INDEX

OF THE

PRINCIPAL MATTERS.

ADMINISTRATOR.

1. Where an administrator sells property which had been conveyed to him for the purpose of securing a debt due to his intestate's estate, his failure to account for the proceeds amounts to a devastavit, and renders himself and his sureties upon his administration bond liable; but it does not entitle the heirs to claim the property from a purchaser in good faith for a valuable consideration. *Long et al.* v. *O'Fallon*, 116.
2. Nor can the heirs, in such a case, claim land which has been taken up by the administrator as vacant land, and for which he obtained a patent from the United States, although such land was included in the conveyance to him. *Ibid.*
3. Moreover, the facts necessary to sustain the plea of the statute of limitations are proved on the part of the defendant in this case, and no charge in the bill discloses a case of exception from its operation. *Ibid.*

ADMIRALTY.

1. The master of a vessel has power to create a lien upon it for repairs and supplies obtained in a foreign port in a case of necessity; and he does so without a bottomry bond, when he obtains them, in a case of necessity, on the credit of the vessel. *Thomas et al.* v. *Osborn*, 22.
2. It is not material whether the implied hypothecation is made directly to the furnishers of repairs and supplies, or to one who lends money, on the credit of the vessel, in a case of necessity, to pay such furnishers. *Ibid.*
3. This power of the master extends to a case where he is charterer and special owner *pro hac vice*. *Ibid.*
4. But this authority only exists in cases of necessity, and it is the duty of the lender to see that a case of apparent necessity for a loan exists. *Ibid.*
5. Hence, where the master had received freight money, and, with the assistance of the libellants, invested it in a series of adventures as a merchant, partly carried on by means of the vessel, the command of which he had deserted for the purpose of conducting these adventures, and money was advanced by the libellants to enable the master to repair and supply the vessel, and purchase a cargo to be transported and sold in the course of such private adventures; and the freight money earned by the vessel was sufficient to pay for the repairs and supplies, and might have been commanded for that use if it had not been wrongfully diverted from it by the master, with the assistance of the libellants, it was held that the latter had no lien on the vessel for their advances. *Ibid.*
6. Where a flat-boat, which was fastened to the bank of the Mississippi river at night, was run down and sunk by a steamer, the circumstances show that the steamer was in fault, and must be responsible for the loss. *Ure* v. *Coffman et al.*, 56.
7. It was not necessary for the flat-boat, in the position which it occupied, to show a light during the night. *Ibid.*
8. When a boat or vessel of any kind is fastened for the night at a landing place to which other boats may have occasion to make a landing in the

ADMIRALTY, (*Continued.*)
night, it is certainly prudent for her position to be designated by a light, on her own account, as well as that the vessel making a landing may have light to do so. But when a vessel is tied to the bank of a river, not in a port or harbor, or at a place of landing, out of the line of customary navigation, there is no occasion for her to show a light, nor has it ever been required that she should do so. *Ibid.*

9. Maritime liens are *stricti juris*, and will not be extended by construction. *Vandewater* v. *Mills, Claimant of the Steamship Yankee Blade*, 82.
10. Contracts for the future employment of a vessel do not, by the maritime law, hypothecate the vessel. *Ibid.*
11. The obligation between ship and cargo is mutual and reciprocal, and does not take place till the cargo is on board. *Ibid.*
12. An agreement between owners of vessels to form a line for carrying passengers and freight between New York and San Francisco, is but a contract for a limited partnership, and the remedy for a breach of it is in the common-law courts. *Ibid.*
13. Where a libel for information, praying the condemnation of a vessel for violating the passenger law of the United States, states the offence in the words of the statute, it is sufficient. *United States* v. *Brig Neurea*, 92.
14. Where a steamer ran down and sunk a schooner which was at anchor in a dark and rainy night, the schooner was to blame for having no light, which, at the time of collision, had been temporarily removed for the purpose of being cleansed. *Rogers et al.* v. *Steamer St. Charles et al.*, 108.
15. But, inasmuch as the schooner was in a place much frequented as a harbor in stormy weather, and of which the steamer was chargeable with knowledge, it was the duty of the steamer to slacken her speed on such a night, if not to have avoided the place altogether, which could easily have been done. *Ibid.*
16. The fact that the steamer carried the United States mail, is no excuse for her proceeding at such a rapid rate. *Ibid.*
17. The case must therefore be remanded to the Circuit Court, to apportion the loss. *Ibid.*
18. Where the decree was for a less sum than two thousand dollars, the appeal must be dismissed for want of jurisdiction. *Ibid.*
19. It cannot be doubted that a master has power to sell both vessel and cargo, in certain cases of absolute necessity. *Post et al.* v. *Jones et al.*, 150.
20. But this rule had no application to a wreck where the property is deserted, or about to become so, and the person who has it in his power to save the crew, and salve the cargo, prefers to drive a bargain with the master, and where the necessity is imperative, because it is the price of safety. *Ibid.*
21. No valid reason can be assigned for fixing the reward for salving derelict property at "not more than a half or less than a third of the property saved." The true principle in all cases is, adequate reward according to the circumstances of the case. *Ibid.*
22. Where the property salved was transported by the salvors from Behring's Straits to the Sandwich Islands, and thence to New York, the salvage service was complete when the property was brought to a port of safety. The court allowed the salvors the one-half for this service, and also frieght on the other moiety from the Sandwich Islands to New York. *Ibid.*
23. To be seaworthy as respects cargo, the hull of a vessel must be so tight, stanch, and strong, as to resist the ordinary action of the sea during the voyage, without damage or loss of cargo. *Dupont de Nemours & Co.* v. *Vance et al.*, 162.
24. A jettison, rendered necessary by a peril of the sea, is a loss by such peril within the meaning of the exception contained in bills of lading—aliter, if unseaworthiness of the vessel caused or contributed to the necessity for the jettison. *Ibid.*
25. The owner of cargo jettisoned has a maritime lien on the vessel for the contributory share due from the vessel on an adjustment of the general average, which lien may be enforced by a proceeding in rem in the admiralty. *Ibid.*

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26. Where the libel alleged a shipment of cargo under a bill of lading, and its non-delivery, and prayed process against the vessel, and the answer set up a jettison rendered necessary by a peril of the sea, and this defensive allegation was sustained by the court, it was held that the libellant was entitled to a decree for the contributory share of general average due from the vessel. *Ibid.*
27. There are no technical rules of variance or departure in pleading in the admiralty. *Ibid.*
28. Where a mortgage existed upon the moiety of a vessel which was afterwards libelled, condemned, and sold by process in admiralty, and the proceeds brought into the registry of the court, the mortgagee could not file a libel against a moiety of those proceeds. *Schuchardt et al.* v. *Ship Angelique*, 239.
29. His proper course would have been, either to have appeared as a claimant when the first libel was filed, or to have applied to the court, by petition, for a distributive share of the proceeds. *Ibid.*
30. Neither rain, nor the darkness of the night, nor the absence of a light from a barge or sailing vessel, nor the fact that the steamer was well manned and furnished, and conducted with caution, will excuse a steamer for coming in collision with a barge or sailing vessel, where the barge or sailing vessel is at anchor or sailing in a thoroughfare, but out of the usual track of the steam vessel. *New York and Virginia Steamship Company* v. *Calderwood et al.*, 241.
31. Therefore, where a collision took place between a steamer and a sailing vessel, the latter being out of the ship channel, and near an edge of shoals, the steamer must be responsible. *Ibid.*
32. The sailing vessel had no pilot, and did not exhibit an efficient light. Although these circumstances did not exonerate the steamer, yet they make it necessary for this court to say that an obligation rests upon all vessels found in the avenues of commerce, to employ active diligence to avoid collisions, and that no inference can be drawn from the fact, that a vessel is not condemned for an omission of certain precautionary measures in one case, that another vessel will be excused, under other circumstances, for omissions of the same description. *Ibid.*
33. In order to create a maritime lien for supplies furnished to a vessel, there must be a necessity for the supplies themselves, and also that they could be obtained only by a credit upon the vessel. *Pratt et al.* v. *Reed*, 359.
34. Hence, where a running account for coal was kept with a vessel trading upon the lakes, the master of which was also the owner, it does not appear that the coal could be procured only by creating a lien upon the vessel. *Ibid.*
35. In a contest, therefore, between a libellant for supplies and mortgagees of the vessel, the latter are entitled to the proceeds of sale of the boat. *Ibid.*
36. This is under the general admiralty law. No opinion is expressed as to the effect of the local laws of the States. *Ibid.*
37. The decision in the preceding case of Pratt, &c., claimants, *v.* Reed, again affirmed. *Tod et al.* v. *Steamboat Sultana*, 362.

AGENTS.

1. Where a sale was made of merchandise, and two parties, viz: Roots & Coe as one party, and Henry Lewis as the other party, both claimed to be the vendors, and to be entitled to the purchase-money, it was proper, under the circumstances which existed in the previous relations of these parties towards each other, for the court to instruct the jury as follows, viz:

"1. If they shall find that the merchandise had been made subject to the order of Roots & Coe; that it was sold by them in their own name; that at the time of sale it belonged to them, or that they had an interest in it for advances and commissions, and an authority as agents to dispose of it; and that it was delivered to and received by the vendee in pursuance of such sale, then Roots & Coe were entitled to the purchase-money.

"2. That although the jury may find from the evidence that the merchandise was sold to the purchasers by Henry Lewis, yet if they also find that it belonged to Roots & Coe, or to the persons for whom they acted

AGENTS, (*Continued.*)
as agents, and if the latter, that Roots & Coe had an interest in and control over the merchandise to cover advances and commissions; that the purchasers subsequently promised to pay Roots & Coe the purchase-money, and that the suit was instituted before the price had been paid to Henry Lewis, then Roots & Coe were entitled to the purchase-money." *McCullough et al.* v. *Roots et al.*, 349.

2. The existence of warehouse receipts, given by another person, was not a sufficient reason to justify the purchasers in refusing to pay for the property which they had purchased, and in the possession of which they had not been disturbed. *Ibid.*
3. Under the circumstances of the case, Roots & Coe had a right to consider Henry Lewis as their agent, and to adopt his acts. The purchaser had no right to allege that Henry Lewis was a tort feasor. *Ibid.*
4. Roots & Coe, having made the contracts, and having an interest to the extent of their commissions, had a right to maintain the suit. *Ibid.*

APPEAL.

1. Where an appeal is taken to this court, the transcript of the record must be filed and the case docketed at the term next succeeding the appeal. *Steamer Virginia* v. *West et al.*, 182.
2. Although the case must be dismissed if the transcript is not filed in time, yet the appellant can prosecute another appeal at any time within five years from the date of the decree, provided the transcript is filed here and the case docketed at the term next succeeding the date of such second appeal. *Ibid.*
3. Where the judgment of the Circuit Court, in an action of ejectment, was against the defendant, in which nominal damages only were awarded, who sued out a writ of error in order to bring the case before this court, this court cannot grant a motion to enlarge the security in the appeal bond, for the purpose of covering apprehended damages, which the plaintiff below thinks he may sustain by being kept out of his land. *Roberts* v. *Cooper*, 373.

ATTORNEY AT LAW.

1. By the rules and practice of common-law courts, it rests exclusively with the court to determine who is qualified to become or continue one of its officers, as an attorney and counsellor of the court; the power being regulated, however, by a sound and just judicial discretion—guarding the rights and independence of the bar as well as the dignity and authority of the court. *Ex Parte Secombe*, 9.
2. The local law of the Territory of Minnesota has regulated the relation between courts and attorneys and counsellors, but has not essentially changed the common-law principle. *Ibid.*
3. The Minnesota statute authorizes the court to dismiss an attorney or counsellor if he does not maintain the respect due to courts of justice and judicial officers, or for not conducting himself with fidelity to the court. *Ibid.*
4. The Supreme Court of the Territory dismissed the relator from the office of counsellor and attorney of the court, stating in the sentence of dismissal that he was guilty of the offences above mentioned, but not specifying the act or acts which, in the opinion of the court, constituted the offence. *Ibid.*
5. The order of dismissal is a judicial act done in the exercise of a judicial discretion vested in the court by law; and a mandamus cannot be issued by a superior or appellate court, commanding it to reverse its decision, and restore the relator to the office he has lost. *Ibid.*
6. Where a fund is brought into court upon proceedings under a bill to foreclose a mortgage, it is altogether irregular for the court to order an investigation into the general accounts between the attorney and his client during past years, and to order that the attorney shall be paid, out of the fund in court, the balance which the master may report to be due. The persons interested in this decree were not properly before the court as parties. *Wolf et al.* v. *Lewis*, 280.
7. The competent parties to agree that a case shall be settled, and the writ of error dismissed, are usually the parties upon the record. If either of

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them has assigned his interest, and it be made known to the court, the interest of such assignee would be protected. *Platt* v. *Jerome*, 384.

8. But where there was a judgment for costs in the court below, and the attorney claimed to have a lien upon such judgment for his fees, it is not a sufficient reason for this court to prevent the parties from agreeing to dismiss the case. *Ibid.*

BONDS.

1. A deed speaks from the time of its delivery, not from its date. *United States* v. *Le Baron*, 73.
2. The bond of a deputy postmaster takes effect and speaks from the time that it reaches the Postmaster General and is accepted by him, and not from the day of its date, or from the time when it is deposited in the post office to be sent forward. *Ibid.*
3. The difference explained between a bond of this description and a bond given by a collector of the customs. *Ibid.*
4. The nomination to an office by the President, confirmation by the Senate, signature of the commission, and affixing to it the seal of the United States, are all the acts necessary to render the appointment complete. *Ibid.*
5. Hence, the appointment is not rendered invalid by the subsequent death of the President before the transmission of the commission to the appointee, even where it is necessary that the person appointed should perform certain acts before he can legally enter upon the duties of the office. *Ibid.*

CALIFORNIA.

1. When a grant or patent for land, or legislative confirmation of titles to land, has been given by the sovereignty or legislative authority only having the right to make it, without any provision having been made, in the patent or by the law, to inquire into its fairness between the grantor and grantee, or between third parties and the grantee, a third party cannot raise, in ejectment, the question of fraud as between the grantor and grantee. *Field* v. *Seabury et al.*, 323.
2. A bill in equity lies to set aside letters patent obtained by fraud, but only between the sovereignty making the grant and the grantee. *Ibid.*
3. Such a patent or grant cannot be collaterally avoided at law for fraud. *Ibid.*
4. The act of March 26, 1851, (California Laws, 764,) makes a grant of all lands of the kind within the limits mentioned in it which had been sold or granted by any alcalde of the city of San Francisco, and confirmed by the ayuntamiento or town or city council thereof, and also registered or recorded in some book of record which was at the date of the act in the office or custody or control of the recorder of the county of San Francisco, on or before the third day of April, one thousand eight hundred and fifty. *Ibid.*
5. The registry of an alcalde grant, in the manner and within the time mentioned in the act, is essential to its confirmation under the act. In that particular, the grant under which the plaintiff in this suit claimed, is deficient. The defendants brought themselves by their documentary evidence within the confirming act of March 26, 1852. *Ibid.*
6. Where a claimant of land in California produced documentary evidence in his favor, copied from the archives in the office of the surveyor general and other original grants by Spanish officers, the presumption is in favor of the power of those officers to make the grants. *United States* v. *Peralta et al.*, 343.
7. If the power be denied, the burden of proof is upon the party who denies it. *Ibid.*
8. The history of California, with respect to the power of its Governors to grant land, examined. *Ibid.*
9. The boundaries of the tract of land, as decreed by the District Court, affirmed. *Ibid.*
10. That the Spanish grants of land in California were large, is no reason why this court should refuse to confirm them. *United States* v. *Sutherland et al.*, 363.
11. A grant of a tract of land known by the name of El Cahon, lying near the

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mission of San Diego, and being that which the map attached to the official papers expresses, which map is of such a character that a surveyor could lay off the land, is good, and must be confirmed. *Ibid.*

CERTIFICATE OF DIVISION IN OPINION.
1. Where a question was certified from the Circuit Court to this court, viz: whether a certain letter, written by the cashier of a bank without the knowledge of the directory, though copied at the time of its date in the letter-book of the bank, was a legal and valid act of authority; and the record afforded no evidence relevant to the acts and authority of the cashier, or to the practice of the bank in ratifying or rejecting similar acts, this court cannot answer the question, and the case must be remanded to the Circuit Court, to be tried in the usual manner. *United States* v. *City Bank of Columbus*, 385.

CERTIORARI.
1. Where there appears to be an omission in the record of an important paper, which may be necessary for a correct decision of the case of the defendant in error, who has no counsel in court, the court will, of its own motion, order the case to be continued and a certiorari to be issued to bring up the missing paper. *Morgan* v. *Curtenius et al.*, 8.

CHANCERY.
1. In the present case, where a bill was filed to set aside titles for frauds alleged to have been committed in 1767, the bill does not make out a sufficient case; and the evidence does not even sustain the facts alleged. And the disability to sue, arising from coverture, is not satisfactorily proved. *Moore* v. *Greene et al.*, 69.
2. In case of alleged fraud, it is true that the statute of limitations does not begin to run until the fraud is discovered. But then the bill must be specific in stating the facts and circumstances which constitute the fraud; and in the present case, this is not done. *Ibid.*
3. Where property was sold under an administrator's sale, the presumption is in favor of its correctness; and after a long possession under it, the burden of proof is upon the party who impeaches the sale. *Ibid.*
4. According to the practice prescribed for the Circuit Courts, by this court, in equity causes, a bill cannot be dismissed, on motion of the respondents, for want of equity after answer and before the hearing. *Betts* v. *Lewis and Wife*, 72.
5. Where an administrator sells property which had been conveyed to him for the purpose of securing a debt due to his intestate's estate, his failure to account for the proceeds amounts to a devastavit, and renders himself and his sureties upon his administration bond liable; but it does not entitle the heirs to claim the property from a purchaser in good faith for a valuable consideration. *Long et al.* v. *O'Fallon*, 116.
6. Nor can the heirs, in such a case, claim land which has been taken up by the administrator as vacant land, and for which he obtained a patent from the United States, although such land was included in the conveyance to him. *Ibid.*
7. Moreover, the facts necessary to sustain the plea of the statute of limitations are proved on the part of the defendant in this case, and no charge in the bill discloses a case of exception from its operation. *Ibid.*
8. The Harmony Society was established upon the basis of a community of property, and one of the articles of association provided, that if any member withdrew from it, he should not claim a share in the property, but should only receive, as a donation, such sum as the society chose to give. *Baker et al*, v. *Nachtrieb*, 126.
9. One of the members withdrew, and received the sum of two hundred dollars, as a donation, for which he gave a receipt, and acknowledged that he had withdrawn from the society, and ceased to be a member thereof. *Ibid.*
10. A bill was then filed by him, claiming a share of the property, upon the ground that he had been unjustly excluded from the society by combination and covin, and evidence offered to show that he had been compelled to leave the society by violence and harsh treatment. *Ibid.*
11. The evidence upon this subject related to a time antecedent to the date of

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the receipt. There was no charge in the bill impeaching the receipt, or the settlement made at its date. *Ibid.*
12. Held, that under the contract, the settlement was conclusive, unless impeached by the bill. *Ibid.*
13. A court of equity will not entertain a bill, where the complainants seek to enforce a merely legal title to land; and in the present case, in the absence of allegations that the plaintiffs are seeking a partition, or a discovery, or an account, or to avoid a multiplicity of suits, the bill cannot be maintained. *Hipp et al.* v. *Babin et al.*, 271.
14. Where a fund is brought into court upon proceedings under a bill to foreclose a mortgage, it is altogether irregular for the court to order an investigation into the general accounts between the attorney and his client during past years, and to order that the attorney shall be paid, out of the fund in court, the balance which the master may report to be due. The persons interested in this decree were not properly before the court as parties. *Wolf et al.* v. *Lewis*, 280.
15. The appellate jurisdiction of this court only includes cases where the judgment or decree of the Circuit Court is final. *Beebe et al.* v. *Russell*, 283.
16. In chancery, a decree is interlocutory whenever an inquiry as to matter of law or fact is directed, preparatory to a final decision. *Ibid.*
17. But when a decree finally decides and disposes of the whole merits of the cause, and reserves no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its final decision, it is a final decree. *Ibid.*
18. Therefore, where a case was referred to a master, to take an account of rents and profits, &c., upon evidence, and from an examination of the parties, and to make or not to make allowances affecting the rights of the parties, and to report his results to the court, this was not a final decree. *Ibid.*
19. The preceding cases upon this subject, examined. *Ibid.*
20. The rule with respect to final and interlocutory decrees, which is applied to the preceding case of Beebe et al. *v.* Russell, again affirmed and applied. *Farrelly et al.* v. *Woodfolk*, 288.
21. Where money was borrowed from a bank upon a promissory note, signed by the principal and two sureties, and the principal debtor, by way of counter security, conveyed certain property to a trustee, for the purpose of indemnifying his sureties, it was necessary to make the trustee and the cestui que trust parties to a bill filed by the bank, asserting a special lien upon the property thus conveyed. *McRea et al.* v. *Branch Bank of Alabama*, 376.
22. But where the principal debtor had made a fraudulent conveyance of the property, which had continued in his possession, after the execution of the first deed, and then died, a bill was good, which was filed by the bank against the administrators, for the purpose of setting aside the fraudulent conveyance, and bringing the property into the assets of the deceased, for the benefit of all creditors who might apply. *Ibid.*
23. In the present case, where a bill was filed to set aside titles for frauds alleged to have been committed in 1767, the bill does not make out a sufficient case; and the evidence does not even sustain the facts alleged. And the disability to sue, arising from coverture, is not satisfactorily proved. *Moore* v. *Greene et al.*, 69.
24. In case of alleged fraud, it is true that the statute of limitations does not begin to run until the fraud is discovered. But then the bill must be specific in stating the facts and circumstances which constitute the fraud; and in the present case, this is not done. *Ibid.*
25. Where property was sold under an administrator's sale, the presumption is in favor of its correctness; and after a long possession under it, the burden of proof is upon the party who impeaches the sale. *Ibid.*
26. Where a sale of mortgaged property in Louisiana was made under proceedings in insolvency, and the heirs of the insolvent filed a bill to set aside the sale on the ground of irregularity, it was necessary to make the mortgagees parties. They had been paid their share of the purchase money, and had an interest in upholding the sale. *Coiron et al.* v. *Millaudon et al.*, 113.

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27. The fact that such persons are beyond the jurisdiction of the court is not a sufficient reason for omitting to make them parties. *Ibid.*
28. Neither the act of Congress nor the 47th rule of this court enables the Circuit Court to make a decree in a suit in the absence of a party whose rights must necessarily be affected by such decree; and the objection may be taken at any time upon the hearing or in the appellate court. *Ibid.*
29. Parol evidence is admissible to show that a conveyance of property, absolute upon the face of it, was really a mortgage or deed of trust. *Babcock* v. *Wyman*, 289.
30. In the present case, parol evidence, taken in conjunction with corroborating circumstances, shows that the deed was not intended to be absolute. *Ibid.*
31. The statute of limitations is not applicable, because the possession was not adverse. So, also, the trustee is not protected by the statute, although he sold the land and received the proceeds six years before the bill was filed, because it was his duty to apply those proceeds to the reduction of the interest and principal of the debt due to him when the deed was made. *Ibid.*
32. Where there was a judgment for costs against the plaintiff, in a suit where the defendant pleaded a discharge in bankruptcy, and the attorney for the defendant taxed those costs, directed the property upon which an execution should be levied for their collection, prepared the advertisements for the sale of it, caused a sale to be made of fourteen thousand acres of land, to produce a few dollars as costs, and then became himself the purchaser, the sale will be decreed fraudulent and void, and ordered to be set aside. *Byers* v. *Surget*, 303.
33. Where bills of lading for goods, shipped on board of a steamboat in the river Mississippi, mentioned that the carrier was not to be responsible for accidents which happened from the "perils of the river," these words did not include fire amongst those perils; and the carrier was responsible for losses by fire, although the boat was consumed without any negligence or fault of the owners, their agents, or servants. *Garrison et al.* v. *Memphis Insurance Company*, 312.
34. The evidence of a witness was not admissible, who offered to testify that he had not known a case where the omission of the word "fire," in the exceptions mentioned in the bill of lading, was considered to give a claim against the boat on account of a loss by fire. *Ibid.*
35. There is no ambiguity which requires to be explained, and the evidence fails to establish a usage. *Ibid.*
36. An insurance company, which paid these losses, had a right to seek relief from the owners of the boat. *Ibid.*
37. This relief could be sought in equity, not only upon the general principles of equity jurisprudence, but also because, in this case, a number of shipments were joined in the same bill, and thus a multiplicity of suits was avoided. *Ibid.*

CHILDREN AND GRANDCHILDREN.

1. Under the act of Congress passed on the 2d of June, 1832, providing for the relief of certain surviving officers of the Revolution, and its several supplements, the word children in the acts embraces the grandchildren of a deceased pensioner, whether their parents died before or after his decease. And they are entitled, per stirpes, to a distributive share of the deceased parent's pension. *Walton et al.* v. *Cotton et al.*, 355.

CITIZENS OF THE UNITED STATES.

See CONSTITUTIONAL LAW.

COMMERCIAL LAW.

1. The master of a vessel has power to create a lien upon it for repairs and supplies obtained in a foreign port, in a case of necessity; and he does so without a bottomry bond, when he obtains them, in a case of necessity, on the credit of the vessel. *Thomas et al.* v. *Osborn*, 22.
2. It is not material whether the implied hypothecation is made directly to the furnishers of repairs and supplies, or to one who lends money, on the credit of the vessel, in a case of necessity, to pay such furnishers. *Ibid.*

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3. This power of the master extends to a case where he is charterer and special owner *pro hac vice*. *Ibid.*
4. But this authority only exists in cases of necessity; and it is the duty of the lender to see that a case of apparent necessity for a loan exists. *Ibid.*
5. Hence, where the master had received freight money, and, with the assistance of the libellants, invested it in a series of adventures as a merchant, partly carried on by means of the vessel, the command of which he had deserted for the purpose of conducting these adventures, and money was advanced by the libellants to enable the master to repair and supply the vessel, and purchase a cargo to be transported and sold in the course of such private adventures; and the freight money earned by the vessel was sufficient to pay for the repairs and supplies, and might have been commanded for that use, if it had not been wrongfully diverted from it by the master, with the assistance of the libellants, it was held that the latter had no lien on the vessel for their advances. *Ibid.*
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10. It cannot be doubted that a master has power to sell both vessel and cargo, in certain cases of absolute necessity. *Post et al.* v. *Jones et al.*, 150.
11. But this rule had no application to a wreck where the property is deserted, or about to become so, and the person who has it in his power to save the crew, and salve the cargo, prefers to drive a bargain with the master, and where the necessity is imperative, because it is the price of safety. *Ibid.*
12. No valid reason can be assigned for fixing the reward for salving derelict property at "not more than a half or less than a third of the property saved." The true principle in all cases is, adequate reward according to the circumstances of the case. *Ibid.*
13. Where the property salved was transported by the salvors from Behring's Straits to the Sandwich Islands, and thence to New York, the salvage service was complete when the property was brought to a port of safety. The court allowed the salvors the one-half for this service, and also freight on the other moiety from the Sandwich Islands to New York. *Ibid.*
14. To be seaworthy as respects cargo, the hull of a vessel must be so tight, stanch, and strong, as to resist the ordinary action of the sea during the voyage, without damage or loss of cargo. *Dupont de Nemours & Co.* v. *Vance et al.*, 162.
15. A jettison, rendered necessary by a peril of the sea, is a loss by such peril within the meaning of the exception contained in bills of lading—aliter, if unseaworthiness of the vessel caused or contributed to the necessity for the jettison. *Ibid.*
16. The owner of cargo jettisoned has a maritime lien on the vessel for the contributory share due from the vessel on an adjustment of the general average; which lien may be enforced by a proceeding in rem in the admiralty. *Ibid.*
17. Where the libel alleged a shipment of cargo under a bill of lading, and its non-delivery, and prayed process against the vessel, and the answer set up a jettison, rendered necessary by a peril of the sea, and this defensive allegation was sustained by the court, it was held that the libellant was entitled to a decree for the contributory share of general average due from the vessel. *Ibid.*
18. There are no technical rules of variance or departure in pleading in the admiralty. *Ibid.*

COMMERCIAL LAW, (*Continued.*)

19. Where a mortgage existed upon the moiety of a vessel which was afterwards libelled, condemned, and sold by process in admiralty, and the proceeds brought into the registry of the court, the mortgagee could not file a libel against a moiety of those proceeds. *Schuchardt et al.* v. *Ship Angelique*, 239.
20. His proper course would have been, either to have appeared as a claimant when the first libel was filed, or to have applied to the court, by petition, for a distributive share of the proceeds. *Ibid.*
21. Where bills of lading for goods, shipped on board of a steamboat in the river Mississippi, mentioned that the carrier was not to be responsible for accidents which happened from the "perils of the river," these words did not include fire amongst those perils; and the carrier was responsible for losses by fire, although the boat was consumed without any negligence or fault of the owners, their agents, or servants. *Garrison et al.* v. *Memphis Insurance Company*, 312.
22. The evidence of a witness was not admissible, who offered to testify that he had not known a case where the omission of the word "fire," in the exceptions mentioned in the bill of lading, was considered to give a claim against the boat on account of a loss by fire. *Ibid.*
23. There is no ambiguity which requires to be explained, and the evidence fails to establish a usage. *Ibid.*
24. An insurance company, which paid these losses, had a right to seek relief from the owners of the boat. *Ibid.*
25. This relief could be sought in equity, not only upon the general principles of equity jurisprudence, but also because, in this case, a number of shipments were joined in the same bill, and thus a multiplicity of suits was avoided. *Ibid.*
26. Where application for reinsurance was made on Saturday, upon certain terms, which were declined, and other terms demanded, and on Monday these last-mentioned terms were accepted by the applicant, and assented to by the president, but the policy not made out, because Monday was a holyday, the agreement to issue the policy must be considered as legally binding. *Commercial Mutual Marine Insurance Co.* v. *Union Mutual Insurance Co.*, 318.
27. The law of Massachusetts is, that although insurance companies can make valid policies only when attested by the signatures of the president and secretary, yet they can make agreements to issue policies in a less formal mode. *Ibid.*
28. By the common law, a promise for a valuable consideration to make a policy is not required to be in writing, and there is no statute in Massachusetts which is inconsistent with this doctrine. *Ibid.*
29. Where the power of the president to make contracts for insurance is not denied in the answer, or made a point in issue in the court below, it is sufficient to bind the company if the other party shows that such had been the practice, and thereby an idea held out to the public that the president had such power. *Ibid.*
30. It is not essential to the existence of a binding contract to make insurance, that a premium note should have been actually signed and delivered. *Ibid.*
31. Where a sale was made of merchandise, and two parties, viz: Roots & Coe as one party, and Henry Lewis as the other party, both claimed to be the vendors, and to be entitled to the purchase-money, it was proper, under the circumstances which existed in the previous relations of these parties towards each other, for the court to instruct the jury as follows, viz:

"1. If they shall find that the merchandise had been made subject to the order of Roots & Coe; that it was sold by them in their own name; that at the time of sale it belonged to them, or that they had an interest in it for advances and commissions, and an authority as agents to dispose of it; and that it was delivered to and received by the vendee in pursuance of such sale, then Roots & Coe were entitled to the purchase-money.

"2. That although the jury may find from the evidence that the merchandise was sold to the purchasers by Henry Lewis, yet if they also find

COMMERCIAL LAW, (*Continued.*)

that it belonged to Roots & Coe, or to the persons for whom they acted as agents, and if the latter, that Roots & Coe had an interest in and control over the merchandise to cover advances and commissions; that the purchasers subsequently promised to pay Roots & Coe the purchase-money, and that the suit was instituted before the price had been paid to Henry Lewis, then Roots & Coe were entitled to the purchase-money." *McCullough et al.* v. *Roots et al.*, 349.

32. The existence of warehouse receipts, given by another person, was not a sufficient reason to justify the purchasers in refusing to pay for the property which they had purchased, and in the possession of which they had not been disturbed. *Ibid.*
33. Under the circumstances of the case, Roots & Coe had a right to consider Henry Lewis as their agent, and to adopt his acts. The purchaser had no right to allege that Henry Lewis was a tort feasor. *Ibid.*
34. Roots & Coe, having made the contracts, and having an interest to the extent of their commissions, had a right to maintain the suit. *Ibid.*

CONSTITUTIONAL LAW.

1. The laws of Louisiana impose a tax of ten per cent. on the value of all property inherited in that State by any person not domiciliated there, and not being a citizen of any State or Territory of the United States. *Prevost* v. *Greneaux*, 1.
2. In 1853, a treaty was made between the United States and France, by which Frenchmen were placed, as regards property, upon the same footing as citizens of the United States, in all the States of the Union whose laws permit it. *Ibid.*
3. This treaty has no effect upon the succession of a person who died in 1848. *Ibid.*
4. The nomination to an office by the President, confirmation by the Senate, signature of the commission, and affixing to it the seal of the United States, are all the acts necessary to render the appointment complete. *United States* v. *Le Baron*, 73.
5. Hence, the appointment is not rendered invalid by the subsequent death of the President before the transmission of the commission to the appointee, even where it is necessary that the person appointed should perform certain acts before he can legally enter upon the duties of the office. *Ibid.*
6. The rights of property and exclusive use granted to a patentee do not extend to a foreign vessel lawfully entering one of our ports; and the use of such improvement in the construction, fitting out, or equipment, of such vessel, while she is coming into or going out of a port of the United States, is not an infringement of the rights of an American patentee, provided it was placed upon her in a foreign port, and authorized by the laws of the country to which she belongs. *Brown* v. *Duchesne*, 183.
7. A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a "citizen" within the meaning of the Constitution of the United States. *Dred Scott* v. *Sandford*, 393.
8. When the Constitution was adopted, they were not regarded in any of the States as members of the community which constituted the State, and were not numbered among its "people or citizens." Consequently, the special rights and immunities guarantied to citizens do not apply to them. And not being "citizens" within the meaning of the Constitution, they are not entitled to sue in that character in a court of the United States, and the Circuit Court has not jurisdiction in such a suit. *Ibid.*
9. The only two clauses in the Constitution which point to this race, treat them as persons whom it was morally lawful to deal in as articles of property and to hold as slaves. *Ibid.*
10. Since the adoption of the Constitution of the United States, no State can by any subsequent law make a foreigner or any other description of persons citizens of the United States, nor entitle them to the rights and privileges secured to citizens by that instrument. *Ibid.*
11. A State, by its laws passed since the adoption of the Constitution, may put a foreigner or any other description of persons upon a footing with its own citizens, as to all the rights and privileges enjoyed by them within its

CONSTITUTIONAL LAW, (*Continued.*)
dominion and by its laws. But that will not make him a citizen of the United States, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State. *Ibid.*
12. The change in public opinion and feeling in relation to the African race, which has taken place since the adoption of the Constitution, cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted. *Ibid.*
13. The plaintiff having admitted, by his demurrer to the plea in abatement, that his ancestors were imported from Africa and sold as slaves, he is not a citizen of the State of Missouri according to the Constitution of the United States, and was not entitled to sue in that character in the Circuit Court. *Ibid.*
14. This being the case, the judgment of the court below, in favor of the plaintiff on the plea in abatement, was erroneous. *Ibid.*
15. The clause in the Constitution authorizing Congress to make all needful rules and regulations for the government of the territory and other property of the United States, applies only to territory within the chartered limits of some one of the States when they were colonies of Great Britain, and which was surrendered by the British Government to the old Confederation of the States, in the treaty of peace. It does not apply to territory acquired by the present Federal Government, by treaty or conquest, from a foreign nation. *Ibid.*
16. The case of the American and Ocean Insurance Companies *v.* Canter (1 Peters, 511) referred to and examined, showing that the decision in this case is not in conflict with that opinion, and that the court did not, in the case referred to, decide upon the construction of the clause of the Constitution above mentioned, because the case before them did not make it necessary to decide the question. *Ibid.*
17. The United States, under the present Constitution, cannot acquire territory to be held as a colony, to be governed at its will and pleasure. But it may acquire territory which, at the time, has not a population that fits it to become a State, and may govern it as a Territory until it has a population which, in the judgment of Congress, entitles it to be admitted as a State of the Union. *Ibid.*
18. During the time it remains a Territory, Congress may legislate over it within the scope of its constitutional powers in relation to citizens of the United States—and may establish a Territorial Government—and the form of this local Government must be regulated by the discretion of Congress—but with powers not exceeding those which Congress itself, by the Constitution, is authorized to exercise over citizens of the United States, in respect to their rights of persons or rights of property. *Ibid.*
19. The territory thus acquired, is acquired by the people of the United States for their common and equal benefit, through their agent and trustee, the Federal Government. Congress can exercise no power over the rights of persons or property of a citizen in the Territory which is prohibited by the Constitution. The Government and the citizen, whenever the Territory is open to settlement, both enter it with their respective rights defined and limited by the Constitution. *Ibid.*
20. Congress have no right to prohibit the citizens of any particular State or States from taking up their home there, while it permits citizens of other States to do so. Nor has it a right to give privileges to one class of citizens which it refuses to another. The territory is acquired for their equal and common benefit—and if open to any, it must be open to all upon equal and the same terms. *Ibid.*
21. Every citizen has a right to take with him into the Territory any article of property which the Constitution of the United States recognises as property. *Ibid.*
22. The Constitution of the United States recognises slaves as property, and pledges the Federal Government to protect it. And Congress cannot exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind. *Ibid.*

CONSTITUTIONAL LAW, (*Continued.*)

23. The act of Congress, therefore, prohibiting a citizen of the United States from taking with him his slaves when he removes to the Territory in question to reside, is an exercise of authority over private property which is not warranted by the Constitution—and the removal of the plaintiff, by his owner, to that Territory, gave him no title to freedom. *Ibid.*
24. The plaintiff himself acquired no title to freedom by being taken, by his owner, to Rock Island, in Illinois, and brought back to Missouri. This court has heretofore decided that the *status* or condition of a person of African descent depended on the laws of the State in which he resided. *Ibid.*
25. It has been settled by the decisions of the highest court in Missouri, that, by the laws of that State, a slave does not become entitled to his freedom, where the owner takes him to reside in a State where slavery is not permitted, and afterwards brings him back to Missouri. *Ibid.*
26. Conclusion. It follows that it is apparent upon the record that the court below erred in its judgment on the plea in abatement, and also erred in giving judgment for the defendant, when the exception shows that the plaintiff was not a citizen of the United States. And as the Circuit Court had no jurisdiction, either in the case stated in the plea in abatement, or in the one stated in the exception, its judgment in favor of the defendant is erroneous, and must be reversed. *Ibid.*

CONTRACTS.

1. Where a railroad company became embarrassed, and were unable to pay the contractor, and a person interested in the company agreed to give the contractor his individual promissory notes if he would finish the work by a certain day, the contractor cannot recover upon the notes, unless he finishes the work within the stipulated time. *Slater* v. *Emerson*, 224.
2. Where application for reinsurance was made on Saturday, upon certain terms, which were declined, and other terms demanded, and on Monday these last-mentioned terms were accepted by the applicant, and assented to by the president, but the policy not made out, because Monday was a holyday, the agreement to issue the policy must be considered as legally binding. *Commercial Mutual Marine Insurance Co.* v. *Union Mutual Insurance Co.*, 318.
3. The law of Massachusetts is, that although insurance companies can make valid policies only when attested by the signatures of the president and secretary, yet they can make agreements to issue policies in a less formal mode. *Ibid.*
4. By the common law, a promise for a valuable consideration to make a policy is not required to be in writing, and there is no statute in Massachusetts which is inconsistent with this doctrine. *Ibid.*
5. Where the power of the president to make contracts for insurance is not denied in the answer, or made a point in issue in the court below, it is sufficient to bind the company, if the other party shows that such had been the practice, and thereby an idea held out to the public that the president had such power. *Ibid.*
6. It is not essential to the existence of a binding contract to make insurance, that a premium note should have been actually signed and delivered. *Ibid.*

COSTS.

1. The competent parties to agree that a case shall be settled, and the writ of error dismissed, are usually the parties upon the record. If either of them has assigned his interest, and it be made known to the court, the interest of such assignee would be protected. *Platt* v. *Jerome*, 384.
2. But where there was a judgment for costs in the court below, and the attorney claimed to have a lien upon such judgment for his fees, it is not a sufficient reason for this court to prevent the parties from agreeing to dismiss the case. *Ibid.*

DEEDS.

1. In Missouri, where a deed was offered in evidence, purporting to convey the titles of married women to land, and their names were in the handwriting of other persons, and there was no proof that the women had either

DEEDS, (*Continued.*)
signed or acknowledged the deed, it was properly refused by the court to be allowed to go to the jury. *Meegan* v. *Boyle*, 130.
2. The property was paraphernal, and could not be conveyed away by their husbands. *Ibid.*
3. The facts in the case were not sufficient to warrant the jury to presume the consent of the married women. *Ibid.*
4. The original deed not being evidence, a certified copy was not admissible. *Ibid.*
5. An old will, which had never been proved according to law, was properly excluded as evidence. Moreover, no claim was set up under it, but, on the contrary, the estate was treated as if the maker of it had died intestate. *Ibid.*
6. Neither the deed nor the will come within the rule by which ancient instruments are admitted. It only includes such documents as are valid upon their face. *Ibid.*
7. The statute of limitations did not begin to run until after the disability of coverture was removed. *Ibid.*
8. Parol evidence is admissible to show that a conveyance of property, absolute upon the face of it, was really a mortgage or deed of trust. *Babcock* v. *Wyman*, 289.
9. A deed speaks from the time of its delivery, not from its date. *United States* v. *Le Baron*, 73.

DUTIES—AT THE CUSTOM-HOUSE.
1. In estimating the duty payable at the custom-house upon imported iron, it was proper to levy it on the prices at which the iron was charged in the invoices; and the entry in the invoices, that the importer would be entitled to a deduction for prompt payment, could not affect the amount of duty chargeable. *Ballard et al.* v. *Thomas*, 382.

EVIDENCE.
1. In Missouri, where a deed was offered in evidence, purporting to convey the titles of married women to land, and their names were in the handwriting of other persons, and there was no proof that the women had either signed or acknowledged the deed, it was properly refused by the court to be allowed to go to the jury. *Meegan* v. *Boyle*, 130.
2. The property was paraphernal, and could not be conveyed away by their husbands. *Ibid.*
3. The facts in the case were not sufficient to warrant the jury to presume the consent of the married women. *Ibid.*
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5. An old will, which had never been proved according to law, was properly excluded as evidence. Moreover, no claim was set up under it, but, on the contrary, the estate was treated as if the maker of it had died intestate. *Ibid.*
6. Neither the deed nor the will come within the rule by which ancient instruments are admitted. It only includes such documents as are valid upon their face. *Ibid.*
7. The statute of limitations did not begin to run until after the disability of coverture was removed. *Ibid.*
8. Evidence tending to show that the agreement between the patentee and the attorney had been produced by the fraudulent representations of the latter, in respect to transactions out of which the agreement arose, ought not to have been received, it being a sealed instrument. *Hartshorn* v. *Day*, 211.
9. In a court of law, between parties or privies, evidence of fraud is admissible only where it goes to the question whether or not the instrument ever had any legal existence. But it was especially proper to exclude it in this case, where the agreement had been partly executed, and rights of long standing had grown up under it. *Ibid.*
10. In Massachusetts, a former verdict and judgment in an action on the case for a nuisance is not conclusive evidence of the plaintiff's right to recover in a subsequent action for the continuance of the same nuisance. *Richardson* v. *The City of Boston*, 263.

EVIDENCE, (*Continued.*)
11. The plea of the general issue in actions of trespass or case does not necessarily put the title in issue. *Ibid.*
12. But the former verdict, though not conclusive, is permitted to go to the jury as prima facie or persuasive evidence. *Ibid.*
13. Where there is some evidence tending to establish a fact in issue, the jury must judge of its sufficiency. *Ibid.*
14. It is the duty of the court to construe written documents, but the application of their provisions to external objects is the peculiar province of the jury. *Ibid.*
15. Parol evidence is admissible to show that a conveyance of property, absolute upon the face of it, was really a mortgage or deed of trust. *Babcock* v. *Wyman*, 289.
16. In the present case, parol evidence, taken in conjunction with corroborating circumstances, shows that the deed was not intended to be absolute. *Ibid.*
17. The statute of limitations is not applicable, because the possession was not adverse. So, also, the trustee is not protected by the statute, although he sold the land and received the proceeds six years before the bill was filed, because it was his duty to apply those proceeds to the reduction of the interest and principal of the debt due to him when the deed was made. *Ibid.*
18. The evidence of a witness was not admissible, who offered to testify that he had not known a case where the omission of the word "fire," in the exceptions mentioned in the bill of lading, was considered to give a claim against the boat on account of a loss by fire. *Garrison* v. *Memphis Insurance Co.*, 312.
19. There is no ambiguity which requires to be explained, and the evidence fails to establish the usage. *Ibid.*
20. The American State Papers, published by order of Congress, may be read in evidence, in the investigation of claims to land. *Bryan* v. *Forsyth*, 334.

FRAUD.
1. Where there was a judgment for costs against the plaintiff, in a suit where the defendant pleaded a discharge in bankruptcy, and the attorney for the defendant taxed those costs, directed the property upon which an execution should be levied for their collection, prepared the advertisements for the sale of it, caused a sale to be made of fourteen thousand acres of land, to produce a few dollars as costs, and then became himself the purchaser, the sale will be declared fraudulent and void, and ordered to be set aside. *Byers* v. *Surget*, 303.
2. When a grant or patent for land, or legislative confirmation of titles to land, has been given by the sovereignty or legislative authority only having the right to make it, without any provision having been made, in the patent or by the law, to inquire into its fairness between the grantor and grantee, or between third parties and the grantee, a third party cannot raise, in ejectment, the question of fraud as between the grantor and grantee. *Field* v. *Seabury et al.*, 323.
3. A bill in equity lies to set aside letters patent obtained by fraud, but only between the sovereignty making the grant and the grantee. *Ibid.*
4. Such a patent or grant cannot be collaterally avoided at law for fraud. *Ibid.*

GARNISHMENT.
1. The laws of Alabama provide, that where there is a judgment against a debtor who is unable to pay, a process of garnishment (which is called in some of the States an attachment upon final process) may be issued and laid in the hands of a garnishee, who may owe money to the judgment debtor, or have any effects within the control of the garnishee. *Williams* v. *Hill et al.*, 246.
2. The garnishee, having real property under his control by virtue of a deed of trust, cannot retain it for the purpose of reimbursing himself for advances made to the judgment debtor after the execution of the deed in execution of a parol contract between them. *Ibid.*
3. Where the garnishee sets up a claim to the funds in his hands, he must

GARNISHMENT, (*Continued.*)
prove the bona fides of his claim, if it is derived from the judgment debtor after the origin of the creditor's demand. *Ibid.*
4. Therefore, where the garnishee produced notes signed by the judgment debtor, bearing date prior to the judgment, but did not prove their existence before the judgment in consideration, it was properly left to the jury to say whether there was fraud or collusion between the garnishee and the judgment debtor. *Ibid.*

INDIANS.
1. The United States made two treaties, one in 1838, and one in 1842, with the Seneca Indians, residing in the State of New York, by which the Indians agreed to remove to the West within five years, and relinquish their possessions to certain assignees of the State of Massachusetts, and the United States agreed that they would appropriate a large sum of money to aid in the removal, and to support the Indians for the first year after their removal to their new residence. *Fellows* v. *Blacksmith et al.*, 366.
2. But neither treaty made any provision as to the mode or manner in which the removal of the Indians or surrender of the reservations was to take place. *Ibid.*
3. The grantees of the land, under the Massachusetts assignment, cannot enter upon it and take forcible possession of a farm occupied by an Indian, but are liable to an action of trespass, *quare clausum fregit*, if they do so. *Ibid.*
4. The removal of tribes of Indians is to be made by the authority and under the care of the Government; and a forcible removal, if made at all, must be made under the direction of the United States. *Ibid.*
5. The courts cannot go behind a treaty, when ratified, to inquire whether or not the tribe was properly represented by its head men. *Ibid.*

INSURANCE.
See Commercial Law.

JETTISON.
See Commercial Law.

JURISDICTION.
1. In 1841, Congress granted to the State of Louisiana 500,000 acres of land, for the purposes of internal improvement, and in 1849 granted also the whole of the swamp and overflowed lands which may be found unfit for cultivating. *Shaffer* v. *Scudday*, 16.
2. In both cases, patents were to be issued to individuals under State authority. *Ibid.*
3. In a case of conflict between two claimants, under patents granted by the State of Louisiana, this court has no jurisdiction, under the 25th section of the judiciary act, to review the judgment of the Supreme Court of Louisiana, given in favor of one of the claimants. *Ibid.*
4. Where the decree was for a less sum than two thousand dollars, the appeal must be dismissed for want of jurisdiction. *Rogers et al.* v. *Steamer St. Charles*, 108.
5. Where a sale of mortgaged property in Louisiana was made under proceedings in insolvency, and the heirs of the insolvent filed a bill to set aside the sale on the ground of irregularity, it was necessary to make the mortgagees parties. They had been paid their share of the purchase money, and had an interest in upholding the sale. *Coiron et al.* v. *Millaudon et al.*, 113.
6. The fact that such persons are beyond the jurisdiction of the court is not a sufficient reason for omitting to make them parties. *Ibid.*
7. Neither the act of Congress nor the 47th rule of this court enables the Circuit Court to make a decree in a suit in the absence of a party whose rights must necessarily be affected by such decree, and the objection may be taken at any time upon the hearing or in the appellate court. *Ibid.*
8. Where the decree of the District Court, in a case of admiralty jurisdiction, was not a final decree, the Circuit Court, to which it was carried by appeal, had no power to act upon the case, nor could it consent to an amendment of the record by an insertion of a final decree by an agreement of the counsel in the case; nor can this court consent to such an amendment. *Mordecai et al.* v. *Lindsay et al.*, 199.

JURISDICTION, (*Continued.*)

9. The District Court having ordered a report to be made, the case must be sent back from here to the Circuit Court, and from there to the District Court, in order that a report may be made according to the reference. *Ibid.*
10. In Louisiana, all the evidence taken in the court below goes up to the Supreme Court, which decides questions of fact as well as of law. In the absence of bills of exceptions, setting forth the points of law decided in the case, this court must look to the opinion of the State court, (made a part of the record by law,) in order to see whether or not any question has been decided there which would give this court appellate jurisdiction, under the twenty-fifth section of the judiciary act. *Cousin* v. *Blanc's Executor et al.*, 202.
11. The appellate jurisdiction of this court only includes cases where the judgment or decree of the Circuit Court is final. *Beebe et al.* v. *Russell*, 283.
12. In chancery, a decree is interlocutory whenever an inquiry as to matter of law or fact is directed, preparatory to a final decision. *Ibid.*
13. But when a decree finally decides and disposes of the whole merits of the cause, and reserves no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its final decision, it is a final decree. *Ibid.*
14. Therefore, where a case was referred to a master, to take an account of rents and profits, &c., upon evidence, and from an examination of the parties, and to make or not to make allowances affecting the rights of the parties, and to report his results to the court, this was not a final decree. *Ibid.*
15. The preceding cases upon this subject, examined. *Ibid.*
16. The rule with respect to final and interlocutory decrees, which is applied to the preceding case of Beebe et al. *v.* Russell, again affirmed and applied. *Farrelly et al.* v. *Woodfolk*, 288.
17. Where a case is brought up to this court by a writ of error issued to the Supreme Court of a State, under the twenty-fifth section of the judiciary act, if it appears that the judgment of the State court only involved the construction of State statutes which both parties in the cause admitted to be valid, the writ of error will be dismissed on motion. *Michigan Central Railroad Co.* v. *Michigan Southern Railroad Co. et al.*, 378.
18. Where a party brought an ejectment in a State court, founding his title upon documents showing a settlement claim under the laws of the United States, and the Supreme Court of the State decided in favor of that title, the opposite party cannot bring the case to this court under the twenty-fifth section of the judiciary act. *Burke* v. *Gaines et al.*, 388.
19. This court has no jurisdiction over such a case. *Ibid.*
20. Upon a writ of error to a Circuit Court of the United States, the transcript of the record of all the proceedings in the case is brought before this court, and is open to its inspection and revision. *Dred Scott* v. *Sandford*, 393.
21. When a plea to the jurisdiction, in abatement, is overruled by the court upon demurrer, and the defendant pleads in bar, and upon these pleas the final judgment of the court is in his favor—if the plaintiff brings a writ of error, the judgment of the court upon the plea in abatement is before this court, although it was in favor of the plaintiff—and if the court erred in overruling it, the judgment must be reversed, and a mandate issued to the Circuit Court to dismiss the case for want of jurisdiction. *Ibid.*
22. In the Circuit Courts of the United States, the record must show that the case is one in which, by the Constitution and laws of the United States, the court had jurisdiction—and if this does not appear, and the court gives judgment either for plaintiff or defendant, it is error, and the judgment must be reversed by this court—and the parties cannot by consent waive the objection to the jurisdiction of the Circuit Court. *Ibid.*
23. But if the plea in abatement is not brought up by this writ of error, the objection to the citizenship of the plaintiff is still apparent on the record, as he himself, in making out his case, states that he is of African descent, was born a slave, and claims that he and his family became entitled to freedom by being taken, by their owner, to reside in a Territory where

JURISDICTION, (*Continued.*)
slavery is prohibited by act of Congress—and that, in addition to this claim, he himself became entitled to freedom by being taken to Rock Island, in the State of Illinois—and being free when he was brought back to Missouri, he was by the laws of that State a citizen. *Ibid.*

24. If, therefore, the facts he states do not give him or his family a right to freedom, the plaintiff is still a slave, and not entitled to sue as a "citizen," and the judgment of the Circuit Court was erroneous on that ground also, without any reference to the plea in abatement. *Ibid.*
25. The Circuit Court can give no judgment for plaintiff or defendant in a case where it has not jurisdiction, no matter whether there be a plea in abatement or not. And unless it appears upon the face of the record, when brought here by writ of error, that the Circuit Court had jurisdiction, the judgment must be reversed. *Ibid.*
26. The case of Capron *v.* Van Noorden (2 Cranch, 126) examined, and the principles thereby decided, reaffirmed. *Ibid.*
27. When the record, as brought here by writ of error, does not show that the Circuit Court had jurisdiction, this court has jurisdiction to revise and correct the error, like any other error in the court below. It does not and cannot dismiss the case for want of jurisdiction here; for that would leave the erroneous judgment of the court below in full force, and the party injured without remedy. But it must reverse the judgment, and, as in any other case of reversal, send a mandate to the Circuit Court to conform its judgment to the opinion of this court. *Ibid.*
28. The difference of the jurisdiction in this court in the cases of writs of error to State courts and to Circuit Courts of the United States, pointed out; and the mistakes made as to the jurisdiction of this court in the latter case, by confounding it with its limited jurisdiction in the former. *Ibid.*
29. If the court reverses a judgment upon the ground that it appears by a particular part of the record that the Circuit Court had not jurisdiction, it does not take away the jurisdiction of this court to examine into and correct, by a reversal of the judgment, any other errors, either as to the jurisdiction or any other matter, where it appears from other parts of the record that the Circuit Court had fallen into error. On the contrary, it is the daily and familiar practice of this court to reverse on several grounds, where more than one error appears to have been committed. And the error of a Circuit Court in its jurisdiction stands on the same ground, and is to be treated in the same manner as any other error upon which its judgment is founded. *Ibid.*
30. The decision, therefore, that the judgment of the Circuit Court upon the plea in abatement is erroneous, is no reason why the alleged error apparent in the exception should not also be examined, and the judgment reversed on that ground also, if it discloses a want of jurisdiction in the Circuit Court. *Ibid.*
31. It is often the duty of this court, after having decided that a particular decision of the Circuit Court was erroneous, to examine into other alleged errors, and to correct them if they are found to exist. And this has been uniformly done by this court, when the questions are in any degree connected with the controversy, and the silence of the court might create doubts which would lead to further and useless litigation. *Ibid.*
32. Where a question was certified from the Circuit Court to this court, viz: whether a certain letter, written by the cashier of a bank without the knowledge of the directory, though copied at the time of its date in the letter-book of the bank, was a legal and valid act of authority; and the record afforded no evidence relevant to the acts and authority of the cashier, or to the practice of the bank in ratifying or rejecting similar acts, this court cannot answer the question, and the case must be remanded to the Circuit Court, to be tried in the usual manner. *United States* v. *City Bank of Columbus*, 385.

LANDS—PUBLIC.

1. Where there are two confirmations by Congress of the same land in Missouri, the elder confirmation gives the better title; and the jury are not

LANDS—PUBLIC, (*Continued.*)
at liberty, in an action of ejectment, to find that the survey and patent did not correspond with the confirmation. *Willot et al.* v. *Sandford*, 79.
2. Titles to lands thus situated could be confirmed; nor were the lands affected by the act of March 3, 1811, providing for the sale of public lands and the final adjustment of land claims. *Ibid.*
3. A claim to land in Louisiana was presented to the commissioner appointed under the act of 1812, (2 Stat. at L., 713,) reported favorably upon by him to Congress, and confirmed by the act of 1819, (3 Stat. at L., 528.) But it did not appear that this claim had been surveyed, or that it had any definite boundaries. *Cousin* v. *Blanc's Executor et al.*, 202.
4. In 1820, the register and receiver gave to the claimant a certificate that he was entitled to a patent, but without saying how it was to be located. *Ibid.*
5. In 1822, Congress passed an act (3 Stat. at L., 707) giving to the registers and receivers power to direct the location and manner of surveying the claims to land confirmed by the act of 1819. *Ibid.*
6. In 1826, the register and receiver ordered the claim to be surveyed, speaking of it, however, as being derived from an original claimant, different from the person who was mentioned as the original claimant in the certificate of 1820. *Ibid.*
7. The act of 1822 was remedial, and this difference was immaterial. *Ibid.*
8. When the survey was executed according to that order, it gave a prima facie title, and the United States were bound by it until it was set aside at the General Land Office. The Supreme Court of Louisiana were in error when they decided that it gave no title, and this court has jurisdiction, under the twenty-fifth section of the judiciary act, to review that judgment. *Ibid.*
9. But until the survey was made and approved, the United States could sell the land, and a purchase of a part of it must stand good. *Ibid.*
10. The act of Congress of 1820 and regulations of the General Land Office of 1831 direct the manner in which purchases of public land shall be authenticated by the registers and receivers of the land offices. *Bell* v. *Hearne et al.*, 252.
11. Where the receiver gave a receipt in the name of John Bell, and the register made two certificates of purchase, one in the name of John Bell and the other in the name of James Bell, the circumstances of the case show that the latter was an error which was properly corrected by the Commissioner of the General Land Office in the exercise of his supervisory authority; and he had a right to do this, although a patent had been issued to James Bell, which had been reclaimed from the register's office, and returned to the General Land Office to be cancelled. *Ibid.*
12. The Supreme Court of Louisiana having decided against the validity of the patent issued to John Bell, this court has jurisdiction under the twenty-fifth section of the judiciary act to review that judgment; and the ground of the decision of the State court sufficiently appears upon the record. *Ibid.*
13. By the acts of Congress passed on the 15th of May, 1820, and March 3d, 1823, provision was made, that each of the settlers in Peoria, Illinois, should be entitled to a village lot, and the surveyor of public lands was directed to designate upon a plat the lot confirmed to each claimant. *Bryan et al.* v. *Forsyth*, 334.
14. The act of 1823 conferred on the grantee an incipient title; and when the survey was made and approved, by which the limits of the lot were designated, the title then became capable of sustaining an action of ejectment, even before a patent was issued. *Ibid.*
15. In the interval between 1823 and the survey, a patent was taken out, which was issued subject to all the rights of persons claiming under the act of 1823. This patent was controlled by the subsequent survey. *Ibid.*
16. But although it was controlled by the subsequent survey, yet the patent was a fee-simple title upon its face, and sufficient to sustain a plea of the statute of limitations in Illinois, which requires that possession should be by actual residence on the land, under a connected title in law or equity, deducible of record from the United States, &c. *Ibid.*

LANDS—PUBLIC, (*Continued.*)

17. The American State Papers, published by order of Congress, may be read in evidence, in the investigation of claims to land. *Ibid.*
18. Under the circumstances described in the preceding case, if there was no sufficient evidence of a survey under the act of 1823, the title claimed under that act could not be held superior to that claimed under a patent issued in the interval between the act of 1823 and the alleged survey. *Ballance* v. *Papin et al.*, 342.
19. Where a claimant of land in California produced documentary evidence in his favor, copied from the archives in the office of the surveyor general and other original grants by Spanish officers, the presumption is in favor of the power of those officers to make the grants. *United States* v. *Peralta et al.*, 343.
20. If the power be denied, the burden of proof is upon the party who denies it. *Ibid.*
21. The history of California, with respect to the power of its Governors to grant land, examined. *Ibid.*
22. The boundaries of the tract of land, as decreed by the District Court, affirmed. *Ibid.*

LIMITATIONS—STATUTE OF.

1. In the present case, where a bill was filed to set aside titles for frauds alleged to have been committed in 1767, the bill does not make out a sufficient case; and the evidence does not even sustain the facts alleged. And the disability to sue, arising from coverture, is not satisfactorily proved. *Moore* v. *Greene et al.*, 69.
2. In case of alleged fraud, it is true that the statute of limitations does not begin to run until the fraud is discovered. But then the bill must be specific in stating the facts and circumstances which constitute the fraud; and in the present case, this is not done. *Ibid.*
3. Parol evidence is admissible to show that a conveyance of property, absolute upon the face of it, was really a mortgage or deed of trust. *Babcock* v. *Wyman*, 289.
4. In the present case, parol evidence, taken in conjunction with corroborating circumstances, shows that the deed was not intended to be absolute. *Ibid.*
5. The statute of limitations is not applicable, because the possession was not adverse. So, also, the trustee is not protected by the statute, although he sold the land and received the proceeds six years before the bill was filed, because it was his duty to apply those proceeds to the reduction of the interest and principal of the debt due to him when the deed was made. *Ibid.*
6. By the acts of Congress passed on the 15th of May, 1820, and March 3d, 1823, provision was made, that each of the settlers in Peoria, Illinois, should be entitled to a village lot, and the surveyor of public lands was directed to designate upon a plat the lot confirmed to each claimant. *Bryan et al.* v. *Forsyth*, 334.
7. The act of 1823 conferred on the grantee an incipient title; and when the survey was made and approved, by which the limits of the lot were designated, the title then became capable of sustaining an action of ejectment, even before a patent was issued. *Ibid.*
8. In the interval between 1823 and the survey, a patent was taken out, which was issued subject to all the rights of persons claiming under the act of 1823. This patent was controlled by the subsequent survey. *Ibid.*
9. But although it was controlled by the subsequent survey, yet the patent was a fee-simple title upon its face, and sufficient to sustain a plea of the statute of limitations in Illinois, which requires that possession should be by actual residence on the land, under a connected title in law or equity, deducible of record from the United States, &c. *Ibid.*

LOUISIANA.

1. The laws of Louisiana impose a tax of ten per cent. on the value of all property inherited in that State by any person not domiciliated there, and not being a citizen of any State or Territory of the United States. *Prevost* v. *Greneaux*, 1.

LOUISIANA, (*Continued.*)
2. In 1853, a treaty was made between the United States and France, by which Frenchmen were placed, as regards property, upon the same footing as citizens of the United States, in all the States of the Union whose laws permit it. *Ibid.*
3. This treaty has no effect upon the succession of a person who died in 1848. *Ibid.*
4. The law of Louisiana imposes on the seller the obligation of warranting the thing sold against its hidden defects, which are those which could not be discovered by simple inspection; and the purchaser may retain the thing sold, and have an action for reduction of the price by reason of the difference in value between the thing as warranted and as it was in fact. *Bulkley* v. *Honold*, 390.
5. Where a vessel was purchased, which was then partly laden as a general ship for an outward foreign voyage, and after she went to sea she was found to be unseaworthy, and had to return, the defects were hidden defects, under the above law. *Ibid.*
6. A vessel is included within the terms of the law. *Ibid.*
7. The purchaser was not bound to renounce the vessel. This privilege is provided for in another and distinct article of the code. *Ibid.*
8. The contract must be governed by the laws of Louisiana, where it was made and performed. *Ibid.*
9. Such a sale is not governed by the general commercial law, but by the civil code of Louisiana. *Ibid.*

MANDAMUS.
1. By the rules and practice of common-law courts, it rests exclusively with the court to determine who is qualified to become or continue one of its officers, as an attorney and counsellor of the court; the power being regulated, however, by a sound and just judicial discretion—guarding the rights and independence of the bar as well as the dignity and authority of the court. *Ex Parte Secombe*, 9.
2. The local law of the Territory of Minnesota has regulated the relation between courts and attorneys and counsellors, but has not essentially changed the common-law principle. *Ibid.*
3. The Minnesota statute authorizes the court to dismiss an attorney or counsellor if he does not maintain the respect due to courts of justice and judicial officers, or for not conducting himself with fidelity to the court. *Ibid.*
4. The Supreme Court of the Territory dismissed the relator from the office of counsellor and attorney of the court, stating in the sentence of dismissal that he was guilty of the offences above mentioned, but not specifying the act or acts which, in the opinion of the court, constituted the offence. *Ibid.*
5. The order of dismissal is a judicial act done in the exercise of a judicial discretion vested in the court by law; and a mandamus cannot be issued by a superior or appellate court, commanding it to reverse its decision and restore the relator to the office he has lost. *Ibid.*

MARITIME LIENS.
See ADMIRALTY.

MARRIED WOMEN.
1. In Missouri, where a deed was offered in evidence, purporting to convey the titles of married women to land, and their names were in the handwriting of other persons, and there was no proof that the women had either signed or acknowledged the deed, it was properly refused by the court to be allowed to go to the jury. *Meegan* v. *Boyle*, 130.
2. The property was paraphernal, and could not be conveyed away by their husbands. *Ibid.*
3. The facts in the case were not sufficient to warrant the jury to presume the consent of the married women. *Ibid.*
4. The original deed not being evidence, a certified copy was not admissible. *Ibid.*
5. An old will, which had never been proved according to law, was properly excluded as evidence. Moreover, no claim was set up under it, but, on

MARRIED WOMEN, (*Continued.*)
the contrary, the estate was treated as if the maker of it had died intestate. *Ibid.*
6. Neither the deed nor the will come within the rule by which ancient instruments are admitted. It only includes such documents as are valid upon their face. *Ibid.*
7. The statute of limitations did not begin to run until after the disability of coverture was removed. *Ibid.*

MINNESOTA.
1. By the rules and practice of common-law courts, it rests exclusively with the court to determine who is qualified to become or continue one of its officers, as an attorney and counsellor of the court; the power being regulated, however, by a sound and just judicial discretion—guarding the rights and independence of the bar as well as the dignity and authority of the court. *Ex Parte Secombe*, 9.
2. The local law of the Territory of Minnesota has regulated the relation between courts and attorneys and counsellors, but has not essentially changed the common-law principle. *Ibid.*
3. The Minnesota statute authorizes the court to dismiss an attorney or counsellor if he does not maintain the respect due to courts of justice and judicial officers, or for not conducting himself with fidelity to the court. *Ibid.*
4. The Supreme Court of the Territory dismissed the relator from the office of counsellor and attorney of the court, stating in the sentence of dismissal that he was guilty of the offences above mentioned, but not specifying the act or acts which, in the opinion of the court, constituted the offence. *Ibid.*
5. The order of dismissal is a judicial act done in the exercise of a judicial discretion vested in the court by law; and a mandamus cannot be issued by a superior or appellate court, commanding it to reverse its decision, and restore the relator to the office he has lost. *Ibid.*

NEGROES AND SLAVES.
1. A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a "citizen" within the meaning of the Constitution of the United States. *Dred Scott* v. *Sandford*, 393.
2. When the Constitution was adopted, they were not regarded in any of the States as members of the community which constituted the State, and were not numbered among its "people or citizens." Consequently, the special rights and immunities guarantied to citizens do not apply to them. And not being "citizens" within the meaning of the Constitution, they are not entitled to sue in that character in a court of the United States, and the Circuit Court has not jurisdiction in such a suit. *Ibid.*
3. The only two clauses in the Constitution which point to this race, treat them as persons whom it was morally lawful to deal in as articles of property and to hold as slaves. *Ibid.*
4. Since the adoption of the Constitution of the United States, no State can by any subsequent law make a foreigner or any other description of persons citizens of the United States, nor entitle them to the rights and privileges secured to citizens by that instrument. *Ibid.*
5. A State, by its laws passed since the adoption of the Constitution, may put a foreigner or any other description of persons upon a footing with its own citizens, as to all the rights and privileges enjoyed by them within its dominion and by its laws. But that will not make him a citizen of the United States, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State. *Ibid.*
6. The change in public opinion and feeling in relation to the African race, which has taken place since the adoption of the Constitution, cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted. *Ibid.*
7. The plaintiff having admitted, by his demurrer to the plea in abatement, that his ancestors were imported from Africa and sold as slaves, he is not a citizen of the State of Missouri according to the Constitution of the

NEGROES AND SLAVES, (*Continued.*)
United States, and was not entitled to sue in that character in the Circuit Court. *Ibid.*
8. This being the case, the judgment of the court below, in favor of the plaintiff on the plea in abatement, was erroneous. *Ibid.*
9. Congress have no right to prohibit the citizens of any particular State or States from taking up their home there, while it permits citizens of other States to do so. Nor has it a right to give privileges to one class of citizens which it refuses to another. The territory is acquired for their equal and common benefit—and if open to any, it must be open to all upon equal and the same terms. *Ibid.*
10. Every citizen has a right to take with him into the Territory any article of property which the Constitution of the United States recognises as property. *Ibid.*
11. The Constitution of the United States recognises slaves as property, and pledges the Federal Government to protect it. And Congress cannot exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind. *Ibid.*
12. The act of Congress, therefore, prohibiting a citizen of the United States from taking with him his slaves when he removes to the Territory in question to reside, is an exercise of authority over private property which is not warranted by the Constitution—and the removal of the plaintiff, by his owner, to that Territory, gave him no title to freedom. *Ibid.*
13. The plaintiff himself acquired no title to freedom by being taken, by his owner, to Rock Island, in Illinois, and brought back to Missouri. This court has heretofore decided that the *status* or condition of a person of African descent depended on the laws of the State in which he resided. *Ibid.*
14. It has been settled by the decisions of the highest court in Missouri, that, by the laws of that State, a slave does not become entitled to his freedom, where the owner takes him to reside in a State where slavery is not permitted, and afterwards brings him back to Missouri. *Ibid.*
15. Conclusion. It follows that it is apparent upon the record that the court below erred in its judgment on the plea in abatement, and also erred in giving judgment for the defendant, when the exception shows that the plaintiff was not a citizen of the United States. And as the Circuit Court had no jurisdiction, either in the case stated in the plea in abatement, or in the one stated in the exception, its judgment in favor of the defendant is erroneous, and must be reversed. *Ibid.*

PARTIES TO A BILL.
See PRACTICE.

PATENT RIGHTS.
1. The act of Congress passed on the 3d of March, 1837, (5 Stat. at L., 194,) provides that a patentee may enter a disclaimer, if he has included in his patent what he was not the inventor of; but if he recovers judgment against an infringer of his patent, he shall not be entitled to costs, unless he has entered a disclaimer for the part not invented. *Seymour et al.* v. *McCormick*, 96.
2. It also provides that if a patentee unreasonably neglects or delays to enter a disclaimer, he shall not be entitled to the benefit of the section at all. *Ibid.*
3. In 1845, McCormick obtained a patent for improvements in a reaping machine, in which, after filing his specification, he claimed, amongst other things, as follows, viz:
"2d. I claim the reversed angle of the teeth of the blade, in manner described.
"3d. I claim the arrangement and construction of the fingers, (or teeth for supporting the grain,) so as to form the angular spaces in front of the blade, as and for the purpose described."
4. These two clauses are not to be read in connection with each other, but separately. The first claim, viz: for "the reversed angle of the teeth of the blade," not being new, and not being disclaimed, he was not entitled to costs, although he recovered a judgment for a violation of other parts of his patent. *Ibid.*

PATENT RIGHTS, (*Continued.*)

5. Under the circumstances of the case, the patentee was not guilty of unreasonable neglect or delay in making the disclaimer, which is a question of law for the court to decide. *Ibid.*
6. The facts that a similar machine was in successful operation in the years 1829 and 1853, do not furnish a sufficient ground for the jury to presume that it had been in continuous operation during the intermediate time. *Ibid.*
7. The fifteenth section of the patent act of 1836, which allows the defendant to give in evidence that the improvement had been described in some public work anterior to the supposed discovery of the patentee, does not make the work evidence of any other fact, except that of the description of the said improvement. *Ibid.*
8. The rights of property and exclusive use granted to a patentee do not extend to a foreign vessel lawfully entering one of our ports; and the use of such improvement in the construction, fitting out, or equipment, of such vessel, while she is coming into or going out of a port of the United States, is not an infringement of the rights of an American patentee, provided it was placed upon her in a foreign port, and authorized by the laws of the country to which she belongs. *Brown* v. *Duchesne*, 183.
9. Where a patentee is about to apply for a renewal of his patent, and agrees with another person that, in case of success, he will assign to him the renewed patent, and the patent is renewed, such an agreement is valid, and conveys to the assignee an equitable title, which can be converted into a legal title by paying, or offering to pay, the stipulated consideration. *Hartshorn et al.* v. *Day*, 211.
10. An agreement between Chaffee, the patentee, and Judson, after the renewal, reciting that the latter had stipulated to pay the expenses of the renewal, and make an allowance to the patentee of $1,200 a year, during the renewed term, and then declaring: "Now, I (Chaffee) do hereby, in consideration of the premises, and to place my patent so that in case of my death, or other accident or event, it may enure to the benefit of Charles Goodyear, and those who hold a right to the use of said patent, under and in connection with his licensees, &c., nominate, constitute, and appoint, said William Judson my trustee and attorney irrevocable, to hold said patent and have the control thereof, so as none shall have a license to use said patent or invention, &c., other than those who had a right when said patent was extended, without the written consent of said Judson, &c.," passed the entire ownership in the patent, legal and equitable, to Judson, for the benefit of Goodyear and those holding rights under him. *Ibid.*
11. If this annuity was not regularly paid, the original patentee had no right to revoke the power of attorney, and assign the patent to another party. His right to the annuity rested in covenant, for a breach of which he had an adequate remedy at law. *Ibid.*
12. Evidence tending to show that the agreement between the patentee and the attorney had been produced by the fraudulent representations of the latter, in respect to transactions out of which the agreement arose, ought not to have been received, it being a sealed instrument. *Ibid.*
13. In a court of law, between parties or privies, evidence of fraud is admissible only where it goes to the question whether or not the instrument ever had any legal existence. But it was especially proper to exclude it in this case, where the agreement had been partly executed, and rights of long standing had grown up under it. *Ibid.*

PENSIONS.

1. Under the act of Congress passed on the 2d of June, 1832, providing for the relief of certain surviving officers of the Revolution, and its several supplements, the word children in the acts embraces the grandchildren of a deceased pensioner, whether their parents died before or after his decease. And they are entitled, per stirpes, to a distributive share of the deceased parent's pension. *Walton et al.* v. *Cotton et al.*, 355.

PLEAS AND PLEADINGS.

1. The Harmony Society was established upon the basis of a community of property, and one of the articles of association provided, that if any

PLEAS AND PLEADINGS, (*Continued.*)
member withdrew from it, he should not claim a share in the property, but should only receive, as a donation, such sum as the society chose to give. *Baker et al.* v. *Nachtrieb*, 126.
2. One of the members withdrew, and received the sum of two hundred dollars, as a donation, for which he gave a receipt, and acknowledged that he had withdrawn from the society, and ceased to be a member thereof. *Ibid.*
3. A bill was then filed by him, claiming a share of the property, upon the ground that he had been unjustly excluded from the society by combination and covin, and evidence offered to show that he had been compelled to leave the society by violence and harsh treatment. *Ibid.*
4. The evidence upon this subject related to a time antecedent to the date of the receipt. There was no charge in the bill impeaching the receipt, or the settlement made at its date. *Ibid.*
5. Held, that under the contract, the settlement was conclusive, unless impeached by the bill. *Ibid.*
6. There are no technical rules of variance or departure in pleading in the admiralty. *Dupont de Nemours* v. *Vance*, 162.
7. The plea of the general issue in actions of trespass or case, does not necessarily put the title in issue. *Richardson* v. *City of Boston*, 263.
8. Upon a writ of error to a Circuit Court of the United States, the transcript of the record of all the proceedings in the case is brought before this court, and is open to its inspection and revision. *Dred Scott* v. *Sandford*, 393.
9. When a plea to the jurisdiction, in abatement, is overruled by the court upon demurrer, and the defendant pleads in bar, and upon these pleas the final judgment of the court is in his favor—if the plaintiff brings a writ of error, the judgment of the court upon the plea in abatement is before this court, although it was in favor of the plaintiff—and if the court erred in overruling it, the judgment must be reversed, and a mandate issued to the Circuit Court to dismiss the case for want of jurisdiction. *Ibid.*
10. In the Circuit Courts of the United States, the record must show that the case is one in which, by the Constitution and laws of the United States, the court had jurisdiction—and if this does not appear, and the court gives judgment either for plaintiff or defendant, it is error, and the judgment must be reversed by this court—and the parties cannot by consent waive the objection to the jurisdiction of the Circuit Court. *Ibid.*

POSTMASTERS.
1. A deed speaks from the time of its delivery, not from its date. *United States* v. *Le Baron*, 73.
2. The bond of a deputy postmaster takes effect and speaks from the time that it reaches the Postmaster General and is accepted by him, and not from the day of its date, or from the time when it is deposited in the post office to be sent forward. *Ibid.*
3. The difference explained between a bond of this description and a bond given by a collector of the customs. *Ibid.*
4. The nomination to an office by the President, confirmation by the Senate, signature of the commission, and affixing to it the seal of the United States, are all the acts necessary to render the appointment complete. *Ibid.*
5. Hence, the appointment is not rendered invalid by the subsequent death of the President before the transmission of the commission to the appointee, even where it is necessary that the person appointed should perform certain acts before he can legally enter upon the duties of the office. *Ibid.*

PRACTICE.
1. Where there appears to be an omission in the record of an important paper, which may be necessary for a correct decision of the case of the defendant in error, who has no counsel in court, the court will, of its own motion, order the case to be continued and a certiorari to be issued to bring up the missing paper. *Morgan* v. *Curtenius et al.*, 8.
2. Where no error appears upon the record in the proceedings of the Circuit Court, the case having been left to the jury, and no instructions asked from the court, the judgment below must be affirmed. *Stevens* v. *Gladding & Proud*, 64.

PRACTICE, (*Continued.*)

3. Where exceptions are not taken in the progress of the trial in the Circuit Court, and do not appear on the record, there is no ground for the action of this court. *Lathrop* v. *Judson*, 66.
4. According to the practice prescribed for the Circuit Courts, by this court, in equity causes, a bill cannot be dismissed, on motion of the respondents, for want of equity after answer and before the hearing. *Betts* v. *Lewis and Wife*, 72.
5. Where a libel for information, praying the condemnation of a vessel for violating the passenger law of the United States, states the offence in the words of the statute, it is sufficient. *United States* v. *Brig Neurea*, 92.
6. Where a sale of mortgaged property in Louisiana was made under proceedings in insolvency, and the heirs of the insolvent filed a bill to set aside the sale on the ground of irregularity, it was necessary to make the mortgagees parties. They had been paid their share of the purchase money, and had an interest in upholding the sale. *Coiron et al.* v. *Millaudon et al.*, 113.
7. The fact that such persons are beyond the jurisdiction of the court is not a sufficient reason for omitting to make them parties. *Ibid.*
8. Neither the act of Congress nor the 47th rule of this court enables the Circuit Court to make a decree in a suit in the absence of a party whose rights must necessarily be affected by such decree; and the objection may be taken at any time upon the hearing or in the appellate court. *Ibid.*
9. Where an appeal is taken to this court, the transcript of the record must be filed and the case docketed at the term next succeeding the appeal. *Steamer Virginia* v. *West et al.*, 182.
10. Although the case must be dismissed if the transcript is not filed in time, yet the appellant can prosecute another appeal at any time within five years from the date of the decree, provided the transcript is filed here and the case docketed at the term next succeeding the date of such second appeal. *Ibid.*
11. Where the decree of the District Court, in a case of admiralty jurisdiction, was not a final decree, the Circuit Court, to which it was carried by appeal, had no power to act upon the case, nor could it consent to an amendment of the record by an insertion of a final decree by an agreement of the counsel in the case; nor can this court consent to such an amendment. *Mordecai et al.* v. *Lindsay et al.*, 199.
12. The District Court having ordered a report to be made, the case must be sent back from here to the Circuit Court, and from there to the District Court, in order that a report may be made according to the reference. *Ibid.*
13. Where the judgment of the Circuit Court, in an action of ejectment, was against the defendant, in which nominal damages only were awarded, who sued out a writ of error in order to bring the case before this court, this court cannot grant a motion to enlarge the security in the appeal bond, for the purpose of covering apprehended damages, which the plaintiff below thinks he may sustain by being kept out of his land. *Roberts* v. *Cooper*, 373.
14. Where money was borrowed from a bank upon a promissory note, signed by the principal and two sureties, and the principal debtor, by way of counter security, conveyed certain property to a trustee, for the purpose of indemnifying his sureties, it was necessary to make the trustee and the cestui que trust parties to a bill filed by the bank, asserting a special lien upon the property thus conveyed. *McRea et al.* v. *Branch Bank of Alabama*, 376.
15. But where the principal debtor had made a fraudulent conveyance of the property, which had continued in his possession, after the execution of the first deed, and then died, a bill was good, which was filed by the bank against the administrators, for the purpose of setting aside the fraudulent conveyance, and bringing the property into the assets of the deceased, for the benefit of all creditors who might apply. *Ibid.*
16. The competent parties to agree that a case shall be settled, and the writ of error dismissed, are usually the parties upon the record. If either of

PRACTICE, (*Continued.*)
them has assigned his interest, and it be made known to the court, the interest of such assignee would be protected. *Platt* v. *Jerome*, 384.
17. But where there was a judgment for costs in the court below, and the attorney claimed to have a lien upon such judgment for his fees, it is not a sufficient reason for this court to prevent the parties from agreeing to dismiss the case. *Ibid.*
18. Where a question was certified from the Circuit Court to this court, viz: whether a certain letter, written by the cashier of a bank without the knowledge of the directory, though copied at the time of its date in the letter-book of the bank, was a legal and valid act of authority; and the record afforded no evidence relevant to the acts and authority of the cashier, or to the practice of the bank in ratifying or rejecting similar acts, this court cannot answer the question, and the case must be remanded to the Circuit Court, to be tried in the usual manner. *United States* v. *City Bank of Columbus*, 385.

PRESUMPTION.
1. Where property was sold under an administrator's sale, the presumption is in favor of its correctness; and after a long possession under it, the burden of proof is upon the party who impeaches the sale. *Moore* v. *Green*, 69.

PURCHASERS IN GOOD FAITH.
1. Where an administrator sells property which had been conveyed to him for the purpose of securing a debt due to his intestate's estate, his failure to account for the proceeds amounts to a devastavit, and renders himself and his sureties upon his administration bond liable; but it does not entitle the heirs to claim the property from a purchaser in good faith for a valuable consideration. *Long et al.* v. *O'Fallon*, 116.

SALVAGE.
See COMMERCIAL LAW.

SEAWORTHINESS.
See COMMERCIAL LAW.

TERRITORY OF THE UNITED STATES.
See CONSTITUTIONAL LAW.

TREATIES.
1. The United States made two treaties, one in 1838, and one in 1842, with the Seneca Indians, residing in the State of New York, by which the Indians agreed to remove to the West within five years, and relinquish their possessions to certain assignees of the State of Massachusetts, and the United States agreed that they would appropriate a large sum of money to aid in the removal, and to support the Indians for the first year after their removal to their new residence. *Fellows* v. *Blacksmith et al.*, 366.
2. But neither treaty made any provision as to the mode or manner in which the removal of the Indians or surrender of the reservations was to take place. *Ibid.*
3. The grantees of the land, under the Massachusetts assignment, cannot enter upon it and take forcible possession of a farm occupied by an Indian, but are liable to an action of trespass, *quare clausum fregit*, if they do so. *Ibid.*
4. The removal of tribes of Indians is to be made by the authority and under the care of the Government; and a forcible removal, if made at all, must be made under the direction of the United States. *Ibid.*
5. The courts cannot go behind a treaty, when ratified, to inquire whether or not the tribe was properly represented by its head men. *Ibid.*

VESSELS.
1. The law of Louisiana imposes on the seller the obligation of warranting the thing sold against its hidden defects, which are those which could not be discovered by simple inspection; and the purchaser may retain the thing sold, and have an action for reduction of the price by reason of the difference in value between the thing as warranted and as it was in fact. *Bulkley* v. *Honold*, 390.
2. Where a vessel was purchased, which was then partly laden as a general ship for an outward foreign voyage, and after she went to sea she was found to be unseaworthy, and had to return, the defects were hidden defects, under the above law. *Ibid.*

VESSELS, (*Continued.*)
3. A vessel is included within the terms of the law. *Ibid.*
4. The purchaser was not bound to renounce the vessel. This privilege is provided for in another and distinct article of the code. *Ibid.*
5. The contract must be governed by the laws of Louisiana, where it was made and performed. *Ibid.*
6. Such a sale is not governed by the general commercial law, but by the civil code of Louisiana. *Ibid.*

WARRANTY.
1. The law of Louisiana imposes on the seller the obligation of warranting the thing sold against its hidden defects, which are those which could not be discovered by simple inspection; and the purchaser may retain the thing sold, and have an action for reduction of the price by reason of the difference in value between the thing as warranted and as it was in fact. *Bulkley* v. *Honold*, 390.
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