MECHANICS' LIEN.

1. The law relating to the lien of mechanics and others upon buildings, only prefers such lien to every other lien or incumbrance, which attached upon the building *subsequent* to the commencement of the same. *Jones* vs. *Hancock*, 187.
2. If there be liens on the property *prior* to the commencement of the building upon which the work is done, or for which the materials are found, the lien for work and materials must be postponed to such prior incumbrance. *Ib.* 188.
3. The act of 1845, ch. 287, sec. 4, gives no right to a party to enforce this lien upon the proceeds of sales of *machinery*. *Ib.*
4. Though a party having a lien on a building, for work and materials, may come into a court of law or equity for his share of the proceeds of a sale made under its authority, no such right is given when such proceeds arise from the sale of machinery. *Ib.*

MERGER.

1. If the inquisition of the jury when returned to, and affirmed by, the court, under the act of 1824, ch. 79, sec. 15, constitutes a debt at all, it is a debt of record, and of an equal grade with a judgment, and, therefore, not merged by it. *Harness* vs. *Chesapeake and Ohio Canal Co.*, 248.

MISJOINDER OF PLAINTIFFS.

See PRACTICE IN CHANCERY, 13.

MISTAKE.

1. Before a party can be relieved in the case of a written contract upon the ground of mistake, the evidence of mistake must be clear and satisfactory, and if any reasonable doubt can be entertained on the subject, relief will be refused. *Goldsborough* vs. *Ringgold*, 239.
2. The mistake sought to be rectified, was in regard to the number of acres sold under the decree. The only evidence was found in a survey ordered by the court, upon the *exparte* application of the petitioner, which differed from the survey according to which the land was sold. It was HELD—That this evidence was not sufficient to overthrow the contract on the ground of mistake. *Ib.*

See JURISDICTION, 14.

MORTGAGE.

1. A bill of sale though absolute in its terms, is, in equity, considered as a mortgage whenever the object is to secure the payment of a debt, and not to transfer the title to the party to whom the conveyance is made. *Clark* vs. *Levering*, 178.
2. A mortgage debt must be paid out of the personal estate of the mortgagor, and if that is not adequate, then the balance should be paid out of that portion of the real estate contained in the mortgage. *Goodburn* vs. *Stevens*, 420.
3. No matter how absolute a conveyance may be on its face, if the intention is to take a security for a subsisting debt, or for money lent, the transaction will be regarded as a mortgage and will be treated as such. *Bank of Westminster* vs. *White*, 536.