

INDEX

OF THE

PRINCIPAL MATTERS.

ADMIRALTY.

1. Where the master of a vessel was also part owner, and made a contract of affreightment with a lumber company, of which he was also a member, and the cargo was consigned to the master, the case is not within admiralty jurisdiction, but appropriate to that of a court of chancery. *Grant v. Pouillon*, 162.
2. Where a judgment of the Circuit Court, sitting in admiralty, was affirmed here by a divided court, interest was not to be calculated upon the judgment. *Hemmenway v. Fisher*, 255.
3. The eighteenth rule of this court never applied to cases in admiralty which are brought up by appeal, and the rule itself is repealed by the sixty-second rule. *Ibid.*
4. The admiralty jurisdiction of the courts of the United States extends to cases of collision upon navigable waters, although the place of such collision may be within the body of a county of a State, and may be above the flux and reflux of the tide. *Jackson v. Steamboat Magnolia*, 296.
5. The District Courts exercise this jurisdiction over fresh-water rivers "navigable from the sea," by virtue of the judiciary act of 1789, and not as conferred by the act of 1845, which extends their jurisdiction to the great lakes and waters "not navigable from the sea." *Ibid.*
6. The admiralty jurisdiction of the courts of the United States does not extend to cases where a lien is claimed by the builders of a vessel for work done and materials found in its construction. *Peoples' Ferry Company v. Beers*, 393.
7. Whether the District Courts can enforce a lien in such cases, where the law of the State where the vessel was built gave a lien for its construction, is a question which the court does not now decide. *Ibid.*
8. Where a tow-boat was descending the Mississippi river with a vessel fastened to each side, and another at the stern, and a collision ensued between one of the vessels thus lashed and an ocean steamer ascending the river, the evidence shows that the latter was in fault, and must pay for all the damage. *Snow et al. v. Hill et al.*, 543.
9. Where a vessel had been seized under a process of foreign attachment issuing from a State court in Pennsylvania, and a motion was pending in that court for an order of sale, a libel filed in the District Court of the United States for mariners' wages and process issued under it, could not divest the authorities of the State of their authority over the vessel; and of the two sales made, one by the sheriff and one by the marshal, the sale by the sheriff must be considered as conveying the legal title to the property, and the sale by the marshal as inoperative. *Taylor v. Carryl*, 583.
10. Where property is levied upon, it is not liable to be taken by an officer acting under another jurisdiction. *Ibid.*
11. The cases examined where conflicting claims against the same property are set up under the laws of the United States and under State laws. *Ibid.*
12. The process of foreign attachment in Pennsylvania is identical with that which issues out of the District Court of the United States sitting in admiralty. *Ibid.*

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13. The admiralty jurisdiction of the courts of the United States, although exclusive on some subjects, is concurrent upon others. The courts of common law deal with ships or vessels as with other personal property. *Ibid.*
14. In order to give jurisdiction *in rem*, the seizure by the marshal must have been valid; and this was not the case when the vessel was, at the time of seizure, in the actual and legal possession of the sheriff. *Ibid.*

AGENTS.

1. A broker who negotiates the sale of an estate is not entitled to his commission until he finds a purchaser in a situation and ready and willing to complete the purchase on the terms agreed upon between the broker and the vendor. *McGavock v. Woodlief*, 221.
2. Where an assignee of a claim upon a foreign Government, holding it under an assignment supposed to be good, but afterwards adjudged invalid, prosecuted the claim to a successful result, and was subjected to costs and expenses in protecting the fund from rival claimants, and thereby preserving it, he was entitled to a reimbursement of these costs and expenses by the true owner, upon a final settlement of accounts between them. *Williams v. Gibbs*, 535.
3. Being placed in the position of a trustee, it was his duty to defend the title, and the expenses for so doing were properly chargeable to the estate. *Ibid.*
4. The assignee ought also to have been allowed a compensation for his trouble and personal exertions in the prosecution of the claim; and under the special circumstances of this case, the Circuit Court having allowed thirty-five per cent. of the sum realized, this court are not prepared to say it is too much. *Ibid.*
5. At a sale of public lands in a Territory, an agent who purchased for another must account, as trustee, to his employer, although the statutes of the Territory have abolished all resulting trusts. *Irvine v. Marshall*, 558.

APPEALS.

1. Where this court affirmed a decree of a Circuit Court, which was, that a conveyance of property should be executed upon the payment of a sum of money; and the Circuit Court proceeded to carry out its decree by issuing an attachment against the party who refused to execute such conveyance, an appeal will not lie to this court from the order directing the attachment. *McMicken v. Perrin*, 133.
2. The appeal must be dismissed, with costs, on motion. *Ibid.*
3. Where an appeal from a decree is taken within ten days from the rendition of the decree, it is in time to operate as a supersedeas; and so, also, if taken within ten days after the decree is settled and signed. *Silsby v. Foote*, 290.

APPEAL BONDS.

1. The penalty of the bond taken, when an injunction is awarded, is no evidence of the amount or value in dispute. *Brown v. Shannon*, 55.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

See COMMERCIAL LAW.

BANKRUPTCY.

1. Deeds of large tracts of land made by a grantor when deeply in debt, and when suits were pending against him, and who shortly afterwards petitioned for the benefit of the bankrupt act, the possession and occupation of the land continuing the same after the sale as before, and the consideration money one-half only of the actual value, held to be fraudulent and void as against creditors. *Hudgins v. Kemp*, 45.
2. The Circuit Court of the United States has no power to entertain an original bill brought by a creditor, who has come in and proved his debt against the bankrupt, for the purpose of annulling or vacating a discharge and certificate in bankruptcy, obtained in the District Court upon imputations of fraud, done in contemplation of bankruptcy by the bankrupt; or to give relief, either at law or in equity, in a suit brought by a creditor who had proved his debt under the commission, who had assented to the bankrupt's discharge and certificate, and who had taken a dividend out of the bankrupt's estate. *Commercial Bank of Manchester v. Buckner*, 108.

BANKRUPTCY, (*Continued.*)

3. The District Court, which passed the decree in bankruptcy, can take cognizance of such a case. *Ibid.*
4. Whether or not such a bill could be filed by a creditor who had not come in and proved his debt, and who was not a party to the decree in bankruptcy, is a question which the court does not now decide. *Ibid.*
5. Nor has the Circuit Court the power, under its general jurisdiction over frauds, to give relief either at law or in equity, in a suit brought by a creditor who had proved his debt under the commission, had assented to the bankrupt's discharge and certificate, and had taken a dividend out of the bankrupt's estate. *Ibid.*

BILLS OF EXCEPTION.

1. A refusal of the court below to grant a new trial is not a proper subject for a bill of exception. *Doswell v. De La Lanza*, 29.
2. The Circuit Court of the United States in Alabama, by a general rule, adopted the practice of the State courts, which is regulated by a statute providing that no bill of exceptions can be signed after the adjournment of the court, unless with the consent of counsel, &c. *United States v. Breittling*, 252.
3. But where a judge holding the Circuit Court in Alabama signed a bill of exceptions under special circumstances, after adjournment, and without the consent of counsel, this court will consider the exception as properly before it. It is in the power of a court to suspend its own rules, or except a particular case from them, to subserve the purposes of justice. *Ibid.*
4. And the signature of the judge was attached to the bill, in conformity with the decisions of this court. *Ibid.*
5. The exception brings up the charge of the court to the jury, but not the admission of evidence which was objected to on the trial, but to the admission of which no exception was noted. *Ibid.*
6. The charge of the court, being founded on a hypothetical state of facts of which there was no evidence, was erroneous. *Ibid.*
7. Rulings of the court below, in admitting or rejecting evidence, can be brought to this court for revision only by a bill of exceptions. *Suydam v. Williamson*, 429.
8. Where there is a bill of exceptions, the writ of error does not operate only upon that part of the record. Wherever an error is apparent on the record, it is open to revision, whether it be made to appear by a bill of exceptions, or in any other manner. *Ibid.*
9. A bill of exceptions may include in its scope the rulings of the court below as to the admissibility of evidence, which a demurrer to evidence cannot do. *Ibid.*
10. Where the only bills of exception were to the refusal of the court to grant a continuance and change the venue, the judgment of the court below must be affirmed, as these matters are not the subjects of review by this court. *McFaul v. Ramsay*, 523.
11. The laws of Iowa permitting a demurrer only when the petition by a fair and natural construction does not show a substantial cause of action, a demurrer to part of the petition in this case was properly overruled. *Ibid.*
12. Exceptions must be taken or the points reserved whilst the jury are at the bar. *Barton v. Forsyth*, 532.
13. Where there was an affidavit made, after verdict and judgment, that the affiant was the real party in interest, and prayed to be substituted for, or admitted with, the defendant, and the court overruled the motion, an exception to this ruling will not bring up the points which were raised at the trial; nor will it bring up the ruling upon the motion. *Ibid.*

CALIFORNIA.

1. The regulations for the colonization of the Territories of the Government of Mexico, made 21st November, 1828, in pursuance of the act of the General Congress, August 18, 1824, provided: 1st. That the Governors of the Territories should be empowered to grant vacant lands, among others, to private persons who may ask for them, for the purpose of cultivating and inhabiting the same. 2d. That every person soliciting lands shall address

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to the Governor a petition, expressing his name, country, and religion, and describing as distinctly as possible, by means of a map, the land asked for. 3d. The Governor shall proceed to obtain the necessary information, whether the petition contains the proper conditions required by the law of the 18th August, 1824, both as regards the land and the petitioner, in order that the application may be at once attended to; or, if it be preferred, the municipal authority may be consulted, whether there be any objection to the making of the grant. 4th. This being done, the Governor will accede or not to such petition, in conformity to the laws on the subject. 5th. The definitive grant asked for being made, a document, signed by the Governor, shall be given, to serve as a title to the party interested, wherein it must be stated that the grant is made in exact conformity with the provisions of the law; in virtue of which, possession shall be given. 6th. The necessary record shall be kept, in a book provided for the purpose, of all the petitions presented and grants made, with maps of the lands granted, and a circumstantial report shall be forwarded quarterly to the Supreme Government. *United States v. Cambuston*, 59.

2. Where there was no evidence, with respect to a grant of land in California, that any one of these preliminary steps had been taken, this court cannot confirm the claim. *Ibid.*
3. The decisions of this court in cases of claims to land in Louisiana and Florida are not applicable where precise and recent regulations exist, directing the manner in which land shall be granted. *Ibid.*
4. There are also strong grounds of suspicion with respect to the *bona fides* of the grant in question; but as the claimant may not have had an opportunity of producing evidence in the court below, the case will be remanded to that court for further proceedings. *Ibid.*
5. As the act of Congress passed on the 3d of March, 1851, does not specify the time within which an appeal must be made to this court from the District Courts of California, the subject must be regulated by the general law respecting writs of error and appeals. Either party is at liberty, therefore, to appeal from such a decree within five years from the time of its rendition. *United States v. Pacheco*, 261
6. Under the sixty-third rule of this court, an appellee in a case from California may docket and dismiss according to that rule; but a new appeal may be taken at any time within five years, or it may be that the record may be filed by the appellant at the same term at which a certificate or record had been filed by the appellee, and the case dismissed. *Ibid.*
7. After a case has been thus docketed and dismissed at the instance of an appellee who is a claimant of land, if a patent should be taken out, it will still be subject to be reviewed by this court at any time within the five years above mentioned. *Ibid.*
8. Where a petitioner files a claim to land in California before the board of commissioners created by Congress, the intervention of rival claimants is a practice not to be encouraged. *United States v. Fossat*, 413.
9. Where there is no natural boundary or descriptive call for the termination of lines of a tract of land, and the quantity of land called for in the grant is "one league of the larger size, a little more or less," the survey must only include a league. The words "a little more or less" must be rejected. *Ibid.*
10. The grant is for one league of land, to be taken within the southern, western, and eastern boundaries designated therein, and to be located at the election of the grantee or his assigns, under the restrictions established for the location and survey of private land claims in California by the Executive department of this Government. *Ibid.*

CHAMPERTY.

1. The ancient English doctrines respecting maintenance or champerty have not found favor in the United States; and in Michigan (where the land lies which is involved in the present controversy) its application to sales, by one out of possession, has been annulled. *Roberts v. Cooper*, 467.
2. Although, in that State, an agreement to carry on a suit upon condition of receiving a share of the proceeds might be void, yet the rule would not

CHAMPERTY, (*Continued.*)

apply to a transfer of the legal estate to one, in trust for himself and the other stockholders in a corporation. *Ibid.*

CHANCERY.

1. When a transcript of a record of another court was attached to the answer as an exhibit, and portions of it particularly referred to, and the record of the entire case pleaded, a decree, certified by the clerk, which had been executed by the parties, must be considered as part of the record, although it had not the signature of the judge. The signature of the judge is not the only evidence by which a decree can be authenticated. *Secombe v. Steele*, 94.
2. Property was agreed to be sold, and the payment was to be made by a deposit of the price in one of two banks, in Boston, and a certificate delivered to the vendor. The vendee made the deposit in another bank, in Boston, and tendered the certificate to the vendor, within the time limited, and the vendor having refused to receive it, he tendered the purchase-money and interest, and that being refused, he filed his bill for a specific performance, and paid the money into court. Held, under the circumstances, to be sufficient. *Ibid.*
3. Creditors of the vendor, who recovered judgments and sold the property, pending a suit for a specific performance, in which the purchase-money had been paid into court, are not necessary parties to the suit, nor are the purchasers at the sheriff's sale under such judgments. *Ibid.*
4. Under a statute of Minnesota, the court of chancery might divest the title of the defendant in the land, without requiring him to make a conveyance. *Ibid.*
5. Where a bill in chancery was filed for the purpose of enjoining a judgment at law, obtained upon a promissory note, and the bill did not allege that adequate relief could not be had at law, and did not contain any charges of fraud; neither did it aver that it was owing to the contrivance or unfairness of the defendant that an adequate remedy could not be had at law, nor did it show the necessity of interference by a court of equity to obtain a discovery, the bill must be dismissed. *Hungerford v. Sigerson*, 156.
6. Where the master of a vessel was also part owner, and made a contract of affreightment with a lumber company, of which he was also a member, and the cargo was consigned to the master, the case is not within admiralty jurisdiction, but appropriate to that of a court of chancery. *Grant v. Pouillon*, 162.
7. Where there was a covenant to sell land upon condition that the purchase-money should be paid in instalments, and other acts done by the covenantee, in failure to perform which, rent was to be charged, and the covenantee failed to execute his contract, the rent was justly chargeable. *Stinson v. Dousman*, 461.
8. The Territory of Minnesota having abolished the court of chancery, the excuses of the defendant must be judged of as if it was a case in chancery, the statute having so directed. But in this case, time would be held to be an essential consideration in the contract by a court of equity, and the excuses for non-performance are insufficient. *Ibid.*
9. Where there were proceedings in a State court between a bank, one of its creditors, and one of its debtors, and the bank having failed, assigned its assets to trustees, who intervened in the dispute between the other two parties, the judgment of the State court against the intervenors must be considered final, and a bill filed by them in the Circuit Court of the United States must be dismissed. *Ingraham v. Dawson*, 486.
10. If there were irregularities in the proceedings of the State court, it was for that court to correct them, had complaint been made at the proper time. *Ibid.*
11. A person dealing with an unlettered man who can neither read nor write, and taking from him a promissory note for the payment of money and a deed for property, in trust, to secure the payment, is bound to show, when he seeks to enforce them, that they, or the material parts of them, were read and fully explained to the party before they were executed, and that he fully understood their meaning and effect. *Selden v. Myers*, 506.

CHANCERY, (*Continued.*)

12. If this fact is established by positive and unimpeached testimony, parol evidence cannot be received, to show that the contract was different from that expressed in the writings, or that nothing was at that time due from the party who executed the instruments. *Ibid.*
13. Where there was a contract for the sale of a lot of ground, partly on time, and the vendee entered into possession; and the vendor did not formally demand the payment of the balance when due, but merely said he was ready to make a deed when the money was paid; and after the time of payment had elapsed, the vendee made a tender of the sum due, which the vendor refused to receive; these and other circumstances show that time was not of the essence of the contract, and the vendee was entitled to relief upon a bill for a specific performance of the contract. *Ahl v. Johnson*, 511.
14. Where the defendant appeared to a bill in chancery, and defended the suit, and no want of jurisdiction appeared in the record, and then the complainant died, an objection that the defendants were citizens of another State comes too late when made to a bill of revivor, which is only a continuance of the suit. *Whyte v. Gibbs*, 541.
15. Moreover, a plea to the jurisdiction comes too late after a mandate has gone down from this court to the court below. *Ibid.*

COMMERCIAL LAW.

- .. For the LAW OF GARNISHEE see GARNISHEE.
1. Where the question before the jury was, whether or not one of the defendants was a partner in a commercial firm, it was proper for the court to exclude the declarations made by the defendant in the absence of the plaintiffs. *Teller v. Patten*, 126.
2. It was also proper not to confine the attention of the jury to declarations made at one particular time in the presence of one of the plaintiffs, but to allow all similar declarations to be given in evidence, so that the jury could judge of the entire question of the existence of the partnership. *Ibid.*
3. Where an accepted and endorsed bill of exchange was placed by the drawer as collateral security for his own debt in the hands of his creditor, and when the creditor came to sue the acceptor, the court instructed the jury, "that if such facts and circumstances were known to the plaintiff as caused him to suspect, or that would have caused one of ordinary prudence to suspect, that the drawer had no interest in the bill, and no authority to use the same for his own benefit, and by ordinary diligence he could have ascertained these facts," then the jury would find for the defendant—this instruction was erroneous. *Goodman v. Simonds*, 343.
4. The facts of the case examined, to ascertain whether or not there was sufficient evidence to go to the jury upon these points. *Ibid.*
5. This court again says, that a *bona fide* holder of a negotiable instrument for a valuable consideration, without notice of facts which impeach its validity between the antecedent parties, if he takes it under an endorsement made before the same becomes due, holds the title unaffected by these facts, and may recover thereon, although as between the antecedent parties the transaction may be without any legal validity. *Ibid.*
6. Where a party is in possession of a negotiable instrument, the presumption is that he holds it for value, and the burden of proof is upon him who disputes it; an exception being where the defect appears on the face of the instrument. *Ibid.*
7. It is a question of fact for the jury, whether or not the holder had knowledge of defects existing antecedently to the transfer to him. *Ibid.*
8. The English and American cases examined. *Ibid.*
9. Surrendering collateral securities previously given, and affording increased indulgence as to time, furnish a sufficient consideration for the transfer of new collaterals. *Ibid.*
10. Where a bill of exchange was drawn in proper form and protested for non-acceptance, parol evidence of an understanding between the drawer and

COMMERCIAL LAW, (*Continued.*)

the party in whose favor the bill was drawn, calculated to vary the terms of the instrument was not admissible. *Brown v. Wiley*, 442.

11. Where the endorser of a promissory note, in conversation with the agent of the holder, before its maturity, dispensed with a presentation of the note and demand of payment, and promised to pay it, or provide for its payment, at maturity, he could not, when sued, set up as a defence that the note was not presented for payment, and demand made therefor when it was due, and that no notice of its dishonor was given. *Sigerson v. Mathews*, 496.
12. If, after the maturity of the note, the endorser promised the agent of the holder to pay the same, having, at the time of making such promise, knowledge of the fact that the note had not been presented for payment, and no demand made therefor, or notice of non-payment, he could not, when sued, set up as a defence a want of such demand or notice. *Ibid.*

CONSTITUTIONAL LAW.

1. Where the Circuit Court adopted the construction of a State statute which was placed upon it by the Supreme Court of the State, the decision was correct; and a different construction of the statute subsequently placed upon it by the Supreme Court of the State will not authorize this court to reverse the judgment of the Circuit Court as having been erroneously given. *Morgan v. Curtenius*, 1.
2. Where it does not appear either by express averment or by a necessary intendment from any matter stated in the case, nor does any entry on the record of the cause in the Supreme Court of the State show, that any of the questions of which this court is entitled to take cognizance under the terms of the 25th section of the judiciary act, arose in the cause and were actually decided by that court, the writ of error must be dismissed, for the want of jurisdiction. *Christ Church v. County of Philadelphia*, 26.
3. The Constitution of the United States gives to Congress the power to provide and maintain a navy, and to make rules for its government. *Dynes v. Hoover*, 65.
4. In the exercise of this power, Congress provided for the punishment of desertion and of other crimes not specified in the articles, which should be punished according to the laws and customs in such cases at sea. *Ibid.*
5. Where a seaman was charged with deserting, and the court martial found him guilty of attempting to desert, the court had jurisdiction over the subject-matter, and an action of trespass for false imprisonment will not lie against the ministerial officer who executes the sentence for attempting to desert. *Ibid.*
6. It is only where a court has no jurisdiction over the subject-matter, or, having such jurisdiction, is bound to adopt certain rules in its proceedings, from which it deviates, whereby the proceedings are rendered *coram non iudice*, that an action will lie against the officer who executes its judgment. *Ibid.*
7. The authorities upon this point examined, and also the legal powers of courts martial. *Ibid.*
8. This court has no jurisdiction, under the 25th section of the judiciary act of 1789, of the question whether or not a law of a State is in opposition to the Constitution of that State. *Withers v. Buckley*, 84.
9. Therefore, where it is alleged that the Constitution of a State declares that private property shall not be taken for public uses, and that the highest court of the State has sustained the validity of a law which violates this constitutional provision, this court has no power to review that decision. *Ibid.*
10. The fifth article of the amendments of the Constitution of the United States was intended to prevent the Government of the United States from taking private property for public uses without just compensation, and was not intended as a restraint upon the State Governments. *Ibid.*
11. A law of the State of Mississippi, for improving the navigation of a river which empties itself into the Mississippi, is not in conflict with the act of Congress providing for the admission of that State into the Union, which act guaranties the free navigation of the Mississippi river. *Ibid.*

CONSTITUTIONAL LAW, (*Continued.*)

12. Being admitted upon a footing of equality with the other States, the State of Mississippi had the rightful power to change the channels or courses of rivers within the interior of the State, for purposes of internal improvement. *Ibid.*
13. And, moreover, the law in question does not propose to affect the navigation of the Mississippi river, but only a small stream running into it. *Ibid.*
14. Where a suit was brought upon a bill of exchange in one of the State courts of Louisiana, and by that court was transferred to another State court for the purpose of being connected with certain proceedings in insolvency, and this transfer was pleaded in bar in the Circuit Court of the United States to the prosecution of the suit in that court upon the bill, the plea was not good. *Hyde v. Stone*, 170.
15. The jurisdiction of the courts of the United States over controversies between citizens of different States cannot be impaired by the laws of the States, which prescribe the modes of redress in their own courts, or which regulate the distribution of their judicial power. *Ibid.*
16. The insertion of the bill amongst the debts of the insolvent upon his schedule, is evidence of the fact of notice; and the sufficiency of the evidence was a question for the jury, and is not subject to review in this court. *Ibid.*
17. When New Mexico was conquered by the United States, it was only the allegiance of the people that was changed; their relation to each other, and their rights of property, remained undisturbed. *Leitensdorfer v. Webb* 176.
18. The executive authority of the United States properly established a provisional Government, which ordained laws and instituted a judicial system; all of which continued in force after the termination of the war, and until modified by the direct legislation of Congress, or by the Territorial Government established by its authority. *Ibid.*
19. A suit brought in a court established by the provisional Government was properly transferred to a court created by the act of Congress establishing the Territory of New Mexico, the jurisdiction of which was fixed by a Territorial statute. *Ibid.*
20. Under the Constitution of the State of Arkansas, the Legislature passed a law allowing the State to be sued. *Beers v. State of Arkansas*, 527.
21. According to this law, a suit was brought upon some of the State bonds; and whilst the suit was going on, the Legislature passed another law, requiring the bonds to be filed in court, or the suit to be dismissed. *Ibid.*
22. The suitor refusing to file his bonds, the suit was dismissed; and the case was carried to the Supreme Court of the State, where the judgment was affirmed. *Ibid.*
23. The case, being brought to this court under the twenty-fifth section of the judiciary act, must be dismissed for want of jurisdiction. *Ibid.*
24. The permission to bring the suit was not a contract whose obligations were impaired by the passage of the subsequent law. *Ibid.*
25. Where property has been levied upon under a State law, it is not liable to be seized by the marshal under process from the District Court of the United States upon a libel for mariners' wages. *Taylor v. Carryl*, 583.

CONSTRUCTION OF STATUTES.

1. Where the Circuit Court adopted the construction of a State statute which was placed upon it by the Supreme Court of the State, the decision was correct; and a different construction of the statute subsequently placed upon it by the Supreme Court of the State will not authorize this court to reverse the judgment of the Circuit Court as having been erroneously given. *Morgan v. Curtenius*, 1.
2. The power granted by Congress to the corporation of the city of Washington, "to open and keep in repair streets, avenues, lanes, alleys, &c., agreeably to the plan of the city," includes the power to alter the grade or change the level of the land on which the streets by the plan of the city are laid out. *Smith v. Corporation of Washington*, 135.
3. If, in the exercise of this power, an individual proprietor suffers inconvenience or is put to expense, the corporation are not liable in damages. *Ibid.*
4. In May, 1830, Congress passed an act (4 Stat. at L., 420) which gave the right

CONSTRUCTION OF STATUTES, (*Continued.*)

of pre-emption to settlers on the public lands, but made null and void all assignments and transfers of the right of pre-emption prior to the issuance of patents. This act was to remain in force for one year. *Marks v. Dickson*, 501.

5. In January, 1832, another act was passed, (4 Stat. at L., 496,) supplementary to the former, allowing certificates of purchase to be transferred, and patents to be issued in the name of the assignee. *Ibid.*
6. In June, 1834, another act was passed, (4 Stat. at L., 678,) reviving the act of 1830. *Ibid.*
7. The true construction of this act of 1834 is, not that it restored the prohibitory clause of 1830, but that it revived the supplement, together with the original act; and that, consequently, an assignment was good and legal before a patent was issued. *Ibid.*
8. But it was necessary to enter the land at the land office, before the right of assignment accrued; and, therefore, assignments made before such entry were assignments of floats, and void. *Ibid.*
9. A power, however, although executed before the location, was sufficient to justify an assignment made after the location, there being a tacit affirmation of the power, when it might have been set aside. *Ibid.*

CONTRACTS.

1. Where there was a contract for the purchase of a cargo of flour, and a portion of it was delivered, paid for, and used by the purchaser, he cannot repudiate the contract, upon the ground that the brand upon the flour was not that for which he contracted. *Lyon v. Bertram*, 150.
2. The cases upon this point examined. *Ibid.*
3. Where the statute of limitations imposes a bar upon certain species of contracts after three years, and upon others after two years, and the plea did not show that the contract in question was of the latter class, the plea was bad. *Ibid.*
4. The laws of California require that actions shall be prosecuted in the name of the real party in interest, and that all parties having an interest in the subject of the action may be joined. So that this statute is complied with, it is not a fatal objection that the respective interests of parties jointly concerned are not accurately set forth. *Ibid.*
5. A broker who negotiates the sale of an estate is not entitled to his commission until he finds a purchaser in a situation and ready and willing to complete the purchase on the terms agreed upon between the broker and the vendor. *McGavock v. Woodlief*, 221.
6. Where there was a covenant to sell land upon condition that the purchase-money should be paid in instalments, and other acts done by the covenantee, in failure to perform which, rent was to be charged, and the covenantee failed to execute his contract, the rent was justly chargeable. *Stinson v. Dousman*, 461.
7. The Territory of Minnesota having abolished the court of chancery, the excuses of the defendant must be judged of as if it was a case in chancery, the statute having so directed. But in this case, time would be held to be an essential consideration in the contract by a court of equity, and the excuses for non-performance are insufficient. *Ibid.*
8. Where there was a contract for the sale of a lot of ground, partly on time, and the vendee entered into possession; and the vendor did not formally demand the payment of the balance when due, but merely said he was ready to make a deed when the money was paid; and after the time of payment had elapsed, the vendee made a tender of the sum due, which the vendor refused to receive; these and other circumstances show that time was not of the essence of the contract, and the vendee was entitled to relief upon a bill for a specific performance of the contract. *Ahl v. Johnson*, 511.

COURTS MARTIAL.

1. The Constitution of the United States gives to Congress the power to provide and maintain a navy, and to make rules for its government. *Dynes v. Hoover*, 65.
2. In the exercise of this power, Congress provided for the punishment of

COURTS MARTIAL, (*Continued.*)

- desertion and of other crimes not specified in the articles, which should be punished according to the laws and customs in such cases at sea. *Ibid.*
3. Where a seaman was charged with deserting, and the court martial found him guilty of attempting to desert, the court had jurisdiction over the subject-matter, and an action of trespass for false imprisonment will not lie against the ministerial officer who executes the sentence for attempting to desert. *Ibid.*
 4. It is only where a court has no jurisdiction over the subject-matter, or, having such jurisdiction, is bound to adopt certain rules in its proceedings, from which it deviates, whereby the proceedings are rendered *coram non judge*, that an action will lie against the officer who executes its judgment. *Ibid.*
 5. The authorities upon this point examined, and also the legal powers of courts martial. *Ibid.*

DUTIES.

See TARIFF.

EJECTMENT.

1. In an action of ejectment, where the defendant pleads the statute of limitations, he must connect his own possession with the adverse possession and title of another person which is set up as a defence. Otherwise, the plea is not good. *Doswell v. De La Lanza*, 29.

EVIDENCE.

1. In an action against the owners of a ferry boat, for personal injuries sustained by the negligence of its officers, it was held that the plaintiff might show that he was engaged in a particular business, and had been incapacitated from attending to it, as exhibiting the extent of the injury, and that it had occasioned expense, suffering, and loss of time which had value to him, although the nature of his occupation was not set forth in the declaration. *Wade v. Leroy*, 34.
2. The signature of the judge is not the only evidence by which a decree can be authenticated. *Secombe v. Steele*, 94.
3. Where the question before the jury was, whether or not one of the defendants was a partner in a commercial firm, it was proper for the court to exclude the declarations made by the defendant in the absence of the plaintiffs. *Teller v. Patten*, 126.
4. It was also proper not to confine the attention of the jury to declarations made at one particular time in the presence of one of the plaintiffs, but to allow all similar declarations to be given in evidence, so that the jury could judge of the entire question of the existence of the partnership. *Ibid.*
5. Rulings of the court below, in admitting or rejecting evidence, can be brought to this court for revision only by a bill of exceptions. *Suydam v. Williamson*, 427.
6. A bill of exceptions may include in its scope the rulings of the court as to the admissibility of evidence, which a demurrer to evidence cannot do. *Ibid.*
7. A demurrer to evidence makes the evidence a part of the record. *Ibid.*
8. Where a bill of exchange was drawn in proper form and protested for non-acceptance, parol evidence of an understanding between the drawer and the party in whose favor the bill was drawn, calculated to vary the terms of the instrument, was not admissible. *Brown v. Wiley*, 442.
9. The deposition of an officer of the General Land Office, as to the opinions and practice prevailing in that office, cannot be read to the jury as proof of the law, although it might have influence with the court in explaining the law to the jury. *Roberts v. Cooper*, 467.
10. A person dealing with an unlettered man who can neither read nor write, and taking from him a promissory note for the payment of money and a deed for property, in trust, to secure the payment, is bound to show, when he seeks to enforce them, that they, or the material parts of them, were read and fully explained to the party before they were executed, and that he fully understood their meaning and effect. *Selden v. Myers*, 506.
11. If this fact is established by positive and unimpeached testimony, parol

EVIDENCE, (*Continued.*)

evidence cannot be received, to show that the contract was different from that expressed in the writings, or that nothing was at that time due from the party who executed the instruments. *Ibid.*

12. Evidence of the sale of property under certain proceedings of a State court was properly received in the Circuit Court, where the proceedings of the State court were duly certified, and it had competent jurisdiction over the subject-matter. *Barton v. Forsyth*, 532.

FRAUDULENT CONVEYANCES.

1. Deeds of large tracts of land made by a grantor when deeply in debt, and when suits were pending against him, and who shortly afterwards petitioned for the benefit of the bankrupt act, the possession and occupation of the land continuing the same after the sale as before, and the consideration money one-half only of the actual value, held to be fraudulent and void as against creditors. *Hudgins v. Kemp*, 45.

FRAUDULENT SALES OF PERSONAL PROPERTY.

1. Where a sheriff was sued for taking goods under an attachment, which goods had been previously assigned under circumstances which were alleged to be fraudulent, it was proper for the court to charge the jury, "that if they believed, from the evidence, that the sale was made for the purpose of hindering, delaying, or defrauding creditors, it was invalid as against the defendant; and that whether the sale was or was not fraudulent was a question of fact, to be determined by the jury under all the circumstances of the case; that if the sale were secret, and no means taken to apprise the public of it, these were facts which threw suspicion upon the transaction, but did not make the sale fraudulent in law as against the defendant. *Warner v. Norton*, 448.

GARNISHEE.

1. By the laws of Virginia, where an absent defendant is sued, and a garnishee is found within the State having funds of the absent debtor in his hands, the court may either suffer the fund to remain in the hands of the garnishee, or be paid over to the attaching creditor, security being given in either case to refund the money upon a final decree. *Mattingly v. Boyd*, 128.
2. Whilst the suit is pending, therefore, the money must be considered as in the custody of the court, and not liable to be sued for by the absent debtor against his garnishee. *Ibid.*
3. Consequently, the statute of limitations does not run whilst the suit is pending; and if an action is brought against the executor of the garnishee after the termination of the principal suit in sufficient time to clear the statute, a recovery must be had. *Ibid.*
4. The garnishee having used the money, his executor must pay interest from the time when the attachment process was served, up to the time of the death of the garnishee—it being so claimed in the bill. *Ibid.*
5. The garnishee was entitled to a reasonable sum for the trouble which he had taken. *Ibid.*

JURISDICTION.

1. In the present case, the complainant and appellant did not derive his title to the land in dispute from any statute of the United States; and therefore this court has no jurisdiction over the matter by virtue of the 25th section of the judiciary act. *Wynn v. Morris*, 3.
2. Where several parties set up conflicting claims to property, with which a special tribunal may deal, as between one party and the Government, regardless of the rights of others, the latter may come into the ordinary courts of justice, and litigate the conflicting claims. *Garland v. Wynn*, 6.
3. Therefore, in a case where the register and receiver of public lands have been imposed upon by *ex parte* affidavits, and the patent has been obtained by one having no interest secured to him in virtue of the pre-emption laws, to the destruction of another's right who had a preference of entry which he preferred and exerted in due form, but which right was defeated by false swearing and fraudulent contrivance brought about by him to whom the patent was awarded—in such a case, the jurisdiction of the courts of justice is not ousted by the regulations of the Commissioner of the General Land Office. *Ibid.*

JURISDICTION, (*Continued.*)

4. Where it does not appear either by express averment or by a necessary intendment from any matter stated in the case, nor does any entry on the record of the cause in the Supreme Court of the State show, that any of the questions of which this court is entitled to take cognizance under the terms of the 25th section of the judiciary act, arose in the cause and were actually decided by that court, the writ of error must be dismissed, for the want of jurisdiction. *Christ Church v. County of Philadelphia*, 26.
5. Where a bill is filed to enforce the specific execution of a contract in relation to the use of a patent right, this court has no appellate jurisdiction, unless the matter in controversy exceeds two thousand dollars. *Brown v. Shannon*, 55.
6. The jurisdiction, where the bill is founded upon a contract, differs materially from the jurisdiction on a bill to prevent the infringement of the monopoly of the patentee, or of those claiming under him by legal assignments, and to protect them in their rights to the exclusive use. *Ibid.*
7. The penalty of the bond taken, when an injunction is awarded, is no evidence of the amount or value in dispute. *Ibid.*
8. This court has no jurisdiction, under the 25th section of the judiciary act of 1789, of the question whether or not a law of a State is in opposition to the Constitution of that State. *Withers v. Buckley*, 84.
9. Therefore, where it is alleged that the Constitution of a State declares that private property shall not be taken for public uses, and that the highest court of the State has sustained the validity of a law which violates this constitutional provision, this court has no power to review that decision. *Ibid.*
10. The Circuit Court of the United States has no power to entertain an original bill brought by a creditor, who has come in and proved his debt against the bankrupt, for the purpose of annulling or vacating a discharge and certificate in bankruptcy, obtained in the District Court upon imputations of fraud, done in contemplation of bankruptcy by the bankrupt; or to give relief, either at law or in equity, in a suit brought by a creditor who had proved his debt under the commission, who had assented to the bankrupt's discharge and certificate, and who had taken a dividend out of the bankrupt's estate. *Commercial Bank of Manchester v. Buckner*, 108.
11. The District Court, which passed the decree in bankruptcy, can take cognizance of such a case. *Ibid.*
12. Whether or not such a bill could be filed by a creditor who had not come in and proved his debt, and who was not a party to the decree in bankruptcy, is a question which the court does not now decide. *Ibid.*
13. Nor has the Circuit Court the power, under its general jurisdiction over frauds, to give relief, either at law or in equity, in a suit brought by a creditor who had proved his debt under the commission, had assented to the bankrupt's discharge and certificate, and had taken a dividend out of the bankrupt's estate. *Ibid.*
14. Where a suit was brought upon a bill of exchange in one of the State courts of Louisiana, and by that court was transferred to another State court for the purpose of being connected with certain proceedings in insolvency, and this transfer was pleaded in bar in the Circuit Court of the United States to the prosecution of the suit in that court upon the bill, the plea was not good. *Hyde v. Stone*, 170.
15. The jurisdiction of the courts of the United States over controversies between citizens of different States cannot be impaired by the laws of the States, which prescribe the modes of redress in their own courts, or which regulate the distribution of their judicial power. *Ibid.*
16. The insertion of the bill amongst the debts of the insolvent upon his schedule, is evidence of the fact of notice; and the sufficiency of the evidence was a question for the jury, and is not subject to review in this court. *Ibid.*
17. In New Mexico, the laws of the provisional Government authorized an attachment against the property of a debtor, in cases in which a party claiming to be a creditor, upon a petition and affidavit, charged that his debtor had fraudulently disposed of his property, so as to hinder, delay, or defraud, his creditors. By the same law, an issue was directed to be tried upon the

JURISDICTION, (*Continued.*)

- petition and affidavit of the plaintiff; upon which issue, if the finding sustained the petition and affidavit, the plaintiff was authorized to proceed to the proof of his debt; if the finding was against the charge in the petition, the attachment was to be dismissed. These proceedings with reference to the attachment are in their nature proceedings in abatement, and are not final as to the rights of the parties, and therefore cannot be reviewed upon writ of error in this court. *Leitensdorfer v. Webb*, 176.
18. By the judiciary act of 1789, no civil suit shall be brought against an inhabitant of the United States by an original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ. *Chaffee v. Day*, 208.
 19. This provision of law is not changed by any subsequent process act, or by the law giving jurisdiction to Circuit Courts in patent cases, without regard to citizenship. *Ibid.*
 20. Therefore, where a suit was commenced for an infringement of a patent right, and process was served by attaching the property of an absent defendant, this was not sufficient to give the court jurisdiction. *Ibid.*
 21. An averment, in pleading, that the Covington Drawbridge Company were citizens of Indiana was sufficient to give jurisdiction to the Circuit Court of the United States, because the company was incorporated by a public statute of the State which the court was bound judicially to notice. *Covington Drawbridge Company v. Shepherd*, 227.
 22. The former decisions of this court upon this subject examined. *Ibid.*
 23. The admiralty jurisdiction of the courts of the United States extends to cases of collision upon navigable waters, although the place of such collision may be within the body of a county of a State, and may be above the flux and reflux of the tide. *Jackson v. Steamboat Magnolia*, 296.
 24. The District Courts exercise this jurisdiction over fresh-water rivers "navigable from the sea," by virtue of the judiciary act of 1789, and not as conferred by the act of 1845, which extends their jurisdiction to the great lakes and waters "not navigable from the sea." *Ibid.*
 25. The admiralty jurisdiction of the courts of the United States does not extend to cases where a lien is claimed by the builders of a vessel for work done and materials found in its construction. *People's Ferry Company v. Beers*, 393.
 26. Whether the District Courts can enforce a lien in such cases, where the law of the State where the vessel was built gave a lien for its construction, is a question which the court does not now decide. *Ibid.*
 27. Where there was a covenant to sell land, and if the covenantee did not comply with the terms of payment, the covenantor had a right to declare the contract void, and charge rent; the amount of rent was not the test of the jurisdiction of this court, as the amount of property involved was large. *Stinson v. Dousman*, 461.
 28. This court has not jurisdiction, under the twenty-fifth section of the judiciary act, to review the judgment of a State court, where the question involved merely related to the proper boundary between two tracts of land, although the owners of both had valid grants from the United States. *Moreland v. Page*, 522.
 29. Where the only bills of exception were to the refusal of the court to grant a continuance and change the venue, the judgment of the court below must be affirmed, as these matters are not the subjects of review by this court. *McFaul v. Ramsay*, 523.
 30. Where the Legislature of a State passed a law allowing the State to be sued upon her bonds, and afterwards directed the bonds to be filed under the penalty of dismissal, and the case was dismissed because the suitor refused to file his bonds, this does not furnish a case within the twenty-fifth section of the judiciary act. *Beers v. State of Arkansas*, 527.
 31. A bill in chancery, purporting to be a cross bill, filed under the same law of Arkansas which was mentioned in the preceding case of *Holford's Administrator v. The State of Arkansas*, comes under the decision in that case, and must be dismissed for want of jurisdiction in this court. *Bank of Washington v. State of Arkansas*, 530.

JURISDICTION, (*Continued.*)

32. A plea to the jurisdiction comes too late after a mandate has gone down from this court to the court below. *Whyte v. Gibbes*, 541.
33. Where there was a demurrer to some parts of a replication, and a motion to strike out other parts, still leaving in the replication some essential allegations, a judgment upon the demurrer and motion to strike out was not such a final judgment as can be reviewed by this court. *Holcombe v. McKusick*, 552.
34. An order of the Circuit Court to quash an execution, is not such a judgment as can be reviewed in this court by a writ of error. *McCargo v. Chapman*, 555.
35. The jurisdiction of the courts of the United States as courts of equity is ample to enforce the performance of trusts under both the Constitution and laws. *Irvine v. Marshall*, 558.
36. The United States can declare by Congress what the law shall be with respect to the public lands, and enforce that law through the judiciary department. *Ibid.*
37. Although the officers of the land department may in practice, and as a rule of convenience, have received the certificate of purchase as evidence of title, yet neither that practice nor the certificate itself can control the power either of the United States or of this court, to adjudge or to confirm the title to the land to the true owner. *Ibid.*

JURY.

1. Where a sheriff was sued for taking goods under an attachment, which goods had been previously assigned under circumstances which were alleged to be fraudulent, it was proper for the court to charge the jury, "that if they believed, from the evidence, that the sale was made for the purpose of hindering, delaying, or defrauding creditors, it was invalid as against the defendant; and that whether the sale was or was not fraudulent was a question of fact, to be determined by the jury under all the circumstances of the case; that if the sale were secret, and no means taken to apprise the public of it, these were facts which threw suspicion upon the transaction, but did not make the sale fraudulent in law as against the defendant. *Warner v. Norton*, 448.

LANDS—PUBLIC, IN CALIFORNIA.

See CALIFORNIA.

LANDS—PUBLIC.

1. Where several parties set up conflicting claims to property, with which a special tribunal may deal, as between one party and the Government, regardless of the rights of others, the latter may come into the ordinary courts of justice, and litigate the conflicting claims. *Garland v. Wynn*, 6.
2. Therefore, in a case where the register and receiver of public lands have been imposed upon by *ex parte* affidavits, and the patent has been obtained by one having no interest secured to him in virtue of the pre-emption laws, to the destruction of another's right who had a preference of entry which he preferred and exerted in due form, but which right was defeated by false swearing and fraudulent contrivance brought about by him to whom the patent was awarded—in such a case, the jurisdiction of the courts of justice is not ousted by the regulations of the Commissioner of the General Land Office. *Ibid.*
3. The decision of this court in the case of *Brown v. Clements* (3 How., 650) reviewed and controlled. *Gazzam v. Phillips's Lessee*, 372.
4. The quantity of land granted to a patentee in pursuance of a pre-emption right under the act of 29th May, 1830, must, in an action at law, be ascertained from the description in the patent, and cannot be controlled by any supposed original equity to the whole of a quarter section to which a claim might have been made before the register and receiver. *Ibid.*
5. Some latitude of discretion is allowed to the surveyor general under the act of 24th April, 1820, and the instructions of the land office, in the subdivision of fractional sections containing more than one hundred and sixty acres; and he is not obliged, absolutely, and under all circumstances, to lay off a full quarter or half quarter section, though the fraction is capable of such a subdivision. *Ibid.*

LANDS—PUBLIC, (*Continued.*)

6. In May, 1830, Congress passed an act (4 Stat. at L., 420) which gave the right of pre-emption to settlers on the public lands, but made null and void all assignments and transfers of the right of pre-emption prior to the issuance of patents. This act was to remain in force for one year. *Marks v. Dickson*, 501.
7. In January, 1832, another act was passed, (4 Stat. at L., 496,) supplementary to the former, allowing certificates of purchase to be transferred, and patents to be issued in the name of the assignee. *Ibid.*
8. In June, 1834, another act was passed, (4 Stat. at L., 678,) reviving the act of 1830. *Ibid.*
9. The true construction of this act of 1834 is, not that it restored the prohibitory clause of 1830, but that it revived the supplement, together with the original act; and that, consequently, an assignment was good and legal before a patent was issued. *Ibid.*
10. But it was necessary to enter the land at the land office, before the right of assignment accrued; and, therefore, assignments made before such entry were assignments of floats, and void. *Ibid.*
11. A power, however, although executed before the location, was sufficient to justify an assignment made after the location, there being a tacit affirmation of the power, when it might have been set aside. *Ibid.*
12. At a sale of public lands in a Territory, an agent who purchased for another must account, as trustee, to his employer, although the statutes of the Territory have abolished all resulting trusts. *Irvine v. Marshall*, 558.
13. The United States, being the owner of the public lands within the States and Territories, have the right to say to whom, in what mode, and by what title, they shall be conveyed. *Ibid.*
14. It promotes the public sales, that agents should be allowed to attend and purchase, under the usual responsibility of agents or trustees. *Ibid.*
15. The control, enjoyment, and disposal, by the United States, of their own property, is independent of the locality of such property, whether it be situated in a State or Territory; nor are the contracts of the Government with respect to subjects within its constitutional competency, local, or confined in their effects and operation strictly to the sites of the subjects to which they relate. *Ibid.*
16. Although a certificate may be the subject of bargain and sale, yet the United States can take care that the conveyance shall be made to him who is in good faith their vendee. *Ibid.*
17. The jurisdiction of the courts of the United States as courts of equity is ample to enforce the performance of trusts under both the Constitution and laws. *Ibid.*
18. The United States can declare by Congress what the law shall be with respect to the public lands, and enforce that law through the judiciary department. *Ibid.*
19. Although the officers of the land department may in practice, and as a rule of convenience, have received the certificate of purchase as evidence of title, yet neither that practice nor the certificate itself can control the power either of the United States or of this court, to adjudge or to confirm the title to the land to the true owner. *Ibid.*

LIMITATION—STATUTES OF

1. By the laws of the Republic of Texas, no action would lie on a foreign judgment, and all actions of debt were prescribed in four years. *Bacon v. Howard*, 22.
2. When about to form a Constitution, for the purpose of becoming a State of the Union, the Legislature passed a law permitting suits to be brought on foreign judgments, but limiting them to sixty days when the judgment was of four years standing and upward. *Ibid.*
3. The plaintiffs' bill attempted to avoid the effect of the last limitation as to their judgment, which was more than four years old, on the ground that they lived more than two thousand miles distant, and could not know of the passage of the last act within time to prosecute their action. *Ibid.*
4. Held, that the last-mentioned statute conferred a favor, and was not retro-

LIMITATION—STATUTES OF, (*Continued.*)

- spective; and that plaintiffs' action was barred, whether he knew of the act or not. *Ibid.*
5. The Constitution of the United States does not restrain the right of each State to legislate as to the remedy on suits on judgments in other States. *Ibid.*
 6. In an action of ejectment, where the defendant pleads the statute of limitations, he must connect his own possession with the adverse possession and title of another person which is set up as a defence. Otherwise, the plea is not good. *Doswell v. De La Lanza*, 29.
 7. By the laws of Virginia, where an absent defendant is sued, and a garnishee is found within the State having funds of the absent debtor in his hands, the court may either suffer the fund to remain in the hands of the garnishee, or he paid over to the attaching creditor, security being given in either case to refund the money upon a final decree. *Mattingly v. Boyd*, 128.
 8. Whilst the suit is pending, therefore, the money must be considered as in the custody of the court, and not liable to be sued for by the absent debtor against his garnishee. *Ibid.*
 9. Consequently, the statute of limitations does not run whilst the suit is pending; and if an action is brought against the executor of the garnishee after the termination of the principal suit in sufficient time to clear the statute, a recovery must be had. *Ibid.*

MANDAMUS.

1. A rule laid upon the district judge of the State of Texas, to show cause why a mandamus should not be issued for him to allow an appeal in a certain case; but upon an examination of the case, the mandamus refused. *Mussina v. Cavazos*, 280.
2. Where there was an order of the Circuit Court to set aside a judgment upon payment by the defendant of the costs which had accrued up to that time, the plaintiff's counsel, by not insisting upon the payment of such costs, thereby impliedly waived the condition upon which the judgment was to be vacated, and cannot proceed upon the judgment as being still in force. *Ransom v. New York*, 581.
3. Other circumstances lead to the opinion that it was the understanding of both sides that the judgment should be vacated. *Ibid.*
4. This court therefore overrule a motion for a mandamus directing the court below to set aside the order vacating the judgment, or for a rule to show cause why a mandamus should not issue. *Ibid.*

PARTIES.

1. Creditors of the vendor, who recovered judgments and sold the property, pending a suit for a specific performance, in which the purchase-money had been paid into court, are not necessary parties to the suit, nor are the purchasers at the sheriff's sale under such judgments. *Secombe v. Steele*, 34.

PARTNERSHIP.

See COMMERCIAL LAW.

PATENT RIGHTS.

1. Where a bill is filed to enforce the specific execution of a contract in relation to the use of a patent right, this court has no appellate jurisdiction, unless the matter in controversy exceeds two thousand dollars. *Brown v. Shannon*, 55.
2. The jurisdiction, where the bill is founded upon a contract, differs materially from the jurisdiction on a bill to prevent the infringement of the monopoly of the patentee, or of those claiming under him by legal assignments, and to protect them in their rights to the exclusive use. *Ibid.*
3. The penalty of the bond taken, when an injunction is awarded, is no evidence of the amount or value in dispute. *Ibid.*
4. In suits for the infringement of a patent right, the rule of damages is the amount which the infringer actually realized in profits, not what he might have made by reasonable diligence. *Dean v. Mason*, 198.
5. After a bill is taken *pro confesso* in the Circuit Court, a motion to allow an answer to be filed is addressed to the discretion of the court; and from a refusal so to do, an appeal does not lie to this court. *Ibid.*

PATENT RIGHTS, (*Continued.*)

6. A motion to dismiss the complainant's bill, upon the ground that he had parted with his interest, was properly overruled, because such assignment was not made until after the time when the computation of profits ended. *Ibid.*
7. By the judiciary act of 1789, no civil suit shall be brought against an inhabitant of the United States by an original process in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ. *Chaffee v. Day*, 208.
8. This provision of law is not changed by any subsequent process act, or by the law giving jurisdiction to Circuit Courts in patent cases, without regard to citizenship. *Ibid.*
9. Therefore, where a suit was commenced for an infringement of a patent right, and process was served by attaching the property of an absent defendant, this was not sufficient to give the court jurisdiction. *Ibid.*
10. The Union India Rubber Company have a right to manufacture articles of India Rubber. *Day v. Union India Rubber Company*, 216.
11. Foote's patent declared good, for the combination of machinery used in "the application of the expansive and contracting power of a metallic rod by different degrees of heat, to open and close a damper which governs the admission of air into a stove, in which such rod shall be acted upon directly by the heat of the stove or the fire which it contains." *Silsby v. Foote*, 378.
12. The award by the Circuit Court of damages for an infringement of the patent affirmed, by an equal division of this court; but the allowance of interest overruled. *Ibid.*
13. Where a patentee claims more than he is entitled to, his patent may still be good for what is really his own, provided he enters a disclaimer for the surplus without any unreasonable delay. In this case, the patentee was allowed to recover damages for an infringement, but not to recover costs, agreeably to the provisions of the act of Congress of the 3d March, 1837. *Ibid.*
14. The reaping machines made by Manny do not infringe McCormick's patent, either as to the divider, the manner in which the reel is supported, or the combination of the reel with a seat for the raker. *McCormick v. Talcott*, 402.
15. McCormick not being the original inventor of the machine called a divider, but the patentee of only an improvement for a combination of mechanical devices, could not hold as an infringer one who used only a part of the combination. *Ibid.*
16. The manner of supporting the reel in Manny's machine is not like that in McCormick's, and was used before McCormick's first patent. *Ibid.*
17. With respect to the raker's seat, McCormick's patent was for a combination of the reel with a seat arranged and located according to his description. But Manny's arrangement differs from McCormick's in principle as well as in form and combination, and is therefore no infringement of McCormick's patent. *Ibid.*

PENNSYLVANIA.

1. By the laws of Pennsylvania before the Revolution, a pre-emption right to islands in the Susquehanna river could not be obtained by settlement. *Fisher v. Haldeman*, 186.
2. The courts of that State have so decided, and this court adopts their decision. *Ibid.*

PLEAS AND PLEADINGS.

1. In an action against the owners of a ferry boat, for personal injuries sustained by the negligence of its officers, it was held that the plaintiff might show that he was engaged in a particular business, and had been incapacitated from attending to it, as exhibiting the extent of the injury, and that it had occasioned expense, suffering, and loss of time which had value to him, although the nature of his occupation was not set forth in the declaration. *Wade v. Leroy*, 34.
2. A demurrer only admits facts which are well pleaded. *Commercial Bank of Manchester v. Buckner*, 108.
3. Where the statute of limitations imposes a bar upon certain species of con-

PLEAS AND PLEADINGS,, (Continued.)

- tracts after three years, and upon others after two years, and the plea did not show that the contract in question was of the latter class, the plea was bad. *Lyon v. Bertram*, 150.
4. The laws of California require that actions shall be prosecuted in the name of the real party in interest, and that all parties having an interest in the subject of the action may be joined. So that this statute is complied with, it is not a fatal objection that the respective interests of parties jointly concerned are not accurately set forth. *Ibid.*
 5. Where a bill in chancery was filed for the purpose of enjoining a judgment at law, obtained upon a promissory note, and the bill did not allege that adequate relief could not be had at law, and did not contain any charges of fraud; neither did it aver that it was owing to the contrivance or unfairness of the defendant that an adequate remedy could not be had at law, nor did it show the necessity of interference by a court of equity to obtain a discovery, the bill must be dismissed. *Hungerford v. Sigerson*, 156.
 6. In New Mexico, the laws of the provisional Government authorized an attachment against the property of a debtor, in cases in which a party claiming to be a creditor, upon a petition and affidavit, charged that his debtor had fraudulently disposed of his property, so as to hinder, delay, or defraud, his creditors. By the same law, an issue was directed to be tried upon the petition and affidavit of the plaintiff; upon which issue, if the finding sustained the petition and affidavit, the plaintiff was authorized to proceed to the proof of his debt; if the finding was against the charge in the petition, the attachment was to be dismissed. These proceedings with reference to the attachment are in their nature proceedings in abatement, and are not final as to the rights of the parties, and therefore cannot be reviewed upon writ of error in this court. *Leitensdorfer v. Webb*, 176.
 7. An averment, in pleading, that the Covington Drawbridge Company were citizens of Indiana, was sufficient to give jurisdiction to the Circuit Court of the United States, because the company was incorporated by a public statute of the State which the court was bound judicially to notice. *Covington Drawbridge Company v. Shepherd*, 227.
 8. The former decisions of this court upon this subject examined. *Ibid.*
 9. A plea to the jurisdiction comes too late after a mandate has gone down from this court to the court below. *Whyte v. Gibbs*, 541.
 10. Where there was a demurrer to some parts of a replication, and a motion to strike out other parts, still leaving in the replication some essential allegations, a judgment upon the demurrer and motion to strike out was not such a final judgment as can be reviewed by this court. *Holcombe v. McKusick*, 552.

PRACTICE.

1. A refusal of the court below to grant a new trial is not a proper subject for a bill of exception. *Doswell v. De La Lanza*, 29.
2. Exceptions to the master's report respecting rents and profits not having been taken in the court below, they cannot be sustained in this court. *Hudgins v. Kemp*, 45.
3. The penalty of the bond taken, where an injunction is awarded, is no evidence of the amount or value in dispute. *Brown v. Shannon*, 55.
4. Where this court affirmed a decree of a Circuit Court, which was, that a conveyance of property should be executed upon the payment of a sum of money; and the Circuit Court proceeded to carry out its decree by issuing an attachment against the party who refused to execute such conveyance, an appeal will not lie to this court from the order directing the attachment. *McMicken v. Perrin*, 133.
5. The appeal must be dismissed, with costs, on motion. *Ibid.*
6. A writ of error will not lie from the refusal of the court below to continue a case. *Thompson v. Selden*, 194.
7. After a notice to produce books and papers, there must be a motion for an order to produce them. *Ibid.*
8. After a bill is taken *pro-confesso* in the Circuit Court, a motion to allow an answer to be filed is addressed to the discretion of the court; and from a refusal so to do, an appeal does not lie to this court. *Dean v. Mason*, 198.

PRACTICE, (*Continued.*)

9. A motion to dismiss the complainants' bill, upon the ground that he had parted with his interest, was properly overruled, because such assignment was not made until after the time when the computation of profits ended. *Ibid.*
10. Although an irregularity in the citation may be cured by an appearance in court, yet a defect in the writ of error, (such as not naming a return day for the writ,) or an omission to file a transcript of the record at the term next succeeding the issuing of the writ or the taking of the appeal, are fatal errors, and the case must be dismissed for want of jurisdiction. *Carroll v. Dorsey*, 204.
11. The defect of an irregular citation (being signed by the clerk of the court, and not by the judge who allowed the writ of error) is cured by an appearance in this court; so that a motion to dismiss the writ, when made at the term succeeding that at which the appearance was entered, comes too late. *Chaffee v. Hayward*, 208.
12. No one can bring up, as plaintiff in a writ of error, the judgment of an inferior court to a superior one, unless he was a party to the judgment in the court below; nor can any one be made a defendant in the writ of error who was not a party to the judgment in the inferior court. *Payne v. Niles*, 219.
13. Therefore, where there was a judgment in the court below, and certain persons intervened, whose petition for intervention was dismissed, they have no right to sue out a writ of error from the judgment to which they were not parties; nor was any process, upon their intervention, served upon the original defendant. *Ibid.*
14. Where the judge files the statement of facts after the trial, *nunc pro tunc*, it is reasonable to presume that he had been requested to do so at the trial. *McGavock v. Woodlief*, 221.
15. The Circuit Court of the United States in Alabama, by a general rule, adopted the practice of the State courts, which is regulated by a statute providing that no bill of exceptions can be signed after the adjournment of the court, unless with the consent of counsel, &c. *United States v. Breilling*, 252.
16. But where a judge holding the Circuit Court in Alabama signed a bill of exceptions under special circumstances, after adjournment, and without the consent of counsel, this court will consider the exception as properly before it. It is in the power of a court to suspend its own rules, or except a particular case from them, to subserve the purposes of justice. *Ibid.*
17. And the signature of the judge was attached to the bill, in conformity with the decisions of this court. *Ibid.*
18. The exception brings up the charge of the court to the jury, but not the admission of evidence which was objected to on the trial, but to the admission of which no exception was noted. *Ibid.*
19. The charge of the court, being founded on a hypothetical state of facts of which there was no evidence, was erroneous. *Ibid.*
20. Where a judgment of the Circuit Court, sitting in admiralty, was affirmed here by a divided court, interest was not to be calculated upon the judgment. *Hennemurway v. Fisher*, 255.
21. The eighteenth rule of the court never applied to cases in admiralty which are brought up by appeal, and the rule itself is repealed by the sixty-second rule. *Ibid.*
22. As the act of Congress passed on the 3d of March, 1851, does not specify the time within which an appeal must be made to this court from the District Courts of California, the subject must be regulated by the general law respecting writs of error and appeals. Either party is at liberty, therefore, to appeal from such a decree within five years from the time of its rendition. *United States v. Pacheco*, 261.
23. Under the sixty-third rule of this court, an appellee in a case from California may docket and dismiss according to that rule; but a new appeal may be taken at any time within five years, or it may be that the record may be filed by the appellant at the same term at which a certificate or record had been filed by the appellee, and the case dismissed. *Ibid.*

PRACTICE, (*Continued.*)

24. After a case has been thus docketed and dismissed at the instance of an appellee who is a claimant of land, if a patent should be taken out, it will still be subject to be reviewed by this court at any time within the five years above mentioned. *Ibid.*
25. Where an appeal from a decree is taken within ten days from the rendition of the decree, it is in time to operate as a supersedeas; and so, also, if taken within ten days after the decree is settled and signed. *Silsby v. Foote*, 290.
26. A decision on a motion for a new trial, being addressed to the discretion of the court, is no ground for a writ of error. *Warner v. Norton*, 448.
27. Exceptions must be taken on the points reserved whilst the jury are at the bar. *Barton v. Forsyth*, 532.
28. An objection, that the executors of the assignee had distributed a portion of the money in the regular course of administration, should have been made when the cause was before this court upon its merits. After a mandate has gone down, and the cause came before the Circuit Court for a settlement of accounts, the objection comes too late. *Williams v. Gibbs*, 535.
29. No objection can be made to the Circuit Court allowing a supplemental answer to be filed when the mandate went down. It was like a petition to bring before the court the facts, which were proper to be known before instructions were given to the master as to the mode of settling the accounts. *Ibid.*
30. An order of the Circuit Court to quash an execution, is not such a judgment as can be reviewed in this court by a writ of error. *McCargo v. Chapman*, 555.
31. Where there was an order of the Circuit Court to set aside a judgment upon payment by the defendant of the costs which had accrued up to that time, the plaintiffs' counsel, by not insisting upon the payment of such costs, thereby impliedly waived the condition upon which the judgment was to be vacated, and cannot proceed upon the judgment as being still in force. *Ransom v. New York*, 581.
32. Other circumstances lead to the opinion that it was the understanding of both sides that the judgment should be vacated. *Ibid.*
33. This court therefore overrule a motion for a mandamus directing the court below to set aside the order vacating the judgment, or for a rule to show cause why a mandamus should not issue. *Ibid.*

SPECIAL VERDICT.

1. Every special verdict, in order to enable the appellate court to act upon it, must find the facts on which the court is to pronounce the judgment according to law, and not merely state the evidence of facts. In this manner it becomes a part of the record. *Suydam v. Williamson*, 429.
2. Where there is no dispute in regard to the facts, and consequently no necessity for any ruling of the court in admitting or rejecting evidence, the case may be brought before an appellate court by a special verdict or an agreed statement of facts. *Ibid.*
3. But in such a case, the previous rulings of the court upon questions of evidence do not come before the appellate court, unless brought up by a bill of exceptions. *Ibid.*
4. A special verdict requires the presence and assent of the court, and a bill of exceptions must always be signed and sealed by the judge. *Ibid.*

STATE COURTS—JUDGMENTS OF.

1. The courts of Pennsylvania have decided that a pre-emption right to islands in the Susquehanna river could not be obtained by settlement before the Revolution, and this court adopts their decision. *Fisher v. Haldeman*, 186.
2. Where there were proceedings in a State court between a bank, one of its creditors, and one of its debtors, and the bank having failed, assigned its assets to trustees, who intervened in the dispute between the other two parties, the judgment of the State court against the intervenors must be considered final, and a bill filed by them in the Circuit Court of the United States must be dismissed. *Ingraham v. Dawson*, 486.
3. If there were irregularities in the proceedings of the State court, it was for that court to correct them, had complaint been made at the proper time. *Ibid.*

STATUTES—CONSTRUCTION OF.

See CONSTRUCTION.

TARIFF.

1. By the eighth section of the act of Congress passed on the 30th of July, 1846, (9 Stat. at L., 42, 43,) it is declared that if the appraised value of imports which have actually been purchased shall exceed by ten per centum or more the value declared on the entry, then, in addition to the duties imposed by law on the same, there shall be levied, collected, and paid, a duty of twenty per centum *ad valorem* on such appraised value. *Sampson v. Peaslee*, 571.
2. The true construction of this section is, that the additional duty of twenty per centum is to be levied only upon the appraised value, and not upon charges and commissions added to it. *Ibid.*
3. The day of the sailing of a vessel from a foreign port is the true period of exportation of goods. The Secretary of the Treasury so directed it to be done, as he had a right to do by law; and this court concurs with him in this, as being a correct exposition of the statute. *Ibid.*
4. Where an importation was alleged to be an unit, but divided into two invoices for the sake of convenience, and entered of different values, each invoice must stand upon its own footing; and the whole cannot be averaged, so as to avoid the additional duty which is levied upon one invoice taken by itself. *Ibid.*
5. Where an examination made by the merchant appraiser was such as is usually made in buying and selling hemp in bales, and was satisfactory to the merchant appraiser, it was not open to the importer to show that he adopted a mode of examination insufficient to detect fraudulent packing or diversities in the qualities of the different parts of the importation. *Ibid.*

TENDERS—LEGAL.

1. A tender of the purchase-money of land held sufficient, although not precisely within the time nor according to the terms of the contract. *Secombe v. Steele*, 94.

TEXAS.

1. Where a person was born at Goliad, then in the State of Coahuila and Texas, being a part of the Republic of Mexico, which place was also the domicil of her father and mother until their deaths, and was removed at the age of four years, before the declaration of Texan independence, to Matamoras, in Mexico, this person is an alien, and can sue in the courts of the United States. *Jones v. McMasters*, 8.
2. Her allegiance remained unchanged, unless by her election, which it was incumbent on the opposite party to show. *Ibid.*
3. According to general principles, mere alienage did not forfeit a title to land in Texas; and although the Constitution of Texas provided that no alien should hold land in Texas, except by title emanating directly from the Government of that Republic, yet it was afterwards declared that the Legislature should, by law, provide a method for determining what lands may have been forfeited or escheated. *Ibid.*
4. In the absence of such a legislative provision, a title emanating from the Government of Mexico, anterior to Texan independence, is not forfeited. *Ibid.*
5. In a court of law, where a grant from the Government is in regular form, it is not proper to inquire into the voidability of the grant from equitable considerations. *Ibid.*
6. By the laws of the Republic of Texas, no action would lie on a foreign judgment, and all actions of debt were prescribed in four years. *Bacon v. Howard*, 22.
7. When about to form a Constitution, for the purpose of becoming a State of the Union, the Legislature passed a law permitting suits to be brought on foreign judgments, but limiting them to sixty days when the judgment was of four years standing and upward. *Ibid.*
8. The plaintiffs' bill attempted to avoid the effect of the last limitation as to their judgment, which was more than four years old, on the ground that they lived more than two thousand miles distant, and could not

TEXAS, (*Continued.*)

- know of the passage of the last act within time to prosecute their action. *Ibid.*
9. Held, that the last-mentioned statute conferred a favor, and was not retrospective; and that plaintiff's action was barred, whether he knew of the act or not. *Ibid.*
 10. The Constitution of the United States does not restrain the right of each State to legislate as to the remedy on suits on judgments in other States. *Ibid.*
 11. Under the decisions of the courts of Texas, a survey made of land beyond the limits of the surveyor's district, although invalid at the time, is rendered good by the subsequent approval of the proper county surveyor. This court adopts the rule. *Doswell v. De La Lanza*, 29.
 12. Where patents for land in Texas were erroneously issued, it was proper to cancel them. *Ibid.*
 13. In the present case, the land granted in Texas was alleged to be within the *empresario* contract of De Leon. After proof that many of the documents upon the subject were destroyed in the revolution, the court left it to the jury to decide whether or not the land was thus situated. This ruling was correct. *White v. Burnley*, 235.
 14. The fact that the surveyor included more land than was called for, does not avoid the grant. Whatever the State might do to annul it, third parties have no right to consider it void. *Ibid.*
 15. A grantee having been compelled to leave Texas, there was no evidence of his voluntary and final abandonment of the country. As there was no evidence, the jury could not express an opinion upon the subject. *Ibid.*
 16. Nor was there any evidence which would justify the court in leaving it to the jury to decide whether or not this grantee was an alien enemy when he made a conveyance, he being then a resident of Louisiana. The mere fact of his being a Spaniard was not sufficient for an inference that he was an enemy of Texas. The averment in the deed that he was a citizen of Mexico was not sufficient. *Ibid.*
 17. Where a deed of land in Texas was executed in Louisiana, and recorded in a notary's books, a copy of it which had been compared with the original by a witness who was acquainted with the handwriting of the notary (being dead) and the subscribing witness, was properly admitted in evidence. It was also admitted as a record of another State. *Ibid.*
 18. In order that the statute of limitations shall begin to run, the defendant, claiming under a younger title to land which conflicts in part with an elder title, should have been in actual possession of the part which was overlapped by the elder title. *Ibid.*
 19. The judge of the District Court of the United States in Texas had power to order the record of a suit in which he was interested to be transmitted to the Circuit Court of the United States in Louisiana. *Spencer v. Lapsley*, 264.
 20. A plea in abatement, filed in connection with pleas in bar, was irregular; and the refusal of the court below to allow the plea to be filed is not subject to the review of this court. *Ibid.*
 21. A contract for the sale of eleven leagues of land in Texas, issued before the revolution, and subsequently located within the colonizing grant of Austin and Williams, with their consent, and certified by the Secretary of State, was good without the signature of the Governor. *Ibid.*
 22. So far as the land was within the colonizing grant of Robertson, his consent was not necessary, the term of his grant having expired. *Ibid.*
 23. Where no organization of a colonial grant had taken place by the introduction of settlers, the land not occupied was open for public sale, with the consent of the *empresario*, and the *alcalde* was a proper person to put the purchaser in possession. *Ibid.*
 24. That the survey was made before the order of survey was directed to the surveyor, was not fatal to the grant. Any preliminary defects were cured by the patent. The fairness of the grant cannot be investigated at law, at the instance of a third party. *Ibid.*
 25. A power of attorney, authenticated before a *regidor*, proved by the handwriting of the *regidor* and the assisting witnesses, held sufficient. *Ibid.*

TRUSTEES

See AGENTS.

WASHINGTON—CORPORATION OF.

1. The power granted by Congress to the corporation of the city of Washington, "to open and keep in repair streets, avenues, lanes, alleys, &c., agreeably to the plan of the city," includes the power to alter the grade or change the level of the land on which the streets by the plan of the city are laid out. *Smith v. Corporation of Washington*, 135.
2. If, in the exercise of this power, an individual proprietor suffers inconvenience or is put to expense, the corporation are not liable in damages. *Ibid.*

WATROUS—JUDGE.

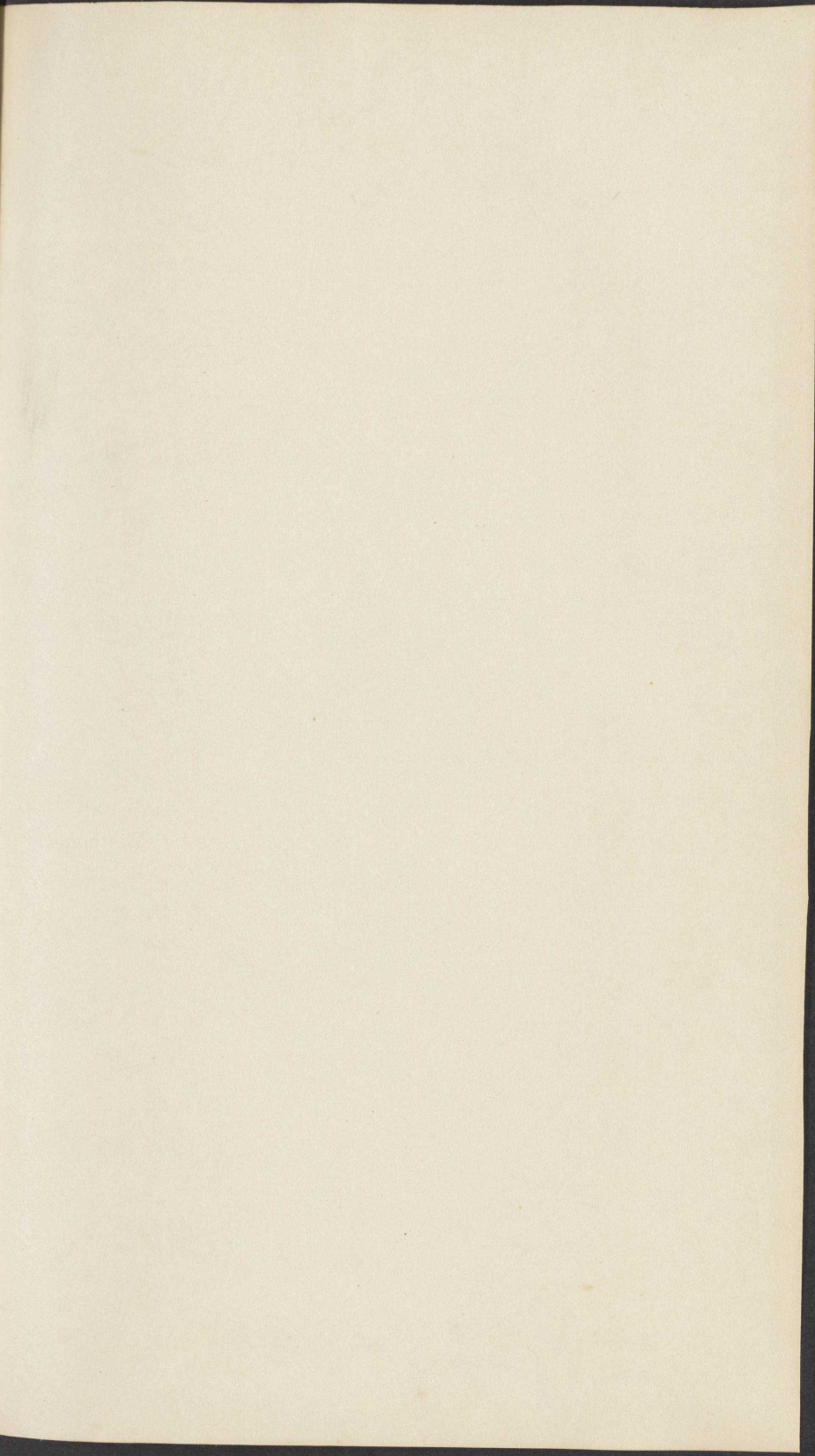
1. A rule laid upon the district judge of the State of Texas, to show cause why a mandamus should not be issued for him to allow an appeal in a certain case; but upon an examination of the case, the mandamus refused. *Mussina v. Cavazos*, 280.

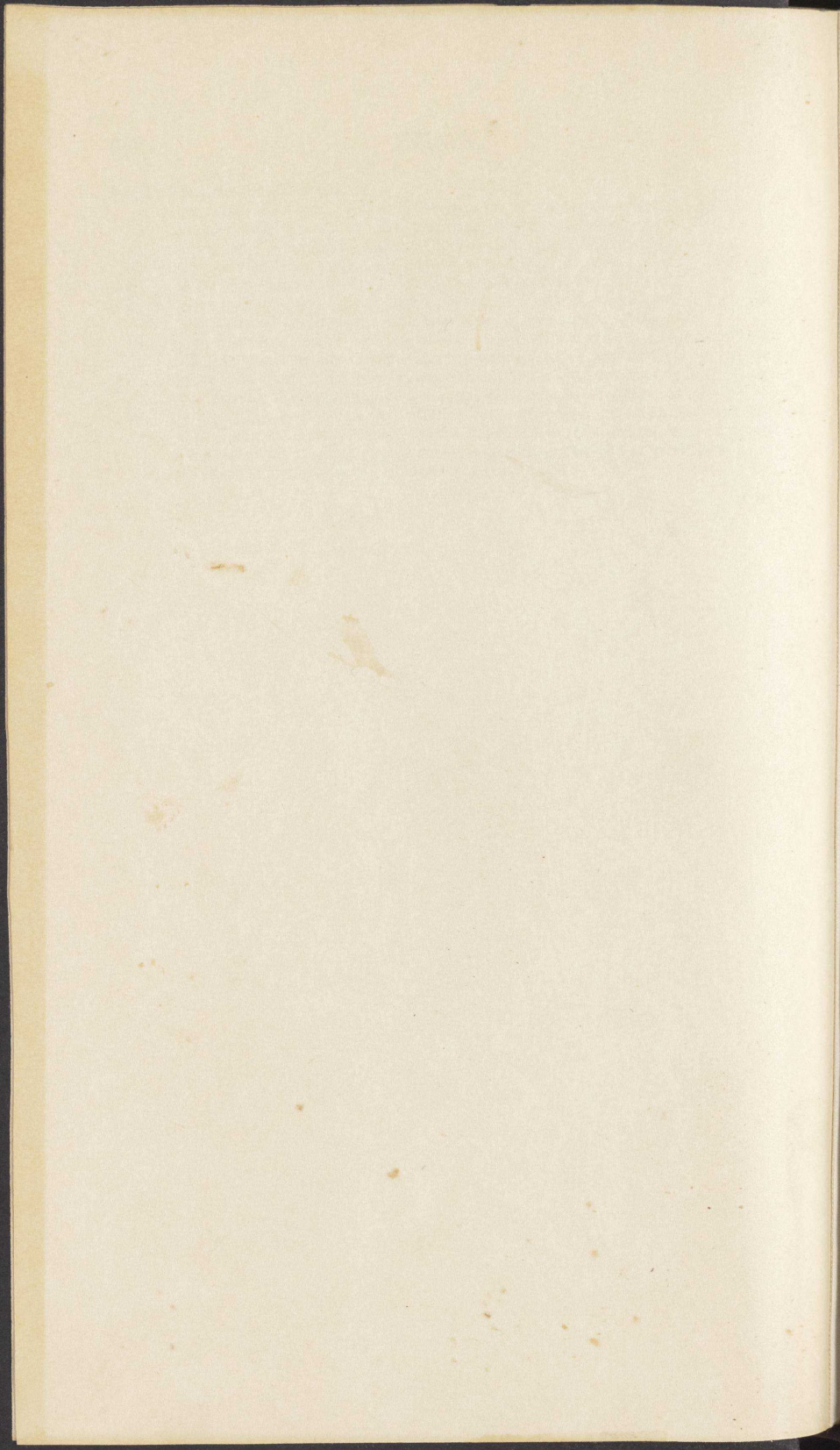
WRIT OF ERROR.

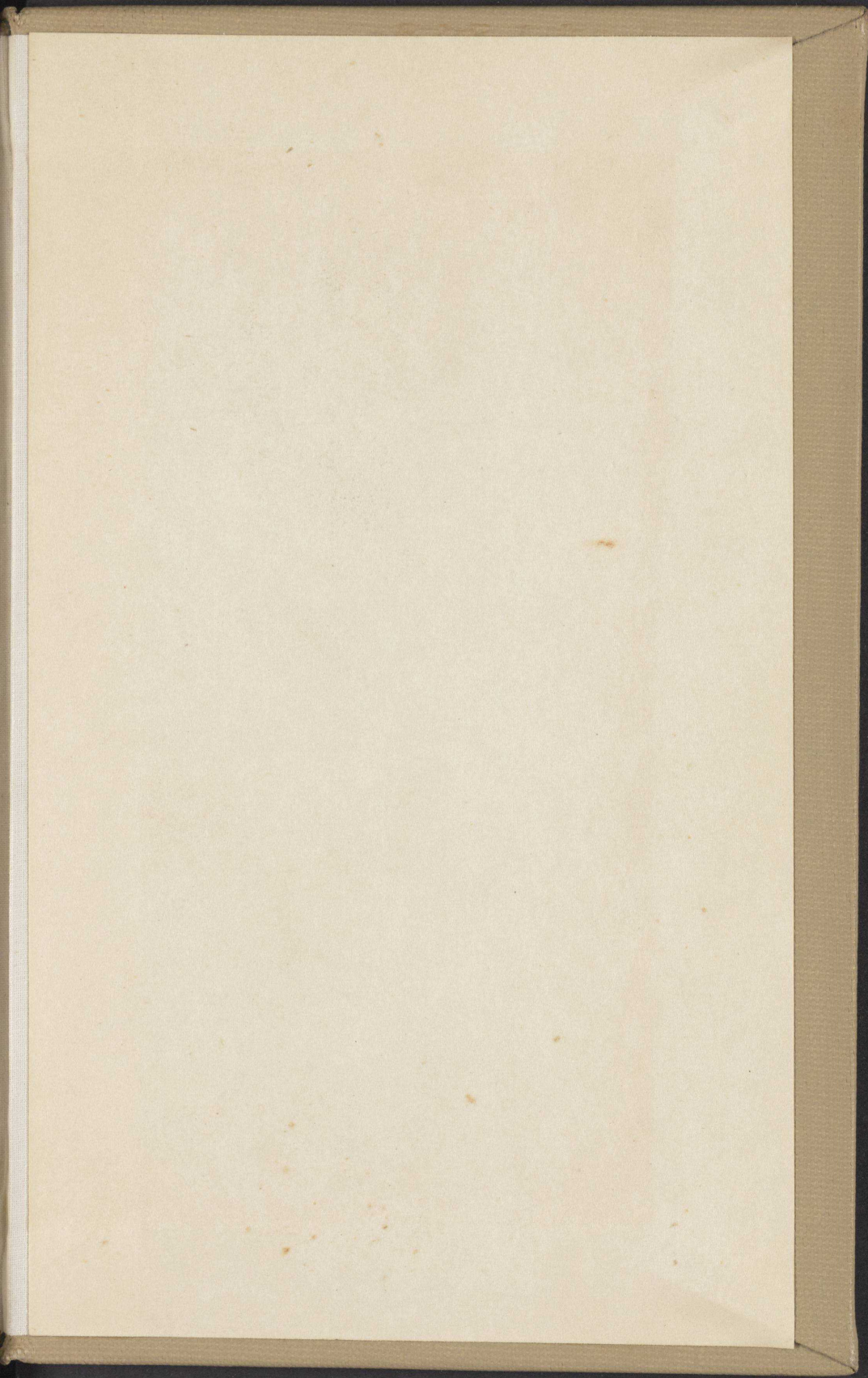
1. Although an irregularity in the citation may be cured by an appearance in court, yet a defect in the writ of error, (such as not naming a return day for the writ,) or an omission to file a transcript of the record at the term next succeeding the issuing of the writ or the taking of the appeal, are fatal errors, and the case must be dismissed for want of jurisdiction *Carroll v. Dorsey*, 204.
2. No one can bring up, as plaintiff in a writ of error, the judgment of an inferior court to a superior one, unless he was a party to the judgment in the court below; nor can any one be made a defendant in the writ of error who was not a party to the judgment in the inferior court. *Payne v. Niles*, 219.
3. Therefore, where there was a judgment in the court below, and certain persons intervened, whose petition for intervention was dismissed, they have no right to sue out a writ of error from the judgment to which they were not parties; nor was any process, upon their intervention, served upon the original defendant. *Ibid.*
4. Rulings of the court below, in admitting or rejecting evidence, can be brought to this court for revision only by a bill of exceptions. *Suydam v. Williamson*, 427.
5. Every special verdict, in order to enable the appellate court to act upon it, must find the facts on which the court is to pronounce the judgment according to law, and not merely state the evidence of facts. In this manner it becomes a part of the record. *Ibid.*
6. Where there is a bill of exceptions, the writ of error does not operate only upon that part of the record. Wherever an error is apparent on the record, it is open to revision, whether it be made to appear by a bill of exceptions, or in any other manner. *Ibid.*
7. Where there is no dispute in regard to the facts, and consequently no necessity for any ruling of the court in admitting or rejecting evidence, the case may be brought before an appellate court by a special verdict or an agreed statement of facts. *Ibid.*
8. But in such a case, the previous rulings of the court upon questions of evidence do not come before the appellate court, unless brought up by a bill of exceptions. *Ibid.*
9. A bill of exceptions may include in its scope the rulings of the court as to the admissibility of evidence, which a demurrer to evidence cannot do. *Ibid.*
10. A demurrer to evidence makes the evidence a part of the record. *Ibid.*
11. So where oyer of any instrument is prayed, or there is a demurrer to any part of the pleadings. *Ibid.*
12. A writ of error operates only upon the record, and brings it into this court. *Ibid.*
13. Therefore, where a paper was filed in the court below after the writ of error was issued, which paper, purporting to contain all the evidence, both admitted and rejected, was signed by the judge and certified to be correct by the counsel of the appellee, and concluded as follows: "A verdict was then, by direction of the court, taken for the plaintiffs for the

WRIT OF ERROR, (*Continued.*)

- premises claimed, subject to the opinion of the court upon the questions of law, with liberty to turn this case into a special verdict or bill of exceptions," this paper cannot be considered a part of the record. *Ibid.*
14. A special verdict requires the presence and assent of the court, and a bill of exceptions must always be signed and sealed by the judge. *Ibid.*
 15. In this case, the paper is merely a report of the judge who presided at the trial, and as such must be disregarded by this court. *Ibid.*
 16. Under the twenty-fifth section of the judiciary act, where the jurisdiction of this court is not shown upon the record, the writ of error must be dismissed; but under the twenty-second section, if no error appears upon the record, the judgment of the court below must be affirmed. *Ibid.*
 17. This court again decides, that after a case has been brought here and decided, and a mandate issued to the court below, if a second writ of error is sued out, it brings up for revision nothing but the proceedings subsequent to the mandate. *Roberts v. Cooper*, 467.







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