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TO THE

MATTERS CONTAINED IN THIS VOLUME.

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

ABATEMENT.

1. Where an action on the case was brought in Virginia, against a person to recover damages for fraudulently recommending a third party as worthy of credit, whereby loss was incurred; and after issue joined upon the plea of not guilty, the defendant died, the action did not survive against the executor, but abated. *Henshaw v. Miller*, 212.
2. The Virginia laws and cases examined. *Ib.*

ABSENT PARTY.

1. An absent party having no notice of the proceedings, and not being guilty of wilful laches or unreasonable neglect, will not be concluded by a decree, distributing a common fund. *Williams v. Gibbs*, 239.
2. Action on the case for making false representations of the credit of a third party.
3. Where an action was brought against a person for making false representations of the pecuniary condition of a certain party, whereby the plaintiff had been induced to sell goods upon credit, and had incurred loss, evidence conducing to show that the statements of the defendant were false, ought to have been allowed to go to the jury. *Iasigi v. Brown*, 183.
4. The defendant having written to his own agent, and headed the letter confidential, it was for the jury to say whether or not it was intended for the exclusive perusal of the agent. *Ib.*
5. It was also for the jury to say, on a thorough examination of the letters and the facts and circumstances connected with them, whether they were calculated to inspire, and did inspire, a false confidence in the pecuniary responsibility of the party, to which the writer knew he was not entitled. *Ib.*
6. Such an action does not survive in Virginia against the executor of the defendant, but abates. *Henshaw v. Miller*, 212.

ADMIRALTY.

1. Where a libel was dismissed by the district court, which decree was affirmed by the circuit court, and it appeared that the claim in the libel amounted only to sixteen hundred dollars, an appeal to this court must, upon motion, be dismissed for want of jurisdiction. *Udall v. Steamship Ohio*, 17.
2. In order to give jurisdiction, the damages must appear on the face of the pleading on which the claim is made. Interest cannot be added, in computing the amount, unless it is specially claimed in the libel. *Ib.*
3. It is too late, when the cause has reached this court, to amend the libel by inserting a special claim for interest. The 24th admiralty rule ought not to be construed to extend to cases where an amendment would give jurisdiction, which would not exist without such amendment. *Ib.*

ADMIRALTY—(Continued.)

4. Where it was alleged in a libel, that the libellant was "entitled to recover from the vessel the damages by him sustained, which amount to the sum of eighteen hundred dollars and upwards," the sum was not sufficient to bring the case within the jurisdiction of this court. *Olney v. Steamship Falcon*, 19.
5. Interest, not being specially claimed, cannot be computed, for it is considered as a part of the damages, being merged in that claim, and is not estimated as a distinct item. *Ib.*
6. A consignee of goods has a right, in his own name, to libel a vessel for their non-delivery, unless there is something to show that he had no interest in them. The presumption is, that he had an interest, and to defeat the right to sue, in his own name, this presumption must be rebutted by proof. *Lawrence v. Minturn*, 100.
7. In the present case, there is no such proof. *Ib.*
8. The goods being thrown overboard, the facts in this case show that the jettison was justifiable, and the loss occasioned by the perils of the sea. *Ib.*
9. The nature of the contract explained between the master and owner of a vessel and the shipper, where the latter knows that the articles shipped are to be carried upon the deck, and the cases upon this subject examined. *Ib.*
10. In this case, the evidence shows that there was no want of due diligence and skill, either in the construction of the vessel or the stowage of the cargo. *Ib.*
11. In a case of collision upon Lake Huron, between a propeller and a schooner, the evidence shows that the propeller was in fault. *Propeller Monticello v. Mollison*, 152.
12. The fact that the libellants had received satisfaction from the insurers, for the vessel destroyed, furnished no good ground of defense for the respondent. *Ib.*
13. In cases of collision, where the injured vessel has been abandoned, the measure of damages is the difference between her value in her crippled condition and her value before the collision; and this is to be ascertained by the testimony of experts, who can judge of the probable expense of raising and repairing the vessel. *Schooner Catharine v. Dickinson*, 170.
14. But where the vessel has been actually raised and repaired, the actual cost incurred is the true measure of indemnity. *Ib.*
15. Where two sailing vessels were approaching each other in opposite directions, one closehauled to the wind, and the other with the wind free, the weight of evidence is, that the vessel which was closehauled, luffed just previous to the collision. This was wrong; she should have kept her course. *Ib.*
16. The other vessel had not a sufficient look-out; the excuse given, namely, that all hands had, just previously, been called to reef the sails, is not sufficient. *Ib.*
17. Both vessels being thus in fault, the loss must be divided. *Ib.*
18. In a collision which took place at sea between a steam-ship and a schooner, by means of which the schooner was sunk and all on board perished, except the man at the helm, the evidence shows that it was not the fault of the steamer. *Peck v. Sanderson*, 178.
19. Although the night was starlight, yet there was a haze upon the ocean, which prevented the schooner from being seen until she came within a distance of two or three hundred yards. She was approaching as closehauled to the wind as she could be. Under these circumstances, the order to stop the engine and back, was judicious. *Ib.*
20. The courts of the United States, in the exercise of admiralty and maritime jurisdiction, cannot take cognizance of questions of property between the mortgagee of a vessel and the owner. *Bogart v. Steamboat John Jay*, 399.
21. The mere mortgage of a ship, other than that of an hypothecated bottomry, is a contract without any of the characteristics or attendants of a maritime loan, and is entered into by the parties to it, without reference to navigation or perils of the sea. *Ib.*

ADMIRALTY—(Continued.)

22. The admiralty courts in England now exercise a more ample jurisdiction upon the subject of mortgages of ships, but it is under a statute of Victoria; and in the United States the admiralty and maritime jurisdiction remains as it was before. *Ib.*
23. A libel *in personam* cannot be maintained against the owners of a steamboat by their general agent or broker, for the balance of an account for money paid, laid out, and expended in paying for supplies, repairs, and advertising, together with commissions on the disbursements. *Minturn v. Maynard*, 477.

APPEAL BOND.

1. Where an appeal from a decree in chancery 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. *Stafford v. Union Bank of Louisiana*, 275.

ARBITRAMENT AND AWARD.

1. If an award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact. *Burchell v. Marsh*, 344.
2. In this case, one of the parties sued the other for debt, who, in his turn, claimed damages for the manner in which he was sued. The submission was broad enough to cover all these demands on either side. *Ib.*
3. One of the claims made by the party who was sued, was for damages for the violence of the agent of the creditors; and the referees heard evidence upon this subject. Even if this had been beyond the submission, there was nothing in the record to show that the arbitrators made any allowance for this violence and slanderous language. *Ib.*
4. The charges of fraud and corruption made in the bill are denied in the answer, and the award is not so outrageous as of itself to constitute conclusive evidence of fraud or corruption. Error of judgment in the arbitrators is not a sufficient ground for setting aside an award. *Ib.*

ASSIGNMENT.

1. In 1816 an association, called the Baltimore Company, was organized in Baltimore for the purpose of furnishing advances and supplies in fitting out a military expedition under General Mina, against Mexico, then a part of the dominions of the King of Spain. See 11 How., 529; 12 Id., 111; 14 Id., 610. *McBlair v. Gibbes*, 232.
2. An assignment of a share in this company, made in 1829 to a *bona fide* purchaser for a valuable consideration, was valid. *Ib.*
3. Although the transaction was illegal in 1816, and had not changed its character in 1829, yet the assignment was not tainted with any illegality. The claim against Mexico, as being one of the efforts to establish her independence of Spain, rested entirely upon her sense of honor in acknowledging the obligation after her independence was achieved; but after the debt was admitted, the *bona fide* assignee became substituted to all the rights of the original shareholder. *Ib.*
4. The cases examined, showing how far a *bona fide* assignee of an illegal contract can claim and enforce his contract of assignment. *Ib.*
5. An assignment of "all my undivided ninth part, right, title, and interest, of every kind whatever, in the claim," carried with it an assignment of a claim to commissions as well as the share itself. *Ib.*
6. Moreover, the original holder, or his representatives, would be estopped from claiming the proceeds, after they had been received by his *bona fide* assignee. *Ib.*
7. The cases examined with respect to the assignment of equitable interests and *choses in action*. *Hinkle v. Wanzer*, 353.
8. Where a prior assignee of a claim against Mexico gave no information of the assignment until a subsequent assignee had prosecuted the claim before the commissioners, and obtained an award in his favor, the equities of these parties were equal, and the possessor of the legal title ought to retain the fund. *Judson v. Corcoran*, 612.
9. The award was not conclusive amongst the claimants. The decision of a former court upon this point again affirmed. *Ib.*

ASSIGNMENT—(Continued.)

10. The cases examined respecting the relative equities of prior and subsequent assignees of a *chose in action*. *Ib.*
11. Where a claimant upon the government of Brazil assigned his claim to a creditor soon after the transaction occurred which gave rise to the claim, and the assignment appeared to have been made upon good consideration, the assignee was entitled to receive the proceeds of the award of the commissioners. The assignee took measures, immediately after the assignment, to protect his rights. *Lewis v. Bell*, 616.

BANKRUPT LAW.

1. Where a person took the benefit of the bankrupt law of the United States; omitted, in first schedule of property, to take any notice of a claim which he had against the Mexican Republic, for the unlawful seizure of the cargo of a vessel; filed an amended schedule, in which he mentioned the claim so indistinctly as to give no information of its value, although he was then prosecuting it before the board of commissioners; concealed the evidence of the property, so that the assignee in bankruptcy reported that it was of no value, and sold the whole, for a nominal consideration, to the sister of the bankrupt, who afterwards transferred it to him; the purchase was fraudulent, under the 4th section of the bankrupt law, and also by the general principles of equity. *Clark v. Clark*, 315.
2. Where a creditor of the bankrupt filed his bill, and gave his bond within thirty days after the award of the board of commissioners, this was sufficient within the 8th section of the act of March 3, 1849, to carry into effect our treaty with Mexico. *Ib.*
3. The creditor was a *cestui que trust* of the fund, and had a right to intervene, as the assignee in bankruptcy was dead. This was sufficient to give jurisdiction to the court. His not having proved his debt did not debar him of this right. Another assignee was appointed, and filed his claim without loss of time. *Ib.*
4. The 8th section of the bankrupt law, limiting actions to two years after the bankruptcy, relates only to suits brought against persons who have claims to property, or rights of property surrendered by the bankrupt. And, moreover, no right of action accrued until the fund existed. *Ib.*
5. The difference between a receiver in chancery and an assignee in bankruptcy explained. *Booth v. Clark*, 322.

BARON AND FEME.

1. Although a deed of warranty may be made by the grantor and wife, in order to bar her dower, yet an action in the covenant of warranty cannot be brought against her. She can make no such covenants. *Griffin et ux v. Reynolds*, 609.

BILL OF EXCEPTIONS.

1. Where a jury is waived, and questions of law and fact decided by the court in Louisiana, the rules of the state appellate court require that the whole evidence should be put into the record. But where a case is brought up to this court, by writ of error from the circuit court of the United States for Louisiana, the rules of this court only require that so much of the evidence should be inserted as is necessary to explain the legal questions decided by the court. *Arthurs v. Hart*, 6.
2. Consequently, the mere fact that some of the evidence given below is omitted from the record, is not of itself sufficient to prevent this court from examining the questions of law presented by the record. *Ib.*
3. Where the court decides questions both of law and fact, the admission of improper testimony is not the subject of a bill of exception, although the exclusion of proper testimony is so. *Ib.*
4. The rule stated, according to which the appellate court should review the legal questions involved in the final judgment of the court below, which has decided both law and fact; and the mode pointed out by which counsel should separate the two classes of questions. *Ib.*

BILL OF EXCHANGE.

1. In an action upon a bill of exchange by a *bonâ fide* assignee against the acceptor, it is no good defense that the bill was accepted in order to pay for a sugar-mill which was defective; that the drawers of the bill had promised to put it in order, and that the assignee of the bill knew

BILL OF EXCHANGE—(*Continued.*)

- these facts. The acceptor of the bill relied upon this promise to protect his rights, and not upon a refusal to pay the bill when due. *Arthurs v. Hart*, 6.
2. Where the protest of a bill of exchange contained an exact copy of the bill, but the acceptance was made by "Chas. Byrne," instead of "And. E. Byrne," as it was in the original bill, this variance or error in the name of the acceptor's agent ought not to have excluded the protest from being read in evidence to the jury. *Dennistoun v. Stewart*, 606.
 3. It is unnecessary that a copy of the protest should be included in the notice to the drawer and indorsers. The object of the notice is to inform the party that payment has been refused; and hence such a description of the note as will give sufficient information to identify it, is all that is necessary. *Ib.*
 4. In this case, the protest had an accurate copy of every material fact which could identify the bill: the date, the place where drawn, the amount, the merchandise on which it was drawn, the ship by which it was sent, the balance on the cotton for which it was accepted, the names of drawers, acceptor, indorsers; every thing but the abbreviations and flourishes in the Christian name of the acceptor's agent. This mistake could not mislead any person as to the identity of the instrument described. *Ib.*

BOSTON, CITY OF.

See LITTORAL PROPRIETORS.

CALIFORNIA.

1. By an act of congress passed on the 3d of March, 1851, (9 Stat. at L., 631,) provision was made for the appointment of a board of commissioners to settle private land claims in California, and for the transfer of a case decided by them to the district court of the United States for California, by way of appeal. *United States v. Ritchie*, 525.
2. This law was constitutional. The board of commissioners was not a court, under the constitution, invested with judicial powers; but the commencement of the suit in the district court, when transferred there, must be regarded as an original proceeding. The district court could hear additional evidence to that which was before the board of commissioners. *Ib.*
3. The 9th section of the act directed that the United States or the claimant might file a petition, praying an appeal to the district court, and other sections pointed out the mode of proceeding. But this was all changed by an act passed on the 31st of August, 1852, (10 Stat. at L., 99,) which directed that the filing of a transcript with the clerk of the district court should, *ipso facto*, operate as an appeal. *Ib.*
4. This amounts, also, to a notice to the opposite party. *Ib.*
5. The title of Francisco Solano, an Indian, to a tract of land in California, particularly set forth. *Ib.*
6. Although Solano was an Indian, yet he was competent, according to the laws of Mexico at the time of the grant, to take and hold real property. *Ib.*
7. The plan of Iguala, adopted by the revolutionary government of Mexico, in 1821, and all the successive public documents and decrees of that country, recognized an equality amongst all the inhabitants, whether Europeans, Africans, or Indians; and the decree of 1824, providing for colonization, recognized the citizenship of the Indians, and their right to hold land. *Ib.*
8. In 1833 and 1834, the government of Mexico passed laws for secularizing the missions, under which the public authorities granted the lands belonging to them in the same manner as other public lands. *Ib.*
9. In respect to those lands called Pueblo lands, no opinion is expressed. *Ib.*
10. By the act of congress passed on the 3d March, 1851, (9 Stat. at L., 631,) to ascertain and settle the private land claims in the state of California, it is made the duty of every person claiming lands in California, by virtue of any right or title derived from the Spanish or Mexican government, to present the same to the commissioners (to be appointed

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- under that act) who were to examine and decide upon the validity of the claim. *Fremont v. United States*, 542.
11. The commissioners, the district, and the supreme court, in deciding on any claim brought before them, were directed to be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the supreme court of the United States, as far as they are applicable. *Ib.*
 12. Under this act, not only inchoate or equitable titles, but legal titles, also, were required to be passed upon by the court. This was an essential difference from the act of 1824, under which claims to land in Louisiana and Florida were decided, and which related to inchoate equitable titles. *Ib.*
 13. Grants of land in Louisiana and Florida were usually preceded by a concession and survey; and until a survey took place, no title accrued to the grantee. Hence, this court has always decided that where the grantee took no further steps in the matter, he had acquired no right, legal or equitable, to the lands under the Spanish government. *Ib.*
 14. The laws of these territories, under which titles were claimed, were never treated by this court as foreign laws, to be decided as a question of fact; but the court held itself bound to notice them judicially, as much so as the laws of a state of the Union. *Ib.*
 15. On the 29th of February, 1844, Micheltorrena, the governor of California, granted to Juan B. Alvarado, the tract of land known by the name of Mariposas, to the extent of ten square leagues within the limits of the Snow Mountain, (Sierra Nevada,) and the rivers known by the names of the Chanchilles, of the Merced and San Joaquin, as his property, subject to the approbation of the most excellent departmental assembly, and to certain conditions. *Ib.*
 16. This grant conveyed to him a present and immediate interest. If any subsequent grantee of the government had made a survey within the described limits, his title would have been paramount to that of Alvarado. But no such grant and survey were made. *Ib.*
 17. The case of *Rutherford v. Greene's Heirs*, 2 Wheat., 196, examined. *Ib.*
 18. No further and definite grant, stating that the conditions had been complied with, was necessary. *Ib.*
 19. The conditions were conditions subsequent, but a non-compliance with them did not amount to a forfeiture of the grant. *Ib.*
 20. There was no unreasonable delay or want of effort, on the part of Alvarado, to fulfil the conditions, so that there is no room for the presumption that he intended to abandon the property. *Ib.*
 21. The reasons explained why Alvarado did not make a survey or a settlement, and why Fremont, his vendee, did not. *Ib.*
 22. One of the conditions was that Alvarado should not sell, alienate, or mortgage the property. But this restriction was void, as being against the laws of Mexico, and, moreover, at the time of the sale to Fremont, California was held by the United States as a conquered country, and an American citizen had a right to purchase property. Although Mexico might have avoided the sale, there is no public law which could require the United States to do so; and any law which subjected an American citizen to disabilities was necessarily abrogated without a formal repeal. *Ib.*
 23. The question about the right to mines does not arise in the present case. *Ib.*
 24. The United States have to direct, by law, how the survey is to be made, in the form and divisions prescribed for surveys in California, embracing the entire grant in one tract. *Ib.*
 25. The acts of congress require that every vessel shall be registered by the collector of the district in which is the port nearest to the place where her owner or owners reside. The name of this port must be painted on her stern, in large letters; and every bill of sale of her must be recorded in the office where she is registered. *Hays v. Pacific Steamship Co.*, 596.
 26. Where a company, incorporated by New York, (all the stockholders being residents of that state,) owned vessels which were employed in

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the transportation of passengers, &c., between New York and San Francisco, in California, and between San Francisco and different ports in the territory of Oregon; all of which vessels were ocean steam-ships, and duly registered in New York; that they remained in California no longer than was necessary to land their passengers and freight, and prepare for the next voyage; these vessels are not liable to assessment and taxation under the laws of California and authorities of San Francisco. *Ib.*

27. They were there but temporarily engaged in lawful trade and commerce, with their *situs* at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested, and where the taxes had been paid. *Ib.*

CHANCERY.

See FRAUD.

1. Where a bill was filed by several distributees of an estate, to compel the payment of money alleged to be due to them, and a decree was rendered in their favor, this court has jurisdiction over an appeal, although the amount payable to each individual claimant was less than two thousand dollars. *Shields v. Thomas*, 3.
2. The aggregate amount which the defendant was decreed to pay, was more than two thousand dollars; and as to him, this is the matter in dispute. *Ib.*
3. The complainants all claimed under the same title; and it was of no consequence to the defendant in what proportions they shared the money amongst them. *Ib.*
4. The cases upon this point examined. *Ib.*
5. Where the death of a party complainant was suggested at December term, 1851, of this court, and his legal representatives did not appear by the tenth day of this term, the bill must, as to him, be entered, abated under the 61st rule of this court. *Barribeau v. Brant*, 43.
6. As to the other complainant, the allegation that a deed which she executed ought to be set aside, upon the ground of fraud and misrepresentation, and inadequacy of price, is not sustained by the evidence; nor is the allegation that she was a joint-tenant, and not a tenant in common, sustained by a construction of the deed. *Ib.*
7. Where the complainant, after filing his bill, conveyed all his interest to a trustee, and died pending an appeal which he took to this court, the trustee cannot be permitted to be made a party to the proceedings in this court. The only persons who can appear in the stead of the complainant, are those who, upon his death, succeed to the interest he then had, and upon whom the estate then devolves. *Ib.*
8. Where a bill in chancery avers that the defendant is a citizen of another state, this averment can only be impugned in a special plea to the jurisdiction of the court. The answer is not the proper place for it, under the 33d rule of equity practice established by this court. *Wickliffe v. Owings*, 47.
9. The plea of the defendant, that he had instituted a suit against the complainant in a state court, in the same controversy, prior to the institution of this one in the circuit court of the United States, is not sustained by the evidence; nor is the allegation that the title of the complainant is invalid. *Ib.*
10. Upon a bill filed, under a statute of Kentucky, by a person having both the legal title to, and the possession of, land, against a person setting up a claim thereto, for the purpose of quieting the title, this court decides that the complainant is entitled to relief, and proceeds to render such decree as the circuit court ought to have rendered. *Ib.*
11. A vendor sold an estate in Louisiana for a large sum of money, and received payment from time to time, for nearly one half of the amount. Afterwards he agreed to take back the property, upon the payment of an additional sum of money, which was secured to him by the promissory notes of six individuals, four of whom lived in Louisiana, and two in Mississippi. *Shields v. Barrow*, 130.
12. Becoming dissatisfied with this arrangement, the vendor filed a bill in the circuit court of the United States for Louisiana, against the two

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- citizens of Mississippi, to set aside the agreement as having been improperly procured, and to restore him to his rights under the original sale. *Ib.*
13. All the six persons with whom the second arrangement was made, were indorsers upon the notes originally given by the vendee for the purchase-money, under the sale. *Ib.*
 14. The four parties to the compromise, who resided in Louisiana, not being suable in the circuit court of that state, and their presence, as defendants, being necessary, the court could not rescind the contract as to two, and allow it to stand as to the other four. Consequently, it could not pass a decree, as prayed. *Ib.*
 15. Neither the act of congress of 1839, (5 Stat. at L., 321, § 1,) nor the 47th rule for the equity practice of the circuit courts, enables a circuit court to make a decree in equity, in the absence of an indispensable party, whose rights must necessarily be affected by such decree. *Ib.*
 16. The cases upon this point, the statute, and the rule examined. *Ib.*
 17. The bill should have been dismissed. *Ib.*
 18. The two Mississippi defendants answered. *Ib.*
 19. The bill insisted that the compromise was made in good faith, and one of them filed a cross-bill against the vendor to compel him to carry it out. *Ib.*
 20. This cross-bill was also defective, as to parties, the other sureties and the vendee having an interest in the subject, so that, without their presence, no decree could be made. *Ib.*
 21. The vendor then filed a petition, by way of amended bill, stating his willingness to carry out the compromise upon certain conditions, which he prayed the court to enforce. *Ib.*
 22. This was irregular. The rules about amendments, examined. *Ib.*
 23. The court then passed an order, that unless the two Mississippi defendants should, before a day named, file a cross-bill, and make all the Louisiana parties defendants, the vendor might proceed upon his prayer to rescind the compromise, as far as the two Mississippi parties were concerned. *Ib.*
 24. This was entirely irregular. Parties cannot be forced into court in this way; nor can new parties be brought into a cause by a cross-bill. *Ib.*
 25. The mode considered of making new parties, when necessary. *Ib.*
 26. The original and cross-bills must be ordered to be dismissed. *Ib.*
 27. A *bonâ fide* assignee of an illegal contract can in some cases enforce his contract of assignment. *McBlair v. Gibbs*, 232.
 28. Where an appeal from a decree in chancery 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. *Stafford v. Union Bank*, 275.
 29. Where the security is insufficient, this court will, upon motion of the appellee, lay a rule upon the judge below, to show cause why a *mandamus* should not issue, commanding him to carry into execution the decree of the court below. *Ib.*
 30. Upon cause shown by the judge that, having taken what he considered to be good and sufficient security, the cause was appealed to this court, which removed it from his jurisdiction, and that he had no power to make an order in the case, this court will order a peremptory *mandamus*. *Ib.*
 31. But as the security given was sufficient to bring the case before this court by appeal, a motion to dismiss the appeal must be overruled. *Ib.*
 32. In 1816, an association called the Baltimore Company, was organized in Baltimore, for the purpose of furnishing advances and supplies in fitting out a military expedition under General Mina, against Mexico, then a part of the dominions of the King of Spain. See 11 How., 529, and 12 Id., 111. *Williams v. Gibbs*, 239.
 33. One of the shareholders having become insolvent, in 1819, his trustee sold the share in 1825. The original transaction being illegal, the share could not be considered, by the laws of Maryland, as property passing by the insolvency to the trustee. Consequently, the sale by the trustee

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- passed nothing to the assignee. The court of appeals of Maryland so decided, and this court adopts their construction of their own laws. *Ib.*
34. An act of the Legislature of Maryland, passed in 1841, made the sale of 1825 valid, so far only as defects existed for the want of a bond, by the trustee in insolvency, and the want of a ratification of the sale by the court. But it did not purport to cure other defects in the title of the trustee. Nor did the court of appeals decide that it went any further than to cure the two defects above mentioned. *Ib.*
 35. In 1846, the Baltimore county court distributed the fund, and awarded the proceeds of the share in question to the executors of the assignee. This decree was affirmed by the court of appeals in 1849. But during this time there was no person authorized to protect the interest of the insolvent. He had died in 1836, and no letters of administration upon his estate were taken out until 1852. *Ib.*
 36. In the distribution of a common fund amongst the several parties interested, an absent party, who had no notice of the proceedings, and who was not guilty of wilful laches or unreasonable neglect, will not be concluded by the decree of distribution from the assertion of his right by bill or petition against the trustee, executor, or administrator; or, in case they have distributed the fund in pursuance of an order of the court, against the distributees. *Ib.*
 37. The English and American cases upon this point examined. *Ib.*
 38. The present claim being made by the administrator of the insolvent, against the executors of the assignee, it is not necessary, under the circumstances of the case, to turn the plaintiff over, for his remedy, against the distributees. *Ib.*
 39. There was a judgment recovered in the supreme court of New York, upon which a *fiery facias* was issued, the return to which was, "no goods, chattels, or real estate of the defendant to be levied upon." *Booth v. Clark*, 322.
 40. The creditor then filed a creditor's bill before the chancellor of the first circuit in the state of New York, to subject the equitable assets and choses in action of the debtor to his judgment. The bill was taken *pro confesso*, and, in 1842, a receiver was appointed. The debtor was also enjoined from making any disposition of his estate, legal or equitable; but the court had not been applied to, either by the creditor or the receiver, for any order upon the debtor, *in personam*, to coerce his compliance with the injunction or decree. *Ib.*
 41. In 1843, the debtor went into another state and took the benefit of the bankrupt law of the United States. An assignee was appointed, and, after his death, another person to succeed him. *Ib.*
 42. In 1851, a sum of money was awarded to the debtor for a claim accruing anterior to the judgment, by the commissioners under the Mexican treaty, which was claimed by the receiver and also by the assignee in bankruptcy, both prosecuting their claims in the circuit court of the United States for the District of Columbia. *Ib.*
 43. The assignee in bankruptcy has the best right to the fund. *Ib.*
 44. A receiver is an officer of the court which appoints him, but cannot sue, in a foreign jurisdiction, for the property of the debtor. *Ib.*
 45. The proper course would be to compel obedience to the injunction, by a coercion of the person of the debtor, obliging him either to bring the property in dispute within the jurisdiction of the court, or to execute such a conveyance or transfer thereof, as will be sufficient to vest the legal title as well as the possession of the property according to the *lex loci rei sitæ*. *Ib.*
 46. The New York and English cases upon this subject examined. *Ib.*
 47. The distinction between a receiver in chancery under a creditor's bill and an assignee in bankruptcy explained. *Ib.*
 48. In England, an assignee in bankruptcy is held to be vested with the personal property of the bankrupt which is in foreign countries; and her courts acknowledge the validity of the title of a foreign assignee to property in England, when such title emanates from a country which has a bankrupt law similar to her own. *Ib.*
 49. But this rule does not prevail in the United States, either as regards a

CHANCERY—(*Continued.*)

- foreign assignee or an assignee under the laws of another state in the Union. The reason is stronger for declining to give such efficacy to a receiver under a creditor's bill. And, moreover, there was in this case a want of vigilance in the creditor and receiver, by their omitting to proceed in the regular chancery practice against the person of the debtor, as above stated. *Ib.*
50. Where a bill was filed for the specific execution of a contract, and it appeared that the notes given for the purchase of the property had never been paid, and the property was sold for the payment of the consideration-money, the bill was properly dismissed. *Boone v. Missouri Iron Co.*, 340.
 51. No principle in equity is better settled, than that he who asks a specific execution of his contract must show a performance, on his part, or that he has offered to perform. Neither of these was done in this case. *Ib.*
 52. If an award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or fact. *Burchell v. Marsh.* 344.
 53. In this case, one of the parties sued the other for debt, who, in his turn, claimed damages for the manner in which he was sued. The submission was broad enough to cover all these demands on either side. *Ib.*
 54. One of the claims made by the party who was sued, was for damages for the violence of the agent of the creditors; and the referees heard evidence upon this subject. Even if this had been beyond the submission, there was nothing in the record to show that the arbitrators made any allowance for this violence and slanderous language. *Ib.*
 55. The charges of fraud and corruption made in the bill are denied in the answer, and the award is not so outrageous as of itself to constitute conclusive evidence of fraud or corruption. Error of judgment in the arbitrators is not a sufficient ground for setting aside an award. *Ib.*
 56. Where a complainant in chancery averred that a note of which he was one of the makers, had been deposited by the holder, amongst other collateral securities, with a person who had become responsible for the debts of the holder; and averred further that enough had been collected from these collateral securities to meet and defray all the responsibilities incurred, the evidence showed that this was not the fact. The amount collected was not enough, by a large deficiency, to reimburse the losses incurred as indorser and surety. *Hinkle v. Wanzer*, 353.
 57. The evidence is not sufficient to show that the note had been paid by another of the makers than the complainant; or that a release had been executed to him by the holder of the note. The answer is substantially responsive to the charge, and denies it. Other circumstances disclosed in the evidence, sustain the answer. *Ib.*
 58. The collateral securities, being deposited with counsel for the purpose of paying the debts of the insolvent as they were collected, were properly held by the counsel as a trust fund, and it was correct to allow the surety to control the judgment upon the note in question. *Ib.*
 59. The cases examined with respect to the assignment of equitable interests and *choses in action.* *Ib.*
 60. A resident in Pennsylvania made his will, in 1829, giving annuities to his wife and others, and directing that his executors, or the survivor of them, after the decease of his wife, should provide for the annuitants, then living, and dispose of the residue of his property for the use of such charitable institutions in Pennsylvania and South Carolina as they or he may deem most beneficial to mankind. *Fountain v. Ravenel*, 369.
 61. His wife and three other persons were appointed executors. *Ib.*
 62. The three other persons all died during the lifetime of the wife. No appointment of the charity was made or attempted to be made during the lifetime of the executors. *Ib.*
 63. The charity cannot now be carried out. *Ib.*
 64. The executors were vested with a mere power of appointment without having any special trust attached to it. In England, the case could only

CHANCERY—(Continued.)

- be reached by the prerogative power of the crown acting through the sign-manual of the king. *Ib.*
65. The English and American cases upon this subject examined. *Ib.*
66. A court of equity does not interfere with judgments at law, unless the complainant has an equitable defense of which he could not avail himself, at law, because it did not amount to a legal defense, or had a good defense at law which he was prevented from availing himself of by fraud or accident, unmixed with negligence of himself or his agents. *Hendrickson v. Hinckley*, 443.
67. Therefore, a bill was properly dismissed where the complainant sought relief from a judgment at law, for the following reasons:—
1. Where he alleged that he had been defrauded in the sale of the property, for the purchase of which he gave his notes. The fraud was pleaded at law, and the verdict against him. Moreover, six years elapsed between the sale and suit, and no effort was made to rescind the contract.
 2. Certain verbal promises alleged to have been made by the agent of the vendor. These were not admissible in any court to vary a contract. This defense was also set up at law, and failed.
 3. That certain letters from a co-defendant were read to the jury as admissions. This ground of relief was also untenable.
 4. That certain claims of set-off existed which he purposely abstained from using in the trial at law. If he voluntarily waived this defense, relying upon a separate action, he has no right now to ask a court of equity to interfere. *Ib.*
68. The penalties for the violation of a copyright imposed by the 7th section of the act of 1731, (4 Stats at L., 438,) namely, the forfeiture of the printed copies and the sum of one dollar for each sheet unlawfully printed, cannot be enforced in a court of equity. *Stevens v. Gladding*, 448.
69. Under a prayer for general relief, the court can decree for an account of profits. This right is incident to the right to an injunction in copy and patent-right cases. *Ib.*
70. Where a complainant sought to recover by bill in chancery the proceeds of a judgment which he alleged that his debtor had against a third person, and it turned out that his debtor had only an interest of one fourth in this judgment, which fourth was collected and the proceeds paid over to the solicitor of the complainant during the pendency of the suit, the bill was properly dismissed at the cost of the complainant. *Rhodes v. Farmer*, 464.
71. The assignment of the judgment was, in reality, conditional, although absolute on its face; and the present bill being in the nature of a bill to carry that assignment into effect, in such a case parol evidence is admissible to rebut or explain an equitable interest. *Ib.*
72. The judgment was nominally assigned to the debtor, but his equitable interest in it was only one fourth, which was all that the complainant was entitled to. This fourth being paid before the decree, together with costs up to that time, it was proper to dismiss the bill at the cost of the complainant. *Ib.*
73. Where a promissory note was given in Mississippi, for the purchase of slaves, the title of the vendor of which afterwards proved to be defective, but in the mean time a foreign creditor of the vendor had laid an attachment in the hands of the vendee, for the amount of the promissory note, and obtained judgment against him as garnishee, the purchaser of the slaves should be credited upon the judgment against him, with the value of the slaves at the time when they were taken away from him, and the damages, costs, and expenses actually paid upon the decrees of the court of chancery in Mississippi. *Wanzer v. Truly*, 584.
74. Where a complainant filed a bill in chancery against numerous defendants, seven of whom were selected by the court to represent the rest; and after these seven had answered the bill, two of them filed a cross-bill against the original complainant, and also against all their co-defendants, an appeal from a decree dismissing this cross-bill, will not lie to this court. It must be dismissed for want of jurisdiction. *Ayres v. Carver*, 591.

CHARITIES.

See USES AND TRUSTS.

CHARTER-PARTY.

1. A charter-party is an informal instrument, often having inaccurate clauses, which ought to have a liberal construction, in furtherance of the real intention of the parties and usage of trade. *Raymond v. Tyson*, 53.
2. Cases cited to illustrate and explain this rule. *Ib.*
3. Though the owner of a ship, of which the charterer is not the lessee, but freighter only, has a lien upon the cargo for freight, properly so called, and also for a sum agreed to be paid for the use and hire of the ship, his lien may be considered as having been waived, without express words to that effect, if there are stipulations in the charter-party inconsistent with the exercise of the lien, or when it can fairly be inferred that the owner meant to trust to the personal responsibility of the charterer. *Ib.*
4. The American and English cases upon this subject examined. *Ib.*
5. Where a ship was chartered for a voyage from London direct, or from thence to Cardiff, in Wales (if required), to load for a port or ports on the Pacific, where she was to be employed between such ports as the charterers might elect, thence to be returned back, either to New York or Great Britain, at their option; the time for her employment being to the full term of fifteen months, with a privilege to the charterers to extend it to twenty-four months; the charterers paying two thousand dollars per month, payable in New York semi-annually; the circumstances of the case indicate that the owner meant to waive his lien upon the cargo for freight, and trust to the personal responsibility of the charterer. *Ib.*
6. The ship having arrived at San Francisco, with a cargo of coal, a libel filed to hold the cargo responsible for the freight, ought to have been dismissed. *Ib.*

CHILDREN AND GRANDCHILDREN.

See "ISSUE."

CHOSES IN ACTION, ASSIGNMENT OF.

See CLAIMS UPON FOREIGN GOVERNMENTS.

1. The cases examined with respect to the assignment of equitable interests and *choses in action*. *Hinkle v. Wanzer*, 353.
2. The cases examined respecting the relative equities of prior and subsequent assignees of a *chose in action*. *Judson v. Corcoran*, 612.
3. Where a claimant upon the government of Brazil assigned his claim to a creditor soon after the transaction occurred which gave rise to the claim, and the assignment appeared to have been made upon good consideration, the assignee was entitled to receive the proceeds of the award of the commissioners. The assignee took measures, immediately after the assignment, to protect his rights. *Lewis v. Bell*, 616.

CITATION.

1. Where a proceeding was instituted in Louisiana, in the name of the treasurer of the state, to recover a tax imposed upon property inherited by aliens, a citation served upon that officer was sufficient. He was the "adverse party," under the judiciary act. *Poydras de la Lande v. Treasurer of Louisiana*, 1.
2. The tenth rule of this court, directing process to be served upon the chief executive magistrate and attorney-general, applies to those cases only in which the state is a party on the record. When an officer of the state is the party prosecuting the suit for the state, the citation must be served on him. *Ib.*

CLAIMS UPON FOREIGN GOVERNMENTS.

1. In 1816, an association, called the Baltimore Company, was organized in Baltimore, for the purpose of furnishing advances and supplies in fitting out a military expedition under General Mina, against Mexico, then a part of the dominions of the King of Spain. See 11 How., 529, and 12 *Ib.*, 111; 14 *Ib.*, 610. *McBlair v. Gibbs*, 232.
2. An assignment of a share in this company, made in 1829 to a *bonâ fide* purchaser for a valuable consideration, was valid. *Ib.*
3. Although the transaction was illegal in 1816, and had not changed its

CLAIMS UPON FOREIGN GOVERNMENTS—(Continued.)

- character in 1829, yet the assignment was not tainted with any illegality. The claim against Mexico, as being one of the efforts to establish her independence of Spain, rested entirely upon her sense of honor in acknowledging the obligation after her independence was achieved; but after the debt was admitted, the *bonâ fide* assignee became substituted to all the rights of the original shareholder. *Ib.*
4. The cases examined, showing how far a *bonâ fide* assignee of an illegal contract can claim and enforce his contract of assignment. *Ib.*
 5. An assignment of "all my undivided ninth part, right, title, and interest, of every kind whatever, in the claim," carried with it an assignment of a claim to commissions as well as the share itself. *Ib.*
 6. Moreover, the original holder, or his representatives, would be estopped from claiming the proceeds, after they had been received by his *bonâ fide* assignee. *Ib.*
 7. In 1816 an association, called the Baltimore Company, was organized in Baltimore for the purpose of furnishing advances and supplies in fitting out a military expedition under General Mina, against Mexico, then a part of the dominions of the King of Spain. See 11 How., 529; 12 *Ib.*, 111. *Williams v. Gibbs*, 239.
 8. One of the shareholders having become insolvent, in 1819, his trustee sold the share in 1825. The original transaction being illegal, the share could not be considered, by the laws of Maryland, as property passing by the insolvency to the trustee. Consequently, the sale by the trustee passed nothing to the assignee. The court of appeals of Maryland so decided, and this court adopts their construction of their own laws. *Ib.*
 9. An act of the Legislature of Maryland, passed in 1841, made the sale of 1825 valid, so far only as defects existed for the want of a bond, by the trustee in insolvency, and the want of a ratification of the sale by the court. But it did not purport to cure other defects in the title of the trustee. Nor did the court of appeals decide that it went any further than to cure the two defects above mentioned. *Ib.*
 10. In 1846, the Baltimore county court distributed the fund, and awarded the proceeds of the share in question to the executors of the assignee. This decree was affirmed by the court of appeals in 1849. But during this time there was no person authorized to protect the interest of the insolvent. He had died in 1836, and no letters of administration upon his estate were taken out until 1852. *Ib.*
 11. In the distribution of a common fund amongst the several parties interested, an absent party, who had no notice of the proceedings, and who was not guilty of wilful laches or unreasonable neglect, will not be concluded by the decree of distribution from the assertion of his right by bill or petition against the trustee, executor, or administrator; or, in case they have distributed the fund in pursuance of an order of the court, against the distributees. *Ib.*
 12. The English and American cases upon this point examined. *Ib.*
 13. The present claim being made by the administrator of the insolvent, against the executors of the assignee, it is not necessary, under the circumstances of the case, to turn the plaintiff over, for his remedy, against the distributees. *Ib.*
 14. Where a prior assignee of a claim against Mexico gave no information of the assignment until a subsequent assignee had prosecuted the claim before the commissioners, and obtained an award in his favor, the equities of these parties were equal, and the possessor of the legal title ought to retain the fund. *Judson v. Corcoran*, 612.
 15. The award was not conclusive amongst the claimants. The decision of a former court upon this point again affirmed. *Ib.*
 16. The cases examined respecting the relative equities of prior and subsequent assignees of a *chose in action*. *Ib.*
 17. Where a claimant upon the government of Brazil assigned his claim to a creditor soon after the transaction occurred which gave rise to the claim, and the assignment appeared to have been made upon good consideration, the assignee was entitled to receive the proceeds of the award of the commissioners. The assignee took measures, immediately after the assignment, to protect his rights. *Lewis v. Bell*, 616.

COLLECTORS OF THE REVENUE.

1. Congress have directed by law that in certain cases the duties of collectors of the revenue should be united with those of naval officer or surveyor of the port, but never with those of inspector of the customs. *Stewart v. United States*, 116.
2. Therefore, where a person held the two offices of collector of the revenue and inspector of the customs, and charged a salary for each office separately, it was irregular. *Ib.*
3. In May, 1822, congress passed an act, (3 Stat. at L., 693,) directing that "no collector, surveyor, or naval officer, shall ever receive more than \$400 annually, exclusive of his compensation as collector, surveyor or naval officer, and the fines and forfeitures allowed by law for any services he may perform for the United States in any other office or capacity." *Ib.*
4. This act was intended to provide compensation to the collector, &c., for extraordinary services incident to their respective offices, and to them only; but did not include the union of the two offices of collector and inspector of the customs. A different mode and rate of compensation for inspectors was provided by law. *Ib.*
5. The tariff act of 1842, (5 Stat. at L., 548,) provided that if the appraised value of merchandise should exceed, by ten per centum or more, the invoice value, an additional duty should be imposed of fifty per centum of the duty imposed on the same, where fairly invoiced. *Ring v. Maxwell*, 147.
6. The act of 1846, (9 Stat. at L., 42,) reduced this additional duty to twenty per centum. *Ib.*
7. Although this additional duty may have been considered as a penalty, and as such, a moiety given to the officers of the custom-house, under the act of 1842, and the same disposition of it would have been made under the act of 1846, if there had been no other legislation, yet the act of February, 1846, (9 Stats. at L., 3,) declares that it shall not be considered a penalty for the purpose of being distributed. *Ib.*
8. Therefore, the additional duty of twenty per centum, levied by the collector, under the 8th section of the act of July 30, 1846, is not to be considered as a penalty, one moiety whereof is to be distributed amongst the officers of the custom-house. *Ib.*
9. Where there were two consecutive commissioners and two sets of sureties, the latter set were responsible for all money which remained in the hands of the principal at the expiration of the first commission. If it was misapplied during the first term of office, it was incumbent upon the second set of sureties to show that it was so. *Bruce v. United States*, 437.

COLLISION OF VESSELS.

See ADMIRALTY.

COMMERCIAL LAW.

1. In an action upon a bill of exchange by a *bonâ fide* assignee against the acceptor, it is no good defense that the bill was accepted in order to pay for a sugar-mill which was defective; that the drawers of the bill had promised to put it in order, and that the assignee of the bill knew these facts. The acceptor of the bill relied upon this promise to protect his rights, and not upon a refusal to pay the bill when due. *Arthurs v. Hart*, 6.
2. A charter-party is an informal instrument, often having inaccurate clauses, which ought to have a liberal construction, in furtherance of the real intention of the parties and usage of trade. *Raymond v. Tyson*, 53.
3. Cases cited to illustrate and explain this rule. *Ib.*
4. Though the owner of a ship, of which the charterer is not the lessee, but freighter only, has a lien upon the cargo for freight, properly so called, and also for a sum agreed to be paid for the use and hire of the ship, his lien may be considered as having been waived, without express words to that effect, if there are stipulations in the charter-party inconsistent with the exercise of the lien, or when it can fairly be inferred that the owner meant to trust to the personal responsibility of the charterer. *Ib.*

COMMERCIAL LAW—(Continued.)

5. The American and English cases upon this subject examined. *Ib.*
6. Where a ship was chartered for a voyage from London direct, or from thence to Cardiff, in Wales (if required), to load for a port or ports on the Pacific, where she was to be employed between such ports as the charterers might elect, thence to be returned back, either to New York or Great Britain, at their option; the time for her employment being to the full term of fifteen months, with a privilege to the charterers to extend it to twenty-four months; the charterers paying two thousand dollars per month, payable in New York semi-annually; the circumstances of the case indicate, that the owner meant to waive his lien upon the cargo for freight, and trust to the personal responsibility of the charterer. *Ib.*
7. The ship having arrived at San Francisco, with a cargo of coal, a libel filed to hold the cargo responsible for the freight, ought to have been dismissed. *Ib.*
8. A consignee of goods has a right, in his own name, to libel a vessel for their non-delivery, unless there is something to show that he had no interest in them. The presumption is, that he had an interest, and to defeat the right to sue, in his own name, this presumption must be rebutted by proof. *Lawrence v. Minturn*, 100.
9. In the present case, there is no such proof. *Ib.*
10. The goods being thrown overboard, the facts in this case show that the jettison was justifiable, and the loss occasioned by the perils of the sea. *Ib.*
11. The nature of the contract explained between the master and owner of a vessel and the shipper, where the latter knows that the articles shipped are to be carried upon the deck, and the cases upon this subject examined. *Ib.*
12. In this case, the evidence shows that there was no want of due diligence and skill, either in the construction of the vessel or the stowage of the cargo. *Ib.*
13. In a case of collision upon Lake Huron, between a propeller and a schooner, the evidence shows that the propeller was in fault. *Propeller Monticello v. Mollison*, 152.
14. The fact that the libellants had received satisfaction from the insurers, for the vessel destroyed, furnished no good ground of defense for the respondent. *Ib.*
15. Where the protest of a bill of exchange contained an exact copy of the bill, but the acceptance was made by "Chas. Byrne," instead of "And. E. Byrne," as it was in the original bill, this variance or error in the name of the acceptor's agent ought not to have excluded the protest from being read in evidence to the jury. *Dennistoun v. Stewart*, 606.
16. It is unnecessary that a copy of the protest should be included in the notice to the drawer and indorsers. The object of the notice is to inform the party that payment has been refused; and hence such a description of the note as will give sufficient information to identify it, is all that is necessary. *Ib.*
17. In this case, the protest had an accurate copy of every material fact which could identify the bill: the date, the place where drawn, the amount, the merchandise on which it was drawn, the ship by which it was sent, the balance on the cotton for which it was accepted, the names of drawers, acceptor, indorsers; every thing but the abbreviations and flourishes in the Christian name of the acceptor's agent. This mistake could not mislead any person as to the identity of the instrument described. *Ib.*

CONFLICT OF LAWS.

See INSOLVENT LAWS.

1. There was a judgment recovered in the supreme court of New York, upon which a *fiery facias* was issued, the return to which was, "no goods, chattels, or real estate of the defendant to be levied upon." *Booth v. Clark*, 322.
2. The creditor then filed a creditor's bill before the chancellor of the first circuit in the state of New York, to subject the equitable assets and

CONFLICT OF LAWS—(Continued.)

- choses in action* of the debtor to his judgment. The bill was taken *pro confesso*, and, in 1842, a receiver was appointed. The debtor was also enjoined from making any disposition of his estate, legal or equitable; but the court had not been applied to, either by the creditor or the receiver, for any order upon the debtor, *in personam*, to coerce his compliance with the injunction or decree. *Ib.*
3. In 1843, the debtor went into another state and took the benefit of the bankrupt law of the United States. An assignee was appointed, and, after his death, another person to succeed him. *Ib.*
 4. In 1851, a sum of money was awarded to the debtor for a claim accruing anterior to the judgment, by the commissioners under the Mexican treaty, which was claimed by the receiver and also by the assignee in bankruptcy, both prosecuting their claims in the circuit court of the United States for the District of Columbia. *Ib.*
 5. The assignee in bankruptcy has the best right to the fund. *Ib.*
 6. A receiver is an officer of the court which appoints him, but cannot sue, in a foreign jurisdiction, for the property of the debtor. *Ib.*
 7. The proper course would be to compel obedience to the injunction, by a coercion of the person of the debtor, obliging him either to bring the property in dispute within the jurisdiction of the court, or to execute such a conveyance or transfer thereof, as will be sufficient to vest the legal title as well as the possession of the property according to the *lex loci rei sitæ*. *Ib.*
 8. The New York and English cases upon this subject examined. *Ib.*
 9. The distinction between a receiver in chancery under a creditor's bill and an assignee in bankruptcy explained. *Ib.*
 10. In England, an assignee in bankruptcy is held to be vested with the personal property of the bankrupt which is in foreign countries; and her courts acknowledge the validity of the title of a foreign assignee to property in England, when such title emanates from a country which has a bankrupt law similar to her own. *Ib.*
 11. But this rule does not prevail in the United States, either as regards a foreign assignee or an assignee under the laws of another state in the Union. The reason is stronger for declining to give such efficacy to a receiver under a creditor's bill. And, moreover, there was in this case a want of vigilance in the creditor and receiver, by their omitting to proceed in their regular chancery practice against the person of the debtor, as above stated. *Ib.*
 12. Although, by the laws of Alabama, a lien upon property accrues from the delivery of the execution to the sheriff or marshal, and the rights of creditors claiming under the same jurisdiction are adjudged accordingly, yet the same rule does not apply where a controversy arises between executions issued by a court of the United States and a state court. *Pulliam v. Osborne*, 471.
 13. In such a case the rule is, that whichever officer, the sheriff or the marshal, acquires possession of the property first by the levy of the execution, obtains a prior right, and a purchaser at a judicial sale will take the property free from all liens of the same description. *Ib.*

CONSTITUTIONAL LAW.

1. The validity of a state insolvent law cannot now be considered as an open question. *Bank of Tennessee v. Horn*, 157.
2. The power of the President to remove a territorial judge discussed, but not decided. *United States v. Guthrie*, 284.
3. The state of Pennsylvania, in 1826, passed a law by which all inheritances being within that commonwealth, which, by the intestacy or the will of any decedent, should devolve upon any other than the father, mother, wife, children, or lineal descendants of such person, should be subject to a tax. *Carpenter v. Pennsylvania*, 456.
4. In 1850, an explanatory act was passed, declaring that the words "being within this commonwealth," should be so construed as to relate to all persons who have been at the time of their decease or now may be, domiciled within this commonwealth, as well as to estates. *Ib.*
5. In 1849, a citizen of Pennsylvania died, whose will was proven by a resident executor in December, 1849. The executor represented that a

CONSTITUTIONAL LAW—(Continued.)

- portion of the estate, consisting of securities, stocks, loans, and evidences of debt and property, was not within the commonwealth. *Ib.*
6. The supreme court of Pennsylvania decided that this portion was subject to the tax, and this court has no authority to revise that decision. *Ib.*
 7. The explanatory law is not within the prohibitions of the constitution of the United States. *Ib.*
 8. It is true that in some respects the rights of donees, under a will, becomes vested by the death of a testator; but until the period of distribution arrives, the law of the decedent's domicile attaches to the property. *Ib.*
 9. The explanatory act is not an *ex post facto* law, within the 10th section of the 1st article of the constitution of the United States. This phrase was used in a restricted sense, relating to criminal cases only. *Ib.*
 10. In cases in which this court has original jurisdiction, the form of proceeding is not regulated by act of congress, but by the rules and orders of the court. *Florida v. Georgia*, 478.
 11. These rules and orders are framed in analogy to the practice in the English court of chancery. But the court does not follow this practice, where it would embarrass the case by unnecessary technicality or would defeat the purposes of justice. *Ib.*
 12. There is no mode of proceeding by which the United States can bring into review the decision of this court upon a question of boundary between two states. Justice therefore requires that the United States, which represent the rights and interests of the other twenty-nine states, should have an opportunity of being heard before the boundary is established. *Ib.*
 13. The attorney-general having filed an information, stating that the interests of the United States are involved in the establishment of the boundary line between Florida and Georgia, he has a right to appear on behalf of the United States and adduce proofs in support of the boundary claimed by them to be the true one, and to be heard at the argument. *Ib.*
 14. The United States will not, by this proceeding, become a party in the technical sense of the word, and no judgment will be entered for or against them. But the evidence and arguments offered, in their behalf, will be considered by the court in deciding the matter in controversy. *Ib.*
 15. Each party is at liberty to cause surveys and maps to be made. But the court does not deem it advisable to appoint persons for this purpose. *Ib.*
 16. By an act of congress passed on the 3d of March, 1851, (9 Stat. at L., 631), provision was made for the appointment of a board of commissioners to settle private land claims in California, and for the transfer of a case decided by them to the district court of the United States for California, by way of appeal. *United States v. Ritchie*, 525.
 17. This law was constitutional. The board of commissioners was not a court, under the constitution, invested with judicial powers; but the commencement of the suit in the district court, when transferred there, must be regarded as an original proceeding. The district court could hear additional evidence to that which was before the board of commissioners. *Ib.*
 18. The acts of congress require that every vessel shall be registered by the collector of the district in which is the port nearest to the place where her owner or owners reside. The name of this port must be painted on her stern, in large letters; and every bill of sale of her must be recorded in the office where she is registered. *Hays v. Pacific Steamship Co.*, 596.
 19. Where a company, incorporated by New York, (all the stockholders being residents of that state,) owned vessels which were employed in the transportation of passengers, &c., between New York and San Francisco, in California, and between San Francisco and different ports in the territory of Oregon; all of which vessels were ocean steam-ships, and duly registered in New York; that they remained in California no longer than was necessary to land their passengers and freight, and prepare for the next voyage; these vessels are not liable to assessment and taxation under the laws of California and authorities of San Francisco. *Ib.*

CONSTITUTIONAL LAW—(Continued.)

20. They were there but temporarily engaged in lawful trade and commerce, with their *situs* at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested, and where the taxes had been paid. *Ib.*

COPYRIGHT.

1. Whether patent-rights and copyrights, held under the laws of the United States, are subject to seizure and sale on execution, is a question upon which the court does not express an opinion in the present case. *Stevens v. Gladding*, 448.
2. The seizure and sale, under execution, of "one copperplate for the map of the State of Rhode Island," did not carry with it the right to print and publish the map. *Ib.*
3. It is distinguishable from a voluntary sale of a plate by the owner thereof. *Ib.*
4. The ownership of a plate and the ownership of the copyright are distinct species of property; and the plate may be used without infringing upon the copyright of printing and publishing the map. *Ib.*
5. But the penalties imposed by the 7th section of the act of congress, passed on the 3d of February, 1831, namely, the forfeiture of the printed copies and the sum of one dollar for each sheet unlawfully printed, cannot be enforced in a court of equity. *Ib.*
6. Under a prayer for general relief, the court can decree for an account of profits. This right is incident to the right to an injunction in copy and patent-right cases. *Ib.*

COVENANT OF WARRANTY.

See WARRANTY.

CRIMINAL LAW.

1. The act of Congress passed on the 29th July, 1813, (3 Stat. at L., 49,) enacts that the owner of every fishing vessel shall, previous to receiving the allowance mentioned in the act, produce to the collector the original agreement which may have been made with the fishermen, and also a certified copy of the days of sailing and returning, to the truth of which he shall swear before the collector. *United States v. Nickerson*, 204.
2. These latter words include the first branch, as well as the second branch of the sentence; so that the owner must not only swear to the truth of the certificate, but also to the verity of the agreement with the fishermen. *Ib.*
3. A person was indicted, in the district court of Massachusetts, for perjury, in swearing falsely to the agreement with the fishermen, and in swearing falsely that three fourths of the crew were citizens of the United States. As the district judge held that the act of Congress only required the owner to swear to the certificate of sailing, and not to the agreement with the fishermen, the person was acquitted. *Ib.*
4. Afterwards, when indicted in the circuit court, this person pleaded his former acquittal. This was a good plea; because the evidence necessary to sustain the indictment, with respect to the fishermen's agreement, might have been given by the United States in the first trial. *Ib.*
5. With respect to the oath that three fourths of the crew were citizens of the United States, the act of 1813 did not require that oath; but then the indictment did not purport to bring the offense under that act, but referred to the statutes of the United States generally. *Ib.*

CUSTOM-HOUSES.

See DUTIES, AND COLLECTORS OF THE REVENUE.

DEED.

See EVIDENCE.

1. In 1839, the legislature of Tennessee passed a law containing the following provision, namely: "That whenever a deed has been registered twenty years, or more, the same shall be presumed to be upon lawful authority, and the probate shall be good and effectual, though the certificate on which the same has been registered, has not been transferred to the register's books, and no matter what has been the form of the certificate of probate or acknowledgment." *Webb v. Den*, 576.
2. A deed to "the legatees and devisees of the late Anthony Bledsoe,"

DEED—(Continued.)

which was certified by the register of Maury county, Tennessee, to have been recorded there in January, 1809, was, under the authority of this statute, properly admitted in evidence, although informalities existed with respect to its being proved, and with respect to the acknowledgment of a *feme covert*. *Ib.*

3. So, also, the deed is effectual, under the circumstances of the case, to transfer a fee-simple estate to the legatees and devisees of Anthony Bledsoe, whose will was in evidence. The deed was a release of the bare legal title to equitable owners in fee, on partition between them as tenants in common. The old common law rule as to the distinction between releases from one joint-tenant to another, and from one tenant in common to another, is not applicable. *Ib.*
4. A defendant in ejectment cannot object to the production in evidence of one of the muniments of the plaintiff's title, because it was *res inter alios acta*. *Ib.*
5. Although the deed of warranty was properly made by the grantor and wife, in order to bar her dower, yet an action upon the covenant of warranty cannot be brought against her. She can make no such covenants. *Griffin v. Reynolds*, 609.

DUTIES.

See also "TARIFF."

1. The 66th section of the act of 1799, (1 Stat. at L., 677, ch. 22,) which declares that "if any goods, wares, or merchandise, of which entry shall have been made in the office of a collector, shall not be invoiced according to the actual cost thereof, at the place of exportation, with design to evade the duties thereupon, or any part thereof, all such goods, &c., or the value thereof, to be recovered of the person making the entry, shall be forfeited," has not been repealed by any provision in the act of 1842, or in any of the duty acts, but still exists in full force and effect. *United States v. 67 Packages of Dry Goods*, 85.

EJECTMENT.

1. The act of congress, passed on the 3d of March, 1807, (2 Stat. at L., 441,) appointing commissioners to adjudicate land claims against the United States, required that where titles to tracts of land, which had not been previously surveyed, were confirmed by the board, they should be surveyed under the directions of the surveyor-general. When a certificate and plat should be filed in the proper office, a patent certificate was to issue, which should entitle the claimant to a patent from the United States. *West v. Cochran*, 403.
2. Therefore, where conflicting locations were claimed of two concessions granted by the lieutenant-governor of Upper Louisiana, and no survey satisfactory to the public officers was made until 1852, when a patent was issued in conformity with a survey directed by the secretary of the interior, this patent was conclusive, in a court of law, of the location to which the party was entitled. *Ib.*
3. He could not, in an action of ejectment, sustain a claim that his patent ought to have had a different location, upon the ground that the confirmation by the commissioners conferred a perfect title to different land from that covered by the patent. *Ib.*
4. In 1839, the legislature of Tennessee passed a law containing the following provision, namely: "That whenever a deed has been registered twenty years, or more, the same shall be presumed to be upon lawful authority, and the probate shall be good and effectual, though the certificate on which the same has been registered, has not been transferred to the register's books, and no matter what has been the form of the certificate of probate or acknowledgment. *Webb v. Den*, 576.
5. A deed to "the legatees and devisees of the late Anthony Bledsoe," which was certified by the register of Maury county, Tennessee, to have been recorded there in January, 1809, was, under the authority of this statute, properly admitted in evidence, although informalities existed with respect to its being proved, and with respect to the acknowledgment of a *feme covert*. *Ib.*
6. So, also, the deed is effectual, under the circumstances of the case, to transfer a fee-simple estate to the legatees and devisees of Anthony

EJECTMENT—(Continued.)

Bledsoe, whose will was in evidence. The deed was a release of the bare legal title to equitable owners in fee, on partition between them as tenants in common. The old common law rule as to the distinction between releases from one joint-tenant to another, and from one tenant in common to another, is not applicable. *Ib.*

7. A defendant in ejectment cannot object to the production in evidence of one of the muniments of the plaintiff's title, because it was *res inter alios acta*. *Ib.*

EQUITY.

See CHANCERY.

EVIDENCE.

1. A treasury transcript was admissible in evidence, in a suit brought by the United States against their debtor, though authenticated copies of the receipts which the debtor had given for money did not accompany the transcript. If an item was charged against him which the debtor disputed, it was in his power to obtain the original voucher; and if it appeared on the face of the account that the item charged did not come into his hands in the regular course of business, the transcript would not be evidence to sustain that charge. *Bruce v. United States*, 437.
2. The cases upon this point examined. *Ib.*
3. It was not necessary for the United States to produce the commission of the debtor, or a certified copy of it. The surety was estopped from denying it. *Ib.*
4. Where there were two consecutive commissions and two sets of sureties, the latter set were responsible for all money which remained in the hands of the principal at the expiration of the first commission. If it was misapplied during the first term of office, it was incumbent upon the second set of sureties to show that it was so. *Ib.*
5. An assignment of a judgment was in reality conditional, although absolute on its face; and a bill being filed in the nature of a bill to carry that assignment into effect, in such a case parol evidence was admissible to rebut or explain an equitable interest. *Rhodes v. Farmer*, 464.
6. Where a suit was brought for damages sustained by the breach of a covenant of warranty of title to land in Alabama, and the plaintiff, in order to establish the existence of an outstanding paramount title at the date of the conveyance, offered the record of a suit in ejectment against his grantor, in which suit the plaintiff himself had been a witness, this record should have been allowed to be given in evidence, without any reservation. *Griffin v. Reynolds*, 609.
7. The ruling of the court was, therefore, erroneous, admitting the record, but referring it to the jury to determine whether the testimony given by the plaintiff was material, and if so, to disregard the evidence. *Ib.*
8. In order to show an outstanding title, a copy from the records of the probate court in Alabama, of a deed of trust from the original owner of the land was offered in evidence, but no evidence was offered to account for the original. This copy should not have been admitted. *Ib.*
9. The deed containing the warranty upon which the suit was brought, was properly admitted in evidence, being an original deed, duly acknowledged and recorded. *Ib.*

EXECUTION.

See CONFLICT OF LAWS.

EXECUTORS AND ADMINISTRATORS.

See USES AND TRUSTS.

1. Where an action on the case was brought in Virginia, against a person to recover damages for fraudulently recommending a third party as worthy of credit, whereby loss was incurred; and after issue joined upon the plea of not guilty, the defendant died, the action did not survive against the executor, but abated. *Henshaw v. Miller*, 212.
2. The Virginia laws and cases examined. *Ib.*
3. The administrator of a deceased partner has no right to interpose and claim a debt due to the partnership. It is the right of the surviving partner to settle up the concerns of the firm. *Wickliffe v. Eve*, 468.

FISHING VESSELS.

See CRIMINAL LAW.

FRAUD.

1. Where a person took the benefit of the bankrupt law of the United States; omitted, in first schedule of property, to take any notice of a claim which he had against the Mexican Republic, for the unlawful seizure of the cargo of a vessel; filed an amended schedule, in which he mentioned the claim so indistinctly as to give no information of its value, although he was then prosecuting it before the board of commissioners; concealed the evidence of the property, so that the assignee in bankruptcy reported that it was of no value, and sold the whole, for a nominal consideration, to the sister of the bankrupt, who afterwards transferred it to him; the purchase was fraudulent, under the 4th section of the bankrupt law, and also by the general principles of equity. *Clark v. Clark*, 315.

INDICTMENT.

See CRIMINAL LAW.

INSOLVENT LAWS.

See BANKRUPT LAW.

1. By an act of the legislature of Louisiana, passed in 1826, all the property of an insolvent petitioner mentioned in his schedule, becomes vested in his creditors, from and after the cession and acceptance; and the syndic is directed to take possession of it, and to administer and sell it for the benefit of the creditors. *Bank of Tennessee v. Horn*, 157.
2. The courts of Louisiana have decided that all the property of the insolvent, whether included in his schedule or not, passes to his creditors by the cession. *Ib.*
3. Therefore, it is of no consequence whether or not the description of a particular piece of property be imperfect in the schedule; and a purchaser of it under the syndic has a better title than one derived from a judicial sale, where the judgment had been obtained after the acceptance of the cession and appointment of the syndic. *Ib.*
4. The validity of a state law of this description cannot now be considered as an open question. *Ib.*

ISSUE.

1. Where provision was made in a marriage settlement for "issue of the said marriage, one or more children then living, the trust then being for the child or children of the said intended marriage," the benefit of this trust did not extend to grandchildren. *Adams v. Law*, 417.

JURISDICTION.

1. Where a bill was filed by several distributees of an estate, to compel the payment of money alleged to be due to them, and a decree was rendered in their favor, this court has jurisdiction over an appeal, although the amount payable to each individual claimant was less than two thousand dollars. *Shields v. Thomas*, 3.
2. The aggregate amount which the defendant was decreed to pay, was more than two thousand dollars; and as to him, this is the matter in dispute. *Ib.*
3. The complainants all claimed under the same title; and it was of no consequence to the defendant in what proportions they shared the money amongst them. *Ib.*
4. The cases upon this point examined. *Ib.*
5. Where a libel was dismissed by the district court, which decree was affirmed by the circuit court, and it appeared that the claim in the libel amounted only to sixteen hundred dollars, an appeal to this court must, upon motion, be dismissed for the want of jurisdiction. *Udall v. Steamship Ohio*, 17.
6. In order to give jurisdiction, the damages must appear on the face of the pleading on which the claim is made. Interest cannot be added, in computing the amount, unless it is specially claimed in the libel. *Ib.*
7. It is too late, when the cause has reached this court, to amend the libel by inserting a special claim for interest. The 24th admiralty rule ought not to be construed to extend to cases where an amendment would give jurisdiction, which would not exist without such amendment. *Ib.*
8. Where it was alleged in a libel, that the libellant was "entitled to recover

JURISDICTION—(Continued.)

- from the vessel the damages by him sustained, which amount to the sum of eighteen hundred dollars and upwards," the sum was not sufficient to bring the case within the jurisdiction of this court. *Olney v. Steamship Falcon*, 19.
9. Interest, not being specially claimed, cannot be computed, for it is considered as a part of the damages, being merged in that claim, and is not estimated as a distinct item. *Ib.*
 10. By the act of congress passed on the 26th of August, 1852, ch. 91, it was made the duty of the superintendent of public printing to receive all matter ordered by congress to be printed, and to deliver it to the public printer or printers. *United States v. Seaman*, 225.
 11. In 1854, Beverly Tucker was printer to the senate, and O. A. P. Nicholson, printer to the house of representatives. *Ib.*
 12. The act further provided, that when any document should be ordered to be printed by both houses of congress, the entire printing of such document should be done by the printer of that house which first ordered the printing. *Ib.*
 13. In January, 1854, the commissioner of patents communicated to the senate that portion of his Annual Report for 1853, which related to arts and manufactures; and on the ensuing day the same communication was made to the house of representatives. Each house having ordered it to be printed, the printing was assigned to Mr. Tucker. *Ib.*
 14. In March, 1854, the agricultural portion of the report was sent to both houses, and both of them, on the same day, ordered it to be printed. In actual priority of time, the order of the house was passed first. The printing of it was given to Mr. Nicholson. *Ib.*
 15. A writ of *mandamus* will not lie from the circuit court of the United States, commanding the superintendent to deliver the printing to Mr. Tucker. *Ib.*
 16. Whether the two portions of the report constituted one document, and which house passed the order first, were questions requiring the exercise of judgment and discretion in the public officer, who had something more than a mere ministerial duty to perform. *Ib.*
 17. The cases upon this point examined. *Ib.*
 18. The circuit court of the United States for the District of Columbia, had not the power to issue a writ of *mandamus*, commanding the secretary of the treasury to pay a judge of the territory of Minnesota his salary, for the unexpired term of his office, from which he had been removed by the President of the United States. *United States v. Guthrie*, 284.
 19. No court has the power to command the withdrawal of money from the treasury of the United States, to pay any individual claim whatever. *Ib.*
 20. A *mandamus* can issue only in cases where the act to be done is merely ministerial, and with regard to which nothing like judgment or discretion, in the performance of his duties, is left to the officer. *Ib.*
 21. The question, whether or not the President has power to remove a territorial judge, argued, but not decided in the present case. *Ib.*
 22. Where a creditor of the bankrupt filed his bill, and gave* his bond within thirty days after the award of the board of commissioners, this was sufficient within the 8th section of the act of March 3, 1849, to carry into effect our treaty with Mexico. *Clark v. Clark*, 315.
 23. The creditor was a *cestui que trust* of the fund, and had a right to intervene, as the assignee in bankruptcy was dead. This was sufficient to give jurisdiction to the court. His not having proved his debt did not debar him of this right. Another assignee was appointed, and filed his claim without loss of time. *Ib.*
 24. The courts of the United States, in the exercise of admiralty and maritime jurisdiction, cannot take cognizance of questions of property between the mortgagee of a vessel and the owner. *Bogart v. Steamboat John Jay*, 399.
 25. The mere mortgage of a ship, other than that of an hypothecated bottomry, is a contract without any of the characteristics or attendants of a maritime loan, and is entered into by the parties to it, without reference to navigation or perils of the sea.

JURISDICTION—(Continued.)

26. The admiralty courts in England now exercise a more ample jurisdiction upon the subject of mortgages of ships, but it is under a statute of Victoria; and in the United States the admiralty and maritime jurisdiction remains as it was before. *Ib.*
27. Where a bill was filed in the district court of the United States for the northern district of Mississippi, against four defendants, who all resided in Alabama, two of whom appeared for the purpose of moving to dismiss the bill, and the other two declined to appear altogether, nor was process served upon them, the court had no alternative but to dismiss the bill. The two absentees were essential parties. *Herndon v. Ridgway*, 424.
28. Jurisdiction over parties is acquired only by a service of process, or their voluntary appearance. If an essential portion of the defendants resided in another state, so that process could not be served upon them, and they would not voluntarily appear, the bill must be dismissed for want of jurisdiction. *Ib.*
29. Where a judgment had been obtained in the circuit court of the United States for the district of Kentucky, in a suit brought by a citizen of Maryland against certain persons in Kentucky, and the judgment was afterwards perpetually enjoined at the instance of the defendants, and a bill was filed by a citizen of Kentucky against the original defendants, who were also citizens of Kentucky, this bill was properly dismissed by the court for the want of jurisdiction. *Wickliffe v. Eve*, 468.
30. The circumstance that the complainant claimed that this was in the nature of a bill of review of the decree which was passed in a suit between citizens of different states, was not sufficient to divest it of the character of an original bill. *Ib.*
31. Moreover, the administrator of a deceased partner had no right to interpose and claim a debt due to the partnership. It was the right of the surviving partner to settle up the concerns of the firm. *Ib.*
32. Where a libel was filed *in personam*, against the owners of a steamboat in California, by their general agent or broker, for the balance of an account for money paid, laid out, and expended, in paying for supplies, repairs, and advertising of the steamboat, together with commissions on the disbursements, the libel was properly dismissed, for want of jurisdiction. *Minturn v. Maynard*, 477.
33. There was nothing in the case to bring it within the class of maritime contracts; nor does the local law of California, which authorizes an attachment of vessels for supplies or repairs, extend to the balance of accounts between agent and principal, who have never dealt on the credit, pledge, or security of the vessel. *Ib.*
34. For the mode of proceeding when this court exercises original jurisdiction in a controversy between two states, see *Florida v. Georgia*, 478.
35. Where a complainant filed a bill in chancery against numerous defendants, seven of whom were selected by the court to represent the rest; and after these seven had answered the bill, two of them filed a cross-bill against the original complainant, and also against all their co-defendants, an appeal from a decree dismissing this cross-bill, will not lie to this court. It must be dismissed for want of jurisdiction. *Ayres v. Carver*, 591.

JURY.

1. It was for the jury to determine, from the facts in the case, whether the specifications, including the claim, were so precise as to enable any person skilled in the structure of machines, to make the one described; also, to judge of the novelty of the invention, and whether the renewed patent was for the same invention as the original patent; also, whether the invention had been abandoned to the public. The jury were also to judge of the identity of the machine used by the defendant, with that of the plaintiffs, or whether they have been constructed and act on the same principle. *Battin v. Taggart*, 74.
2. The statutes of Rhode Island require towns to keep the highways safe and convenient for travellers, at all seasons of the year; and, in case of neglect, "that they shall be liable to all persons, who may in anywise

JURY—(*Continued.*)

- suffer injury to their persons or property, by reason of any such neglect." *City of Providence v. Clapp*, 161.
3. These statutes extend to cities as well as towns, (or townships), and also to side-walks, where they constitute a part of the public highways. The city of Providence was, therefore, bound to keep those side-walks convenient and safe, in a reasonable degree, for pedestrians; and, when a fall of snow took place, it was the duty of the city to use ordinary care and diligence to restore the side-walk to a reasonably safe and convenient state. *Ib.*
 4. It was for the jury to find whether or not this was accomplished, by treading down the snow; and, if not, whether the want of safety and convenience was owing to the want of ordinary care and diligence on the part of the city. *Ib.*
 5. In considering whether due diligence required the city to remove the snow, the jury ought to take into consideration the ordinances enacted by the city, not as prescribing a rule binding on the city, but as evidence of the fact that a removal, and not a treading down of the snow, was reasonably necessary. *Ib.*
 6. Where an action was brought against a person for making false representations of the pecuniary condition of a certain party, whereby the plaintiff had been induced to sell goods upon credit, and had incurred loss, evidence conducing to show that the statements of the defendants were false, ought to have been allowed to go to the jury. *Iasigi v. Brown*, 183.
 7. The defendant having written to his own agent, and headed the letter confidential, it was for the jury to say whether or not it was intended for the exclusive perusal of the agent. *Ib.*
 8. It was also for the jury to say on a thorough examination of the letters and the facts and circumstances connected with them, whether they were calculated to inspire, and did inspire, a false confidence in the pecuniary responsibility of the party, to which the writer knew he was not entitled to. *Ib.*
 9. Although the presumption of a dedication of property to public uses, is a question of fact for the jury, yet it is for the court to instruct them what facts, if proved, will justify such a presumption. *City of Boston v. Lecraw*, 426.
 10. An instruction to the jury was erroneous, namely, that if the plaintiff had not lost all the land conveyed to him by the defendant, then the jury might allow him the average value of the part lost, in proportion to the price paid for the whole. The true measure of damage was the loss actually sustained by the eviction from the land for which the title has failed. *Griffin v. Reynolds*, 609.

LANDS, PUBLIC.

For PUBLIC LANDS IN CALIFORNIA, see CALIFORNIA.

1. In 1811, congress passed an act (2 Stat. at L., 663) giving to the owners of land in Louisiana bordering on any river, creek, &c., the preference in purchasing back land; and where, by reason of bends in the river, each claimant could not obtain a tract equal in quantity to the adjacent tract already held by him, the surveyor of the district, under the superintendence of the surveyor of the public lands, south of the state of Tennessee, was directed to divide the vacant land between the several claimants in such a manner as to him might seem most equitable. *Haydel v. Dufresne*, 23.
2. These officers decided, as judges, upon the equities of the claimants; and their allotments are not liable to be overthrown by courts of justice, upon any other ground than that of fraud, which is not imputed in this case. *Ib.*
3. The principles affirmed in the cases of the *United States v. King and others*, 7 How., 833, and of the *United States v. Turner's Heirs*, 11 How., 663, again established. *United States v. Cox*, 41.
4. The act of congress, passed on the 3d of March, 1807, (2 Stat. at L., 441,) appointing commissioners to adjudicate land claims against the United States, required that where titles to tracts of land, which had not been previously surveyed, were confirmed by the board, they should

LANDS, PUBLIC—(Continued.)

- be surveyed under the directions of the surveyor-general. When a certificate and plat should be filed in the proper office, a patent certificate was to issue, which should entitle the claimant to a patent from the United States. *West v. Cochran*, 403.
5. Therefore, where conflicting locations were claimed of two concessions granted by the lieutenant-governor of Upper Louisiana, and no survey satisfactory to the public officers was made until 1852, when a patent was issued in conformity with a survey directed by the secretary of the interior, this patent was conclusive, in a court of law, of the location to which the party was entitled. *Ib.*
 6. He could not, in an action of ejectment, sustain a claim that his patent ought to have had a different location, upon the ground that the confirmation by the commissioners conferred a perfect title to different land from that covered by the patent. *Ib.*
 7. In 1824, the United States made a treaty with the Sac and Fox Indians, in which there was a reservation of a certain tract of land for the use of the half-breeds, who were to hold it by the same title, and in the same manner, that other Indian titles were held. *Coy v. Mason*, 580.
 8. In 1834, congress relinquished all the right and title of the United States to the above land, and vested the title in the half-breeds, who, at the passage of the act, under the Indian title, had a right to the same. *Ib.*
 9. In 1840, proceedings were commenced in the district court of Lee county, Iowa, for a partition of the tract among the respective owners. *Ib.*
 10. In 1841, the land was divided into one hundred and one shares, there being that number of original half-breeds who were entitled to shares. *Ib.*
 11. The complainants represented that their grantor was entitled to one and two thirds shares; that he resided in Wisconsin, and had no notice of the partition; that his shares were allotted to another person, and that the proceedings ought to be set aside as fraudulent. *Ib.*
 12. The record of the proceedings in partition was, by agreement of parties, made evidence before this court; but, not being produced, it is impossible to decide whether or not the charge of fraud is sustained. Moreover, all the parties interested are not before the court; nor is it made out that the shares claimed were allotted to the alleged persons. *Ib.*

LIMITATION OF ACTIONS.

1. The 8th section of the bankrupt law, limiting actions to two years after the bankruptcy, relates only to suits brought against persons who have claims to property, or rights of property surrendered by the bankrupt. And, moreover, no right of action accrued until the fund existed. *Clark v. Clark*, 315.
2. The fifteenth section of the statute of limitations of Texas is as follows:—"Every suit to be instituted to recover real estate, as against him, her, or them, in possession, under title or color of title, shall be instituted within three years next after cause of action shall have accrued, and not afterwards. *Christy v. Alford*, 601.
3. The proper construction of this section is, that a possession may be in two or more holding in privity, one under another; and if the possession of both so holding will make out the term prescribed, and he who is sued has title or color of title, then the bar will be effectual. *Ib.*
4. Therefore, where two persons, claiming under the same head-right certificate, had possession of the land claimed for three years, it was sufficient. *Ib.*
5. The decisions of the supreme court of Texas upon this subject examined. *Ib.*

LITTORAL PROPRIETORS.

1. By the old laws of Massachusetts, a littoral proprietor of land owned down to low-water mark; subject, however, to the condition that, until he occupied the space between high and low-water mark the public had a right to use it for the purposes of navigation. *City of Boston v. Lecraw*, 426.
2. The city of Boston had the same right as other littoral proprietors, and consequently had the control over a dock which was situated between two wharves; one end of the dock being at high-water mark, and the other at low-water mark. It had, therefore, the right to construct a sewer for

LITTORAL PROPRIETORS—(*Continued.*)

- the purpose of carrying off the drainage from the high water, to the low-water end of the dock. *Ib.*
3. The city had not dedicated the dock to public uses by merely abstaining from any control over it. The principles which regulate a dedication to public uses, examined. *Ib.*
 4. Although the presumption of such a dedication is a question of fact for the jury, yet it is for the court to instruct them what facts, if proved, will justify such a presumption. *Ib.*

MANDAMUS.

1. By the act of congress passed on the 26th of August, 1852, ch. 91, it was made the duty of the superintendent of public printing to receive all matter ordered by congress to be printed, and to deliver it to the public printer or printers. *United States v. Seaman*, 225.
2. In 1854, Beverly Tucker was printer to the senate, and O. A. P. Nicholson, printer to the house of representatives. *Ib.*
3. The act further provided, that when any document should be ordered to be printed by both houses of congress, the entire printing of such document should be done by the printer of that house which first ordered the printing. *Ib.*
4. In January, 1854, the commissioner of patents communicated to the senate that portion of his Annual Report for 1853, which related to arts and manufactures; and on the ensuing day the same communication was made to the house of representatives. Each house having ordered it to be printed, the printing was assigned to Mr. Tucker. *Ib.*
5. In March, 1854, the agricultural portion of the report was sent to both houses, and both of them, on the same day, ordered it to be printed. In actual priority of time, the order of the house was passed first. The printing of it was given to Mr. Nicholson. *Ib.*
6. A writ of *mandamus* will not lie from the circuit court of the United States, commanding the superintendent to deliver the printing to Mr. Tucker. *Ib.*
7. Whether the two portions of the report constituted one document, and which house passed the order first, were questions requiring the exercise of judgment and discretion in the public officer, who had something more than a mere ministerial duty to perform. *Ib.*
8. The cases upon this point examined. *Ib.*
9. Where the security taken by the court below in an appeal bond was insufficient, this court will, upon motion by the appellee, lay a rule upon the judge below to show cause why a *mandamus* should not issue, commanding him to carry into execution the decree of the court below. *Stafford v. Union Bank of Louisiana*, 275.
10. Upon cause shown by the judge that, having taken what he considered to be good and sufficient security, the cause was appealed to this court, which removed it from his jurisdiction, and that he had no power to make an order in the case, this court will order a peremptory *mandamus*. *Ib.*
11. The circuit court of the United States for the District of Columbia, had not the power to issue a writ of *mandamus*, commanding the secretary of the treasury to pay a judge of the territory of Minnesota his salary, for the unexpired term of his office, from which he had been removed by the President of the United States. *United States v. Guthrie*, 284.
12. No court has the power to command the withdrawal of money from the treasury of the United States, to pay any individual claim whatever. *Ib.*
13. A *mandamus* can issue only in cases where the act to be done is merely ministerial, and with regard to which nothing like judgment or discretion, in the performance of his duties, is left to the officer. *Ib.*
14. The question, whether or not the President has power to remove a territorial judge, argued, but not decided in the present case. *Ib.*

MEXICAN COMPANY OF BALTIMORE.

See ASSIGNMENT.

PATENT RIGHTS.

1. A railroad company, organized under a charter from Pennsylvania, is responsible for the infraction of a patent right respecting cars, although

PATENT RIGHTS—(Continued.)

- the entire capital stock of the company was held by a connecting railroad company in Maryland, which latter company also worked the road by the instrumentality of its agents, and motive power, and cars. *York and Maryland Railroad Co. v. Winans*, 30.
2. The obligations to the community which the Pennsylvania company is placed under by its charter, cannot be evaded by any transfer of its rights and powers to another company; and in this case, the Pennsylvania company contributes to the expense of working the road, and of paying the officers and agents who are employed. *Ib.*
 3. Courts will not allow corporations to escape from their proper responsibility, by means of any disguise. *Ib.*
 4. Where the patent was signed by an acting commissioner of patents, it was not necessary to aver or prove that he was legally entitled to act in that capacity. The court will judicially take notice of the persons who preside over the patent-office, whether they do so permanently or transiently. *Ib.*
 5. A machine for making hook-headed spikes was constructed in Boston, prior to the 18th of April, 1839, and therefore not within a patent for a machine for a similar purpose which Burden applied for on that day. *Troy Iron and Nail Factory v. Odiorne*, 72.
 6. Whether the defect be in the specifications or in the claim of a patent, the patentee may surrender it, and, by an amended specification or claim, cure the defect. *Battin v. Taggart*, 74.
 7. When this is done, and a reissued and corrected patent is taken out, the omissions and defects are cured; and nothing within the scope of the patentee's original invention can be considered as having been dedicated to the public, by the lapse of time between the original and reissued patent. *Ib.*
 8. Hence, where a patent was taken out for a new and useful improvement in the machine for breaking and screening coal, and the claim was for the manner in which the party had arranged and combined with each other the breaking rollers and the screen: and the amended specification of the reissued patent described essentially the same machine as the former one did, but claimed, as the thing invented, the breaking apparatus only, a dedication to the public did not accrue in the interval between the one patent and the other. *Ib.*
 9. It was for the jury to determine, from the facts in the case, whether the specifications, including the claim, were so precise as to enable any person skilled in the structure of machines, to make the one described; also, to judge of the novelty of the invention, and whether the renewed patent was for the same invention as the original patent; also, whether the invention had been abandoned to the public. The jury were also to judge of the identity of the machine used by the defendant, with that of the plaintiffs, or whether they have been constructed and act on the same principle. *Ib.*
 10. Whether patent-rights can be sold under execution, see *Stevens v. Glad-ding*, 448.
 11. Under a prayer for general relief, a court of equity can decree for an account of profits. This right is incident to the right to an injunction in copy and patent-right cases. *Ib.*

PLEAS AND PLEADINGS.

1. Where the patent was signed by an acting commissioner of patents, it was not necessary to aver or prove that he was legally entitled to act in that capacity. The court will judicially take notice of the persons who preside over the patent-office, whether they do so permanently or transiently. *York and Maryland Railroad Co. v. Winans*, 30.
2. Where a bill in chancery avers that the defendant is a citizen of another state, this averment can only be impugned in a special plea to the jurisdiction of the court. The answer is not the proper place for it, under the 33d rule of equity practice established by this court. *Wickliffe v. Owings*, 47.
3. The act of Congress passed on the 29th July, 1813, (3 Stat. at L., 49,) enacts that the owner of every fishing vessel shall, previous to receiving the allowance mentioned in the act, produce to the collector the original

PLEAS AND PLEADINGS—(*Continued.*)

- agreement which may have been made with the fishermen, and also a certified copy of the days of sailing and returning, to the truth of which he shall swear before the collector. *United States v. Nickerson*, 204.
4. These latter words include the first branch, as well as the second branch of the sentence; so that the owner must not only swear to the truth of the certificate, but also to the verity of the agreement with the fishermen. *Ib.*
 5. A person was indicted, in the district court of Massachusetts, for perjury, in swearing falsely to the agreement with the fishermen, and in swearing falsely that three fourths of the crew were citizens of the United States. As the district judge held that the act of Congress only required the owner to swear to the certificate of sailing, and not to the agreement with the fishermen, the person was acquitted. *Ib.*
 6. Afterwards, when indicted in the circuit court, this person pleaded his former acquittal. This was a good plea; because the evidence necessary to sustain the indictment, with respect to the fishermen's agreement, might have been given by the United States in the first trial. *Ib.*
 7. With respect to the oath that three fourths of the crew were citizens of the United States, the act of 1813 did not require that oath; but then the indictment did not purport to bring the offense under that act, but referred to the statutes of the United States generally. *Ib.*

PRACTICE.

1. Where a proceeding was instituted in Louisiana, in the name of the treasurer of the state, to recover a tax imposed upon property inherited by aliens, a citation served upon that officer was sufficient. He was the "adverse party," under the judiciary act. *Poydras de la Lande v. Treasurer of Louisiana*, 1.
2. The tenth rule of this court, directing process to be served upon the chief executive magistrate and attorney-general, applies to those cases only in which the state is a party on the record. When an officer of the state is the party prosecuting the suit for the state, the citation must be served on him. *Ib.*
3. Where a jury is waived, and questions of law and fact decided by the court in Louisiana, the rules of the state appellate court require that the whole evidence should be put into the record. But where a case is brought up to this court, by writ of error from the circuit court of the United States for Louisiana, the rules of this court only require that so much of the evidence should be inserted as is necessary to explain the legal questions decided by the court. *Arthurs v. Hart*, 6.
4. Consequently, the mere fact that some of the evidence given below is omitted from the record, is not of itself sufficient to prevent this court from examining the questions of law presented by the record. *Ib.*
5. Where the court decides questions both of law and fact, the admission of improper testimony is not the subject of a bill of exception, although the exclusion of proper testimony is so. *Ib.*
6. The rule stated, according to which the appellate court should review the legal questions involved in the final judgment of the court below, which has decided both law and fact; and the mode pointed out by which counsel should separate the two classes of questions. *Ib.*
7. Where a libel was dismissed by the district court, which decree was affirmed by the circuit court, and it appeared that the claim in the libel amounted only to sixteen hundred dollars, an appeal to this court must, upon motion, be dismissed for the want of jurisdiction. *Udall v. Steamship Ohio*, 17.
8. In order to give jurisdiction, the damages must appear on the face of the pleading on which the claim is made. Interest cannot be added, in computing the amount, unless it is specially claimed in the libel. *Ib.*
9. It is too late, when the cause has reached this court, to amend the libel by inserting a special claim for interest. The 24th admiralty rule ought not to be construed to extend to cases where an amendment would give jurisdiction, which would not exist without such amendment. *Ib.*
10. Where it was alleged in a libel, that the libellant was "entitled to recover from the vessel the damages by him sustained, which amount to the

PRACTICE—(*Continued.*)

- sum of eighteen hundred dollars and upwards," the sum was not sufficient to bring the case within the jurisdiction of this court. *Olney v. Steamship Falcon*, 19.
11. Interest, not being specially claimed, cannot be computed, for it is considered as a part of the damages, being merged in that claim, and is not estimated as a distinct item. *Ib.*
 12. Where the death of a party complainant was suggested at December term, 1851, of this court, and his legal representatives did not appear by the tenth day of this term, the bill must, as to him, be entered, abated under the 61st rule of this court. *Barribeau v. Brant*, 43.
 13. Where the complainant, after filing his bill, conveyed all his interest to a trustee, and died pending an appeal which he took to this court, the trustee cannot be permitted to be made a party to the proceedings in this court. The only persons who can appear in the stead of the complainant, are those who, upon his death, succeed to the interest he then had, and upon whom the estate then devolves. *Ib.*
 14. A vendor sold an estate in Louisiana for a large sum of money, and received payment from time to time, for nearly one half of the amount. Afterwards he agreed to take back the property, upon the payment of an additional sum of money, which was secured to him by the promissory notes of six individuals, four of whom lived in Louisiana, and two in Mississippi. *Shields v. Barrow*, 130.
 15. Becoming dissatisfied with this arrangement, the vendor filed a bill in the circuit court of the United States for Louisiana, against the two citizens of Mississippi, to set aside the agreement as having been improperly procured, and to restore him to his rights under the original sale. *Ib.*
 16. All the six persons with whom the second arrangement was made, were indorsers upon the notes originally given by the vendee for the purchase-money, under the sale. *Ib.*
 17. The four parties to the compromise, who resided in Louisiana, not being suable in the circuit court of that state, and their presence, as defendants, being necessary, the court could not rescind the contract as to two, and allow it to stand as to the other four. Consequently, it could not pass a decree, as prayed. *Ib.*
 18. Neither the act of congress of 1839, (5 Stat. at L., 321, § 1,) nor the 47th rule for the equity practice of the circuit courts, enables a circuit court to make a decree in equity, in the absence of an indispensable party, whose rights must necessarily be affected by such decree. *Ib.*
 19. The cases upon this point, the statute, and the rule examined. *Ib.*
 20. The bill should have been dismissed. *Ib.*
 21. The two Mississippi defendants answered. *Ib.*
 22. The bill insisted that the compromise was made in good faith, and one of them filed a cross-bill against the vendor to compel him to carry it out. *Ib.*
 23. This cross-bill was also defective, as to parties, the other sureties and the vendee having an interest in the subject, so that, without their presence, no decree could be made. *Ib.*
 24. The vendor then filed a petition, by way of amended bill, stating his willingness to carry out the compromise upon certain conditions, which he prayed the court to enforce. *Ib.*
 25. This was irregular. The rules about amendments, examined. *Ib.*
 26. The court then passed an order, that unless the two Mississippi defendants should, before a day named, file a cross-bill, and make all the Louisiana parties defendants, the vendor might proceed upon his prayer to rescind the compromise, as far as the two Mississippi parties were concerned. *Ib.*
 27. This was entirely irregular. Parties cannot be forced into court in this way; nor can new parties be brought into a cause by a cross-bill. *Ib.*
 28. The mode considered of making new parties, when necessary. *Ib.*
 29. The original and cross-bills must be ordered to be dismissed. *Ib.*
 30. Where an appeal from a decree in chancery is intended to operate as a *supersedeas*, the security given in the appeal bond must be equal to the

PRACTICE—(Continued.)

- amount of the decree, as it is in the case of a judgment at common law. *Stafford v. Union Bank of Louisiana*, 275.
31. Where the security is insufficient, this court will, upon motion of the appellee, lay a rule upon the judge below, to show cause why a *mandamus* should not issue, commanding him to carry into execution the decree of the court below. *Ib.*
 32. Upon cause shown by the judge that, having taken what he considered to be good and sufficient security, the cause was appealed to this court, which removed it from his jurisdiction, and that he had no power to make an order in the case, this court will order a peremptory *mandamus*. *Ib.*
 33. But as the security given was sufficient to bring the case before this court by appeal, a motion to dismiss the appeal must be overruled. *Ib.*
 34. Where a creditor of a bankrupt filed his bill, and gave his bond within thirty days after the award of the board of commissioners, this was sufficient within the 8th section of the act of March 3, 1849, to carry into effect our treaty with Mexico. *Clark v. Clark*, 315.
 35. A motion to amend the decree and mandate of this court, so as to exclude the grandchildren from the distribution of the fund, as legatees, upon the ground that they had elected to renounce their interest under the will of their grandfather, and claim under the marriage settlement, overruled. *Adams v. Law*, 417.
 36. For the practice in this court when exercising original jurisdiction, see *Florida v. Georgia*, 478.
 37. The 9th section of the act of congress, passed on the 3d of March, 1851, (9 Stats. at L., 631,) directed that the United States or the claimant might file a petition, praying an appeal to the district court, and other sections pointed out the mode of proceeding. But this was all changed by an act passed on the 31st of August, 1852, (10 Stat. at L., 99,) which directed that the filing of a transcript with the clerk of the district court should, *ipso facto*, operate as an appeal. *United States v. Ritchie*, 525.
 38. This amounts, also, to a notice to the opposite party. *Ib.*
 39. Where a complainant filed a bill in chancery against numerous defendants, seven of whom were selected by the court to represent the rest; and after these seven had answered the bill, two of them filed a cross-bill against the original complainant and also against all their co-defendants, an appeal from a decree dismissing this cross-bill will not lie to this court. It must be dismissed for want of jurisdiction. *Ayers v. Carver*, 591.

PROVIDENCE, CITY OF.

See RHODE ISLAND.

RAILROAD COMPANIES.

1. A railroad company, organized under a charter from Pennsylvania, is responsible for the infraction of a patent right respecting cars, although the entire capital stock of the company was held by a connecting railroad company in Maryland, which latter company also worked the road by the instrumentality of its agents, and motive power, and cars. *York & Maryland Railroad Co. v. Winans*, 30.
2. The obligations to the community which the Pennsylvania company is placed under by its charter, cannot be evaded by any transfer of its rights and powers to another company; and in this case, the Pennsylvania company contributes to the expense of working the road, and of paying the officers and agents who are employed. *Ib.*
3. Courts will not allow corporations to escape from their proper responsibility, by means of any disguise. *Ib.*

RECEIVER IN CHANCERY.

1. A receiver is an officer of the court which appoints him, but cannot sue in a foreign jurisdiction, for the property of the debtor. *Booth v. Clark*, 322.
2. The distinction explained between a receiver in chancery under a creditor's bill and an assignee in bankruptcy. *Ib.*

RHODE ISLAND.

1. The statutes of Rhode Island require towns to keep the highways safe

RHODE ISLAND—(*Continued.*)

and convenient for travellers, at all seasons of the year; and, in case of neglect, "that they shall be liable to all persons, who may in anywise suffer injury to their persons or property, by reason of any such neglect." *City of Providence v. Clapp*, 161.

2. These statutes extend to cities as well as towns, (or townships,) and also to side-walks, where they constitute a part of the public highways. The city of Providence was, therefore, bound to keep those side-walks convenient and safe, in a reasonable degree, for pedestrians; and, when a fall of snow took place, it was the duty of the city to use ordinary care and diligence to restore the side-walk to a reasonably safe and convenient state. *Ib.*
3. It was for the jury to find whether or not this was accomplished, by treading down the snow; and, if not, whether the want of safety and convenience was owing to the want of ordinary care and diligence on the part of the city. *Ib.*
4. In considering whether due diligence required the city to remove the snow, the jury ought to take into consideration the ordinances enacted by the city, not as prescribing a rule binding on the city, but as evidence of the fact that a removal, and not a treading down of the snow, was reasonably necessary. *Ib.*

SAC AND FOX INDIANS.

See LANDS, PUBLIC.

SHIPS AND VESSELS.

See ADMIRALTY AND COMMERCIAL LAW.

SUPERSEDEAS.

See APPEAL BOND.

SURETIES.

1. Where there were two consecutive commissioners and two sets of sureties, the latter set were responsible for all money which remained in the hands of the principal at the expiration of the first commission. If it was misapplied during the first term of office, it was incumbent upon the second set of sureties to show that it was so. *Bruce v. United States*, 437.

TARIFF.

1. The 66th section of the act of 1799, (1 Stat. at L., 677, ch. 22,) which declares that "if any goods, wares, or merchandise, of which entry shall have been made in the office of a collector, shall not be invoiced according to the actual cost thereof, at the place of exportation, with design to evade the duties thereupon, or any part thereof, all such goods, &c., or the value thereof, to be recovered of the person making the entry, shall be forfeited," has not been repealed by any provision in the act of 1842, or in any of the duty acts, but still exists in full force and effect. *United States v. 67 Packages of Dry Goods*, 85.
2. The tariff act of 1842, (5 Stats. at L., 548,) provided that if the appraised value of merchandise should exceed, by ten per centum or more, the invoice value, an additional duty should be imposed of fifty per centum of the duty imposed on the same, where fairly invoiced. *Ring v. Maxwell*, 147.
3. The act of 1846, (9 Stats. at L., 42,) reduced this additional duty to twenty per centum. *Ib.*
4. Although this additional duty may have been considered as a penalty, and as such, a moiety given to the officers of the custom-house, under the act of 1842, and the same disposition of it would have been made under the act of 1846, if there had been no other legislation, yet the act of February, 1846, (9 Stats. at L., 3,) declares that it shall not be considered a penalty for the purpose of being distributed. *Ib.*
5. Therefore, the additional duty of twenty per centum, levied by the collector, under the 8th section of the act of July 30, 1846, is not to be considered as a penalty, one moiety whereof is to be distributed amongst the officers of the custom-house. *Ib.*

TERRITORIAL JUDGES.

1. The power of the President to remove a territorial judge discussed, but not decided. *United States v. Guthrie*, 294.

TEXAS.

1. The fifteenth section of the statute of limitations of Texas is as follows:—"Every suit to be instituted to recover real estate, as against him, her, or them, in possession, under title or color of title, shall be instituted within three years next after cause of action shall have accrued, and not afterwards. *Christy v. Alford*, 601.
2. The proper construction of this section is, that a possession may be in two or more holding in privity, one under another; and if the possession of both so holding will make out the term prescribed, and he who is sued has title or color of title, then the bar will be effectual. *Ib.*
3. Therefore, where two persons, claiming under the same head-right certificate, had possession of the land claimed for three years, it was sufficient. *Ib.*
4. The decisions of the supreme court of Texas upon this subject examined. *Ib.*

USES AND TRUSTS.

1. A resident in Pennsylvania made his will, in 1829, giving annuities to his wife and others, and directing that his executors, or the survivor of them, after the decease of his wife, should provide for the annuitants, then living, and dispose of the residue of his property for the use of such charitable institutions in Pennsylvania and South Carolina, as they or he may deem most beneficial to mankind. *Fountain v. Recenel*, 369.
2. His wife and three other persons were appointed executors. *Ib.*
3. The other three persons all died during the lifetime of the wife. No appointment of the charity was made or attempted to be made during the lifetime of the executors. *Ib.*
4. The charity cannot now be carried out. *Ib.*
5. The executors were vested with a mere power of appointment without having any special trust attached to it. In England, the case could only be reached by the prerogative power of the crown acting through the sign-manual of the king. *Ib.*
6. The English and American cases upon this subject examined. *Ib.*
7. Where marriage articles, executed as an ante-nuptial settlement, recited the intention of the parties to provide a jointure for the wife, in lieu of dower, and then property was conveyed to a trustee, for the use of the husband for life, then for the use of the wife for life; and in case of the death of the wife during the lifetime of the husband, leaving issue of the said marriage, one or more children then living, then from, and immediately after the decease of the husband, upon trust for the child or children of said intended marriage, this does not include grandchildren. *Adams v. Law*, 417.
8. The wife having died before the husband, leaving no child alive, but only grandchildren, these did not take. *Ib.*
9. The principles which regulate a dedication of property to public uses examined. *City of Boston v. Lecraw*, 426.

WARRANTY.

1. Where a suit was brought for damages sustained by the breach of a covenant of warranty of title to land in Alabama, and the plaintiff, in order to establish the existence of an outstanding paramount title at the date of the conveyance, offered the record of a suit in ejectment against his grantor, in which suit the plaintiff himself had been a witness, this record should have been allowed to be given in evidence, without any reservation. *Griffin v. Reynolds*, 609.
2. The ruling of the court was, therefore, erroneous, admitting the record, but referring it to the jury to determine whether the testimony given by the plaintiff was material, and if so, to disregard the evidence. *Ib.*
3. In order to show an outstanding title, a copy from the records of the probate court in Alabama, of a deed of trust from the original owner of the land was offered in evidence, but no evidence was offered to account for the original. This copy should not have been admitted. *Ib.*
5. The deed containing the warranty upon which the suit was brought, was properly admitted in evidence, being an original deed, duly acknowledged and recorded. *Ib.*

WARRANTY—(*Continued.*)

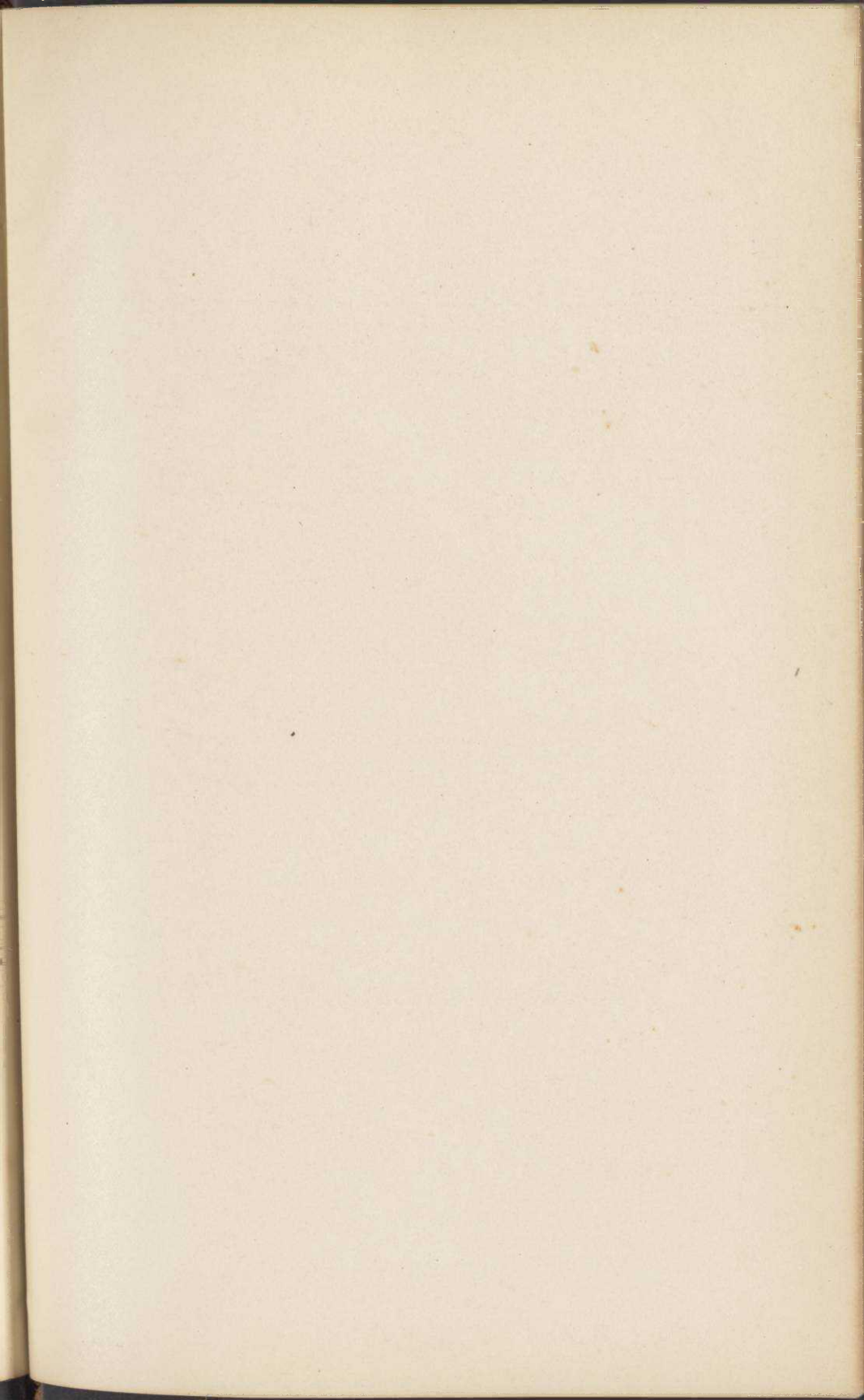
5. An instruction to the jury was erroneous, namely, that if the plaintiff had not lost all the land conveyed to him by the defendant, then the jury might allow him the average value of the part lost, in proportion to the price paid for the whole. The true measure of damage was the loss actually sustained by the eviction from the land for which the title has failed. *Ib.*
6. Although the deed of warranty was properly made by the grantor and wife, in order to bar her dower, yet an action upon the covenant of warranty cannot be brought against her. She can make no such covenants. *Ib.*

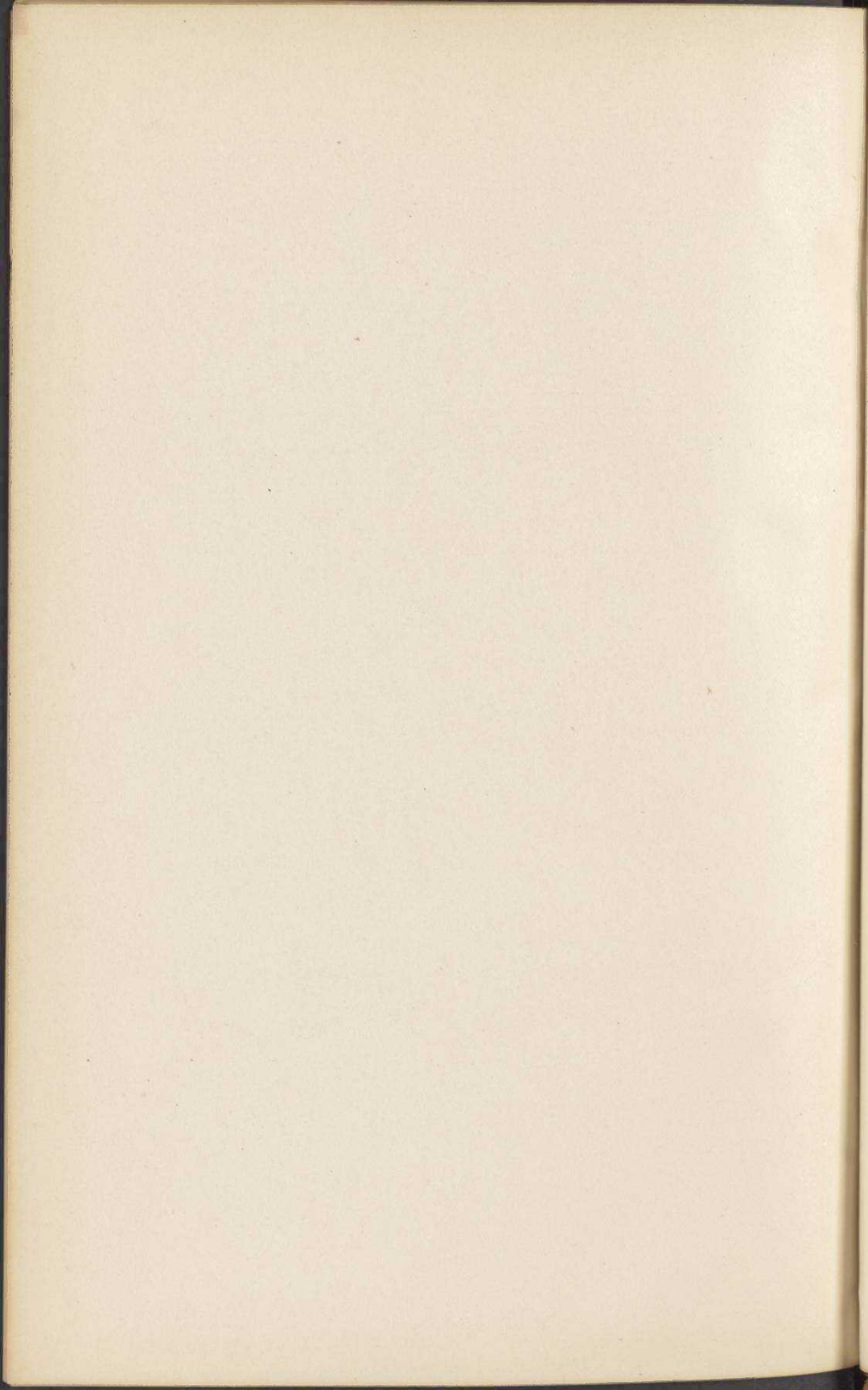
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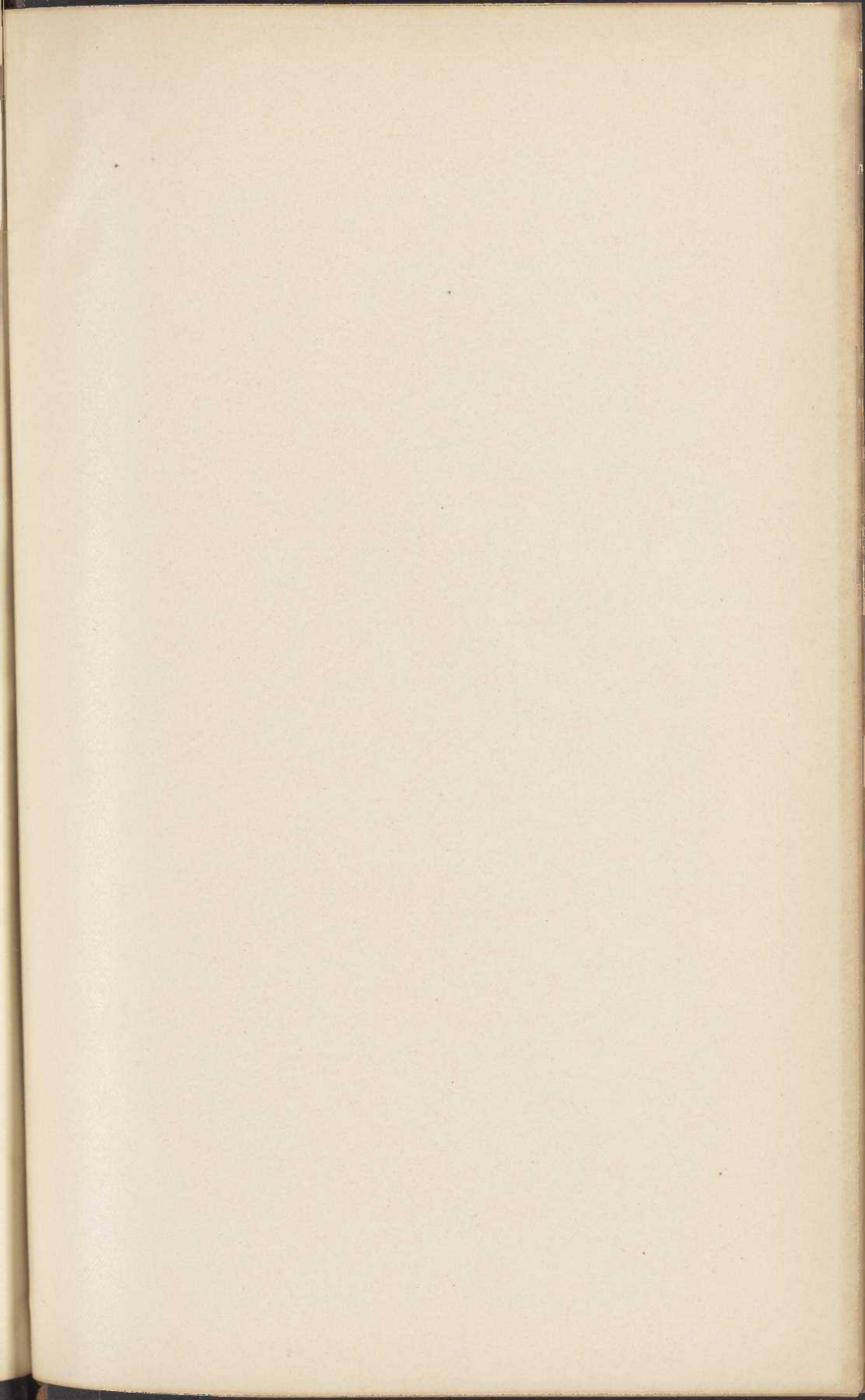
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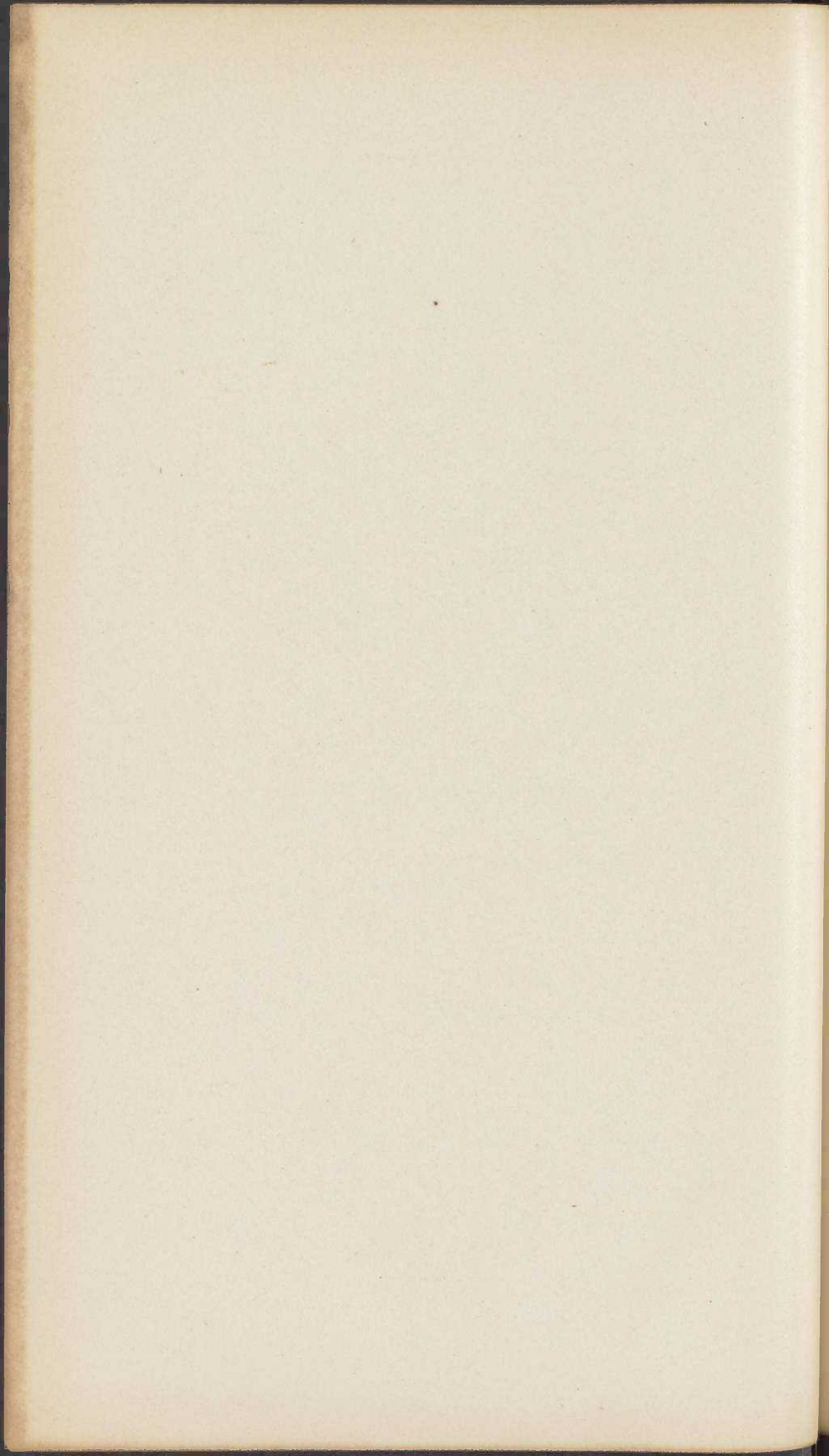
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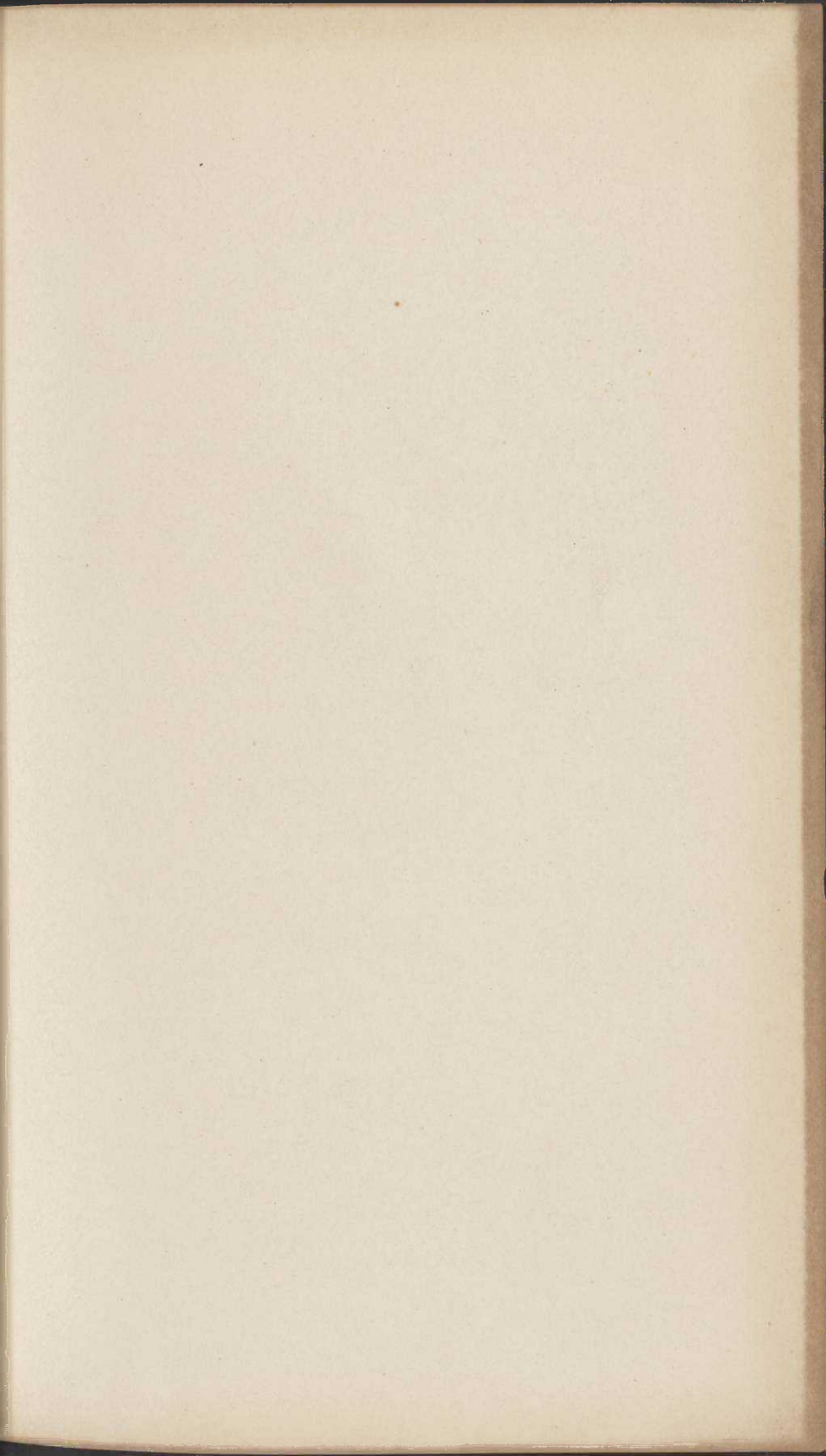
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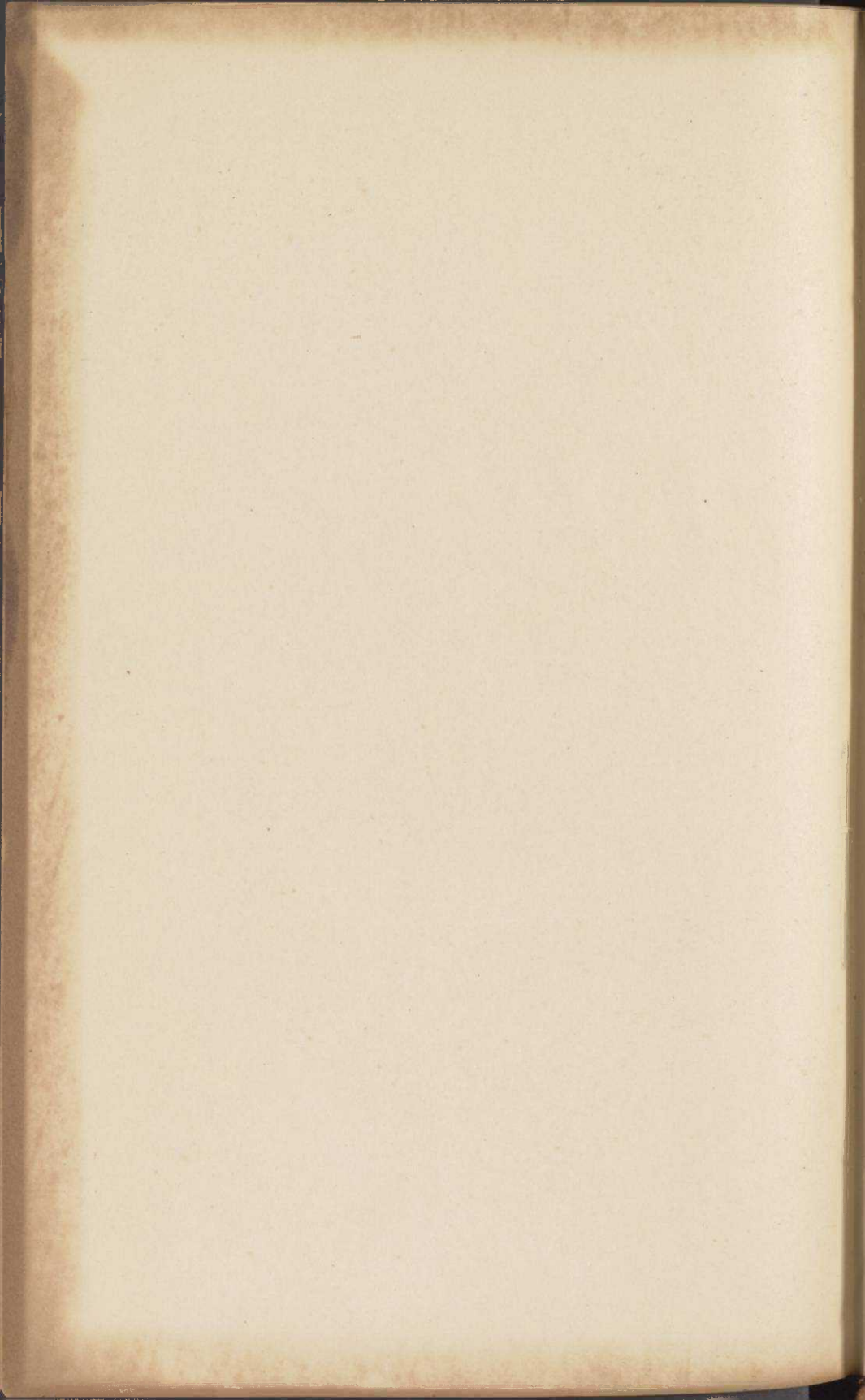












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