

# INDEX

## OF THE

### PRINCIPAL MATTERS.

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#### ADMINISTRATOR.

1. Where a sale was made by an administrator under the authority and pursuant to an order of the Probate Court of the county where the land laid, and the proceedings were regular except that no guardian was appointed to represent the heirs, the Supreme Court of Wisconsin decided that this defect was not sufficient to prevent the title from vesting in the purchaser, and this court adopts their decision. *Parker v. Kane*, 1.

#### ADMIRALTY.

1. In a collision which took place between a steamboat and a flat-boat on the Yazoo river, more than two hundred miles from its mouth where it falls into the Mississippi river, both vessels were in fault—the flat-boat, because it had not one or more steady and fixed lights on one or more conspicuous parts of the boat, and because of its erroneous position in the river; and the steamboat, because the master, seeing a light ahead, did not stop his boat, and reverse her wheels, until the locality of the light was clearly ascertained. *Nelson v. Leland*, 48.
2. The collision took place within the admiralty jurisdiction of the courts of the United States. *Ibid.*
3. Upon a motion to dismiss an appeal, upon the ground of a want of jurisdiction originally in the District Court, the question of jurisdiction in that court is a proper one for appeal to this court, and for argument when the case is regularly reached. This court have jurisdiction on such an appeal. The motion to dismiss, upon that ground, must therefore be overruled. *Ibid.*
4. Where a steamboat was built at Louisville, in Kentucky, and the persons who furnished the boilers and engines libelled the vessel in admiralty in the District Court of the United States for the eastern district of Louisiana, that court had no jurisdiction of the case. *Roach v. Chapman*, 129.
5. A contract for building a ship, or supplying engines, timber, &c., is not a maritime contract. This court so decided in 20 Howard, 400, and now reaffirms that decision. *Ibid.*
6. The State law of Kentucky, which creates a lien in such a case, cannot confer jurisdiction on the courts of the United States; and the prece

ADMIRALTY, (*Continued.*)

ding decisions of this court do not justify an inference to the contrary  
*Ibid.*

7. Where there was a contract for raising a sunken vessel upon certain stipulations, the party who raised the vessel cannot abandon it, and claim salvage in a court of admiralty. *Bondies v. Sherwood*, 214.
8. This court does not now decide whether, in suits for salvage, the suit may be in personam and in rem jointly. The question is still an open one. *Ibid.*
9. Nor does it decide whether the maritime law of salvage applies to a vessel engaged in the internal trade of a State, proceeding from a port in the same, up a river wholly within the same. *Ibid.*
10. Where certain parties joined together to carry on an adventure in trade for their mutual benefit—one contributing a vessel, and the other his skill, labor, experience, &c.—and there was to be a communion of profits on a fixed ratio, it was a contract over which a court of admiralty had no jurisdiction. *Ward v. Thompson*, 330.
11. In a collision which took place in the river Delaware, between a steamship and a barge which was in tow of a propeller, the latter was in fault. *N. Y. and Balt. Trans. Co. v. Phila. and Savannah Steamship Co.*, 461.
12. The lookout was not properly stationed, being in a place where his view was obstructed; and the propeller violated the rule which requires steamers approaching each other from opposite directions to port their helms, and pass each other on the larboard side. *Ibid.*
13. A propeller with a barge in tow is not within the rule which applies to sailing vessels, and which requires steamships to keep out of their way. Propellers have nearly the same speed as side-wheel steamers, and quite as much power, and must be subject to the same rules of navigation. *Ibid.*
14. The regulations at the port of Rio Janeiro require the master of a foreign vessel, upon her arrival at the port, to deliver to the proper officer, upon his visit to the vessel, his passport, manifest, and list of passengers. He is also required, at the end of the manifest, to make such declarations or statement for his security, by adding any packages that may be omitted or exceeded in the manifest, giving his reason for such omissions; no excuse will afterwards be admitted for any omissions or error. *Howland et al. v. Greenway et al.*, 491.
15. The regulations further declare that, when it is proved that the vessel brought more goods than are specified or contained in the manifest, and not declared by the master, such goods will be seized and divided among the seizers, the master also paying into the national treasury a fine of one-half their value, besides the customary duties thereon. *Ibid.*
16. Where the master of a vessel omitted to enter a part of the cargo upon his manifest, and in consequence thereof the boxes were seized and confiscated, the vessel and her owners were responsible to the consignees upon a libel filed in the District Court of New York, where the contract of affreightment was made. *Ibid.*
17. A delivery into the custom-house under the order of the officers, and the



ADMIRALTY, (*Continued.*)

payment of duties by the consignees, did not discharge the contract of the owners. The delivery contemplated by the contract was a transfer of the property into the power and possession of the consignees. *Ibid.*

18. The evidence upon the amount of damages is not such as to justify this court in reversing the decree of the court below. *Ibid.*

## AGENTS.

1. Where an agent was employed to sell an estate in Louisiana, and the owner refused, without sufficient reasons, to fulfil an agreement which the agent had made, a right to demand compensation accrued to the agent, the amount of which is to be settled by established usage. *Kock v. Emmerling*, 69.

## APPEAL.

1. Although the laws of the Territory abolished the distinction between cases at law and cases in equity, and required all cases to be removed from an inferior to a higher court by writ of error, and not by appeal, yet such laws cannot regulate the process of this court; and the present case, being in the nature of a bill in equity, is properly brought up by appeal. *Brewster v. Wakefield*, 118.
2. The parties who acquired liens on the mortgaged property subsequent to the mortgage in question were not necessarily parties to this appeal; and if they had appeared to the suit in the court below, one defendant, whose interest is separate from that of the other defendants, may appeal without them. *Ibid.*
3. No appeal can be taken from the final decision of a State court of last resort, under the 25th section of the judiciary act, to the Supreme Court of the United States. A writ of error alone can bring up the cause. *Verden v. Coleman*, 192.

## ATTORNEY, POWER OF.

1. Although under a power of attorney, authorizing a conveyance of lands, the legal title does not pass when the attorney executes a deed, unless the sale was made in accordance with the requirements of the power, yet in this case, where the deed executed by the attorney was apparently within the scope of his power, and admitted the payment of the consideration, it was *prima facie* evidence of the conveyance of the legal title. *Morrill v. Cone*, 75.
2. The evidence offered to show that the power of attorney had not been complied with, was not sufficient in an action of ejectment to recover the lands after a long period of time had elapsed, and the lands had been repeatedly sold. *Ibid.*

## BILLS OF EXCHANGE AND PROMISSORY NOTES.

See COMMERCIAL LAW.

## BOUNTY LANDS.

See LANDS, PUBLIC.

## CALIFORNIA, LANDS IN.

1. Where the clear weight of the proof is against the possession or occupation by the grantee of land in California, the date of the grant was altered without any explanation of the alteration, and the genuineness of the

CALIFORNIA, LANDS IN, (*Continued.*)

signature of the Governor to a certificate of approval of the Departmental Assembly doubted, this court will reverse the decree of the court below confirming the claim, and remit it for further evidence and examination. *United States v. Galbraith*, 89.

2. Where a grant of land in California describes it by name and boundaries, and then states that the land of which donation is made is one league in length and three-quarters of a league in breadth, a little more or less, as shown by the map which goes with the expediente, with the usual reservations of the sobrante or overplus to the use of the nation, the grant will be confirmed to the extent of one league in length and three-quarters of a league in breadth, without extending it to the boundaries mentioned. *Gonzales v. United States*, 161.
3. Where there was a grant of land in California included within certain boundaries laid down on a map, and the grant said it was made for two square leagues, but the map and the evidence clearly show that the intention was to give to the grantee a rancho of at least two leagues on each side line, the equity of the claim requires that it should be confirmed to that extent, situate within the given out-boundary. *United States, v. Pacheco*, 225.
4. It is for the United States to grant the legal title. *Ibid.*
5. Where there was an order from the Governor allowing a claimant to search for land in California, and the claimant subsequently petitioned the Governor for a grant, who referred the petition to the alcalde by a marginal order, and the alcalde reported that the land did not belong to any private individual, this does not amount to a vested interest in the land, binding on the Government. *United States v. Garcia*, 274.
6. The law of Mexico, passed in 1824, directs that it shall not be permitted to unite in one hand, as property, more than one league of irrigable land, four leagues of farming land, and six for stock raising. *United States v. Hartnell's Executors*, 286.
7. Therefore, where a person had obtained a grant of five leagues in Lower California, and another grant of eleven leagues in Upper California, and the Departmental Assembly held the law to be, that the Governor could not unite in the same hand more than eleven leagues, although it might be in different tracts, the grant in Upper California must be restricted to six leagues. *Ibid.*
8. It was necessary to its being definitively voted, that the grant of the Governor should have the concurrence of the Departmental Assembly; and as they reduced it, taking off five leagues, this was the state of the title, as respected quantity, when the treaty with Mexico was made. *Ibid.*
9. The 12th section of the act of 31st of August, 1852, providing for an appeal from the board of land commissioners in California to the District Court, directs that notice of an intention to appeal shall be filed within six months; and on failure to file such notice, the appeal shall be regarded as dismissed. *Yturvide's Executors v. United States*, 290.
10. This language is mandatory on the court, and admits of no discretion. In case of such failure, the appeal must be dismissed. *Ibid.*



CALIFORNIA, LANDS IN, (*Continued.*)

11. This case distinguished from those in which a court can relax its own rules.  
*Ibid.*
12. Where property in California has been in the undisturbed possession of the claimant and his heirs for sixteen years, without any other person claiming or exercising a possession or right of possession, and it appears that the grant was originally made by Governor Alvarado during his term of office, the claim will be confirmed. *United States v. D. Haro's Heirs*, 294.
13. Where a grant of land in California was genuine, and issued by the proper authority, a fraudulent attempt to alter it by erasures and interlineations for the purpose of enlarging the quantity, made after California had been ceded to the United States, will not vitiate the original grant. *United States v. West's Heirs*, 315.
14. The book called Jimeno's Index is not an authoritative proof of grants enumerated in it, or as a conclusive exclusion of grants not so registered, but may be referred to as an auxiliary memorandum made by Jimeno officially while he was secretary. *Ibid.*
15. Where none of the preliminary steps required by the act of 1824 and regulations of 1828 have been observed or shown, as there required, previous to the grant, and no record of the title, as also there required, and but slight evidence of possession, either as to value or permanency, the proof of the genuineness of the official signatures to the grant is not sufficient. Evidence, under the circumstances of grants in California, should be given so as to make the ante-dating of the grant irreconcilable with the weight of the proof; otherwise, there can be no protection against imposition and fraud. *United States v. Teschmaker*, 392.
16. The record of the title must be shown, or its absence accounted for to the satisfaction of the court. *Ibid.*
17. Where the preliminary proceedings to a grant of land in California were not produced, and the grant and certificate of approval came from the hands of the claimants, no record of them being found among the Mexican archives or in any book, nor is there any evidence of possession or occupation deserving notice or consideration, the case will be remanded to the court below for further evidence. *United States v. Pico*, 406.
18. Where neither the grant of land in California, nor the certificate of approval by the Departmental Assembly, are found among the Mexican archives, nor the record of them upon any book of records, but both papers came from the hands of the claimants, the case will be remanded for further evidence. *United States v. Vallejo*, 416.
19. Where the objection to a grant of land in California was, that the grantee was a foreigner, and therefore not entitled to hold land, this court is of the opinion that the testimony of conversations of admissions, relied upon to prove that fact, ought not to be received to outweigh the *prima facie* (if not conclusive) presumptions arising from the expediente and definitive title. *United States v. Dalton*, 436.
20. A petition was presented to the board of commissioners in California, claiming the confirmation of a title to land, which petition alleged—

CALIFORNIA, LANDS IN, (*Continued.*)

1. That a grant had been issued by Micheltorena, and delivered in June, 1843.
2. That it was recorded.
3. That it was not to be found in the archives, because the record had been burned.
4. That the grant was approved by the Departmental Assembly, but that the record of such approval had been burned.
5. That therefore the claimant could not produce any evidence that the grant had been so approved. *United States v. Fuentes*, 443.
21. The secondary evidence offered does not prove the existence of such records, nor their destruction. The recital in the grant is not sufficient evidence of this. *Ibid.*
22. The paper produced by the claimant, purporting to be a grant, must therefore be judged by itself. There was no evidence that it had been preceded by the usual formalities, such as a petition, an examination, an inquiry into the character of the applicant, an order for a survey, a reference to a magistrate for a report, a transmission of the grant to the Departmental Assembly, nor was there an expediente on file. *Ibid.*
23. Where these requirements do not appear, a presumption arises against the genuineness of the grant, making it a proper subject of inquiry before that fact can be admitted. *Ibid.*
24. The evidence produced in this case does not establish the genuineness of the grant. *Ibid.*
25. There is also an absence of all proof that the grant had been delivered to the grantee, then a minor, or to any one for him. If the grant was genuine, and not delivered until after the cession of California to the United States, it would not give the grantee any right to claim the land. *Ibid.*
26. A recital in the paper or grant, that the pre-requisites had been complied with, is not sufficient ground for a presumption that they had been observed. The cases decided heretofore by this court do not support the position. *Ibid.*
27. These cases examined. *Ibid.*
28. If the conditions imposed by the grant were conditions subsequent, yet the grantee allowed years to pass without any attempt to perform them until a change of circumstances had taken place, which amounts to evidence of an abandonment. *Ibid.*

## CHANCERY.

1. Where the complainant set up in his bill that a deed, power of attorney, and other writings, all which, as alleged, were executed in contemplation of a suit for the recovery of his patrimonial inheritance of which he had been unjustly deprived, were obtained by imposition and fraud, and also that a deed, executed by him in the adjustment of the estate among the parties participating in the litigation to recover it, was obtained by like fraud and imposition, held, that upon the pleadings and proofs, the allegations are not sustained; on the contrary, the transactions in both respects referred to were fair, open, and unexceptionable. *Collins v. Thompson*, 246.



CHANCERY, (*Continued.*)

2. Where a bill of review was filed, alleging that the decree was obtained by fraud, which allegations were denied in the answer, and it appeared by the evidence that the complainant had lost the suit by his own neglect, the bill of review was properly dismissed by the court below. *McMicken's Executors v. Perin*, 282.
3. The Real Estate Bank of Arkansas was established on a loan by the State of Arkansas of its bonds, which the bank sold to form its capital. The stockholders gave their bonds and mortgaged their lands to the extent of their subscriptions. Notrebe subscribed for three hundred shares, and mortgaged his land for thirty thousand dollars. *Refeld v. Woodfolk*, 318.
4. Notrebe sold the land with a covenant of warranty, and then died. The purchaser paid all the money, and the widow and heir at law of Notrebe offered to convey the land by a deed, with a covenant of warranty of title. *Ibid.*
5. The Circuit Court, sitting as a court of equity, decreed that the executors should remove the encumbrance whenever it could be done, and in the mean time they should deposit with the clerk of the court bonds of the State of Arkansas to an amount sufficient to pay Notrebe's subscription, with interest, in case the bank should prove a total loss. *Ibid.*
6. This decree was erroneous. *Ibid.*
7. The purchaser must rely upon his remedy at law under the covenant of warranty. He can either take the deed offered by the widow and heirs at law, or retain the original agreement. *Ibid.*
8. The cases examined upon the point, how far a court of chancery will interfere in such a case. *Ibid.*
9. In a bill by judgment creditors against an incorporated insurance company and its stockholders, to compel the latter to pay up the balance due on their several subscriptions to the stock, they cannot be allowed to defend themselves by an allegation that their subscriptions were obtained by fraud and misrepresentation of the agent of the company. *Ogilvie v. Knox Insurance Co.*, 380.
10. It is too late, after the investment is found to be unprofitable, and debts are incurred, for stockholders to withdraw their subscriptions, under such a pretence or plea. *Ibid.*
11. It is not a sufficient objection to the bill, for want of proper parties, that all the creditors or stockholders are not sued. If necessary, the court may, at the suggestion of either party that the corporation is insolvent, administer its assets by a receiver, and thus collect all the subscriptions or debts to the corporation. *Ibid.*
12. This court has never reviewed the judgment of an inferior court of a State, where there was an appeal to the Supreme Court of the State, upon a subject within the jurisdiction of such court, upon the allegation that its proceedings were irregular or illegal, and contrary to the law of the State. *Adams v. Preston*, 473.
13. The present is such a case. *Ibid.*
14. The Parish Court of New Orleans had exclusive jurisdiction over property

CHANCERY, (*Continued.*)

ceded by insolvents, and the courts of the United States have no jurisdiction over such insolvencies. *Ibid.*

15. An allegation of fraud in a bill filed to review such proceedings in insolvency, which was afterwards abandoned, is not sufficient to give to the Circuit Court jurisdiction to review the proceedings of the State court. *Ibid.*
16. Moreover, the complainant has no equitable claim to relief, his assignors having no mortgage lien on the property, when the judgments were assigned to the complainant. *Ibid.*

## COLLECTORS OF THE CUSTOMS.

1. The act of Congress, passed on the 7th of May, 1822, (3 Stat. at L., 695,) enumerated the ports of Boston, New York, Philadelphia, Baltimore, Charleston, Savannah, and New Orleans, in which the collector was allowed to receive more than three thousand dollars a year. In the non-enumerated ports, the maximum rate of annual compensation or salary allowed to the office was three thousand dollars. *United States v. Walker*, 299.
2. Mobile was one of the non-enumerated ports, and consequently the salary of the collector at Mobile was not to exceed three thousand dollars, by that act. *Ibid.*
3. This act was not repealed by any of the numerous acts, called additional compensation acts, which were passed from time to time between 1833 and 1841, until one of these temporary acts, viz: the act of 1838, (5 Stat. at L., 265,) was continued in force until otherwise directed by law by the 7th section of the act for the relief of Chastelain and Ponvert, and for other purposes, passed on the 21st of July, 1840. (6 Stat. at L., 815.) *Ibid.*
4. The history and purport given of the several statutes respecting the compensation of collectors, with the reasons which led to the passage of the act of 1841. *Ibid.*
5. Nor was it repealed by the act of 3d March, 1841. (5 Stat. at L., 432.) There is no repugnancy between the acts. Repeal by implication, upon the ground that the subsequent provision upon the same subject is repugnant to the prior law, is not favored in any case; but where such repeal would operate to reopen accounts at the Treasury Department long since settled and closed, the supposed repugnancy ought to be clear and controlling before it can be held to have that effect. *Ibid.*
6. By the true construction of this act of 1841, every collector is required to include in his quarter-yearly accounts all sums received by him for rent and storage of goods, wares, and merchandise, stored in the public stores, for which rent is paid beyond the rent paid by him; and if, from such accounting, the aggregate sums received from that source exceed two thousand dollars, he is directed and required to pay the excess into the Treasury as part and parcel of the public money. When the sums so received from that source in any year do not in the aggregate exceed two thousand dollars, he may retain the whole to his own use; and in



COLLECTORS OF THE CUSTOMS, (*Continued.*)

no case is he obliged to pay into the Treasury anything but the excess, beyond the two thousand dollars. *Ibid.*

7. Collectors of the non-enumerated ports may receive, as an annual compensation for their services, the sum of three thousand dollars from the sources of emolument recognised and prescribed by the act of 7th May, 1822, provided their respective offices yield that amount from these sources, after deducting the necessary expenses incident to the office, and not otherwise; and in addition thereto, they are also entitled to whatever sum or sums they may receive for rent and storage, provided the amount does not exceed two thousand dollars; but the excess, beyond that sum, they are expressly required to pay into the Treasury as part and parcel of the public money. *Ibid.*

## COLLISION OF VESSELS.

See ADMIRALTY.

## COMMERCIAL LAW.

1. A commercial house sent to a correspondent eight bills of exchange, four purporting to be the first and the other four the second of exchange, and the whole eight accepted on their face by that commercial house, and each of the four made payable to the order of their correspondent, but in blank as to the names of the drawers, and the address of the drawees, and as to date and amount and time and place of payment. *Bank of Pittsburgh v. Neal*, 96.
2. The correspondent filled up and had discounted the four which were the first of exchange, which were not involved in the present suit. *Ibid.*
3. Two of the four of the second of exchange were filled up, varying from the others, not only in dates and amounts, but also as to time and place of payment. *Ibid.*
4. These bills were discounted by a bank without any knowledge whatever that either had been perfected and filled up by the payee without authority, or of the circumstances under which they had been intrusted to his care, unless the words "second of exchange, first unpaid," can be held to have that import. *Ibid.*
5. The effect of these words was a question of law, and not of fact for the jury. *Ibid.*
6. The bills described above were not parts of sets of bills of exchange. They were perfected, filled up, and negotiated, by the correspondent of the defendants, to whom the blank acceptances had been intrusted as single bills of exchange; and for the acts of their correspondent, in that behalf, the defendants are responsible to a bona fide holder for value, without notice that the acts were performed without authority. *Ibid.*
7. The case falls within the rule, that where one of two innocent parties must suffer, through the fraud or negligence of a third party, the loss shall fall upon him who gave the credit. *Ibid.*
8. Where there was insurance upon the freight of a vessel on a voyage from Charleston to Rio Janeiro, and from thence to a port of discharge in the United States, the insurance was upon the freight of each successive voyage, and is to be applied to the freight at risk at any time, whether

COMMERCIAL LAW, (*Continued.*)

- on the outward or homeward voyage, to the amount of the valuation. *Insurance Co. of the Valley of Virginia v. Mordecai*, 111.
9. Therefore, where the vessel performed the outward voyage, and was condemned as unseaworthy, and the whole freight of the return voyage lost, the underwriters were not entitled to a deduction of the freight earned on the outward voyage. *Ibid.*
  10. Where bills of exchange were drawn by the principal acting partner of a firm in the name of the firm, all the partners were responsible. *Kimbro v. Bullitt*, 256.
  11. Whenever there are written articles of agreement between the partners, their power and authority, *inter se*, are to be ascertained and regulated by the terms and conditions of the written stipulations. But, independently of any such stipulations, each partner possesses an equal and general power and authority, in behalf of the firm, to transact any business within the scope and objects of the partnership, and in the course of its trade and business. *Ibid.*
  12. Where partnerships are formed for the mere purpose of farming, one partner does not possess the right, without the consent of his associates, to draw or accept bills of exchange, for the reason that such a practice is not usual, nor is it necessary for carrying on the farming business. *Ibid.*
  13. In the present case, the jury found that this was a trading firm, and their verdict is conclusive. *Ibid.*
  14. The right of the acceptors, who had paid the money, to recover from the drawers, cannot be affected by the fact that one of the drawers had applied the money to an unlawful purpose. *Ibid.*
  15. An arrangement was made between creditor and debtor houses, that the latter should execute an assignment, and confess judgment, and that the former should give a receipt in full, and agree that the notes of the debtor house should be cancelled. *Clark v. Bowen*, 270.
  16. The assignment was made, the judgment confessed, and the receipt given. *Ibid.*
  17. A solvent partner of the debtor house was absent, and neither consented to the assignment nor to the confession of judgment, and upon his motion the judgment was vacated as to him, as being confessed without authority. *Ibid.*
  18. The judgment was then vacated as to all the partners, and the assigned property taken out of the hands of the trustee by a prior claim. Whereupon the creditor house brought suit upon the notes which had not been destroyed. *Ibid.*
  19. The whole arrangement to secure the debt being in effect annulled, the original indebtedness stood revived, and judgment was properly rendered upon the notes. *Ibid.*
  20. Where an endorsement upon a promissory note was made, not by the payee, but by persons who did not appear to be otherwise connected with the note, and the note thus endorsed was handed to the payee before maturity, a motion to strike out of the declaration a recital of these



COMMERCIAL LAW, (*Continued.*)

facts, and also an allegation that this endorsement was thus made for the purpose of guarantying the note, was properly overruled. *Rey v. Simpson*, 341.

21. In Minnesota, where the transaction took place, suitors are enjoined by law, in framing their declarations, to give a statement of the facts constituting their cause of action; which statement is required to be expressed in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. *Ibid.*
22. The facts above recited were a part of the facts constituting the cause of action, and therefore properly inserted in the declaration. *Ibid.*
23. Parol proof of the circumstances under which the endorsement was made was admissible, and the weight of authority is in harmony with this principle. *Ibid.*
24. The judgment against these endorsers was properly given, upon the ground that they were original parties to the note. *Ibid.*
25. The declaration was sufficient, under the system of pleading which prevails in Minnesota. *Ibid.*
26. The regulations at the port of Rio Janeiro require the master of a foreign vessel, upon her arrival at the port, to deliver to the proper officer, upon his visit to the vessel, his passport, manifest, and list of passengers. He is also required, at the end of the manifest, to make such declarations or statement for his security, by adding any packages that may be omitted or exceeded in the manifest, giving his reason for such omissions; no excuse will afterwards be admitted for any omissions or error. *Howland et al. v. Greenway et al.*, 491.
27. The regulations further declare that, when it is proved that the vessel brought more goods than are specified or contained in the manifest, and not declared by the master, such goods will be seized and divided among the seizers, the master also paying into the national treasury a fine of one-half their value, besides the customary duties thereon. *Ibid.*
28. Where the master of a vessel omitted to enter a part of the cargo upon his manifest, and in consequence thereof the boxes were seized and confiscated, the vessel and her owners were responsible to the consignees upon a libel filed in the District Court of New York, where the contract of affreightment was made. *Ibid.*
29. A delivery into the custom-house under the order of the officers, and the payment of duties by the consignees, did not discharge the contract of the owners. The delivery contemplated by the contract was a transfer of the property into the power and possession of the consignees. *Ibid.*
30. The evidence upon the amount of damages is not such as to justify this court in reversing the decree of the court below. *Ibid.*

## CONSTITUTIONAL LAW.

1. A law of the State of Alabama, passed in 1854, requiring the owners of steamboats navigating the waters of the State, before such boat shall leave the port of Mobile, to file a statement in writing, in the office of the probate judge of Mobile county—setting forth, first, the name of the

CONSTITUTIONAL LAW, (*Continued.*)

- vessel; second, the name of the owner or owners; third, his or their place or places of residence; fourth, the interest each has in the vessel—is in conflict with the act of Congress passed on the 17th of February, 1793, so far as the State law is brought to bear upon a vessel which had taken out a license, and was duly enrolled under the act of Congress for carrying on the coasting trade, and plied between New Orleans and the cities of Montgomery and Wetumpka, in Alabama. *Sinnot v. Davenport*, 227.
2. The State law, in such a case, is therefore unconstitutional and void. *Ibid.*
  3. An act of Congress, passed in pursuance of a clear authority under the Constitution, is the supreme law of the land, and any law of a State in conflict with it is inoperative and void. *Ibid.*
  4. The principle established in the preceding case extends also to a steamboat employed as a lighter and towboat, sometimes towing vessels beyond the outer bar of the bay, and into the gulf to the distance of several miles. *Foster v. Davenport*, 244.
  5. The character of the navigation and business in which this boat was employed cannot be distinguished from that in which the vessels it towed or unloaded were engaged. The lightering or towing was but the prolongation of the voyage of the vessels assisted to their port of destination. *Ibid.*
  6. The charter of the Ohio and Mississippi Railroad Company, passed by the Legislature of Indiana in 1848, and a supplement in 1849, authorized the county commissioners of a county through which the road passed to subscribe for stock and issue bonds, provided a majority of the qualified voters of the county voted, on the 1st of March, 1849, that this should be done. *Aspinwall v. Commissioners of the County of Daviess*, 364.
  7. The election was held on the appointed day, and a majority of the voters voted that the subscription should be made. *Ibid.*
  8. But before the subscription was made, the State adopted a new Constitution, which went into effect on the 1st November, 1851. One of the articles prohibited such subscriptions, unless paid for in cash, and prohibited also a county from loaning its credit or borrowing money to pay such subscriptions. *Ibid.*
  9. In 1852, the county commissioners of Daviess county subscribed for stock in the railroad company, and issued their bonds for the amount. *Ibid.*
  10. The provisions of the railroad charter, authorizing the commissioners to subscribe, conferred a power upon a public corporation or civil institution of Government, which could be modified, changed, enlarged, or restrained, by the legislative authority, the charter not importing a contract, within the meaning of the clause of the Constitution prohibiting a State from passing a law impairing the obligation of contracts. *Ibid.*
  11. The mere vote to subscribe did not, of itself, form such a contract with the railroad company as would be protected by the 10th section of the 1st article of the Constitution of the United States. Until the subscription was actually made, the contract was unexecuted. *Ibid.*



CONSTITUTIONAL LAW, (*Continued.*)

12. The bonds were issued in violation of the Constitution of Indiana, and are therefore void. *Ibid.*

## CONTRACT.

1. In the case of *Slater v. Emerson*, 19 Howard, 224, this court held that where there was a contract to finish a railroad by a given day, the parties to which were the contractor with the railroad company of the one part, and a stockholder in the company of the other part, time was of the essence of the contract; and there could be no recovery on the written agreement without showing performance within the time limited; but added, that a subsequent performance and acceptance by the defendant would authorize a recovery in a *quantum meruit*. *Emerson v. Slater*, 28.
2. This court now holds that the promise of the stockholder contained in the written agreement was an original undertaking, on a good and valid consideration moving between the parties to the instrument, and not a special promise for the debt, default, or misdoings, of another. Consequently, it is not within the operation of the statute of frauds. *Ibid.*
3. The cases upon this point examined. *Ibid.*
4. Being an original contract, parol evidence was admissible to show that the parties had, subsequently to the date of the contract, and before a breach of it, made a new oral agreement, on a new and valuable consideration, enlarging the time of performance, and varying its terms. *Ibid.*

## DEEDS.

1. Where a deed for land in Wisconsin was voluntarily destroyed by the parties without its being recorded, and adverse parties were bona fide purchasers without notice, (according to the decision of the Supreme Court of Wisconsin,) the destroyed deed was inoperative under the statutes of Wisconsin in relation to the registry of deeds. *Parker v. Kane*, 1.
2. A deed which conveyed "an undivided fourth part of the following described parcel or tract of land, viz: lots number one and six, being that part of the northeast quarter lying east of the Milwaukee river," conveys only lots one and six, and not that part of the northeast quarter which is not included within the lots one and six. *Ibid.*

## DUTIES.

See COLLECTORS OF THE CUSTOMS.

## EVIDENCE.

1. In the case of *Slater v. Emerson*, 19 Howard, 224, this court held that where there was a contract to finish a railroad by a given day, the parties to which were the contractor with the railroad company of the one part, and a stockholder in the company of the other part, time was of the essence of the contract; and there could be no recovery on the written agreement without showing performance within the time limited; but added, that a subsequent performance and acceptance by the defendant would authorize a recovery in a *quantum meruit*. *Emerson v. Slater*, 28.

EVIDENCE, (*Continued.*)

2. This court now holds that the promise of the stockholder contained in the written agreement was an original undertaking, on a good and valid consideration moving between the parties to the instrument, and not a special promise for the debt, default, or misdoings, of another. Consequently, it is not within the operation of the statute of frauds. *Ibid.*
3. The cases upon this point examined. *Ibid.*
4. Being an original contract, parol evidence was admissible to show that the parties had, subsequently to the date of the contract, and before a breach of it, made a new oral agreement, on a new and valuable consideration, enlarging the time of performance, and varying its terms. *Ibid.*

## INSURANCE.

1. Where there was insurance upon the freight of a vessel on a voyage from Charleston to Rio Janeiro, and from thence to a port of discharge in the United States, the insurance was upon the freight of each successive voyage, and is to be applied to the freight at risk at any time, whether on the outward or homeward voyage, to the amount of the valuation. *Insurance Co. of the Valley of Virginia v. Mordecai*, 111.
2. Therefore, where the vessel performed the outward voyage, and was condemned as unseaworthy, and the whole freight of the return voyage lost, the underwriters were not entitled to a deduction of the freight earned on the outward voyage. *Ibid.*

## INSURANCE COMPANY.

1. In a bill by judgment creditors against an incorporated insurance company and its stockholders, to compel the latter to pay up the balance due on their several subscriptions to the stock, they cannot be allowed to defend themselves by an allegation that their subscriptions were obtained by fraud and misrepresentation of the agent of the company. *Ogilvie v. Knox Insurance Co.*, 380.
2. It is too late, after the investment is found to be unprofitable, and debts are incurred, for stockholders to withdraw their subscriptions, under such a pretence or plea. *Ibid.*
3. It is not a sufficient objection to the bill, for want of proper parties, that all the creditors or stockholders are not sued. If necessary, the court may, at the suggestion of either party that the corporation is insolvent, administer its assets by a receiver, and thus collect all the subscriptions or debts to the corporation. *Ibid.*

## INTEREST.

1. Whilst Minnesota was a Territory, the following statute was passed:  
 Sec. 1. Any rate of interest agreed upon by the parties in contract, specifying the same in writing, shall be legal and valid.  
 Sec 2. When no rate of interest is agreed upon or specified in a note or other contract, seven per cent. per annum shall be the legal rate. *Brewster v. Wakefield*, 118.
2. Where a party gave two promissory notes, in one of which he promised to pay, twelve months after the date thereof, a sum of money, with interest thereon at the rate of twenty per cent. per annum from the date thereof,



INTEREST, (*Continued.*)

and in another promised to pay another sum, six months after date, with interest at the rate of two per cent. per month, the mode of computing interest under the statute was to calculate the interest stipulated for up to the time when the notes became due, and after that time at the rate of seven per cent. per annum. *Ibid.*

## JUDGMENT.

1. Where proceedings were had in Minnesota for the sale of property mortgaged to secure a debt, and the judgment of the court below was, that the property should be sold, there appears to be no error in the judgment, and it must therefore be affirmed. *Lawler v. Claflin*, 23.
2. Where streets were opened in New Orleans, a sum of money, as indemnity, was allowed to G, as being the supposed owner of the property condemned. *City of New Orleans v. Gaines*, 141.
3. D claimed to be the owner of the property, and brought a suit against the city for the money, in which suit G was cited for the purpose of having the question decided, to whom the property belonged, and judgment was rendered against the city in favor of D. *Ibid.*
4. Afterwards, G brought a suit in the Circuit Court of the United States, and the city pleaded the former judgment in bar. *Ibid.*
5. But, as these facts were not given in evidence upon the trial, nor did the judge make any statement of facts found by him, the record presents only the judgment against the city in favor of G, and there is no ground of error upon which this court can reverse the judgment. *Ibid.*
6. Where the matter in controversy was the right to the mayoralty in Georgetown, and there was a judgment of ouster in the Circuit Court, if the defendant filed the necessary bond and sued out a writ of error to this court, this amounts to a supersedeas upon the judgment. *United States ex relatione Crawford v. Addison*, 174.
7. An arrangement was made between creditor and debtor houses, that the latter should execute an assignment, and confess judgment, and that the former should give a receipt in full, and agree that the notes of the debtor house should be cancelled. *Clark v. Bowen*, 270.
8. The assignment was made, the judgment confessed, and the receipt given. *Ibid.*
9. A solvent partner of the debtor house was absent, and neither consented to the assignment nor to the confession of judgment, and upon his motion the judgment was vacated as to him, as being confessed without authority. *Ibid.*
10. The judgment was then vacated as to all the partners, and the assigned property taken out of the hands of the trustee by a prior claim. Whereupon the creditor house brought suit upon the notes which had not been destroyed. *Ibid.*
11. The whole arrangement to secure the debt being in effect annulled, the original indebtedness stood revived, and judgment was properly rendered upon the notes. *Ibid.*
12. Where no question was raised upon the trial of the case in the court below for the consideration of this court, nor did the plaintiff in error, by

JUDGMENT, (*Continued.*)

counsel or otherwise, make one here, the judgment will be affirmed with costs and interest at the rate of ten per cent. per annum. *Kilbourne et al. v. State Savings Institution of St. Louis*, 503.

## JURISDICTION.

1. Where a decree for the partition of lands was made by a State court having jurisdiction over the subject matter and the parties, which decree was affirmed by the Supreme Court of the State, this court cannot inquire, in a collateral action, whether errors or irregularities exist in the proceedings. *Parker v. Kane*, 1.
2. Where the question decided by the Supreme Court of Louisiana was, that the introduction of a judgment obtained in Mississippi for the same cause of action which was then before the court of Louisiana was not such an alteration of the substance of the demand as was forbidden by the code of practice, this is not a question which can be revised by this court under the twenty-fifth section of the judiciary act; it being merely a question of pleading and evidence in support of a new allegation, arising according to the practice in Louisiana so as to reach the merits of the case. *White v. Wright*, 19.
3. Upon a motion to dismiss an appeal, upon the ground of a want of jurisdiction originally in the District Court, the question of jurisdiction in that court is a proper one for appeal to this court, and for argument when the case is regularly reached. This court have jurisdiction on such an appeal. The motion to dismiss, upon that ground, must therefore be overruled. *Nelson v. Leland*, 48.
4. Where a steamboat was built at Louisville, in Kentucky, and the persons who furnished the boilers and engines libelled the vessel in admiralty in the District Court of the United States for the eastern district of Louisiana, that court had no jurisdiction of the case. *Roach v. Chapman*, 129.
5. A contract for building a ship, or supplying engines, timber, &c., is not a maritime contract. This court so decided in 20 Howard, 400, and now reaffirms that decision. *Ibid.*
6. The State law of Kentucky, which creates a lien in such a case, cannot confer jurisdiction on the courts of the United States; and the preceding decisions of this court do not justify an inference to the contrary. *Ibid.*
7. Where the matter in controversy was the right to the mayoralty in Georgetown, the salary of which office was \$1,000 per annum, payable monthly, and the duration of which office was two years, this court has jurisdiction of a case coming up by writ of error from the Circuit Court of the United States for the District of Columbia. *United States ex relatione Crawford v. Addison*, 174.
8. The fact that the salary is payable monthly makes no difference; the appropriation, when made, being made for the whole sum. *Ibid.*
9. Where the decision of a State court was against the validity of an entry of land which had been allowed by the proper officers of the United States, this court has jurisdiction, under the 25th section of the judiciary act, to revise that judgment, whether the invalidity was decreed upon a question of fact or of law. *Lytle v. State of Arkansas*, 193.



JURISDICTION, (*Continued.*)

10. The adjudication of the register and receiver is subject to revision in the courts of justice, on proof, showing that the entry was obtained by fraud and the imposition of false testimony on those officers, as to settlement and cultivation. This court has so decided heretofore. *Ibid.*
11. Over the questions raised in the court below, of the effect of a bona fide purchase and of the statute of limitations, this court has no jurisdiction. *Ibid.*
12. But the evidence shows that the entry was obtained by false affidavits as to residence and cultivation. The judgment of the Supreme Court of Arkansas is therefore affirmed. *Ibid.*
13. Where there was a contract for raising a sunken vessel upon certain stipulations, the party who raised the vessel cannot abandon it, and claim salvage in a court of admiralty. *Bondies v. Sherwood*, 214.
14. This court does not now decide whether, in suits for salvage, the suit may be in personam and in rem jointly. The question is still an open one. *Ibid.*
15. Nor does it decide whether the maritime law of salvage applies to a vessel engaged in the internal trade of a State, proceeding from a port in the same, up a river wholly within the same. *Ibid.*
16. Where certain parties joined together to carry on an adventure in trade for their mutual benefit—one contributing a vessel, and the other his skill, labor, experience, &c.—and there was to be a communion of profits on a fixed ratio, it was a contract over which a court of admiralty had no jurisdiction. *Ward v. Thompson*, 330.
17. Where the decision of the Supreme Court of a State was against the validity of a title to land derived from a confirmation by the board of commissioners sitting under the act of March 3, 1807, this court has jurisdiction, under the 25th section of the judiciary act, to review that decision. *Berthold v. McDonald*, 334.
18. Where the controversy was between two claimants to land, both of whom held equitable titles only under confirmation by the board of commissioners above mentioned, the court had a right to go behind the *prima facie* title resulting from the confirmation, and to instruct the jury as to such facts as would tend to establish the superior equity of one of the claimants. *Ibid.*
19. Where a mortgage of land and slaves, in Louisiana, was made to the Bank of Louisiana, the property sold in the manner pointed out by the charter of the bank, the purchasers applied to the District Court, (State court,) under a statute of Louisiana, for a monition, citing all persons who objected to the sale to make their objection known; that court decided that the sale was null and void, but the Supreme Court reversed the judgment as to the widow, and those claiming under her; this judgment cuts off all the objections that apply to the manner of conducting the sale, and to the form of the judgment in the court below. *Jeter v. Hewitt*, 352.
20. The Supreme Court of the State decided that the courts below had jurisdiction of the case, and that decision is binding upon this court. The

JURISDICTION, (*Continued.*)

whole matter now in controversy has therefore been legally adjudicated by the courts of the State. *Ibid.*

21. This court has never reviewed the judgment of an inferior court of a State, where there was an appeal to the Supreme Court of the State, upon a subject within the jurisdiction of such court, upon the allegation that its proceedings were irregular or illegal, and contrary to the law of the State. *Adams v. Preston*, 473.
22. The present is such a case. *Ibid.*
23. The Parish Court of New Orleans had exclusive jurisdiction over property ceded by insolvents, and the courts of the United States have no jurisdiction over such insolvencies. *Ibid.*
24. An allegation of fraud in a bill filed to review such proceedings in insolvency, which was afterwards abandoned, is not sufficient to give to the Circuit Court jurisdiction to review the proceedings of the State court. *Ibid.*
25. Moreover, the complainant has no equitable claim to relief, his assignors having no mortgage lien on the property, when the judgments were assigned to the complainant. *Ibid.*

## LANDS IN CALIFORNIA.

See CALIFORNIA.

## LANDS, PUBLIC.

1. Congress reserved the sixteenth section of the public lands in all the new States for the support of schools, for the benefit of the inhabitants of the township. *Springfield Township v. Quick*, 56.
2. So that the funds arising from this section are applied to the use of the inhabitants of the township, the State has a right to apply funds raised from other sources, according to its discretion, for the purposes of education throughout the State. *Ibid.*
3. In an action of ejectment for the Hot Springs in Arkansas, wherein one party claimed title through a pre-emption claim which they were allowed to enter by the register and receiver, and the other party through a New Madrid certificate, (the title of the United States not being drawn into question,) the former party had the better title. *Hale v. Gaines*, 144.
4. There was no regular survey and location of the New Madrid certificate until 1838, a prior application for a public survey in 1818, and certificate of a private survey in 1820, being irregular. *Ibid.*
5. The act of Congress of April, 1822, required these locations to be made within one year from the date of its passage. Consequently, the right to locate the New Madrid certificate expired in April, 1823. *Ibid.*
6. Nor does the act of 1843 support the survey of 1838, because it is not included within the provisions of the act. *Ibid.*
7. Whether or not the title acquired under the pre-emption is valid, is a question not now before this court; because the case is brought up from the Supreme Court of Arkansas under the twenty-fifth section of the judiciary act, and the decision of that court was in favor of the validity of the action of the register and receiver; and, moreover, the opposing party cannot set up an outstanding title in the United States. In order



LANDS, PUBLIC, (*Continued.*)

- to bring himself within the rule of that section, he must have a personal interest in the subject in litigation. *Ibid.*
8. The claim set up under a prior pre-emption was of no value, the land having been reserved from sale when an offer to locate the pre-emption right was made. *Ibid.*
  9. An act of Congress, passed in 1812, (2 Stat. at L., 729,) gave a bounty of 160 acres of land to every regular soldier of the army, and made void all sales or agreements by the grantee before the patent issued. *Maxwell v. Moore*, 185.
  10. Another act, passed in 1826, (4 Stat. at L., 190,) permitted the soldier, under certain circumstances, to surrender his patent, and select other land. This act did not contain the avoiding clause contained in the first act. *Ibid.*
  11. These acts have no necessary connection in this particular, and an agreement to convey, made after the first patent was surrendered, and before the second was issued, held to be valid and binding. *Ibid.*
  12. Where the decision of a State court was against the validity of an entry of land which had been allowed by the proper officers of the United States, this court has jurisdiction, under the 25th section of the judiciary act, to revise that judgment, whether the invalidity was decreed upon a question of fact or of law. *Lytle v. State of Arkansas*, 193.
  13. The adjudication of the register and receiver is subject to revision in the courts of justice, on proof, showing that the entry was obtained by fraud and the imposition of false testimony on those officers, as to settlement and cultivation. This court has so decided heretofore. *Ibid.*
  14. Over the questions raised in the court below, of the effect of a bona fide purchase and of the statute of limitations, this court has no jurisdiction. *Ibid.*
  15. But the evidence shows that the entry was obtained by false affidavits as to residence and cultivation. The judgment of the Supreme Court of Arkansas is therefore affirmed. *Ibid.*
  16. Where the decision of the Supreme Court of a State was against the validity of a title to land derived from a confirmation by the board of commissioners sitting under the act of March 3, 1807, this court has jurisdiction, under the 25th section of the judiciary act, to review that decision. *Berthold v. McDonald*, 334.
  17. Where the controversy was between two claimants to land, both of whom held equitable titles only under confirmation by the board of commissioners above mentioned, the court had a right to go behind the *prima facie* title resulting from the confirmation, and to instruct the jury as to such facts as would tend to establish the superior equity of one of the claimants. *Ibid.*

## LOUISIANA.

1. Where, according to the practice in Louisiana, the facts of the case are stated by the court below in the nature of a special verdict, an objection that the contract sued upon could not be proved by one witness only,

LOUISIANA, (*Continued.*)

- comes too late when made for the first time in this court. *Cucullu v. Emmerling*, 83.
2. According to that practice, the judge below finds facts, and not evidence of those facts. *Ibid.*
  3. Where a mortgage of land and slaves, in Louisiana, was made to the Bank of Louisiana, the property sold in the manner pointed out by the charter of the bank, the purchasers applied to the District Court, (State court,) under a statute of Louisiana, for a monition, citing all persons who objected to the sale to make their objection known; that court decided that the sale was null and void, but the Supreme Court reversed the judgment as to the widow, and those claiming under her; this judgment cuts off all the objections that apply to the manner of conducting the sale, and to the form of the judgment in the court below. *Jeter v. Hewitt*, 352.
  4. The Supreme Court of the State decided that the courts below had jurisdiction of the case, and that decision is binding upon this court. The whole matter now in controversy has therefore been legally adjudicated by the courts of the State. *Ibid.*

## MANDAMUS.

1. Where the matter in controversy was the right to the mayoralty in Georgetown, the salary of which office was \$1,000 per annum, payable monthly, and the duration of which office was two years, this court has jurisdiction of a case coming up by writ of error from the Circuit Court of the United States for the District of Columbia. *United States ex relatione Crawford v. Addison*, 174.
2. The fact that the salary is payable monthly makes no difference; the appropriation, when made, being made for the whole sum. *Ibid.*
3. A judgment of ouster being rendered in the Circuit Court, and the defendant having filed the necessary bond, and sued out a writ of error to this court, this amounts to a supersedeas upon the judgment. *Ibid.*
4. The case is not a proper one for a mandamus from this court to the judges below, or for a rule upon them to show cause why they should not carry out the judgment of ouster. *Ibid.*
5. The fact that the term of office will be about to expire when the writ of error is returnable, viz: December term, 1860, is not a sufficient reason for the interposition of this court at the present stage of the proceedings. *Ibid.*

## MINNESOTA.

1. Whilst Minnesota was a Territory, the following statute was passed:
  - Sec. 1. Any rate of interest agreed upon by the parties in contract, specifying the same in writing, shall be legal and valid.
  - Sec 2. When no rate of interest is agreed upon or specified in a note or other contract, seven per cent. per annum shall be the legal rate. *Brewster v. Wakefield*, 118.
2. Where a party gave two promissory notes, in one of which he promised to pay, twelve months after the date thereof, a sum of money, with interest thereon at the rate of twenty per cent. per annum from the date thereof,



MINNESOTA, (*Continued.*)

and in another promised to pay another sum, six months after date, with interest at the rate of two per cent. per month, the mode of computing interest under the statute was to calculate the interest stipulated for up to the time when the notes became due, and after that time at the rate of seven per cent. per annum. *Ibid.*

## PAROL EVIDENCE.

See EVIDENCE.

1. Parol proof of the circumstances under which an endorsement was made upon a promissory note was admissible. *Rey v. Simpson*, 341.

## PARTIES.

1. The parties who acquired liens on the mortgaged property subsequent to the mortgage in question were not necessarily parties to this appeal; and if they had appeared to the suit in the court below, one defendant, whose interest is separate from that of the other defendants, may appeal without them. *Brewster v. Wakefield*, 118.

## PARTITION.

1. Where a decree for the partition of lands was made by a State court having jurisdiction over the subject matter and the parties, which decree was affirmed by the Supreme Court of the State, this court cannot inquire, in a collateral action, whether errors or irregularities exist in the proceedings. *Parker v. Kane*, 1.

## PARTNERS AND PARTNERSHIP.

See COMMERCIAL LAW.

## PATENT RIGHTS.

1. The patent of the Tathams, for an improvement upon the machinery used for making pipes and tubes from lead or tin, when in a set or solid state, explained and sustained. *Le Roy v. Tatham*, 132.
2. Where a patentee, whose patent had been extended according to law, conveyed all his interest to another person, and the assignee brought suit against certain parties for an infringement of the patent, and these parties claimed, under a license granted by the original patentee before the assignment, it was necessary to show a connected chain of title to themselves, in order to justify their use of the improvements secured by the patent. *Chaffee v. Boston Belting Co.*, 217.
3. Having omitted to do this, the judgment of the court below, which was in favor of the defendants, must be reversed, and the case remanded for another trial. *Ibid.*
4. Whether the patent was for a process or a machine, is not decided in the present case. *Ibid.*

## PLEAS AND PLEADINGS.

1. Where a bill of review was filed, alleging that the decree was obtained by fraud, which allegations were denied in the answer, and it appeared by the evidence that the complainant had lost the suit by his own neglect, the bill of review was properly dismissed by the court below. *McMicken's Executors v. Perin*, 282.
2. Where the question decided by the Supreme Court of Louisiana was, that the introduction of a judgment obtained in Mississippi for the same

PLEAS AND PLEADINGS, (*Continued.*)

- cause of action which was then before the court of Louisiana was not such an alteration of the substance of the demand as was forbidden by the code of practice, this is not a question which can be revised by this court under the twenty-fifth section of the judiciary act; it being merely a question of pleading and evidence in support of a new allegation, arising according to the practice in Louisiana so as to reach the merits of the case. *White v. Wright*, 19.
3. Where an endorsement upon a promissory note was made, not by the payee, but by persons who did not appear to be otherwise connected with the note, and the note thus endorsed was handed to the payee before maturity, a motion to strike out of the declaration a recital of these facts, and also an allegation that this endorsement was thus made for the purpose of guarantying the note, was properly overruled. *Key v. Simpson*, 341.
  4. In Minnesota, where the transaction took place, suitors are enjoined by law, in framing their declarations, to give a statement of the facts constituting their cause of action; which statement is required to be expressed in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended. *Ibid.*
  5. The facts above recited were a part of the facts constituting the cause of action, and therefore properly inserted in the declaration. *Ibid.*
  6. Parol proof of the circumstances under which the endorsement was made was admissible, and the weight of authority is in harmony with this principle. *Ibid.*
  7. The judgment against these endorsers was properly given, upon the ground that they were original parties to the note. *Ibid.*
  8. The declaration was sufficient, under the system of pleading which prevails in Minnesota. *Ibid.*
  9. Where a patentee, whose patent had been extended according to law, conveyed all his interest to another person, and the assignee brought suit against certain parties for an infringement of the patent, and these parties claimed, under a license granted by the original patentee before the assignment, it was necessary to show a connected chain of title to themselves, in order to justify their use of the improvements secured by the patent. *Chaffee v. Boston Belting Co.*, 217.
  10. Having omitted to do this, the judgment of the court below, which was in favor of the defendants, must be reversed, and the case remanded for another trial. *Ibid.*
  11. Whether the patent was for a process or a machine, is not decided in the present case. *Ibid.*

## PRACTICE.

1. Where a writ of error was allowed in open court, in the Circuit Court, but this writ had no seal, and was not returned to this court with the transcript of the record, and two terms afterwards a paper was filed in the clerk's office, in form of a writ of error, but without a seal, and having no authenticated transcript annexed, the cause must be dismissed on motion. *Overton v. Cheek*, 46.



PRACTICE, (*Continued.*)

2. Where, according to the practice in Louisiana, the facts of the case are stated by the court below in the nature of a special verdict, an objection that the contract sued upon could not be proved by one witness only, comes too late when made for the first time in this court. *Cucullu v. Emmerling*, 83.
3. According to that practice, the judge below finds facts, and not evidence of those facts. *Ibid.*
4. A writ of error cannot be amended in this court. *Hodge v. Williams*, 87.
5. Therefore, where the party who was really the plaintiff in error, and sought to reverse the judgment, was made the defendant, and the party in whose favor the judgment in the court below was rendered was made plaintiff in error in the writ, it cannot be amended in this court, but must be dismissed. *Ibid.*
6. Whether the underwriters were discharged in consequence of the condemnation of the vessel as unseaworthy, was a question not made on the trial or presented to the court for decision, and therefore cannot be entertained here; neither can the question whether the policy was an open or valued one, as no exception was taken to ruling of the court below that it was a valued policy. *Insurance Co. of the Valley of Virginia v. Mordecai*, 111.
7. Although the laws of the Territory abolished the distinction between cases at law and cases in equity, and required all cases to be removed from an inferior to a higher court by writ of error, and not by appeal, yet such laws cannot regulate the process of this court; and the present case, being in the nature of a bill in equity, is properly brought up by appeal. *Brewster v. Wakefield*, 118.
8. The parties who acquired liens on the mortgaged property subsequent to the mortgage in question were not necessarily parties to this appeal; and if they had appeared to the suit in the court below, one defendant, whose interest is separate from that of the other defendants, may appeal without them. *Ibid.*
9. Where streets were opened in New Orleans, a sum of money, as indemnity, was allowed to G, as being the supposed owner of the property condemned. *City of New Orleans v. Gaines*, 141.
10. D claimed to be the owner of the property, and brought a suit against the city for the money, in which suit G was cited for the purpose of having the question decided, to whom the property belonged, and judgment was rendered against the city in favor of D. *Ibid.*
11. Afterwards, G brought a suit in the Circuit Court of the United States, and the city pleaded the former judgment in bar. *Ibid.*
12. But, as these facts were not given in evidence upon the trial, nor did the judge make any statement of facts found by him, the record presents only the judgment against the city in favor of G, and there is no ground of error upon which this court can reverse the judgment. *Ibid.*
13. No appeal can be taken from the final decision of a State court of last resort, under the 25th section of the judiciary act, to the Supreme Court of the United States. A writ of error alone can bring up the cause. *Verden v. Coleman*, 192.

PRACTICE, (*Continued.*)

14. Where no question was raised upon the trial of the case in the court below for the consideration of this court, nor did the plaintiff in error, by counsel or otherwise, make one here, the judgment will be affirmed with costs and interest at the rate of ten per cent. per annum. *Kilbourne et al. v. State Savings Institution of St. Louis*, 503.

## SHIPS AND VESSELS.

See ADMIRALTY.

## STOCKHOLDERS, LIABILITY OF, TO PAY UP.

See INSURANCE COMPANY.

## SUPERSEDEAS.

1. Where the matter in controversy was the right to the mayoralty in Georgetown, and there was a judgment of ouster in the Circuit Court, if the defendant filed the necessary bond and sued out a writ of error to this court, this amounts to a supersedeas upon the judgment. *United States ex relatione Crawford v. Addison*, 174.

## TAXES IN WASHINGTON.

1. Under the act to incorporate the city of Washington, passed on the 15th of May, 1820, amended by the act of 1824, it is not a condition to the validity of the sale of unimproved lands for taxes, that the personal estate of the owner should have been exhausted by distress. *Thompson v. Lessee of Carroll*, 422.
2. The ordinances of the corporation cannot increase or vary the power given by the acts of Congress, nor impose any terms or conditions which can affect the validity of a sale made within the authority conferred by the statute. *Ibid.*

## WASHINGTON, CITY OF.

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2. The ordinances of the corporation cannot increase or vary the power given by the acts of Congress, nor impose any terms or conditions which can affect the validity of a sale made within the authority conferred by the statute. *Ibid.*

## WISCONSIN.

1. Where a deed for land in Wisconsin was voluntarily destroyed by the parties without its being recorded, and adverse parties were bona fide purchasers without notice, (according to the decision of the Supreme Court of Wisconsin,) the destroyed deed was inoperative under the statutes of Wisconsin in relation to the registry of deeds. *Parker v. Kane*, 1.
2. A deed which conveyed "an undivided fourth part of the following described parcel or tract of land, viz: lots number one and six, being that part of the northeast quarter lying east of the Milwaukee river," conveys only lots one and six, and not that part of the northeast quarter which is not included within the lots one and six. *Ibid.*



WISCONSIN, (*Continued.*)

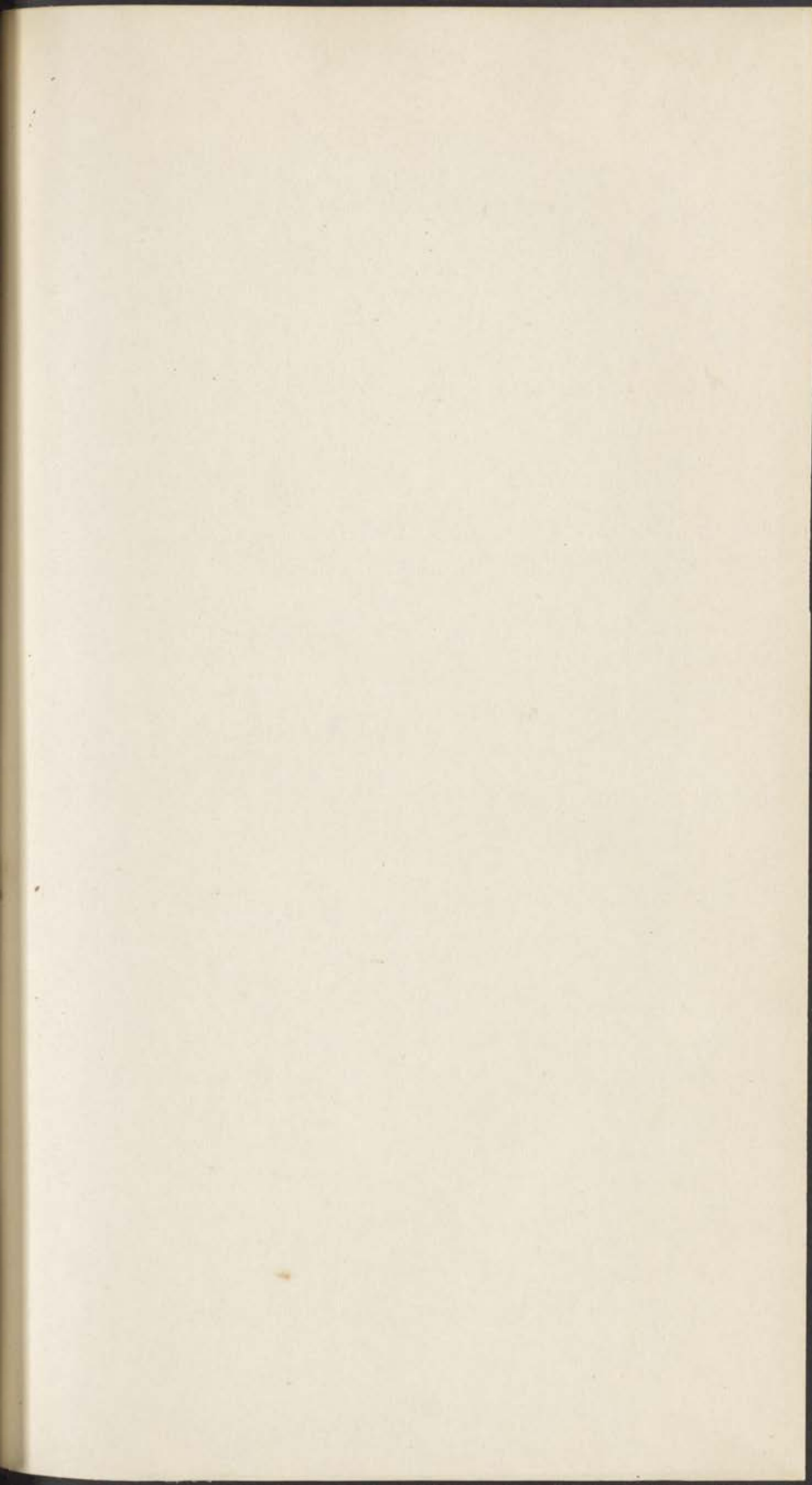
3. Where a sale was made by an administrator under the authority and pursuant to an order of the Probate Court of the county where the land laid, and the proceedings were regular except that no guardian was appointed to represent the heirs, the Supreme Court of Wisconsin decided that this defect was not sufficient to prevent the title from vesting in the purchaser, and this court adopts their decision. *Ibid.*
4. Where a decree for the partition of lands was made by a State court having jurisdiction over the subject matter and the parties, which decree was affirmed by the Supreme Court of the State, this court cannot inquire, in a collateral action, whether errors or irregularities exist in the proceedings. *Ibid.*

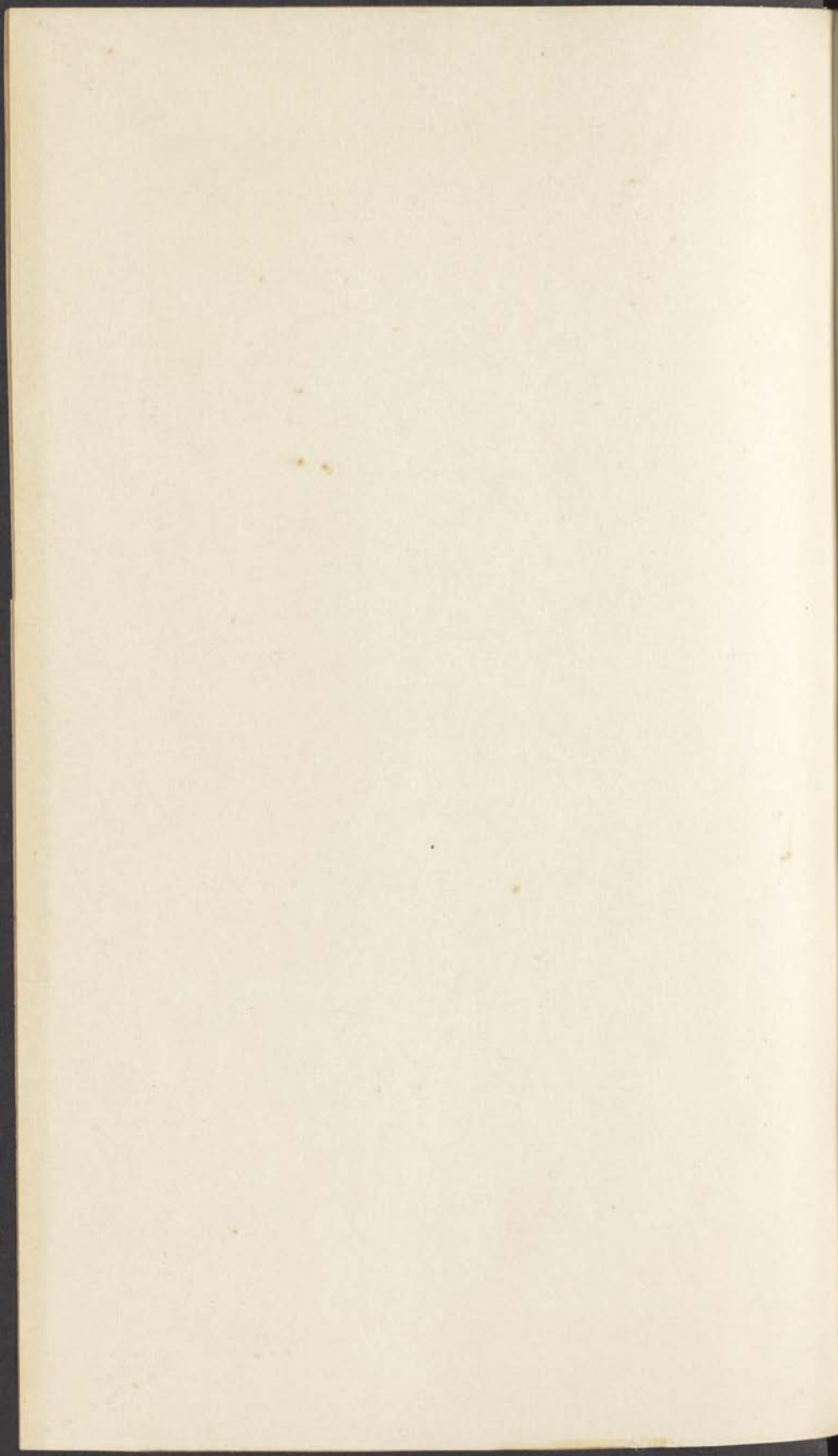
## WRIT OF ERROR.

1. Where a writ of error was allowed in open court, in the Circuit Court, but this writ had no seal, and was not returned to this court with the transcript of the record, and two terms afterwards a paper was filed in the clerk's office, in form of a writ of error, but without a seal, and having no authenticated transcript annexed, the cause must be dismissed on motion. *Overton v. Cheek*, 46.
2. A writ of error cannot be amended in this court. *Hodge v. Williams*, 87.
3. Therefore, where the party who was really the plaintiff in error, and sought to reverse the judgment, was made the defendant, and the party in whose favor the judgment in the court below was rendered was made plaintiff in error in the writ, it cannot be amended in this court, but must be dismissed. *Ibid.*
4. No appeal can be taken from the final decision of a State court of last resort, under the 25th section of the judiciary act, to the Supreme Court of the United States. A writ of error alone can bring up the cause. *Verden v. Coleman*, 192.

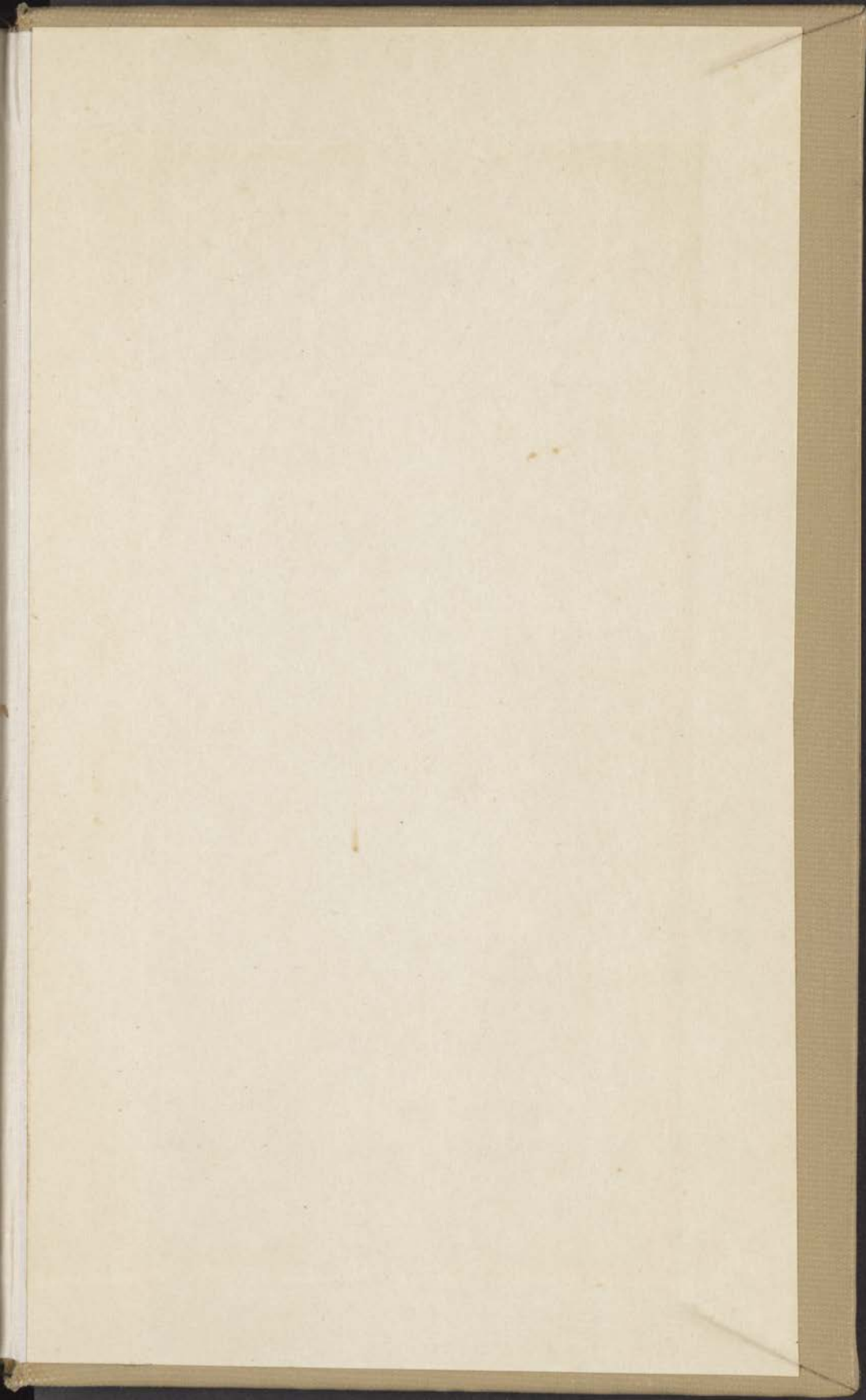
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