INDEX

TO THE

MATTERS CONTAINED IN THIS VOLUME.

The references are to the STAR (*) pages.

ACCOUNTS.

1. There were two trustees of real and personal estate for the benefit of a minor. One of the trustees was also administrator *de bonis non* upon the estate of the father of the minor, and the other trustee was appointed guardian to the minor.
2. When the minor arrived at the proper age, and the accounts came to be settled, the following rules ought to have been applied.
3. The trustees ought not to have been charged with an amount of money, which the administrator trustee had paid himself as commission. That item was allowed by the Orphans' Court, and its correctness cannot be reviewed, collaterally, by another court. *Barney* v. *Saunders et al.*, 535.
4. Nor ought the trustees to have been charged with allowances made to the guardian trustee. The guardian's accounts also were cognizable by the Orphans' Court. Having power under the will to receive a portion of the income, the guardian's receipts were valid to the trustees. *Ib.*
5. The trustees were properly allowed and credited by five per cent. on the principal of the personal estate, and ten per cent. on the income. *Ib.*
6. Under the circumstances of this case, the trustees ought not to have been charged upon the principle of six months' rests and compound interest. *Ib.*
7. The trustees ought to have been charged with all gains, as with those arising from usurious loans, unknown friends, or otherwise. *Ib.*
8. The trustees ought not to have been credited with the amount of a sum of money, deposited with a private banking house, and lost by its failure, so far as related to the capital of the estate, but ought to have been credited for so much of the loss as arose from the deposit of current collections of income. *Ib.*

ADMIRALTY.

1. Where a libel was filed, claiming compensation for injuries sustained by a passenger in a steamboat, proceeding from Sacramento to San Francisco, in California, the case is within the admiralty jurisdiction of the courts of the United States. *Steamboat New World et al.* v. *King*, 469.

AGENTS.

1. A contract is void, as against public policy, and can have no standing in court by which one party stipulates to employ a number of secret agents in order to obtain the passage of a particular law by the legislature of a State, and the other party promises to pay a large sum of money in case the law should pass. *Marshall* v. *Baltimore and Ohio Railroad Company*, 314.
2. It was also void if, when it was made, the parties agreed to conceal from the members of the legislature the fact that the one party was the agent of the other, and was to receive a compensation for his services in case of the passage of the law. *Ib.*
3. And if there was no agreement to that effect, there can be no recovery upon the contract, if in fact the agent did conceal from the members

AGENTS—(*Continued.*)
of the legislature that he was an agent who was to receive compensation for his services in case of the passage of the law. *Ib.*
4. Where there is a special contract between principal and agent, by which the entire compensation is regulated and made contingent, there can be no recovery on a count for *quantum meruit*. *Ib.*
5. The circumstance that a passenger was a "steamboat man," and as such carried gratuitously, does not deprive him of the right of redress enjoyed by other passengers. It was the custom to carry such persons free. *Ib.*
6. The master had power to bind the boat by giving such a free passage. *Steamboat New World et al.* v. *King*, 469.
7. The principle asserted in 14 How., 486, reaffirmed, namely, that "when carriers undertake to convey persons by the agency of steam, public policy and safety require that they should be held to the greatest possible care and diligence. *Ib.*
8. The theory and cases examined relative to the three degrees of negligence, namely, slight, ordinary, and gross. *Ib.*
9. Skill is required for the proper management of the boilers and machinery of a steamboat; and the failure to exert that skill, either because it is not possessed, or from inattention, is gross negligence *Ib.*
10. The 13th section of the act of Congress, passed on the 7th of July, 1838, (5 Stat. at Large, 306,) makes the injurious escape of steam *primâ facie* evidence of negligence; and the owners of the boat, in order to escape from responsibility, must prove that there was no negligence. *Ib.*

APPEAL.
See PRACTICE and CHANCERY.

APPRAISERS.
See DUTIES.

ATTACHMENT.
1. Where the debtor alleged that process of attachment had been laid in his hands as garnishee, attaching the debt which he owed to the creditor in question; and moved the court to stay execution until the rights of the parties could be settled in the State Court which had issued the attachment, and the court refused so to do, this refusal is not the subject of review by this court. The motion was addressed to the discretion of the court below, which will take care that no injustice shall be done to any party. *Early* v. *Rogers et al.*, 599.
2. This court expresses no opinion, at present, upon the point whether an attachment from a State Court can obstruct the collection of a debt by the process of the courts of the United States. *Ib.*

AUTHORITIES, LEGAL.
1. A distinction is to be made between cases which decide the precise point in question and those in which an opinion is expressed upon it incidentally. *Carroll* v. *Lessee of Carroll et al.*, 275.

BANKS.
1. In 1845, the Legislature of Ohio passed a general banking law, the fifty-ninth section of which required the officers to make semiannual dividends, and the sixtieth required them to set off six per cent. of such dividends for the use of the State, which sum or amount so set off should be in lieu of all taxes to which the company, or the stockholders therein, would otherwise be subject.
2. This was a contract fixing the amount of taxation, and not a law prescribing a rule of taxation until changed by the legislature. *State Bank of Ohio* v. *Knoop*, 369.
3. In 1851, an act was passed entitled, "An act to tax banks, and bank and other stocks, the same as property is now taxable by the laws of this State." The operation of this law being to increase the tax, the banks were not bound to pay that increase. *Ib.*
4. A municipal corporation, in which is vested some portion of the administration of the government, may be changed at the will of the legislature. But a bank, where the stock is owned by individuals, is a private corporation. Its charter is a legislative contract, and cannot be changed without its assent. *Ib.*

BANKS—(*Continued.*)
5. The preceding case upon this subject, examined, and the case of the *Providence Bank* v. *Billing*, 4 Peters, 561, explained. *Ib.*

BILLS OF EXCEPTION.
1. It is not necessary that the bill of exceptions should be formally drawn and signed, before the trial is at an end. But the exception must be noted then, and must purport on its face so to have been, although signed afterwards *nunc pro tunc*. *Turner* v. *Yates*, 14.

BONDS.
For Surety Bonds, see SURETIES.

CARRIERS.
1. The circumstances that a passenger was a "steamboat man," and as such carried gratuitously, does not deprive him of the right of redress enjoyed by other passengers. It was the custom to carry such persons free. *Steamboat New World* v. *King*, 469.
2. The master had power to bind the boat by giving such a free passage. *Ib.*
3. The principle asserted in 14 How., 486, reaffirmed, namely, that "when carriers undertake to convey persons by the agency of steam, public policy and safety require that they should be held to the greatest possible care and diligence. *Ib.*
4. The theory and cases examined relative to the three degrees of negligence, namely, slight, ordinary, and gross. *Ib.*
5. Skill is required for the proper management of the boilers and machinery of a steamboat; and the failure to exert that skill, either because it is not possessed, or from inattention, is gross negligence. *Ib.*
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CHANCERY.
1. When a bill in chancery was filed by a legatee against the person who had married the daughter and residuary devisee of the testator, (there having been no administration in the United States upon the estate,) this daughter of her representatives if she were dead, ought to have been made a party defendant. *Lewis* v. *Darling*, 1.
2. But if the complainant appears to be entitled to relief, the court will allow the bill to be amended, and even if it be an appeal, will remand the case for this purpose. *Ib.*
3. Where the will, by construction, shows an intention to charge the real estate with the payment of a legacy, it is not necessary to aver in the bill a deficiency of personal assets. *Ib.*
4. The real estate will be charged with the payment of legacies where a testator gives several legacies, and then, without creating an express trust to pay them, makes a general residuary disposition of the whole estate, blending the realty and personalty together in one fund. This is an exception to the general rule that the personal estate is the first fund for the payment of debts and legacies. *Ib.*
5. Where it appears, by the admissions and proofs, that the defendant has substantially under his control a large property of the testator which he intended to charge with the payment of the legacy in question, the complainant is entitled to relief although the land lies beyond the limits of the State in which the suit is brought. *Ib.*
6. Where a person who was acting as guardian to a minor, but without any legal authority, being indebted to the minor, contracted to purchase real estate for the benefit of his ward, and transferred his own property in part payment therefor, the ward cannot claim to receive from the vendor the amount of property so transferred. *Yerger* v. *Jones*, 30.
7. He can neither complete the purchase by paying the balance of the purchase-money, or set aside the contract and look to his guardian for reimbursement; but in the absence of fraud, he cannot compel the vendor to return such part of the purchase-money as had been paid by the guardian. *Ib.*

CHANCERY—(*Continued.*)

8. Whenever the parties to a suit and the subject in controversy between them are within the regular jurisdiction of a court of equity, the decree of that court is to every intent as binding as would be the judgment of a court of law. *Pennington* v. *Gibson*, 65.
9. Whenever, therefore, an action of debt can be maintained upon a judgment at law for a sum of money awarded by such judgment, the like action can be maintained upon a decree in equity which is for a specific amount; and the records of the two courts are of equal dignity and binding obligation. *Ib.*
10. A declaration was sufficient which averred that "at a general term of the Supreme Court in Equity for the State of New York," &c., &c. Being thus averred to be a court of general jurisdiction, no averment was necessary that the subject-matter in question was within its jurisdiction. And the courts of the United States will take notice of the judicial decisions in the several States, in the same manner as the courts of those States. *Ib.*
11. Where a case in equity was referred to a Master, which came again before the court upon exceptions to the Master's report, the court had a right to change its opinion from that which it had expressed upon the interlocutory order, and to dismiss the bill. All previous interlocutory orders were open for revision. *Fourniquet* v. *Perkins*, 82.
12. The decree of dismissal was right in itself, because it conformed to a decision of this court in a branch of the same case, which decision was given in the interval between the interlocutory order and final decree of the Circuit Court. *Ib.*
13. Where an appeal was taken from a decree in chancery, which decree was made by the court below during the sitting of this court in term time, the appellant is allowed until the next term to file the record; and a motion to dismiss the appeal, made at the present term, before the case has been regularly entered upon the docket, cannot be entertained, nor can a motion to award a *procedendo*. *Stafford* v. *Union Bank of Louisiana*, 135.
14. This court, however, having a knowledge of the case, will express its views upon an important point of practice. *Ib.*
15. Where the appeal is intended to operate as a *supersedeas*, the security given in the appeal bond must be equal to the amount of the decree, as it is in the case of a judgment at common law. *Ib.*
16. The two facts, namely, first that the receiver appointed by the court below had given bond to a large amount, and second, that the persons to whom the property had been hired had given security for its safe keeping and delivery, do not affect the above result. *Ib.*
17. The security must, notwithstanding, be equal to the amount of the decree. *Ib.*
18. A mode of relief suggested. *Ib.*
19. In order to act as a *supersedeas* upon a decree in chancery, the appeal bond must be filed within ten days after the rendition of the decree. In the present case, where the bond was not filed in time, a motion for a *supersedeas* is not sustained by sufficient reasons, and consequently must be overruled. *Adams* v. *Law*, 144.
20. So, also, a motion is overruled to dismiss the appeal, upon the ground that the real parties in the case, were not made parties to the appeal. The error is a mere clerical omission of certain words. *Ib.*
21. A bill of review, in a chancery case, cannot be maintained where the newly discovered evidence, upon which the bill purports to be founded, goes to impeach the character of witnesses examined in the original suit. *Southard et al.* v. *Russell*, 547.
22. Nor can it be maintained where the newly discovered evidence is merely cumulative, and relates to a collateral fact in the issue, not of itself, if admitted, by any means decisive or controlling: such as the question of adequacy of price, when the main question was, whether a deed was a deed of sale or a mortgage. *Ib.*

CHANCERY—(*Continued.*)
23. Where a case is decided by an appellate court, and a mandate is sent down to the court below to carry out the decree, a bill of review will not lie in the court below to correct errors of law alleged on the face of the decree. Resort must be had to the appellate court. *Ib.*
24. Nor will a bill of review lie founded on newly discovered evidence, after the publication or decree below, where a decision has taken place on an appeal, unless the right is reserved in the decree of the appellate court, or permission be given on an application to that court directly for the purpose. *Ib.*

CHURCH, METHODIST EPISCOPAL.
1. In 1844, the Methodist Episcopal Church of the United States, at a General Conference, passed sundry resolutions providing for a distinct, ecclesiastical organization in the slaveholding States, in case the annual conferences of those States should deem the measure expedient. *Smith et al.* v. *Swormstedt et al.*, 288.
2. In 1845, these conferences did deem it expedient and organized a separate ecclesiastical community, under the appellation of the Methodist Episcopal Church South. *Ib.*
3. At this time there existed property, known as the Book Concern, belonging to the General Church, which was the result of the labors and accumulation of all the ministers. *Ib.*
4. Commissioners appointed by the Methodist Episcopal Church South, may file a bill in chancery, in behalf of themselves and those whom they represent, against the trustees of the Book Concern, for a division of the property. *Ib.*
5. The rule is well established that where the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of others; and a bill may also be maintained against a portion of a numerous body of defendants, representing a common interest. *Ib.*
6. The Methodist Church was divided. It was not a case of the secession of a part from the main body. Neither division lost its interest in the common property. *Ib.*
7. The General Conference, of 1844, had the legitimate power thus to divide the church. In 1808, the General Conference was made a representative body, with six restrictive articles upon its powers. But none of these articles deprived it of the power of dividing the church. *Ib.*
8. The sixth restrictive article provided that the General Conference should not appropriate the profits of the Book Concern to any other purpose than for the benefit of the travelling ministers, their widows, &c.; and one of the resolutions of 1844 recommended to all the annual conferences to authorize a change in the sixth restrictive article. This was not imposed as a condition of separation, but merely a plan to enable the General Conference itself to carry out its purposes. *Ib.*
9. The separation of the church into two parts being legally accomplished, a division of the joint property by a court of equity follows, as a matter of course. *Ib.*

COMMERCIAL LAW.
1. A bond, with sureties, was executed for the purpose of securing the repayment of certain money advanced for putting up and shipping bacon. William Turner was to have the management of the affair, and Harvy Turner was to be his agent. *Turner* v. *Yates*, 14.
2. After the money was advanced, Harvy made a consignment of meat, and drew upon it. Whether or not this draft was drawn specially against this consignment was a point which was properly decided by the court from an interpretation of the written papers in the case. *Ib.*
3. It was also correct to instruct the jury that if they believed, from the evidence, that Harvy was acting in this instance either upon his own account, or as the agent of William, then the special draft drawn upon the consignment was first to be met out of the proceeds of sale, and the

COMMERCIAL LAW—(*Continued.*)
sureties upon the bond to be credited only with their proportion of the residue. *Ib.*
4. The consignor had a right to draw upon the consignment with the consent of the consignee, unless restrained by some contract with the sureties, of which there was no evidence. On the contrary there was evidence that Harvy was the agent of William, to draw upon this consignment as well as for other purposes. *Ib.*
5. It was not improper for the court to instruct the jury that they might find Harvy to have been either a principal or an agent of William. *Ib.*
6. An agreement by the respective counsel to produce upon notice at the trial table any papers which may be in his possession did not include the invoice of the consignment, because the presumption was, that it had been sent to London, to those to whom the boxes had been sent by their agent in this country. *Ib.*
7. A correspondence between the plaintiff and Harvy, offered to show that Harvy was acting in this matter as principal, was properly allowed to go to the jury. *Ib.*

CONSTITUTIONAL LAW.
1. In the war with Mexico, the port of San Francisco was conquered by the arms of the United States, in the year 1846, and shortly afterwards the United States had military possession of all of Upper California. Early in 1847 the President of the United States, as constitutional commander-in-chief of the army and navy, authorized the military and naval commanders of the United States forces in California to exercise the belligerent rights of a conqueror, and to form a civil and military government for the conquered territory, with power to impose duties on imports and tonnage for the support of such government, and of the army, which had the conquest in possession. *Cross* v. *Harrison*, 164.
2. This was done, and tonnage and import duties were levied under a war tariff, which had been established by the civil government for that purpose, until official notice was received by the civil and military Governor of California, that a treaty of peace had been made with Mexico, by which Upper California had been ceded to the United States. *Ib.*
3. Upon receiving this intelligence the governor directed that import and tonnage duties should thereafter be levied in conformity with such as were to be paid in the other parts of the United States, by the acts of Congress; and for such purpose he appointed the defendant in this suit, collector of the port of San Francisco. *Ib.*
4. The plaintiffs now seek to recover from him certain tonnage duties and imposts upon foreign merchandise paid by them to the defendant as collector between the 3d of February, 1848, (the date of the treaty of peace,) and the 13th of November, 1849, (when the collector appointed by the President, according to law, entered upon the duties of his office,) upon the ground that they had been illegally exacted. *Ib.*
5. The formation of the civil government in California, when it was done, was the lawful exercise of a belligerent right over a conquered territory. It was the existing government when the territory was ceded to the United States, as a conquest, and did not cease as a matter of course, or as a consequence of the restoration of peace; and it was rightfully continued after peace was made with Mexico, until Congress legislated otherwise, under its constitutional power, to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. *Ib.*
6. The tonnage duties, and duties upon foreign goods imported into San Francisco, were legally demanded and lawfully collected by the civil governor, whilst the war continued, and afterwards, from the ratification of the treaty of peace until the revenue system of the United States was put into practical operation in California, under the acts of Congress, passed for that purpose. *Ib.*
7. The constitutional privilege which a citizen of one State has to sue the citizens of another State in the federal courts cannot be taken away by

CONSTITUTIONAL LAW—(*Continued.*)
the erection of the latter into a corporation by the laws of the State in which they live. The corporation itself may, therefore, be sued as such. *Marshall* v. *Baltimore and Ohio Railroad Co.*, 314.

CONTRACTS.

1. Where a contract was made to obtain a certain law from the legislature of Virginia, and stated to be made on the basis of a prior communication, this communication is competent evidence in a suit upon the contract. *Marshall* v. *Baltimore and Ohio Railroad Co.*, 314.
2. A contract is void, as against public policy, and can have no standing in court by which one party stipulates to employ a number of secret agents in order to obtain the passage of a particular law by the legislature of a State, and the other party promises to pay a large sum of money in case the law should pass. *Ib.*
3. It was also void if, when it was made, the parties agreed to conceal from the members of the legislature the fact that the one party was the agent of the other, and was to receive a compensation for his services in case of the passage of the law. *Ib.*
4. And if there was no agreement to that effect, there can be no recovery upon the contract, if in fact the agent did conceal from the members of the legislature that he was an agent who was to receive compensation for his services in case of the passage of the law. *Ib.*
5. Moreover, in this particular case, the law which was passed was not such a one as was stipulated for, and upon this ground there could be no recovery. *Ib.*
6. There having been a special contract between the parties by which the entire compensation was regulated and made contingent, there could be no recovery on a count for *quantum meruit*. *Ib.*
7. In 1845, the Legislature of Ohio passed a general banking law, the fifty-ninth section of which required the officers to make semiannual dividends, and the sixtieth required them to set off six per cent. of such dividends for the use of the State, which sum or amount so set off should be in lieu of all taxes to which the company, or the stockholders therein, would otherwise be subject. *Ib.*
8. This was a contract fixing the amount of taxation, and not a law prescribing a rule of taxation until changed by the legislature. *State Bank of Ohio* v. *Knoop*, 369.
9. In 1851, an act was passed entitled, "An act to tax banks, and bank and other stocks, the same as property is now taxable by the laws of this State." The operation of this law being to increase the tax, the banks were not bound to pay that increase. *Ib.*
10. A municipal corporation, in which is vested some portion of the administration of the government, may be changed at the will of the legislature. But a bank, where the stock is owned by individuals, is a private corporation. Its charter is a legislative contract, and cannot be changed without its assent. *Ib.*
11. The preceding case upon this subject, examined, and the case of the *Providence Bank* v. *Billing*, 4 Pet., 561, explained. *Ib.*
12. In 1838, the Legislature of the Territory of Iowa authorized Fanning, his heirs and assigns, to establish and keep a ferry across the Mississippi river, at the town of Dubuque, for the term of twenty years; and enacted further, that no court or board of county commissioners should authorize any person to keep a ferry within the limits of the town of Dubuque. *Ib.*
13. In 1840, Fanning was authorized to keep a horse ferry-boat instead of a steamboat.
14. In 1847, the General Assembly of the State of Iowa passed an act to incorporate the city of Dubuque, the fifteenth section of which enacted that the "city council shall have power to license and establish ferries across the Mississippi river, from said city to the opposite shore, and to fix the rates of the same. *Ib.*
15. In 1851, the mayor of Dubuque, acting by the authority of the city

CONTRACTS—(*Continued.*)
council, granted a license to Gregoire (whose agent Bogg was) to keep a ferry for six years from the 1st of April, 1852, upon certain payments and conditions. *Ib.*
16. The right granted to Fanning was not exclusive of such a license as this. The prohibition to license another ferry did not extend to the legislature, nor to the city council, to whom the legislature had delegated its power. *Fanning* v. *Gregoire et al.*, 524.
17. Nor was it necessary for the city council to act by an ordinance in the case. Corporations can make contracts through their agent without the formalities which the old rules of law required. *Ib.*

CORPORATION.
See TAXES; also CHURCH, METHODIST EPISCOPAL.
1. A citizen of Virginia may sue the Baltimore and Ohio Railroad Company in the Circuit Court of the United States for Maryland, and an averment that the defendants are a body corporate, created by the Legislature of Maryland, is sufficient to give the court jurisdiction. *Marshall* v. *Baltimore and Ohio Railroad Company*, 314.
2. The constitutional privilege which a citizen of one State has to sue the citizens of another State in the federal courts cannot be taken away by the erection of the latter into a corporation by the laws of the State in which they live. The corporation itself may, therefore, be sued as such. *Ib.*
3. In 1838, the Legislature of the Territory of Iowa authorized Fanning, his heirs and assigns, to establish and keep a ferry across the Mississippi river, at the town of Dubuque, for the term of twenty years; and enacted further, that no court or board of county commissioners should authorize any person to keep a ferry within the limits of the town of Dubuque. *Ib.*
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8. Nor was it necessary for the city council to act by an ordinance in the case. Corporations can make contracts through their agents without the formalities which the old rules of law required. *Ib.*

COSTS.
1. Where a judgment in a patent case was affirmed by this court with a blank in the record for costs, and the Circuit Court afterwards taxed these costs at a sum less than two thousand dollars, and allowed a writ of error to this court, this writ must be dismissed on motion. *Sizer* v. *Many*, 98.
2. The writ of error brings up only the proceedings subsequent to the mandate; and there is no jurisdiction where the amount is less than two thousand dollars, either under the general law or the discretion allowed by the patent law. The latter only relates to cases which involve the construction of the patent laws and the claims and rights of patentees under them. *Ib.*
3. As a matter of practice this court decides, that it is proper for circuit courts to allow costs to be taxed, *nunc pro tunc*, after the receipt of the mandate from this court. *Ib.*

COVENANT.

1. Where a lease was made by several owners of a house, reserving rent to each one in proportion to his interest, and there was a covenant on the part of the lessee that he would keep the premises in good repair and surrender them in like repair, this covenant was joint as respects the lessors, and one of them (or two representing one interest) cannot maintain an action for the breach of it by the lessee. *Calvert et al.* v. *Bradley et al.*, 580.
2. The question examined, whether a mortgagee of a leasehold interest, remaining out of possession, is liable upon the covenants of the lease. The English and American cases reviewed and compared with the decisions of this court upon kindred points. But the court abstains from an express decision, which is rendered unnecessary by the application of the principle first above mentioned to the case in hand. *Ib.*

CUSTOMS.

See Duties.

DAMAGES.

1. In 1834, McCormick obtained a patent for a reaping machine. This patent expired in 1848.
2. In 1845, he obtained a patent for an improvement upon his patented machine; and in 1847, another patent for new and useful improvements in the reaping machine. The principal one of these last was in giving to the raker of the grain a convenient seat upon the machine.
3. In a suit for a violation of the patent of 1847, it was erroneous in the Circuit Court to say that the defendant was responsible in damages to the same extent as if he had pirated the whole machine. *Seymour et al.* v. *McCormick*, 480.
4. It was also erroneous to lay down as a rule for the measure of damages, the amount of profits which the patentee would have made, if he had constructed and sold each one of the machines which the defendants constructed and sold. There was no evidence to show that the patentee could have constructed and sold any more than he actually did. *Ib.*
5. The acts of Congress and the rules for measuring damages, examined and explained. *Ib.*

DEEDS, CONSTRUCTION OF.

1. On 6th November, 1836, W. F. Hamilton, William V. Robinson, and wife, by deed conveyed to the United States "the right and privilege to use, divert, and carry away from the fountain spring, by which the woollen factory of the said Hamilton & Robinson is now supplied, so much water as will pass through a pipe or tube of equal diameter with one that shall convey the water from the said spring, upon the same level therewith, to the factory of the said grantors, and to proceed from a common cistern or head to be erected by the said United States, and to convey and conduct the same, by tubes or pipes, through the premises of the said grantors in a direct line, &c. &c.
2. The distance to which the United States wished to carry their share of the water being much greater than that of the other party, it was necessary, according to the principles of hydraulics, to lay down pipes of a larger bore than those of the other party, in order to obtain one half of the water.
3. The grantors were present when the pipes were laid down in this way, and made no objection. It will not do for an assignee, whose deed recognizes the title of the United States to one half of the water, now to disturb the arrangement. *Irwin* v. *United States*, 513.
4. Under the circumstances, the construction to be given to the deed is, that the United States purchased a right to one half of the water, and had a right to lay down such pipes as were necessary to secure that object. *Ib.*

DEVISES.

See Wills.

DUTIES, CUSTOM HOUSE.

1. The twentieth section of the Tariff Act of 1842 provides, that on all articles manufactured from two or more materials, the duty shall be

DUTIES, CUSTOM HOUSE—(*Continued.*)
assessed at the highest rates at which any of its component parts may be chargeable. (5 Stat. at L., 556.) *Stuart* v. *Maxwell*, 150.
2. This section was not repealed by the general clause in the Tariff Act of 1846, by which all acts, and parts of acts, repugnant to the provisions of that act, (1846,) were repealed. *Ib.*
3. Consequently, where goods were entered as being manufactures of linen and cotton, it was proper to impose upon them a duty of twenty-five per cent. *ad valorem*, such being the duty imposed upon cotton articles, in Schedule D, by the Tariff Act of 1846. (9 Stat. at L., 46.) *Ib.*
4. In the war with Mexico, the port of San Francisco was conquered by the arms of the United States, in the year 1846, and shortly afterwards the United States had military possession of all of Upper California. Early in 1847 the President of the United States, as constitutional commander-in-chief of the army and navy, authorized the military and naval commanders of the United States forces in California to exercise the belligerent rights of a conqueror, and to form a civil and military government for the conquered territory, with power to impose duties on imports and tonnage for the support of such government, and of the army, which had the conquest in possession. *Cross* v. *Harrison*, 164.
5. This was done, and tonnage and import duties were levied under a war tariff, which had been established by the civil government for that purpose, until official notice was received by the civil and military Governor of California, that a treaty of peace had been made with Mexico, by which Upper California had been ceded to the United States. *Ib.*
6. Upon receiving this intelligence the governor directed that import and tonnage duties should thereafter be levied in conformity with such as were to be paid in the other parts of the United States, by the acts of Congress; and for such purpose he appointed the defendant in this suit, collector of the port of San Francisco. *Ib.*
7. The plaintiffs now seek to recover from him certain tonnage duties and imposts upon foreign merchandise paid by them to the defendant as collector between the 3d of February, 1848, (the date of the treaty of peace,) and the 13th of November, 1849, (when the collector appointed by the President, according to law, entered upon the duties of his office,) upon the ground that they had been illegally exacted. *Ib.*
8. The formation of the civil government in California, when it was done, was the lawful exercise of a belligerent right over a conquered territory. It was the existing government when the territory was ceded to the United States, as a conquest, and did not cease as a matter of course, or as a consequence of the restoration of peace; and it was rightfully continued after peace was made with Mexico, until Congress legislated otherwise, under its constitutional power, to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. *Ib.*
9. The tonnage duties, and duties upon foreign goods imported into San Francisco, were legally demanded and lawfully collected by the civil governor, whilst the war continued, and afterwards, from the ratification of the treaty of peace until the revenue system of the United States was put into practical operation in California, under the acts of Congress, passed for that purpose. *Ib.*
10. By the Tariff Act of 1846, a duty of thirty per cent. *ad valorem* is imposed upon articles included within schedule C; amongst which are "clothing ready made and wearing apparel of every description; of whatever material composed, made up, or manufactured, wholly or in part by the tailor, sempstress, or manufacturer." *Maillard et al.* v. *Lawrence*, 251.
11. By schedule D a duty of twenty-five per cent. only is imposed on manufactures of silk, or of which silk shall be a component material, not otherwise provided for; manufactures of worsted, or of which worsted is a component material not otherwise provided for. *Ib.*

DUTIES, CUSTOM HOUSE—(*Continued.*)

12. Shawls, whether worsted shawls, worsted and cotton shawls, silk and worsted shawls, barage shawls, merino shawls, silk shawls, worsted scarfs, silk scarfs, and mouseline de laine shawls, are wearing apparel, and therefore subject to a duty of thirty per cent. under schedule C. *Ib.*
13. The popular or received import of words furnishes the general rule for the interpretation of public laws as well as of private and social transactions. *Ib.*
14. By the Tariff Act of 1842, the custom-house appraisers are directed to ascertain, estimate and appraise, by all reasonable ways and means in their power, the true and actual market value of goods, &c., and have power to require the production, on oath, of all letters, accounts, or invoices relating to the same. If the importer shall be dissatisfied with the appraisement, he may appeal to two merchant appraisers. *Bartlett* v. *Kane*, 263.
15. Where there was an importation of Peruvian bark, and the appraisers directed a chemical examination to be made of the quantity of quinine which it contained, although the rule may have been inaccurate, yet it did not destroy the validity of the appraisement. *Ib.*
16. The importer having appealed, and the appraisers having then called for copies of letters, &c., the importer withdrew his appeal without complying with the requisition. The appraisement then stands good. *Ib.*
17. The appraisers having reported the value of the goods to be more than ten per cent. above that declared in the invoice, the collector assessed an additional duty of twenty per cent. under the eighth section of the act of 1846, (9 Stat. at L., 43). This additional duty was not entitled to be refunded, as drawback, upon reëxportation. *Ib.*

EJECTMENT.

1. Where a grant issued in 1722, by the French authorities of Louisiana, cannot be located by metes and bounds, it cannot serve as a title in an action of ejectment; and it was proper for the Circuit Court to instruct the jury to this effect. *Denise et al.* v. *Ruggles*, 242.

EQUITY.

See CHANCERY.

ERROR.

See WRIT OF ERROR.

EVIDENCE.

1. The testimony of an attorney was admissible, reciting conversations between himself and the attorney of the other parties in their presence, which declarations of the attorney were binding on the last mentioned parties. *Turner* v. *Yates*, 14.
2. Evidence was admissible to show that a charge of one per cent. upon the advance made upon the consignment, was a proper charge according to the usage and custom of the place. *Ib.*
3. In 11 How., 480, it is said, "Where a witness was examined for the plaintiff, and the defendant offered in evidence declarations which he had made of a contradictory character, and then the plaintiff offered to give in evidence others, affirmatory of the first, these last affirmatory declarations were not admissible, being made at a time posterior to that at which he made the contradictory declarations given in evidence by the defendant." *Conrad* v. *Griffey*, 38.
4. The case having been remanded to the Circuit Court under a *venire facias de novo*, the plaintiff gave in evidence, upon the new trial, the deposition taken under a recent commission, of the same witness whose deposition was the subject of the former examination, when the defendant offered to give in evidence the same affirmatory declarations which upon the former trial were offered as rebutting evidence by the plaintiff. *Ib.*
5. The object of the defendant being to discredit and contradict the deposition of the witness taken under the recent commission, the evidence was not admissible. He should have been interrogated respecting the statements, when he was examined under the commission. *Ib.*

EVIDENCE—(*Continued.*)

6. If his declarations had been made subsequent to the commission, a new commission should have been sued out, whether his declarations had been written or verbal. *Ib.*
7. Evidence that the name of the tract of land, conveyed by a deed, was the same with the name given in an early patent; that it had long been held by the persons under whom the party claimed; and that there was no proof of any adverse claim, was sufficient to warrant the jury in finding that the land mentioned in the deed was the same with that mentioned in the patent. *Carroll* v. *Lessee of Carroll et al.*, 275.
8. Where a contract was made to obtain a certain law from the legislature of Virginia, and stated to be made on the basis of a prior communication, this communication is competent evidence in a suit upon the contract. *Marshall* v. *Baltimore and Ohio Railroad Company*, 314.
9. In 1812, Congress passed an act (2 Stat. at L., 748) entitled "An act making further provision for settling the claims to land in the territory of Missouri." It confirmed the titles to town or village lots, out lots, &c., in several towns and villages, and amongst them the town of Carondelet, where they had been inhabited, cultivated, or possessed, prior to the twentieth day of December, 1803. *Ib.*
10. In 1824, Congress passed another act, (4 Stat. at L., 65,) supplementary to the above, the first section of which made it the duty of the individual owners or claimants, whose lots were confirmed by the act of 1812, to proceed within 18 months to designate their lots by proving cultivation, boundaries, &c., before the recorder of land titles. The third section made it the duty of this officer to issue a certificate of confirmation for each claim confirmed, and furnish the surveyor-general with a list of the lots so confirmed. *Ib.*
11. This list was furnished in 1827. *Ib.*
12. Afterwards, in 1839, another recorder gave a certificate of confirmation; an extract from the registry showing that this second recorder entered the certificate in 1839; and an extract from the additional list of claims, which addition was that of a single claim, being the same as above. *Ib.*
13. These three papers were not admissible as evidence in an ejectment brought by the owners of this claim. The time had elapsed within which the recorder could confirm a claim. *Gamache et al.* v. *Piquignot et al.*, 451.
14. The thirteenth section of the act of Congress passed on the 7th of July, 1838, (5 Stat. at L., 306,) makes the injurious escape of steam *primâ facie* evidence of negligence, and the owners of the boat upon which such injurious escape occurs, to avoid responsibility, must prove that there was no negligence. *Steamboat New World et al.* v. *King*, 469.
15. Where an act of Congress confirmed the titles or claims to certain lots which had been inhabited, cultivated, or possessed prior to a certain day; and a subsequent act of Congress made it the duty of claimants of such lots to designate them by proving before the recorder the fact of inhabitation, the boundaries, &c., and directed the recorder to issue certificates thereof;
16. Held, that as no forfeiture was imposed for non-compliance, and as the government did not by the latter act impair the effect or operation of the former, claimants might still establish, by parol evidence the facts of inhabitation, &c. *Guitard et al.* v. *Stoddard*, 494.
17. A bill of review, in a chancery case, cannot be maintained where the newly discovered evidence, upon which the bill purports to be founded, goes to impeach the character of witnesses examined in the original suit. *Southard et al.* v. *Russell*, 547.
18. Nor can it be maintained where the newly discovered evidence is merely cumulative, and relates to a collateral fact in the issue, not of itself, if admitted, by any means decisive or controlling: such as the question of adequacy of price, when the main question was, whether a deed was a deed of sale or mortgaged. *Ib.*
19. Nor will a bill of review lie founded on newly discovered evidence, after

EVIDENCE—(*Continued.*)
the publication or decree below, where a decision has taken place on an appeal, unless the right is reserved in the decree of the appellate court, or permission be given on an application to that court directly for the purpose. *Ib.*

EXECUTION.
1. By the laws of Alabama, where property is taken in execution, if the sheriff does not make the money, the plaintiff is allowed to suggest to the court that the money might have been made with due diligence, and thereupon the court is directed to frame an issue in order to try the fact. *Chapman* v. *Smith*, 114.
2. In a suit upon a sheriff's bond, where the plea was that this proceeding had been resorted to by the plaintiff and a verdict found for the sheriff, a replication to this plea alleging that the property in question in that trial was not the same property mentioned in the breach assigned in the declaration, was a bad replication and demurrable. *Ib.*
3. Where the sheriff pleaded that the property which he had taken in execution, was not the property of the defendant, against whom he had process, and the plaintiff demurred to this plea, the demurrer was properly overruled. *Ib.*
4. The original judgment having omitted to name interest, and this court having affirmed the judgment as it stood, it was proper for the court below to issue an execution for the amount of the judgment and costs, leaving out interest. *Early* v. *Rogers et al.*, 599.

GUARDIAN.
1. Where a person who was acting as guardian to a minor, but without any legal authority, being indebted to the minor, contracted to purchase real estate for the benefit of his ward, and transferred his own property in part payment therefor, the ward cannot claim to receive from the vendor the amount of property so transferred. *Yerger* v. *Jones*, 10.
2. He can either complete the purchase by paying the balance of the purchase-money, or set aside the contract and look to his guardian for reimbursement; but in the absence of fraud, he cannot compel the vendor to return such part of the purchase-money as had been paid by the guardian. *Ib.*

INJUNCTION.
1. Where a complainant filed a bill on the equity side of the Circuit Court, for an injunction to prevent the sale of slaves which had been taken in execution as the property of another person, and the evidence showed that they were the property of the complainant, the Circuit Court was directed to make the injunction perpetual. *Amis et al.* v. *Myers*, 492.

JUDGMENT.
1. Whenever the parties to a suit and the subject in controversy between them are within the regular jurisdiction of a court of equity, the decree of that court is to every intent as binding as would be the judgment of a court of law. *Pennington* v. *Gibson*, 65.
2. Whenever, therefore, an action of debt can be maintained upon a judgment at law for a sum of money awarded by such judgment, the like action can be maintained upon a decree in equity which is for a specific amount; and the records of the two courts are of equal dignity and binding obligation. *Ib.*
3. The lessee of the plaintiffs having claimed, in the declaration, a term of fifteen years in three undivided fourth parts of the land, and the judgment being that the lessee do recover his term aforesaid yet to come and unexpired, this judgment was correct. *Carroll* v. *Lessee of Carroll et al.*, 275.
4. Where a controverted case was, by agreement of the parties, entered settled, and the terms of settlement were that the debtor should pay by a limited day, and the creditor agreed to receive a less sum than that for which he had obtained a judgment; and the debtor failed to pay on the day limited, the original judgment became revived in full force. *Early* v. *Rogers et al.*, 599.

JUDGMENT—(*Continued.*)
5. The original judgment having omitted to name interest, and this court having affirmed the judgment as it stood, it was proper for the court below to issue an execution for the amount of the judgment and costs, leaving out interest. *Ib.*

JURISDICTION.
1. Where it appears by the admission and proofs that the defendant has substantially under his control a large property of the testator which he intended to charge with the payment of the legacy in question, the complainant is entitled to redress, although the land lies beyond the limits of the State in which the suit is brought. *Lewis* v. *Darling*, 1.
2. No equitable and inchoate title to land in Missouri, arising under the treaty with France can be tried in the State Court. *Burgess* v. *Gray*, 48.
3. Under the twenty-second section of the Judiciary Act of 1789, this court cannot reverse the judgment of the court below, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court. *Piquignot* v. *Pennsylvania Railroad Company*, 104.
4. In Pennsylvania it is not usual to make a record of the judgment in any legal form. But there is no necessity that the courts of the United States should follow such careless precedents. *Ib.*
5. Where a suit was brought in which the plaintiff was described as a citizen of France, against the Pennsylvania Railroad Company, without any averment that the defendants were a corporation under the laws of Pennsylvania, or that the place of business of the corporation was there, or that its corporators, managers, or directors were citizens of Pennsylvania, the absence of such an averment was fatal to the jurisdiction of the court. *Ib.*
6. In the State of Mississippi, a judgment of forfeiture was rendered against the Commercial Bank of Natchez, and a trustee appointed to take charge of all promissory notes in possession of the bank. *Robertson* v. *Coulter*, 106.
7. The trustee brought an action upon one of these promissory notes. *Ib.*
8. The defendant pleaded that the plaintiff, as trustee, had collected and received of the debts, effects, and property of the bank, an amount of money sufficient to pay the debts of the bank, and all costs, charges, and expenses incident to the performance of the trust. *Ib.*
9. To this plea the plaintiff demurred. *Ib.*
10. The action was brought in a State Court, and the highest court of the State overruled the demurrer, and gave judgment for the defendant. *Ib.*
11. This court has no jurisdiction under the twenty-fifth section of the Judiciary Act to review this decision. The question was merely one of construction of a statute of the State, as to the extent of the powers of the trustee under the statute. *Ib.*
12. A citizen of Virginia may sue the Baltimore and Ohio Railroad Company in the Circuit Court of the United States for Maryland, and an averment that the defendants are a body corporate, created by the Legislature of Maryland, is sufficient to give the court jurisdiction. *Marshall* v. *Baltimore and Ohio Railroad Company*, 314.
13. Where a libel was filed, claiming compensation for injuries sustained by a passenger in a steamboat, proceeding from Sacramento to San Francisco, in California, the case is within the admiralty jurisdiction of the courts of the United States. *Steamboat New World et al.* v. *King*, 469.
14. Upon an appeal from the District Court of the United States for the Northern District of California, where it did not appear, from the proceedings, whether the land claimed was within the Northern or Southern District, this court will reverse the judgment of the District Court and remand the case for the purpose of making its jurisdiction apparent, (if it should have any,) and of correcting any other matter of form or substance which may be necessary. *Cervantes* v. *United States*, 619.
15. The eleventh section of the Judiciary Act of 1789, says, "nor shall any

JURISDICTION—(*Continued.*)
District or Circuit Court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange." *Ib.*
16. This clause has no application to the case of a suit by the assignee of a chose in action to recover possession of the thing in specie, or damages for its wrongful caption or detention. *Deshler* v. *Dodge*, 622.
17. Therefore where an assignee of a package of bank-notes brought an action of replevin for the package, the action can be maintained in the Circuit Court, although the assignor could not himself have sued in that court. *Ib.*

LANDS, PUBLIC.
1. No equitable and inchoate title to land in Missouri, arising under the treaty with France, can be tried in the State Court. *Burgess* v. *Gray*, 48.
2. The Act of Congress, passed on the 2d of March, 1807, (2 Stat. at L., 440,) did not *proprio vigore* vest the legal title in any claimants; for it required the favorable decision of the commissioner, and then a patent before the title was complete. *Ib.*
3. The Act of 12th April, 1814, (3 Stat. at L., 121,) confirmed those claims only which had been rejected by the Recorder upon the ground that the land was not inhabited by the claimant on the 20th of December, 1803. *Ib.*
4. Where it did not appear by the report of the Recorder that a claim was rejected upon this specific ground, this act did not confirm it. *Ib.*
5. The question whether or not the Recorder committed an error in point of fact, was not open in the State Court of Missouri upon a trial of the legal title. *Ib.*
6. The mere possession of the public land, without title, for any time, however long, will not enable a party to maintain a suit against any one who enters upon it; and more especially against a person who derives his title from the United States. *Ib.*
7. The act of Congress, passed on the 3d of March, 1807, (2 Stat. at L., 440,) declared that all claims to land in Missouri should be void unless notice of the claim should be filed with the Recorder of Land Titles, prior to the 1st of July, 1808. *McCabe* v. *Worthington*, 86.
8. Hence in the year 1824, a claim which had not been thus filed had no legal existence. *Ib.*
9. The act of the 26th May, 1824, (4 Stat. at L., 52,) authorizing the institution of proceedings to try the validity of claims, did not reserve from sale lands, the claims to which had not been filed as above. *Ib.*
10. Therefore, when the owner of such a claim filed his petition in 1824, which was decided against him; and he brought the case to this court, which was decided in his favor in 1836, but in the mean time entries had been made for parts of the land, the latter were the better titles. *Ib.*
11. Moreover, the act of May 24, 1828, (4 Stat. at L., 298,) provides that confirmations and patents under the act of 1824 should only operate as a relinquishment on the part of the United States. Therefore, the confirmation by this court in 1836 was subject to this act. *Ib.*
12. On the 22d of September, 1788, the tribe of Indians called the Foxes, situated on the west bank of the Mississippi, sold to Julien Dubuque a permit to work at the mine as long as he should please; and also sold and abandoned to him all the coast and the contents of the mine discovered by the wife of Peosta, so that no white man or Indian should make any pretension to it without the consent of Dubuque. *Choteau* v. *Molony*, 203.
13. On the 22d of October, 1796, Dubuque presented a petition to the Baron de Carondelet for a grant of the land, which he alleged that he had bought from the Fox Indians, who had subsequently assented to the

LANDS, PUBLIC—(*Continued.*)
erection of certain monuments for the purpose of designating the boundaries of the land. *Ib.*
14. The governor referred the petition to Andrew Todd, an Indian trader, who had received a license for the monopoly of the Indian trade, who reported that as to the land nothing occurred to him why the governor should not grant it, if he deemed it advisable to do so, provided Dubuque should be prohibited from trading with the Indians, unless with Todd's consent, in writing. *Ib.*
15. Upon this report the governor made an order, granted as asked, under the restrictions expressed in the information given by the merchant, Andrew Todd. *Ib.*
16. This grant was not a complete title, making the land private property, and therefore excepting it from what was conveyed to the United States by the treaty of Paris of April 30, 1803. *Ib.*
17. The words of the grant from the Indians do not show any intention to sell more than a mining privilege; and even if the words were ambiguous, there are no extrinsic circumstances in the case to justify the belief that they intended to sell the land. *Ib.*
18. The governor, in his subsequent grant, intended only to confirm such rights as Dubuque had previously received from the Indians. The usual mode of granting land was not pursued. Dubuque obtained no order for a survey from Carondelet, nor could he have obtained one from his successor, Gayoso. *Ib.*
19. By the laws of Spain, the Indians had a right of occupancy; but they could not part with this right except in the mode pointed out by Spanish laws, and these laws and usages did not sanction such a grant as this from Carondelet to Dubuque. *Ib.*
20. Moreover, the grant included a large Indian village, which it is unreasonable to suppose that the Indians intended to sell. *Ib.*
21. Where a grant issued in 1722, by the French authorities of Louisiana, cannot be located by metes and bounds, it cannot serve as a title in an action of ejectment; and it was proper for the Circuit Court to instruct the jury to this effect. *Denise et al.* v. *Ruggles*, 242.
22. In 1812, Congress passed an act (2 Stat. at L., 748,) entitled "An act making further provision for settling the claims to land in the territory of Missouri." It confirmed the titles to town or village lots, out lots, &c., in several towns and villages, and amongst them the town of Carondelet, where they had been inhabited, cultivated, or possessed, prior to the twentieth day of December, 1803. *Ib.*
23. In 1824, Congress passed another act, (4 Stats. at L., 65,) supplementary to the above, the first section of which made it the duty of the individual owners or claimants whose lots were confirmed by the act of 1812, to proceed within 18 months to designate their lots by proving cultivation, boundaries, &c., before the Recorder of Land Titles. The third section made it the duty of this officer to issue a certificate of confirmation for each claim confirmed, and furnish the surveyor-general with a list of the lots so confirmed. *Ib.*
24. This list was furnished in 1827. *Ib.*
25. Afterwards, in 1839, another recorder gave a certificate of confirmation; an extract from the registry showing that this second recorder entered the certificate in 1839; and an extract from the additional list of claims, which addition was that of a single claim, being the same as above. *Gamache et al.* v. *Piquignot et al.*, 451.
26. These three papers were not admissible as evidence in an ejectment brought by the owners of this claim. The time had elapsed within which the recorder could confirm a claim. *Ib.*
27. The act of Congress, passed on the 13th of June, 1812, (2 Stat. at L., 748,) entitled An act for the settlement of land claims, in Missouri, confirmed the rights, titles, and claims to town or village lots, out lots, common field lots, and commons, in, adjoining, and belonging to the several towns and villages therein named (including St. Louis,)

LANDS, PUBLIC—(*Continued.*)
which lots had been inhabited, cultivated, or possessed, prior to the 20th of December, 1803. *Ib.*
28. This confirmation was absolute, depending only upon the facts of inhabitation, cultivation, or possession, prior to the day named. It was not necessary for the confirmee to have received from the Spanish government a grant or survey, or permission to cultivate the land. *Ib.*
29. In 1824 Congress passed a supplementary act, (4 Stat. at L., 65,) making it the duty of claimants of town and village lots to designate them by proving before the recorder the fact of inhabitation, the boundaries, &c., and directing the recorder to issue certificates thereof. But no forfeiture was imposed for non-compliance, nor did the government, by that act, impair the effect and operation of the act of 1812. Claimants may still establish, by parol evidence, the facts of inhabitation, &c. *Guitard et al.* v. *Stoddard*, 494.
30. In the act of 1812, the surveyor was directed to survey and mark the out boundary lines of the towns or villages, so as to include the out lots, common field lots, and commons. This was done. Whether a claimant can recover land lying outside of this line, or whether the evidence in this case is sufficient to establish the plaintiffs' title, this court does not now decide. *Ib.*
31. In the ratification, by the King of Spain, of the treaty by which Forida was ceded to the United States, it was admitted that certain grants of land in Florida, amongst which was one to the Duke of Alagon, were annulled and declared void. *Ib.*
32. A written declaration, annexed to a treaty at the time of its ratification, is as obligatory as if the provision had been inserted in the body of the treaty itself. *Doe et al.* v. *Braden*, 635.
33. Whether or not the King of Spain had power, according to the Constitution of Spain, to annul this grant, is a political and not a judicial question, and was decided when the treaty was made and ratified. *Ib.*
34. A deed made by the duke to a citizen of the United States, during the interval between the signature and ratification of the treaty, cannot be recognized as conveying any title whatever. The land remained under the jurisdiction of Spain until the annulment of the grant. *Ib.*

LAWS, CONSTRUCTION OF.
1. The popular or received import of words furnishes the general rule for the interpretation of public laws as well as of private and social transactions. *Maillard et al.* v. *Lawrence*, 251.

LEGACIES.
See WILLS.

LIMITATIONS OF ACTIONS, AND STATUTE OF.
1. The mere possession of the public land, without title, for any time, however long, will not enable a party to maintain a suit against any one who enters upon it; and more especially against a person who derives a title from the United States. *Burgess* v. *Gray*, 48.
2. The Statute of Limitations of New York allows ten years within which an action must be brought by the heirs of a person under disability, after that disability is removed. *Thorp* v. *Raymond*, 247.
3. But the right of entry would be barred if an adverse possession, including those ten years, had then continued twenty years; and the right of title would be barred, if the adverse possession had continued twenty-five years, including those ten years. *Ib.*
4. Cumulative disabilities are not allowed in the one case or in the other. *Ib.*
5. Therefore, where a right of entry accrued to a person who was in a state of insanity, the limitation did not begin to run until the death of that person; but began to run then, although the heir was under coverture. *Ib.*
6. A mortgagor and his heirs cannot avail themselves of a defect in the proceedings under which the mortgaged premises were sold, after the property had been adversely and quietly held for a long period, (more than twenty years.) *Slicer et al.* v. *Bank of Pittsburg*, 571.

MORTGAGES.
1. Where there was a mortgage of land in the city of Pittsburg, Pennsylvania, the mortgagee caused a writ of *scire facias* to be issued from the Court of Common Pleas, there being no chancery court in that State. There was no regular judgment entered upon the docket, but a writ of *levari facias* was issued, under which the mortgaged property was levied upon and sold. The mortgagee, the Bank of Pittsburg, became the purchaser. *Ib.*
2. This took place in 1820. *Ib.*
3. In 1836, the court ordered the record to be amended by entering up the judgment regularly, and by altering the date of the *scire facias*. *Ib.*
4. Although the judgment in 1820 was not regularly entered up, yet it was confessed before a prothonotary, who had power to take the confession. The docket upon which the judgment should have been regularly entered, being lost, the entry must be presumed to have been made. *Ib.*
5. Moreover, the court had power to amend its record in 1836. *Ib.*
6. Even if there had been no judgment, the mortgagor or his heirs could not have availed themselves of the defect in the proceedings, after the property had been adversely and quietly held for so long a time. *Ib.*
7. The question examined, whether a mortgage of a leasehold interest, remaining out of possession, is liable upon the covenants of the lease. The English and American cases reviewed and compared with the decisions of this court upon kindred points. But the court abstains from an express decision, which is rendered unnecessary by the application of the principle first mentioned to the case in hand. *Calvert et al.* v. *Bradley et al.*, 580.

NONSUIT.
1. The consequences of a nonsuit examined. *Homer* v. *Brown*, 354.

NOTICE.
1. Where the language of the statute was "That public notice of the time and place of the sale of real property for taxes due to the corporation of the city of Washington shall be given by advertisement inserted in some newspaper published in said city, once in each week for at least twelve successive weeks," it must be advertised for twelve full weeks, or eighty-four days. *Early* v. *Doe*, 610.
2. Therefore, where property was sold after being advertised for only eighty-two days, the sale was illegal, and conveyed no title. *Ib.*

ORPHANS COURT.
1. Where an Orphan's Court had allowed a certain commission to an administrator, the correctness of that allowance cannot be reviewed collaterally by another court in which the administrator credited himself with the amount of such commission, in an account as trustee. *Barney* v. *Saunders et al.*, 535.

PARTIES.
1. The rule is well established that where the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of the others; and a bill may also be maintained against a portion of a numerous body of defendants, representing a common interest. *Smith et al.* v. *Swormstedt et al.*, 288.
2. Where a lease was made by several owners of a house, reserving rent to each one in proportion to his interest, and there was a covenant on the part of the lessee that he would keep the premises in good repair and surrender them in like repair, this covenant was joint as respects the lessors, and one of them (or two representing one interest) cannot maintain an action for the breach of it by the lessee. *Calvert et al.* v. *Bradley et al.*, 580.

PATENTS.
1. In 1834, McCormick obtained a patent for a reaping machine. This patent expired in 1848.
2. In 1845, he obtained a patent for an improvement upon his patented

PATENTS—(*Continued.*)
machine; and in 1847 another patent for new and useful improvements in the reaping machine. The principal one of these last was in giving to the raker of the grain a convenient seat upon the machine.

3. In a suit for a violation of the patent of 1847, it was erroneous in the Circuit Court to say that the defendant was responsible in damages to the same extent as if he had pirated the whole machine. *Seymour et al.* v. *McCormick*, 480.
4. It was also erroneous to lay down as a rule for the measure of damages, the amount of profits which the patentee would have made, if he had constructed and sold each one of the machines which the defendants constructed and sold. There was no evidence to show that the patentee could have constructed and sold any more than he actually did. *Ib.*
5. The acts of Congress and the rules for measuring damages, examined and explained. *Ib.*

PLEAS AND PLEADING.

1. Where a bill in chancery was filed by a legatee against the person who had married the daughter and residuary devisee of the testator, (there having been no administration in the United States upon the estate,) this daughter, or her representatives if she were dead, ought to have been made a party defendant. *Lewis* v. *Darling*, 1.
2. But if the complainant appears to be entitled to relief, the court will allow the bill to be amended, and even if it be an appeal, will remand the case for this purpose. *Ib.*
3. Where the will by construction shows an intention to charge the real estate with the payment of a legacy, it is not necessary to aver in the bill a deficiency of personal assets. *Ib.*
4. It is not necessary that the bill of exceptions should be formally drawn and signed before the trial is at an end. But the exception must be noted then, and must purport on its face so to have been, although signed afterwards *nunc pro tunc*. *Turner et al.* v. *Yates*, 14.
5. A declaration was sufficient which averred that "at a general term of the Supreme Court in Equity for the State of New York," &c. &c. Being thus averred to be a court of general jurisdiction, no averment was necessary that the subject-matter in question was within its jurisdiction. And the courts of the United States will take notice of the judicial decisions in the several States, in the same manner as the courts of those States. *Pennington* v. *Gibson*, 65.
6. Under the twenty-second section of the Judiciary Act of 1789, this court cannot reverse the judgment of the court below, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court. *Piquignot* v. *Pennsylvania Railroad Company*, 104.
7. In Pennsylvania it is not usual to make a record of the judgment in any legal form. But there is no necessity that the courts of the United States should follow such careless precedents. *Ib.*
8. Where a suit was brought in which the plaintiff was described as a citizen of France, against the Pennsylvania Railroad Company, without any averments that the defendants were a corporation under the laws of Pennsylvania, or that the place of business of the corporation was there, or that its corporators, managers, or directors, were citizens of Pennsylvania, the absence of such an averment was fatal to the jurisdiction of the court. *Ib.*
9. By the laws of Alabama, where property is taken in execution, if the sheriff does not make the money, the plaintiff is allowed to suggest to the court that the money might have been made with due diligence, and thereupon the court is directed to frame an issue in order to try the fact. *Chapman* v. *Smith*, 114.
10. In a suit upon a sheriff's bond, where the plea was that this proceeding had been resorted to by the plaintiff and a verdict found for the sheriff, a replication to this plea alleging that the property in question in that trial was not the same property mentioned in the breach assigned in the declaration, was a bad replication and demurrable. *Ib.*

PLEAS AND PLEADING—(*Continued.*)

11. Where the sheriff pleaded that the property which he had taken in execution was not the property of the defendant, against whom he had process, and the plaintiff demurred to this plea, the demurrer was properly overruled. *Ib.*
12. Where there is a special contract between principal and agent, by which the entire compensation is regulated and made contingent, there can be no recovery on a count for *quantum meruit*. *Marshall* v. *The Baltimore and Ohio Railroad Company*, 314.
13. A judgment of *non pros* given by a State court in a case between the same parties, for the same property, was not a sufficient plea in bar to prevent a recovery under the writ of right; nor was the agreement of the plaintiff to submit his case to that court upon a statement of facts, sufficient to prevent his recovery in the Circuit Court. *Homer* v. *Brown*, 354.
14. The consequences of a nonsuit examined. *Ib.*
15. Where a lease was made by several owners of a house, reserving rent to each one in proportion to his interest, and there was a covenant on the part of the lessee that he would keep the premises in good repair, and surrender them in like repair, this covenant was joint as respects the lessors, and one of them, (or two representing one interest,) cannot maintain an action for the breach of it by the lessee. *Calvert et al.* v. *Bradley et al.*, 580.
16. The eleventh section of the Judiciary Act of 1789, says, "nor shall any District or Circuit Court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange." *Ib.*
17. This clause has no application to the case of a suit by the assignee of a chose in action to recover possession of the thing in specie, or damages for its wrongful caption or detention. *Deshler* v. *Dodge*, 622.
18. Therefore when an assignee of a package of bank-notes brought an action of replevin for the package, the action can be maintained in the Circuit Court, although the assignor could not himself have sued in that court. *Ib.*

PRACTICE.

1. Where a case in equity was referred to a Master, which came again before the court upon exceptions to the Master's report, the court had a right to change its opinion from that which it had expressed upon the interlocutory order, and to dismiss the bill. All previous interlocutory orders were open for revision. *Fourniquet* v. *Perkins*, 82.
2. The decree of dismissal was right in itself, because it conformed to a decision of this court in a branch of the same case, which decision was given in the interval between the interlocutory order and final decree of the Circuit Court. *Ib.*
3. Where a judgment in a patent case was affirmed by this court with a blank in the record for costs, and the Circuit Court afterwards taxed these costs at a sum less than two thousand dollars, and allowed a writ of error to this court, this writ must be dismissed on motion. *Sizer* v. *Marcy*, 98.
4. The writ of error brings up only the proceedings subsequent to the mandate; and there is no jurisdiction where the amount is less than two thousand dollars, either under the general law or the discretion allowed by the patent law. The latter only relates to cases which involve the construction of the patent laws and the claims and rights of patentees under them. *Ib.*
5. As a matter of practice this court decides, that it is proper for circuit courts to allow costs to be taxed, *nunc pro tunc*, after the receipt of the mandate from this court. *Ib.*
6. Where an appeal was taken from a decree in chancery, which decree was made by the court below during the sitting of this court in term time

PRACTICE—(*Continued.*)
the appellant is allowed until the next term to file the record; and a motion to dismiss the appeal, made at the present term, before the case has been regularly entered upon the docket, cannot be entertained, nor can a motion to award a *procedendo*. *Stafford* v. *Union Bank of Louisiana*, 135.
7. This court, however, having a knowledge of the case, will express its views upon an important point of practice. *Ib.*
8. Where the appeal is intended to operate as a *supersedeas*, the security given in the appeal bond must be equal to the amount of the decree, as it is in the case of a judgment at common law. *Ib.*
9. The two facts, namely, first, that the receiver appointed by the court below had given bond to a large amount, and second, that the persons to whom the property had been hired, had given security for its safe keeping and delivery, do not affect the above result. *Ib.*
10. The security must, notwithstanding, be equal to the amount of the decree. *Ib.*
11. A mode of relief suggested. *Ib.*
12. 1. Where the judgment is not properly described in the writ of error;
13. 2. Where the bond is given to a person who is not a party to the judgment;
14. 3. Where the citation issued, is issued to a person who is not a party;—the writ of error will be dismissed on motion. *Davenport* v. *Fletcher*, 143.
15. In order to act as a *supersedeas* upon a decree in chancery, the appeal bond must be filed within ten days after the rendition of the decree. In the present case, where the bond was not filed in time, a motion for a *supersedeas* is not sustained by sufficient reasons, and consequently must be overruled. *Adams* v. *Law*, 144.
16. So, also, a motion is overruled to dismiss the appeal, upon the ground that the real parties in the case, were not made parties to the appeal. The error is a mere clerical omission of certain words. *Ib.*
17. Where there was a mortgage of land in the city of Pittsburg, Pennsylvania, the mortgagee caused a writ of *scire facias* to be issued from the Court of Common Pleas, there being no chancery court in that State. There was no regular judgment entered upon the docket, but a writ of *levari facias* was issued, under which the mortgaged property was levied upon and sold. The mortgagee, the Bank of Pittsburg, became the purchaser. *Ib.*
18. This took place in 1820. *Ib.*
19. In 1836, the court ordered the record to be amended by entering up the judgment regularly, and by altering the date of the *scire facias*. *Ib.*
20. Although the judgment in 1820 was not regularly entered up, yet it was confessed before a prothonotary, who had power to take the confession. The docket upon which the judgment should have been regularly entered, being lost, the entry must be presumed to have been made. *Slicer et al.* v. *Bank of Pittsburg*, 571.
21. Moreover, the court had power to amend its record in 1836. *Ib.*
22. Upon an appeal from the District Court of the United States for the Northern District of California, where it did not appear, from the proceedings, whether the land claimed was within the Northern or Southern District, this court will reverse the judgment of the District Court, and remand the case for the purpose of making its jurisdiction apparent (if it should have any), and of correcting any other matter of form or substance which may be necessary. *Cervantes* v. *United States*, 619.

PRINCIPAL AND AGENT.
See AGENTS,

PUBLIC LANDS.
See LANDS, PUBLIC.

RELIGIOUS SOCIETIES.
See CHURCH.

SURETIES.

1. A bond, with sureties, was executed for the purpose of securing the repayment of certain money advanced for putting up and shipping bacon. William Turner was to have the management of the affair, and Harvy Turner was to be his agent. *Turner* v. *Yates*, 14.
2. After the money was advanced, Harvy made a consignment of meat, and drew upon it. Whether or not this draft was drawn specially against this consignment was a point which was properly decided by the court from an interpretation of the written papers in the case. *Ib.*
3. It was also correct to instruct the jury that if they believed, from the evidence, that Harvy was acting in this instance either upon his own account, or as the agent of William, then the special draft upon the consignment was first to be met out of the proceeds of sale, and the sureties upon the bond to be credited only with their proportion of the residue. *Ib.*
4. The consignor had a right to draw upon the consignment with the consent of the consignee, unless restrained by some contract with the sureties, of which there was no evidence. On the contrary, there was evidence that Harvy was the agent of William, to draw upon this consignment as well as for other purposes. *Ib.*
5. It was not improper for the court to instruct the jury that they might find Harvy to have been either a principal or an agent of William. *Ib.*

TARIFF.

1. The twentieth section of the Tariff Act of 1842, provides that on all articles manufactured from two or more materials, the duty shall be assessed at the highest rates at which any of its component parts may be chargeable. (5 Stat. at L., 566.) *Stuart* v. *Maxwell*, 150.
2. This section was not repealed by the general clause in the Tariff Act of 1846, by which all acts, and parts of acts, repugnant to the provisions of that act (1846), were repealed. *Ib.*
3. Consequently, where goods were entered as being manufactures of linen and cotton, it was proper to impose upon them a duty of twenty-five per cent. *ad valorem*, such being the duty imposed upon cotton articles, in Schedule D, by the Tariff Act of 1846. (9 Stat. at L., 46.) *Ib.*

TAXES.

1. In 1845, the Legislature of Ohio passed a general banking law, the 59th section of which required the officers to make semiannual dividends, and the 60th required them to set off six per cent. of such dividends for the use of the State, which sum or amount so set off should be in lieu of all taxes to which the company or the stockholders therein would otherwise be subject. This was a contract fixing the amount of taxation and not a law prescribing a rule of taxation until changed by the legislature. *State Bank of Ohio* v. *Knoop*, 369.
2. In 1851, an act was passed entitled "An Act to tax banks and bank and other stocks, the same as property is now taxable by the laws of this State. The operation of this law being to increase the tax, the banks were not bound to pay that increase. *Ib.*
3. In 1834, the Legislature of Ohio passed an act incorporating the Ohio Life Insurance and Trust Company, with power, amongst other things, to issue bills or notes until the year 1843. One section of the charter provided that no higher taxes should be levied on the capital stock or dividends of the company than are or may be levied on the capital stock or dividends of incorporated banking institutions in the State. *Ib.*
4. In 1836, the legislature passed an act to prohibit the circulation of small bills. This act provided, that if any bank should surrender the right to issue small notes, the treasurer should collect a tax from such bank of five per cent. upon its dividends; if not, he should collect twenty per cent. The Life Insurance and Trust Company surrendered the right. *Ib.*
5. In 1838, this law was repealed. *Ib.*
6. In 1845, an act was passed to incorporate the State Bank of Ohio and other banking companies. The 60th section provided that each com-

TAXES—(*Continued.*)
pany should pay, annually, six per cent. upon its profits, in lieu of all taxes to which such company or the stockholders thereof, on account of stocks owned therein, would otherwise be subject. *Ib.*
7. In 1851, an act was passed to tax banks and bank and other stocks, the same as other property was taxable by the laws of the State. *Ib.*
8. There was nothing in previous legislation to exempt the Life Insurance and Trust Company from the operation of this act. *Ohio Life Insurance and Trust Company* v. *Debolt*, 416.

TITLE.
1. Where the language of the statute was "That public notice of the time and place of the sale of real property for taxes due to the corporation of the city of Washington shall be given by advertisement in some newspaper published in said city, once in each week for at least twelve successive weeks," it must be advertised for twelve full weeks, or eighty-four days.
2. Therefore, where property was sold after being advertised for only eighty-two days, the sale was illegal, and conveyed no title. *Early* v. *Doe*, 610.

TREATIES.
1. In the ratification, by the King of Spain, of the treaty by which Florida was ceded to the United States, it was admitted that certain grants of land in Florida, amongst which was one to the Duke of Alagon, were annulled and declared void.
2. A written declaration, annexed to a treaty at the time of its ratification, is as obligatory as if the provision had been inserted in the body of the treaty itself. *Doe et al.* v. *Braden*, 635.
3. Whether or not the King of Spain had power, according to the Constitution of Spain, to annul this grant, is a political and not a judicial question, and was decided when the treaty was made and ratified. *Ib.*
4. A deed made by the duke to a citizen of the United States, during the interval between the signature and ratification of the treaty, cannot be recognized as conveying any title whatever. The land remained under the jurisdiction of Spain until the annulment of the grant. *Ib.*

TRUSTEES.
1. There were two trustees of real and personal estate for the benefit of a minor. One of the trustees was also administrator de bonis non upon the estate of the father of the minor, and the other trustee was appointed guardian to the minor.
2. When the minor arrived at the proper age, and the accounts came to be settled, the following rules ought to have been applied.
3. The trustees ought not to have been charged with an amount of money, which the administrator trustee had paid himself as commission. That item was allowed by the Orphans' Court, and its correctness cannot be reviewed, collaterally, by another court. *Barney* v. *Saunders*, 535.
4. Nor ought the trustees to have been charged with allowances made to the guardian trustee. The guardian's accounts also were cognizable by the Orphans' Court. Having power under the will to receive a portion of the income, the guardian's receipts were valid to the trustees. *Ib.*
5. The trustees were properly allowed and credited by five per cent. on the principal of the personal estate, and ten per cent. on the income. *Ib.*
6. Under the circumstances of this case, the trustees ought not to have been charged upon the principal of six months' rest and compound interest. *Ib.*
7. The trustees ought to have been charged with all gains, as with those arising from usurious loans, unknown friends, or otherwise. *Ib.*
8. The trustees ought not to have been credited with the amount of a sum of money, deposited with a private banking house, and lost by its failure, so far as related to the capital of the estate, but ought to have been credited for so much of the loss as arose from the deposit of current collections of income. *Ib.*

WATER-RIGHTS.
1. On 6th November, 1836, W. F. Hamilton, William V. Robinson, and

WATER-RIGHTS—(*Continued.*)
wife, by deed, conveyed to the United States "the right and privilege to use, divert, and carry away from the fountain spring, by which the woollen factory of said Hamilton & Robinson is now supplied, so much water as will pass through a pipe or tube of equal diameter with one that shall convey the water from the said spring, upon the same level therewith, to the factory of the said grantors, and to proceed from a common cistern or head to be erected by the said United States, and to convey and conduct the same, by tubes or pipes, through the premises of the said grantors in a direct line, &c., &c.

2. The distance to which the United States wished to carry their share of the water being much greater than that of the other party, it was necessary, according to the principles of hydraulics, to lay down pipes of a larger bore than those of the other party, in order to obtain one half of the water.
3. The grantors were present when the pipes were laid down in this way, and made no objection. It will not do for an assignee, whose deed recognizes the title of the United States to one half of the water, now to disturb the arrangement. *Irwin* v. *United States*, 513.
4. Under the circumstances, the construction to be given to the deed is, that the United States purchased a right to one half of the water, and had a right to lay down such pipes as were necessary to secure that object. *Ib.*

WILLS.

1. Where a bill in chancery was filed by the legatee against the person who had married the daughter and residuary devisee of the testator, (there having been no administration in the United States upon the estate,) this daughter or her representatives if she were dead, ought to have been made a party defendant. *Lewis* v. *Darling*, 1.
2. But if the complainant appears to be entitled to relief, the court will allow the bill to be amended, and even if it be an appeal, will remand the case for this purpose. *Ib.*
3. Where the will, by construction, shows an intention to charge the real estate with the payment of a legacy, it is not necessary to aver in the bill a deficiency of personal assets. *Ib.*
4. The real estates will be charged with the payment of legacies where a testator gives several legacies, and then, without creating an express trust to pay them, makes a general residuary disposition of the whole estate, blending the realty and personalty together in one fraud. This is an exception to the general rule that the personal estate is the first fund for the payment of debts and legacies. *Ib.*
5. Where it appears, by the admissions and proofs, that the defendant has substantially under his control a large property of the testator which he intended to charge with the payment of the legacy in question, the complainant is entitled to relief, although the land lies beyond the limits of the State in which the suit is brought. *Ib.*
6. By the common law of Maryland, lands of which the testator was not seized at the time of making his will, could not be devised thereby. *Carroll* v. *Lessee of Carroll et al.*, 275.
7. In 1850, the legislature passed the following act:
8. Sec. 1. Be it enacted, &c., That every last will and testament executed in due form of law, after the first day of June next, shall be construed with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed on the day of the death of the testator or testatrix, unless a contrary intention shall appear by the will. *Ib.*
9. Sec. 2. That the provisions of this act shall not apply to any will executed, before the passage of this act, by any person who may die before the first day of June next, unless in such will the intention of the testator or testatrix shall appear that the real and personal estate which he or she may own at his or her death, should thereby pass. *Ib.*
10. Sec. 3. That this law shall take effect on the first day of June next. *Ib.*

WILLS—(*Continued.*)
11. In 1837, Michael B. Carroll duly executed his will, making his wife Jane, his residuary legatee and devisee. After the execution of his will, he acquired the lands in controversy, and died in August, 1851. *Ib.*
12. The lands which he purchased in 1842 did not pass to the devisee, but descended to the heirs. *Ib.*
13. The cases upon the subject examined. *Ib.*
14. In April, 1815, William Brown, of Massachusetts, made his will by which he made sundry bequests to his youngest son, Samuel. One of them was of the rent or improvement of the store and wharf privilege of the Stoddard property, during his natural life, and the premises to descend to his heirs. After two other similar bequests, the will then gave to Samuel absolutely, a share in certain property when turned into money. *Ib.*
15. In May, 1816, the testator made a codicil, revoking that part of the will wherein any part of the estate was devised or bequeathed to Samuel, and in lieu thereof, bequeathing to him only the income, interest, or rent. At his decease it was to go to the legal heirs. *Ib.*
16. Under the circumstances of this will and codicil, the revoking part applied only to such share of the estate as was given to Samuel, absolutely; leaving in the Stoddard property a life estate in Samuel, with a remainder to his heirs, which remainder was protected by the laws of Massachusetts until Samuel's death. *Homer* v. *Brown*, 354.
17. At the death of Samuel the title to the property became vested in fee simple in the two children of Samuel. *Ib.*

WRIT OF RIGHT.
1. A tenant in common may bring a real action by a writ of right for his undivided moiety of the property in the Circuit Courts. *Homer* v. *Brown*, 354.
2. The writ of right was abolished by Massachusetts, in 1840, but was previously adopted as a process by the acts of Congress of 1789 and 1792. Its repeal by Massachusetts did not repeal it as a process in the Circuit Court of the United States. *Ib.*
3. A judgment of *non pros* given by the State court in a case between the same parties, for the same property, was not a sufficient plea in bar to prevent a recovery under the writ of right; nor was the agreement of the plaintiff to submit his case to that court upon a statement of facts, sufficient to prevent his recovery in the Circuit Court. *Ib.*

WRIT OF ERROR.
1. Where the debtor alleged that process of attachment had been laid in his hands as garnishee, attaching the debt which he owed to the creditor in question; and moved the court to stay execution until the rights of the parties could be settled in the State Court which had issued the attachment, and the court refused so to do, this refusal is not the subject of review by this court. The motion was addressed to the discretion of the court below, which will take care that no injustice shall be done to any party. *Early* v. *Rogers et al.*, 599.
2. This court expresses no opinion, at present, upon the point Whether a writ of error was the proper mode of bringing the present question before this court. *Ib.*