions annexed to this legacy, the prohibition to alienate or to divide the estate, or to separate in its management the interest of the cities, or their care and control, or to deviate from the testator's scheme, do not invalidate the bequest, because the Louisiana Code provides that "in all dispositions *inter vivos* and *mortis causa*, impossible conditions, those which are contrary to the laws or to morals, are reputed not written." *Ib.*
9. The difference between the civil and common law, upon this point, examined:
The city of Baltimore is entitled and empowered to receive this legacy under the laws of Maryland; and the laws of Louisiana do not forbid it. The article in the code of the latter State, which says that "Donations may be made in favor of a stranger, when the laws of his country do not prohibit similar dispositions in favor of a citizen of this State," does not most probably apply to the citizens or corporations of the

LOUISIANA—(*Continued.*)
States of the Union. Moreover, the laws of Maryland do not prohibit similar dispositions in favor of a citizen of Louisiana. *Ib.*
10. The destination of the legacy to public uses in the city of Baltimore, does not affect the valid operation of the bequest in Louisiana. *Ib.*
11. The cities of New Orleans and Baltimore, having the annuities charged upon their legacies, would be benefited by the invalidity of these legacies. Upon the question of their validity, this court expresses no opinion. But the parties to this suit, viz., the heirs at law, could not claim them. *Ib.*
12. In case of the failure of the devise to the cities, the limitation over to the States of Maryland and Louisiana would have been operative. *Ib.*

MISSISSIPPI.
See Statutes, Construction of.

NEW JERSEY.
1. The soil under the public navigable waters of East New Jersey belongs to the State and not to the proprietors. This court so decided in the case of *Martin* v. *Waddell*, 16 Pet., 367; and the principle covers a case where land has been reclaimed from the water under an act of the legislature. *Den* v. *Jersey Company*, 426.

NEW ORLEANS.
For McDonogh's Will, see "Wills."

PARTNERSHIP.
See Award.

PATENTS FOR LAND.
1. In 1841, Congress passed an act (5 Stat. at L., 455) declaring that there shall be granted to each State, &c., (Louisiana being one,) five hundred thousand acres of land. *Foley* v. *Harrison*, 433.
2. This act did not convey the fee to any lands whatever; but left the land system of the United States in full operation as to regulation of titles, so as to prevent conflicting entries. *Ib.*
3. Hence, where a plaintiff claimed under a patent from the State of Louisiana, and entries only in the United States office; and the defendant claimed under patents from the United States, the title of the latter is the better in a petitory action. *Ib.*
4. The defendant has also the superior equity; because his entries were prior in time to those of the plaintiff, and the decision of a board, consisting of the Secretary of the Treasury, the Attorney-General, and the Commissioner of the Land Office, to whom the matter had been referred by an act of Congress, was in favor of the defendant. *Ib.*

PATENT-RIGHTS.
1. Morse was the first and original inventor of the electro-magnetic telegraph, for which a patent was issued to him in 1840, and reissued in 1848. His invention was prior to that of Steinheil of Munich, or Wheatstone or Davy of England. *O'Reilly et al.* v. *Morse et al.*, 63.
2. Their respective dates compared. *Ib.*
3. But even if one of these European inventors had preceded him for a short time, this circumstance would not have invalidated his patent. A previous discovery in a foreign country does not render a patent void, unless such discovery, or some substantial part of it, had been before patented or described in a printed publication. And these inventions are not shown to have been so. *Ib.*
4. Besides, there is a substantial and essential difference between Morse's and theirs, that of Morse being decidedly superior. *Ib.*
5. An inventor does not lose his right to a patent because he has made inquiries or sought imformation from other persons. If a combination of different elements be used, the inventors may confer with men, as well as consult books, to obtain this various knowledge. *Ib.*
6. There is nothing in the additional specifications in the reissued patent of 1848, inconsistent with those of the patent of 1840. *Ib.*
7. The first seven inventions, set forth in the specifications of his claims, are not subject to exception. The eighth is too broad, and covers too

PATENT-RIGHTS—(*Continued.*)
much ground. It is this: "I do not propose to limit myself to the specific machinery or parts of machinery described in the foregoing specifications and claims; the essence of my invention being the use of the motive power of the electric or galvanic current, which I call electro-magnetism, however developed, for making or printing intelligible characters, signs, or letters, at any distances, being a new application of that power, of which I claim to be the first inventor or discoverer." *Ib.*

8. The case of *Neilson et al.* v. *Harford et al.*, in the English Exchequer Reports, examined; and also the American decisions. The acts of Congress do not justify a claim so extensive. *Ib.*
9. But, although the patent is illegal and void, so far as respects the eighth claim, yet the patentee is within the act of Congress, which gives him a right to disclaim, and thus save the portion to which he is entitled. No disclaimer having been entered before the institution of this suit, the patentee is not entitled to costs. *Ib.*
10. In 1846, Morse obtained a second patent for the local circuits, which was reissued in 1848. It is no objection to this patent, that it was embraced in the eighth claim of the former one, because that eighth claim was void. Nor is it an objection to it, that it was an improvement upon the former patent, because a patentee has a right to improve his own invention. *Ib.*
11. This new patent and its reissue were properly issued. The improvement was new, and not embraced in the former specification. *Ib.*
12. These two patents of 1848, being good, with the exception of the eighth claim, are substantially infringed upon by O'Reilly's telegraph, which uses the same means, both upon the main line and upon the local circuits. *Ib.*
13. The preceding case of O'Reilly and Morse having settled the principles involved in the controversy between them, this court declines to hear an argument upon technical points of pleading in a branch of the case coming from another State. *Smith* v. *Ely*, 137.
14. The case is remanded to the Circuit Court. *Ib.*
15. A machine for planing boards, and reducing them to an equal thickness throughout, which was patented by Norcross, decided not to be an infringement of Woodworth's planing machine, for which a patent was obtained in 1828, reissued in 1845. *Brooks et al.* v. *Fiske*, 212.
16. The operation of both machines explained. *Ib.*
17. In a suit brought for an infringement of a patent-right, the defendant ought to be allowed to give in evidence the patent under which he claims, although junior to the plaintiff's patent. *Corning* v. *Burden*, 252.
18. Burden's patent, for "a new and useful machine for rolling puddler's balls and other masses of iron in the manufacture of iron," was a patent for a machine, and not a process, although the language of the claim was equivocal. *Ib.*
19. The difference explained between a process and a machine. *Ib.*
20. Hence, it was erroneous for the Circuit Court to exclude evidence offered to show that the practical manner of giving effect to the principle embodied in the machine of the defendants was different from that of Burden, the plaintiff; that the machine of the defendants produced a different mechanical result from the other; and that the mechanical structure and mechanical action of the two machines were different. *Ib.*
21. Evidence offered as to the opinion of the witness upon the construction of the patent, whether it was for a process or a machine, was properly rejected. *Ib.*
22. A patent was taken out for making the body of a burden railroad car of sheet iron, the upper part being cylindrical, and the lower part in the form of a frustum of a cone, the under edge of which has a flange secured upon it, to which flange a movable bottom is attached. *Winans* v. *Denmead*, 330.
23. The claim was this: "What I claim as my invention, and desire to secure

PATENT-RIGHTS—(*Continued.*)
by letters-patent, is, making the body of a car for the transportation of coal, &c., in the form of a frustum of a cone, substantially as herein described, whereby the force exerted by the weight of the load presses equally in all directions, and does not tend to change the form thereof, so that every part resists its equal proportion, and by which, also, the lower part is so reduced as to pass down within the truck frame and between the axles, to lower the centre of gravity of the load, without diminishing the capacity of the car, as described. I also claim extending the body of the car below the connecting pieces of the truck frame and the line of draught, by passing the connecting bars of the truck frame and the draught bar, through the body of the car substantially described." *Ib.*

24. This patent was not for merely changing the form of a machine, but by means of such change to introduce and employ other mechanical principles or natural powers, or a new mode of operation, and thus attain a new and useful result. *Ib.*
25. Hence, where, in a suit brought by the patentee against persons who had constructed octagonal and pyramidal cars, the District Judge ruled that the patent was good for conical bodies, but not for rectilinear bodies; this ruling was erroneous. *Ib.*
26. The structure, the mode of operation, and the result attained, were the same in both, and the specification claimed in the patent covered the rectilinear cars. With this explanation of the patent, it should have been left to the jury to decide the question of infringement as a question of fact. *Ib.*
27. Where the assignors of a patent-right were joined with the assignee for a particular locality, in a bill for an injunction to restrain a defendant from the use of the machine patented, and the defendant raised, in this court, and after a final decree, an objection arising from a misjoinder of parties, the objection comes too late. *Livingston* v. *Woodworth*, 546.
28. Moreover, in the present case, the parties consented to the decree under which the account in controversy was adjusted. *Ib.*
29. That consent having been given, however, to a decree by which an account should be taken of gains and profits, according to the prayer of the bill, the defendant was not precluded from objecting to the account upon the ground that it went beyond the order. *Ib.*
30. The report having been recommitted to the master, with instructions to ascertain the amount of profits which might have been realized with due diligence, and the master having framed his report upon the theory of awarding damages, this report, and the order of the court confirming it, were both erroneous. *Ib.*
31. Under the circumstances of this case, the decree should have been for only the actual gains and profits during the time when the machine was in operation and during no other period. *Ib.*

PLANING-MACHINE.

1. A machine for planing boards, and reducing them to an equal thickness throughout, which was patented by Norcross, decided not to be an infringement of Woodworth's planing machine, for which a patent was obtained in 1828, reissued in 1845. *Brooks et al.* v. *Fiske*, 212.
2. The operation of both machines explained. *Ib.*

PLEAS AND PLEADINGS.

1. Where a clerk of a court was sued upon his official bond, and the breach alleged was, that he had surrendered certain goods without taking a bond with good and sufficient securities, and the plea was, that the bond which had been taken was assigned to the plaintiffs, who had brought suit, and received large sums of money in discharge of the bond,—this plea was sufficient, and a demurrer to it was properly overruled. *Bevins* v. *Ramsey*, 179.
2. Where a citizen of New Jersey was sued in a State court in New York, and filed his petition to remove the case into the Circuit Court of the United States, offering a bond with surety, the amount claimed in the

PLEAS AND PLEADINGS—(*Continued.*)
declaration being one thousand dollars, it became the duty of the State court to accept the surety, and proceed no further in the cause. *Kanouse* v. *Martin*, 198.
3. Consequently, it was erroneous to allow the plaintiff to amend the record, and reduce his claim to four hundred and ninety-nine dollars. *Ib.*
4. The case having gone on to judgment, and been carried by writ of error to the Superior Court, without the petition for removal into the Circuit Court of the United States, it was the duty of the Superior Court to go behind the technical record, and inquire whether or not the judgment of the court below was erroneous. *Ib.*
5. The defendant was not bound to plead to the jurisdiction of the court below; such a step would have been inconsistent with his right, that all proceedings should cease when his petition for removal was filed. *Ib.*
6. The Superior Court being the highest court to which the case could be carried, a writ of error lies to examine its judgment, under the 25th section of the judiciary act. *Ib.*
7. Prescription cannot be pleaded, where the assignor of the party who offers to plead it was a lessor, and had not regained possession, by a judicial proceeding, of the property which had been previously leased, *Anderson* v. *Bock*, 323.
8. A statute of Mississippi, passed in 1846, declares that no record of any judgment recovered in a foreign court against a citizen of that State, shall be received as evidence after the expiration of three years from the time of the rendition of such judgment, without the limits of the State. *Murray* v. *Gibson*, 421.
9. This statute has no application to judgments rendered before its passage. Hence, where it was pleaded as a defence in a suit brought upon a judgment recovered in Louisiana, in 1844, the plea was bad and a demurrer to it sustained. *Ib.*

PRACTICE.
See APPEAL AND CHANCERY.
1. The preceding case of O'Reilly and Morse having settled the principles involved in the controversy between them, this court declines to hear an argument upon technical points of pleading in a branch of the case coming from another State. *Smith* v. *Ely*, 137.
2. The case is remanded to the Circuit Court. *Ib.*
3. In order to make a bill of exceptions valid, it must appear by the transcript not only that the instructions were given or refused at the trial, but also that the party who complains of them excepted to them while the jury were at the bar. *Phelps* v. *Mayer*, 160.
4. The bill of exceptions need not be drawn out in form and signed before the jury retire; but it must be taken in open court, and must appear by the certificate of the judge who authenticates it, to have been so taken. *Ib.*
5. Hence, when the verdict was rendered on the 13th December, and on the next day the plaintiff came into court and filed his exception, it is not properly before this court. And no error being assigned or appearing in the other proceedings, the judgment of the Circuit Court must be affirmed, with costs. *Ib.*
6. Three judgments were entered up against a debtor on the same day. *Rockhill* v. *Hanna*, 189.
7. One of the creditors issued a *capias ad satisfaciendum* in February, and the other two issued writs of *fieri facias* upon the same day, in the ensuing month of March. *Ib.*
8. Under the *ca. sa.* the defendant was taken and imprisoned, until discharged by due process of law. The plaintiff then obtained leave to issue a *fi. fa.*, which was levied upon the same land previously levied upon. The marshal sold the property under all the writs. *Ib.*
9. The executions of the first *fi. fa.* creditors are entitled to be first satisfied out of the proceeds of sale. *Ib.*

PRACTICE—(*Continued.*)
10. Each creditor having elected a different remedy, is entitled to a precedence in that which he has elected. *Ib.*
11. Besides, the *ca. sa.* creditor, by imprisoning the debtor, postponed his lien, because it may happen, under certain circumstances, that the judgment is forever extinguished. If these do not happen, his lien is not restored as against creditors who have obtained a precedence during such suspension. *Ib.*
12. The Circuit Court having instructed the jury that, in its opinion, and the written proofs and law of the case, the plea of prescription must prevail, and the written proofs not being in the record, this court cannot test the accuracy of its conclusion. *Anderson* v. *Bock*, 323.
13. Where the assignors of a patent-right were joined with the assignee for a particular locality, in a bill for an injunction to restrain a defendant from the use of the machine patented, and the defendant raised in this court, and after a final decree, an objection arising from a misjoinder of parties, the objection comes too late. *Livingston* v. *Woodworth*, 546.

RAILROADS.
1. A patent was taken out for making the body of a burden railroad car of sheet iron, the upper part being cylindrical, and the lower part in the form of a frustum of a cone, the under edge of which has a flange secured upon it, to which flange a movable bottom is attached. *Winans* v. *Denmead*, 330.
2. The claim was this: "What I claim as my invention, and desire to secure by letters-patent, is, making the body of a car for the transportation of coal, &c., in the form of a frustum of a cone, substantially as herein described, whereby the force exerted by the weight of the load presses equally in all directions, and does not tend to change the form thereof, so that every part resists its equal proportion, and by which, also, the lower part is so reduced as to pass down within the truck frame and between the axles, to lower the centre of gravity of the load, without diminishing the capacity of the car, as described. I also claim extending the body of the car below the connecting pieces of the truck frame and the line of draught, by passing the connecting bars of the truck frame and the draught bar, through the body of the car substantially described." *Ib.*
3. This patent was not for merely changing the form of a machine, but by means of such change to introduce and employ other mechanical principles or natural powers, or a new mode of operation, and thus attain a new and useful result. *Ib.*
4. Hence, where, in a suit brought by the patentee against persons who had constructed octagonal and pyramidal cars, the District Judge ruled that the patent was good for conical bodies, but not for rectilinear bodies; this ruling was erroneous. *Ib.*
5. The structure, the mode of operation, and the result attained, were the same in both, and the specification claimed in the patent covered the rectilinear cars. With this explanation of the patent, it should have been left to the jury to decide the question of infringement as a question of fact. *Ib.*

REMOVAL OF CAUSES.
See JURISDICTION.

STATUTES, CONSTRUCTION OF.
1. A statute of Mississippi, passed in 1846, declares that no record of any judgment recovered in a foreign court against a citizen of that State, shall be received as evidence after the expiration of three years from the time of the rendition of such judgment, without the limits of the State. *Murray* v. *Gibson*, 421.
2. This statute has no application to judgment rendered before its passage. Hence, where it was pleaded as a defence, in a suit brought upon a judgment recovered in Louisiana, in 1844, the plea was bad, and a demurrer to it sustained. *Ib.*

SURETIES.
1. The act of Congress, passed on 2d March, 1799, (1 Stat. at Large, 705,)

SURETIES—(*Continued.*)
requires the bond given by a collector of the customs to be approved by the Comptroller of the Treasury. *Broome* v. *United States*, 143.
2. But the date of such approval is not conclusive evidence of the commencement of the period when the bond began to run. On the contrary, it begins to be effective from the moment when the collector and his sureties part with it in the course of transmission. *Ib.*
3. Hence, where the surety upon the bond of a collector in Florida, died upon the 24th of July, and the approval of the comptroller was not written upon the bond until the 31st of July, it was properly left to the jury to ascertain the time when the collector and his sureties parted with the bond to be sent to Washington; and they were instructed that, before they could find a verdict for the surety, they must be satisfied from the evidence that the bond remained in the hands of the collector, or the sureties, until after the 24th of July. *Ib.*
4. Collectors are often disbursing officers; and they and their sureties are responsible for the money which a collector receives from his predecessor in office; and also for money transmitted to him by another collector upon his representation and requisition that it was necessary to defray the current expenses of his office, and advanced for that purpose. *Ib.*

TELEGRAPH.
See PATENT-RIGHTS.

TREATY.
1. By two acts, passed in 1820 and 1823, Congress granted a lot in the village of Peoria, in the State of Illinois, to each settler who "had not heretofore received a confirmation of claim or donation of any tract of land or village lot from the United States. *Forsyth* v. *Reynolds*, 358.
2. Lands granted to settlers in Michigan, prior to the surrender of the western posts by the British government, and which grants were made out to carry out Jay's treaty in 1794, were not donations so as to exclude a settler in Peoria from the benefit of the two acts of Congress above mentioned. *Ib.*

USAGE.
1. Where a note was given in the District of Columbia on the 11th of March, payable sixty days after date, and notice of its non-payment was given to the indorser on the 15th of May, (being Monday,) the notice was not in time. *Adams* v. *Otterback*, 539.
2. Although evidence was given that since 1846, the bank which was the holder of the note, had changed the preëxisting custom, and had held the paper until the fourth day of grace, giving notice to the indorser on Monday, when the note fell due on Sunday. This was not sufficient to establish an usage. *Ib.*
3. An usage, to be binding, must be general, as to place, and not confined to a particular bank, and, in order to be obligatory, must have been acquiesced in, and become notorious. *Ib.*

VENDOR AND PURCHASER.
See CONTRACT.

WILLS.
1. McDonogh, a citizen of Louisiana, made a will, in which, after bequeathing certain legacies not involved in the present controversy, he gave, willed, and bequeathed all the rest, residue, and remainder of his property to the corporations of the cities of New Orleans and Baltimore forever, one half to each, for the education of the poor in those cities. *McDonogh's Executors* v. *Murdoch*, 367.
2. The estate was to be converted into real property, and managed by six agents, three to be appointed by each city. *Ib.*
3. No alienation of this general estate was ever to take place, under penalty of forfeiture, when the States of Maryland and Louisiana were to become his residuary devisees for the purpose of educating the poor of those States. *Ib.*
4. Although there is a complexity in the plan by which the testator pro-

WILLS—(*Continued.*)
posed to effect his purpose, yet his intention is clear to make the cities his legatees; and his directions about the agency are merely subsidiary to the general objects of his will, and whether legal and practicable, or otherwise, can exert no influence over the question of its validity. *Ib.*

5. The city of New Orleans, being a corporation established by law, has a right to receive a legacy for the purpose of exercising the powers which have been granted to it, and amongst these powers and duties is that of establishing public schools for gratuitous education. *Ib.*
6. The civil and English law upon this point compared:
The dispositions of the property in this will are not "substitutions, or *fidei commissa*," which are forbidden by the Louisiana code. *Ib.*
7. The meaning of those terms explained and defined:
The testator was authorized to define the use and destination of his legacy. *Ib.*
8. The conditions annexed to this legacy, the prohibition to alienate or to divide the estate, or to separate in its management the interest of the cities, or their care and control, or to deviate from the testator's scheme, do not invalidate the bequest, because the Louisiana Code provides that "in all dispositions *inter vivos* and *mortis causa*, impossible conditions, those which are contrary to the laws or to morals, are reputed not written." *Ib.*
9. The difference between civil and common law, upon this point, examined:
The city of Baltimore is entitled and empowered to receive this legacy under the laws of Maryland; and the laws of Louisiana do not forbid it. The article in the code of the latter State, which says that "Donations may be made in favor of a stranger, when the laws of his country do not prohibit similar dispositions in favor of a citizen of this State," does not most probably apply to the citizens or corporations of the States of the Union. Moreover, the laws of Maryland do not prohibit similar dispositions in favor of a citizen of Louisiana. *Ib.*
10. The destination of the legacy to public uses in the city of Baltimore, does not affect the valid operation of the bequest in Louisiana. *Ib.*
11. The cities of New Orleans and Baltimore, having the annuities charged upon their legacies, would be benefited by the invalidity of these legacies. Upon the question of their validity, this court expresses no opinion. But the parties to this suit, viz. the heirs at law, could not claim them. *Ib.*
12. In case of the failure of the devise to the cities, the limitation over to the States of Maryland and Louisiana would have been operative. *Ib.*