

PATENTS—Continued.

- survey, does not, in virtue of such warrant, acquire a right of pre-emption in the adjoining vacancy. *Buckingham vs. Dorsey*, 31.
2. Yet patents obtained by a party who has no legal title to the original, or upon a certificate of resurvey, including vacancy not contiguous to the original, will not be vacated, except for fraud, *in fact*, alleged and proved, though upon a *caveat* filed in the land office, they would have been refused. *Ib.*

PAYMENTS.

See EVIDENCE, 6.

APPLICATION OF PAYMENTS, 1 to 4.

PERSONAL PROPERTY.

See SPECIFIC PERFORMANCE, 8 to 10.

WOOD CUT NOT REALTY.

PETITION.

See CHANCERY PRACTICE, 3, 39, 45.

PLEADINGS.

1. The principles that regulate equity pleadings will admit a different interpretation to be put upon a particular sentence than would be required by grammatical rule. *Small vs. Owings*, 363.
2. The complainant cannot rely upon the admissions of the answer, and obtain relief upon those admissions unless he has set them out in his bill. *Ib.*
3. A complainant in his bill must put in issue whatever he intends proving, otherwise the evidence will be excluded. The Court of Chancery decrees only *secundum allegata et probata*. *Ib.*

See PRACTICE IN CHANCERY.

POSTHUMOUS CHILDREN.

1. Courts of equity will use all possible ingenuity to construe testamentary expressions in such a manner as to include all children living at the testator's death, and a child *in ventre sa mere*, is considered as living at that time. *Conn vs. Conn*, 212.
2. When the testator stands in the relation of parent to the legatees, a court of equity will lay hold of any general expression which will include all the children, though it may be apparent from the context that only children in existence when the will was made, were within the contemplation of the testator. *Ib.*
3. Yet when it is evident that the testator really forgot that other children might be born to him, and has, upon the face of the instrument, made provision for only such as were living at the date of the will, it is impossible to supply the defect, and give such after born children any provision, notwithstanding the anxiety of the court to do so. *Ib.*
4. Where the testator has described the children *by name*, among whom the estate is to be divided, upon the happening of a contingency, it is impossible to bring a posthumous child within the description. *Ib.*

POUNDA GE FEES.

1. As a general rule, the defendant, and not the plaintiff, is answerable for poundage fees. *Gilmor vs. Brien*, 40.