

3 FED.CAS.—77

{The references are to pages. The asterisk (*) indicates that the case has been reversed.}

ABATEMENT AND REVIVAL.

The administratrix and infant son and sole heir of defendant in the original bill are proper parties to a bill of revivor

The only questions upon bill of revivor are as to its form and the competency of the parties. Objections cannot be taken to the original bill

ACCOUNT.

Reliance by defendant upon the credit side of an account *held* a prima facie admission of the debit side

ADMIRALTY.

Jurisdiction—In general.

Admiralty has jurisdiction of petitory as well as possessory actions 629

Admiralty has no jurisdiction of a claim for state and county taxes assessed against a steamboat

A party cannot have remedy in admiralty for matters of account unless upon the basis of an adjusted and recognized liability

____ Persons and property.

Admiralty may take cognizance of controversies of maritime nature between foreigners, transiently within court's jurisdiction, but is not bound to take jurisdiction

____ Affreightments; charter parties, etc.

A contract between a passenger and the master of a vessel for passage is not cognizable in admiralty

____ Repairs and supplies to vessel. See "Maritime Liens."

Admiralty will take cognizance, under a local law giving a lien on vessels, of all contracts or charges of an admiralty or maritime nature, though no lien was given by the general maritime law; but otherwise as to contracts or charges not of an admiralty or a maritime nature

Admiralty has no jurisdiction of a claim for repairs to a canal boat navigating the interior canals of a state, and repaired at a point on a river where the tide ebbs and flows

____ Torts.

Admiralty has jurisdiction over a personal tort committed on board a vessel in a harbor where the tide ebbs and flows

The district courts in admiralty have jurisdiction of torts committed on the high seas without reference to the nationality of the parties or vessel

Such jurisdiction declined in suits between foreigners, where justice would be well done by remitting them to their home forum

But, where the suit is between subjects of different governments, jurisdiction will not be declined 279

ADVERSE POSSESSION.

By the common law, land *held* adversely cannot be conveyed 1076

A settlement upon public land without authority of law *held* a trespass 112

AFFIDAVIT.

An affidavit entitled as in a cause pending, but taken before it existed, cannot be read in evidence with such title, nor after the title is rejected, if the absence of the title renders material portions meaningless 615

AFFREIGHTMENT.

See, also, "Admiralty;" "Charter-Parties;" "Shipping."

The vessel is not entitled to freight pro rata at intermediate port unless cargo is received by owner, though she is unable to proceed 902

The owner of cargo preventing its transportation from a port of distress is liable for full freight 902

A permanent embargo excuses performance; a temporary embargo suspends it 902

A contract for transportation on the Great Lakes may be performed by a land conveyance in case of obstruction 902

A shipper may recoup damages from the freight money 1180

ALIENS.

An alien holding land under a special law of a state may sustain a suit in the circuit court relating to such land 821

ALTERATION OF INSTRUMENTS.

Erasing the words "after date," in a printed blank, following "on demand," will not avoid a note 402

The addition of the names of others as joint makers to a promissory note will not avoid it 402

APPEAL AND ERROR.

No appeal lies from the judgment of a justice of the peace for a penalty for violating a by-law of Georgetown 891

A writ of error is not a supersedeas, unless a copy of it be lodged for the adverse party in the clerk's office within the 10 days 154

The proceedings and judgments of the district court in actions at law cannot be reviewed where the facts are controverted and no case is stated for the opinion of the court 574

In salvage cases, the court on appeal will not alter amount of salvage upon slight grounds 932

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Summary judgment can be rendered against the sureties on appeal bond where the decree in a circuit court is for a sum not sufficient to allow an appeal to the supreme court

APPEARANCE.

Appearance of counsel for defendants waives notice of injunction 110
Where defendant in equity has appeared by a solicitor, notice of application for a decree, after an order pro confesso, must be given such solicitor

APPRENTICE.

The orphans' court of Alexandria county has power to bind out orphan children with-102
out indentures

The statute and constitutional provisions for the rendition of persons *held* to labor⁷⁷⁶
include apprentices

A person binding himself as an apprentice, with the assent of his father living in another-776
state, may be arrested and remanded as a fugitive from labor

ARMY AND NAVY.

The power of congress to provide for the government of the land and naval forces "in⁷⁹⁶
peace and war" is not affected by amendments to the constitution

Congress has power under the constitution to provide for punishment by naval court-796
martial without indictment or the intervention of a jury

A court-martial is a lawful tribunal existing under the constitution and acts of congress,⁷⁹⁶
and is supreme while acting within the sphere of its exclusive jurisdiction

A paymaster's clerk may be tried by court martial for an offense committed while on⁷⁹⁶
duty in the navy, upon proceedings commenced after his dismissal

The status of a soldier is not affected by a sentence of court-martial discharging him⁴²⁵
from service, subsequently set aside

A soldier, if arrested before the expiration of his term of enlistment, may be *held* for⁴²⁵
trial thereafter by military authority

Under article of war 88, a soldier may be arrested and tried, after the expiration of his⁴²⁵
term of service, for a military offense committed during such term

ARREST.

Nonresident party defendant cannot be arrested (in North Carolina) on mere affidavit²⁶¹
in action for injury to person or character

One arrested after the adoption of the supreme court rule abolishing imprisonment¹⁰⁹
for debt, but before its publication, is entitled to be discharged

A recommitment of debtor upon ca. sa. is not a breach of the debtor's privilege as a³⁷⁵
witness and party bound to attend court

ASSIGNMENT.

The transfer of a bankrupt's effects in England, being an assignment merely by opera-⁶⁸¹
tion of law, will not enable the assignees to maintain an action in their own name in
the courts of this country

ASSIGNMENT FOR BENEFIT OF CREDITORS.

See, also, "Bankruptcy;" "Insolvency."

An assignment with preferences, made by two members of a firm, in the absence1049 and without the knowledge or consent of the third, who had previously refused to give preference, is not valid as to him

An assignment, fraudulent as to creditors, does not in law oppose any obstacle to the76 enforcement of their legal rights

An assignment for the benefit of creditors *held* to take priority as against subsequent327 attachment of goods *held* by an other on consignment

An assignment by a person while laboring under the immediate effects of intoxica-1049 tion will not be favored in a court of equity

Unlawfully preferred creditors have no priority as against a mortgagee equally pre-1049 ferred, but not enforcing his mortgage to their prejudice

Quaere, whether the assignee of an in solvent can sue, in his own name, in a foreign1132 jurisdiction

ATTACHMENT.

To obtain attachment (Act Md. 1795, c. 56), it is not necessary that all plaintiffs should424 make affidavit, nor that they appear to be citizens

An affidavit made before a judge in another state is not good without a certificacate820 of authority to administer the oath

An attachment, on mesne process, is not a lien in the sense of the common law 138

The writ and *capias* may be amended by inserting given names of plaintiffs 424

ATTORNEY AND CLIENT.

The discretion to remove or suspend an attorney should be exercised with great cau-1167 tion

Counsel fees, as such, are not recoverable without express agreement, but otherwise591 as to reasonable fees and expenses

An attorney may recover for services in a litigation ordered to be prosecuted by a591 city, and conducted in its behalf, with notice of his employment, where it accepts the benefits thereof, though without express contract

AVERAGE.

A removal in a port of necessity, for the purpose of repairs, of perishable fruit, which845 increased an incipient decay and precipitated an entire loss, is not a matter for general average

BAIL.

By the Pennsylvania practice, filing the declaration before the return of the writ is784 not a waiver of bail

A recognizance of bail taken out of court is only *de bene esse*, and does not discharge231 the marshal

Where defendants are not liable to be imprisoned on the judgment, the special bail⁶⁵ is not bound to surrender them in his discharge

An exoneratur on the bail piece, on the ground that the defendant was confined in¹⁰⁶⁷ the hospital as a lunatic, refused

The court will not relieve the appearance bail, upon his delivering the principal in⁷⁸⁵ court, unless he put in and perfect special bail

The engagements of special bail and appearance bail are of a different nature. Be-⁷⁸⁵ cause the former may deliver up the principal before the second sci. fa., it does not follow the latter may do so

The undertaking of the appearance bail can be fulfilled only by defendant's giving⁷⁸⁴ special bail, if so ruled, and that bail justifying, if excepted to

In an action on the recognizance, the bail may plead discharge of principals under65 state insolvent laws

A discharge of the principal under an in solvent law is ineffectual to release the bail1103 when not produced until the third term after the return of a sci. fa. against the bail

That no ca. sa. was issued against the principal *held* a good plea in bar in sci. fa.277 against bail

A surrender of the principal will not be received after the return term of the sci. fa.1102 against the bail

It is not necessary in a suit on a bail bond to state defendants to be citizens of a788 different state from that of plaintiff

To a suit by the assignees on the bail bond, defendant may plead that the principal788 was not a citizen of another state, as laid in the original declaration

The plea of comperuit ad diem affirms a legal appearance 787

A replication nul tiel record to a plea comperuit ad diem in an action by the assignee787 of a bail bond presents an issue

Proper conclusions to a replication of nul tiel record 787

If the real amount of the debt is controverted after judgment on a bond, the court788 may direct a writ of inquiry to ascertain the amount, or direct an issue to be made up and tried at bar

BANKRUPTCY.

Operation and effect of bankrupt laws and proceedings thereunder.

An attachment on mesne process, before commencement of bankruptcy proceedings,*138 is ineffectual to control the bankruptcy court, and further proceedings in the suit will be enjoined

A district court in bankruptcy may restrain sale of bankrupt's property on process of1 state court levied before bankruptcy proceedings

An attachment is ipso facto dissolved by proceedings in bankruptcy commenced with1120 in four months, in which the debtor is adjudged a bankrupt

The creditor is liable to the assignee for the proceeds of the attachment sale, though1120 the assignee did not appear or defend the suit

The rights of creditors, after a surrender of the assets to the assignee in bankruptcy1016 by the assignee, under a state law, are to be determined under the provisions of the bankrupt law

A sheriff paying over proceeds of attachment sale, after proceedings in bankruptcy1151 commenced, *held* not liable to the assignee

A creditor receiving the proceeds of a sale on attachment, after proceedings in bank-1151 ruptcy, may be compelled to pay the amount to the assignee, by an action in the federal court

A bona fide entry of judgment and levy of execution before proceedings in bankruptcy is not affected thereby

Bankrupt not amenable to process for judgment for costs in state court 913

Jurisdiction of courts.

Where a corporation is created under the laws of two states, the bankruptcy court which first exercises jurisdiction will be permitted to carry the proceedings to their final conclusion without the interference of the bankruptcy court in another state

A bankruptcy court will not set aside a stipulation discontinuing the proceedings given upon a release procured by fraud until relief is sought in a court having jurisdiction to set aside the release for fraud, or to award damages

Petition of merchant failing in business in New York, who moved his family to New Jersey, but continued with his successors as clerk, is properly filed two years later in southern district of New York

Where petitions are filed in two or more district courts, each having jurisdiction, the court in which the petition is first filed will be accorded exclusive jurisdiction 951

The jurisdiction of the district court in bankruptcy to sell real estate and pay off liens is not exclusive

The bankruptcy court, being always open, and having no separate terms, may vacate orders and decrees if no vested rights are disturbed

The district court has no jurisdiction of a summary petition by a mortgagee for the sale of mortgaged property in the hands of receivers appointed by the state court, not parties to the petition

A party holding a judgment entered in an action for tort after commencement of the proceedings need not apply to the bankruptcy court for leave to enter execution

Register—Powers and duties.

Power of register to employ watchman to guard the bankrupt's property 803

Register may make order requiring assignee to file account required by section 28, Act 1867

Commencement of proceedings—Voluntary bankruptcy.

An infant is entitled to the benefit of the bankrupt act, and the proceedings may be had in his own name

Separate petitions of members of bankrupt firm *held* not allowable 1107

Petition by surviving partner not allowed against objection of creditors and discontinuing solvent partner 209

_____ Involuntary bankruptcy.

A creditor holding a secured debt may petition 733

In computing the quorum of creditors, debts secured and debts barred by the statute must be eliminated, and all offsets due the debtor deducted

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The petition in invitum must allege that the debtor was a trader when he committed854
the act of bankruptcy

Petition will be sustained if the aggregate of all the petitioner's debts equal one-third266
of the aggregate of all provable debts

Where petitioners who hold debts exceeding \$250 do not represent one-third of all570
provable debts, every \$250 creditor sinks into a common unit in the mass of credi-
tors, and counts but one

The court on trial before a jury as to the facts of bankruptcy may permit amendment412
of the creditor's petition

A person not actually a copartner cannot be adjudged bankrupt upon petition of a292
pretended copartner

Lawful solicitation by a debtor to induce his creditors to sign a petition against him1019
in involuntary bankruptcy is permissible

A creditor not a party to the petition cannot move to dismiss the same 956
Acts of bankruptcy.

Inability to pay debts as they mature, in the ordinary course of business, constitutes412,
"insolvency" 495

Suspension of payment by solvent trader for 14 days is an act of bankruptcy 412

The appointment by a state court of a receiver, for the purpose of paying debts, de-412
feats and delays the operation of the act; and, where procured by the debtor, he must
be presumed to have intended such effect

The giving of a warrant of attorney to confess judgment for full consideration is not493
an act of bankruptcy, though the war rant was not recorded

The intent will be inferred from the fact that an act of bankruptcy gives a preference,495 unless the contrary is shown

The allowance of a judgment by default by an insolvent firm in favor of the brother495 of a partner *held* an act of bankruptcy

A mere security, though given as a preference. is not an act of bankruptcy, unless854 given in contemplation of bankruptcy

The giving of a judgment, followed by execution, is not an act of bankruptcy, unless854 the debtor was insolvent or it covered his whole effects

The motive of petitioners and of one of debtors co-operating will not be considered412 where the acts of bankruptcy are established

Adjudication.

An adjudication in one state, made between the time of signing and filing an adjudi-951 cation in another state, is prior

An attaching creditor may move to set aside an adjudication of bankruptcy, though266 no party to the bankrupt proceedings

Assignee—Appointment and removal.

The son of the bankrupt will not be appointed assignee where he will be obliged to803 investigate the claims of other members of the family

A register should state to the judge any known ground of disapproval of the appoint-705 ment of an assignee

The court will decline to approve an assignee selected by, or in the interest of, the705 bankrupt

The court in a state in which the bankrupt corporation *held* property and carried on956 business should decline to approve the election of assignees in another jurisdiction where its state is not given a representative

The register may, upon request, in writing, of a creditor who has proved his claim,418 require the assignee to give bond

Involving the estate in unnecessary litigation, if caused through erroneous legal ad-716 vice, is no ground for removal

_____ Powers and duties.

An agreement by two of three assignees is not binding upon the absent assignee in699 the absence of previous authority or ratification

An assignee is accountable only to the court appointing him 1067

Property of bankrupt—What constitutes.

A divorce obtained by a wife prior to the discharge of her husband gives his assignee236 no claim in land *held* by the husband and wife in entirety at the time of the adjudication

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- Assignee not vested, by mere force of adjudication in bankruptcy and his appoint-83
ment, with title to property assigned by bankrupt for benefit of creditors
- An assignee procuring a general assignment to be set aside, as in contravention of75,
the bankruptcy statutes, takes title from the assignee 76
- A recovery on a wife's chose in action by the assignee, substituted in place of the1089
bankrupt, in a pending suit, *held*, to inure to the benefit of the creditors
- _____Exemptions.
- The individual members of a firm are not entitled to a separate exemption of \$250720
out of undivided partnership property (in Michigan)
- Individual members not entitled to exemption from partnership stock 892
- An adjudication of bankruptcy against a partnership operates as a dissolution, and720
nothing can be set apart as exempt to the bankrupts as a firm
- Bankrupt *held* entitled to homestead exemption out of proceeds of equity of redemp-62
tion of mortgaged farm, sold free of such right
- A vested expectancy to the estimated present value of 8300 is exempted in Pennsyl-211
vania
- _____Liens.
- A bank whose by-laws provide that stock of stockholders shall be liable for their341
debts to the bank has a lien upon the stock of a member of a bankrupt firm for
either individual or firm indebtedness
- A petition to enjoin enforcement of a judgment against the bankrupt's property can1067
be filed, before the appointment of assignees, only by the bankrupt, and, after such
appointment, only by the assignees
- Where a general assignment is valid as to the debtor and creditors, but is avoided by76
assignee in bankruptcy as in contravention of the bankruptcy statute, such assignee
has a superior right to judgment and execution creditors intervening between the as-
signment and the petition in bankruptcy
- The assignee in bankruptcy procuring a general assignment to be set aside, as in vio-75
lation of bankruptcy act, *held* estopped by a judgment against the assignee for credi-
tors in favor of a sheriff declaring the assignment fraudulent as to creditors
- A lien which is superior to all other liens will be paid as far as possible out of the1072
fund on which it is the only lien
- Receiver will not be appointed of bankrupt's mortgaged lands after appointment of206
assignee
- Register's assignment to assignee of estate of bankrupt in mortgaged lands divests206
mortgagee of possession
- Property of bankrupt is subject to execution of creditors until decree made 203

An attachment of property on mesne process, bona fide made, before a petition filed*138 in bankruptcy by the debtor, is not a lien or security upon the property. (Act 1841. § 2)

Judgment recovered after assignment for creditors valid by state laws creates no cloud⁸³ or title, though assignment is afterwards set aside at suit of assignee in bankruptcy

Where leave has been granted (Rev. St. § 5106) to proceed in a pending cause. a¹⁰¹⁶ judgment obtained therein is valid, although the assignee is not made a party

Proceedings to determine validity of execution lien expedited on request of creditor¹⁰ who surrendered possession of property to assignee

Such proceedings not conducted on ex parte affidavits

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_____ Sale.

A creditor applying for an order to sell collaterals need not ascertain their value be-³⁴³ fore proving his claim, but must prove, his claim before order to sell will be granted

An assignee will not be required to sell property incumbered for more than its value¹⁰⁶⁷

A sale of land free from incumbrances does not pass to the purchaser the bankrupt's⁶⁸⁶ right to any portion of the growing crops as rent

Where property is sold free from mortgage lien, the court has no authority to adjust⁷⁵⁰ the rights between the trustee under the mortgage and his cestui que trust

A sale of stock *held* by a creditor as collateral security at two-fifths of its value set¹⁰¹² aside, and the resale ordered

- Bankruptcy court may order bankrupt to deliver possession of his realty sold under314 deed of trust
- Proof of debts.
- An equitable debt is provable 669
- An indebtedness to a cestui que trust is provable 669
- A verdict in an action for tort is not provable 504
- A judgment entered in an action for tort after commencement of bankruptcy pro-504 ceedings upon a verdict previously rendered is not provable
- A suit and judgment against a bankrupt on a fiduciary debt does not preclude the1003 creditor from proving it
- As regards proof of debts, secured and unsecured creditors stand upon the same1067 footing
- A secured creditor may prove his debt for the overplus, and vote on such amount 820
- The bankrupt's wife may prove as a debt moneys realized by the bankrupt out of her669 separate estate
- The wife of a bankrupt *held* entitled to prove the balance of a long-standing debt,347 but without interest
- Claim of wife for loan to bankrupt out of her separate estate cannot be proved by16 bankrupt
- A mortgage, whether of realty or personalty, given contrary to the provisions of sec-401, tion 39. is void, and deprives the mortgagee of the right to prove his claim, even on405 its surrender
- Separate proofs of same debt to its full amount may be filed against individual mem-64 bers of firm
- A bank having discounted a note made by a firm to one of the partners, and in1135 dorsed by him, is entitled to prove the debt against the estate of the firm and of the individual partner
- The form of the security or evidence of indebtedness taken will not prejudice the1135 legal rights of a creditor
- Assignee ordered to furnish bankrupt a list of creditors who have proved debts 581
- Where a question of law or fact is raised in respect to the sufficiency of proof of a802 debt, it must be certified for the decision of the judge
- The assignee is not bound by the amount found due the ward of the bankrupt in a1003 suit in the chancery court commenced after the adjudication, to which he was not a party
- Payment of debts: Priority: Dividends.
- Judgment creditor of firm is not entitled to dividends out of separate estate of each283 member on an equal footing with separate creditors

Separate creditors are not entitled, as against firm creditors, to be paid interest on²⁸³ their debts subsequent to the adjudication

A creditor proving a joint and several claim against the bankrupt members of a firm³⁴⁵ separately is entitled to dividends out of the several assets

Agreement by assignees to give a preference when valid 699

Restriction of proof of debt of a preferred creditor to a moiety is limited to cases of⁵⁰⁰ actual fraud, and not to cases of mere knowledge that a preference was intended.

(Act June 22, 1874. § 12)

An attempt to gain a preference which entirely failed will not subject the creditor to¹⁰¹³ the penalty of the statute as one who knowingly receives a preference

United States, recovering a judgment upon a claim accruing after the commencement¹⁰¹⁶ of the proceedings, is entitled to priority, and no proof of claim need be made

A creditor, by filing a petition without reference to a lien *held* by him, waives such⁷³³ lien

Unclaimed dividends not awarded to bankrupt's administrator after many years when⁶⁹⁷ opposed by creditors whose claims were not paid in full

Interest upon claim accruing after the commencement of the proceedings is allow¹⁰¹⁶ able

Examination of bankrupt, etc.

Creditors whose claims have been protested against, if duly proved, will be entitled⁸² to an order for the examination of the bankrupt

Orders for examination are summonses under section 26, and may be issued by¹²¹ blank forms, signed by the clerk

A bankrupt must answer questions put to him in relation to property in which it is⁸⁴⁹ shown that he might possibly have an interest

Any one possessing information may be examined concerning the same matter in⁵⁸⁵ reference to which the bankrupt may be examined

Order to show cause why attachment should not issue will be granted where wife¹³⁵ of bankrupt refuses to testify

In the examination of a witness the register has no power to decide on the materi-⁸³⁴ ality or relevancy of questions

Costs: Fees: Disbursements.

An estate is not liable for counsel fees in opposing involuntary bankruptcy, and for³⁴⁵ drawing inventories, order of adjudication, etc

Where the estate of a bankrupt which is all incumbered is sold at the suggestion of⁷⁵⁰ his general creditors, and produces only enough to satisfy the liens, the proceeds are only liable for the costs of sale

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Register is entitled to fees on proceedings for a discharge as for services “while actually employed under a special order of the court.”

Review.

The nature of the revisory power given the circuit court (Act March 2, 1867) considered and stated

The jurisdiction conferred upon the circuit court by section 2, Act 1867, is revisory and confers no power to execute the decrees of the district court or to assume primary exercise of jurisdiction conferred on the district court by section 1

A bankrupt seeking a review, and at the same time prosecuting suits in a state court to restrain proceedings in the district court, will not be required to elect

On petition for review, decree in favor of assignee in summary proceeding to recover assets set aside for irregularities

Appeal cannot be allowed where bond not given within 10 days, as required by section 8

Appeal bond failing to state the court rendering the decree is insufficient 189

Discharge—Proceedings to obtain.

The assignee’s return is not necessary before granting order to show cause why discharge should not be granted

Failure for over a year to bring petition for a review to a hearing shows unreasonable delay in obtaining a discharge

The order to show cause (form No. 51) is to have the signature of the clerk and the seal of the court

The clerk must mail the notices (form No. 52) 126

The register must transmit, to clerk, list of proofs of debt, to enable the notices (form No. 52) to be served properly

On a petition, according to form No. 51, the register to whom the case is referred¹²¹, may direct the making of the order 124

What is to be contained in that order, and the practice under it 124

The register must make his certificate as to examination, whether there be opposi-¹²⁴tion to the discharge or not

No discharge can be granted until all papers relating to the case are filed by the¹²⁴register in the clerk's office

Where there are debts proved and assets, application for a discharge cannot be⁷⁹²filed before the expiration of six months from the issue of the warrant of adjudica-
tion

Form No. 4 in bankruptcy is not a special order, but a "general order," under rule¹²⁶5 of the general orders in bankruptcy

Petition for discharge individually may be amended so as to cover partnership debts³³⁸

Discharge: Opposition: Acts barring.

Any one interested in the administration of the effects of the bankrupt may object⁸⁶⁷(Act 1841) though technically he is not a creditor

Persons cannot oppose a discharge unless they have proved debts, or it clearly ap-¹⁰¹⁸pears from the evidence that they are bona fide creditors

Creditor proving debt after time for hearing of application expired not heard in op-⁹¹³position, and debt not counted

Hearing on specification of grounds of opposition is essentially different from hear-⁹¹³ing of application for discharge

Time to oppose discharge extended to permit examination of bankrupt on petition⁷⁹alleging fraud

Discharge not granted unless all necessary steps have been regularly taken 124

Bankrupts *held* not in complicity with uncle having entire charge of business, who⁸wasted their large capital

The amount for which the bankrupt's goods were sold by the assignee is to be⁸⁹⁶taken as their value, under the 50 per cent. clause

In order to bar a discharge because of a false affidavit of indebtedness, it must ap-⁷⁵⁷pear that the bankrupt knew that the claim was false

Court has power to permit amendment of defective specifications 135

A discharge will not be granted where the bankrupt has failed to keep proper¹⁰⁰¹books of account

The test as to proper books of account is whether a competent accountant could¹³⁵therefrom ascertain the debtor's financial condition

Specification averring want of proper books of account showing receipt and dispos-¹³⁵al of money will admit evidence of want of cash book

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Discharge refused where bankrupt failed for 10 months to keep a cash book, resulting in inability to determine his financial condition re-135

The bankrupt must keep an account of dealings with another under an agreement to carry on his business, the same as dealings with customers 757

The pass book of another containing accounts with the bankrupt, entered daily by the owner's bookkeeper, but kept in possession of the bankrupt, *held* proper book of account within the statute 758

Act July 27, 1868, is retroactive 385

_____ Scope and effect.

Discharge of the principal under a commission of bankruptcy issued after return of sci. fa. against bail is no discharge of bail 203

The bankrupt law relieves against a judgment for a tort 801

Prohibited or fraudulent transfers.

The language of section 35, "in fraud of the provisions of this act," construed 889

Concurrence of facts necessary to constitute an illegal preference 493

All transactions to prefer a bona fide creditor come within the four-months clause of section 5128; the six-months clause applies to other creditors 1013

Purchase with partnership funds of home stead, with knowledge of its insolvency, is fraudulent 892

A sale to a creditor of logs purchased with money furnished by him *held* not a preference 1013

Jugment by default obtained against a firm by service upon one member, a brother of the creditor, *held* an illegal preference 495

The transfer of assets of an insolvent corporation to a partnership of which one of its directors is a member, made more than six months before proceedings in bankruptcy as security for a debt, set aside in equity 1142, 1146

Act June, 1874, § 10, changing the period from four to two months, *held* not retro-spective 1126;

but 889

see 889

act june, 1874, § 11, substituting "knowing" for "reasonable cause to believe," does not affect transactions happening before december 1, 1873, in cases where bankruptcy proceedings were begun before that date. 1126

the communication by a member of an insolvent firm of creditor's direction to an attorney to enforce a judgment note is a procuring of the enforcement thereof 255

an act directly tending and done with intent to defeat bankruptcy act is fraudulent and void 1

where warrant of attorney to confess judgment is given for full consideration, the creditor may enter judgment and enforce the same, when insolvency is apparent, if not assisted by the debtor

a mortgagee who takes a conveyance from the mortgagor under circumstances apparently for the latter's relief must have actual notice that it is in fraud of the act a mortgage is not fully made in Vermont until it is recorded, and the fact that it was executed more than two months before the petition was filed does not render it valid

payment to private bankers after their suspension, if bona fide, is valid. (act 1867, §909 35.)

one taking mortgage upon lot claimed as homestead after decree declaring it not exempt as such may be ordered summarily to release his security

judgments obtained by service of process on absconding bankrupt, who secretly returned to permit such service, are void

executions are valid if the creditor had no reasonable cause to believe the debtor insolvent when they were taken out

omission to take voluntary proceedings cannot have a retroactive effect, so as to supply an intent to give a preference by an attachment

a general assignment for creditors is void as against an assignee in bankruptcy 76

an effort to secure an honest debt from a failing creditor is not an actual fraud, with in the meaning of section 5021 1013

the defendant in an equity suit must account, before a master, for property received by him. orders of reference to a master will be settled on notice 188

conveyance may be an act of bankruptcy; and yet valid as to grantee 16

a judgment by default is prima facie fraudulent, and creditors petitioning for vacation of an injunction issued by the bankruptcy court against a sale thereunder must negative all circumstances under the statute making the transfer void 420

_____proceedings to recover property.
property fraudulently disposed of may be recovered by the assignee by summary pro-376
ceedings upon petition in bankruptcy court
executor and trustee chargeable with notice of bankruptcy proceedings against57
remainder-man, is liable for money paid over to him
Assignee not entitled to an injunction and receivership as to disputed property in49
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The suit by an assignee to recover property conveyed by the bankrupt with intent1176
to defraud, his creditors is governed by the general statute of limitation, and is not
limited by section 35 of the act of 1867
Assignee can recover property fraudulently conveyed, even if there was no lien on52
such property in favor of a creditor when the petition was filed
Where a creditor to whom the fraudulent preference has' been made by a default495
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proceeds of sale on execution by summary process
In case of attachment of bankrupt's property, assignee can take advantage of any rem-71
edy open to subsequent attachment creditor
Levy of execution on bankrupt's personalty will be declared void on petition of as-71
signee where not in conformity to state laws under which it was made
In summary proceedings by the assignee to recover property fraudulently disposed376
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Confirmation denied where the bankrupt, given possession of the property, had mis-715
appropriated the funds of a creditor
An unaccepted offer of money to induce consent, and payment by bookkeeper to an-205
other creditor who did assent, unexplained, Jicld sufficient to impeach composition
Where a composition is accepted and approved, no formal discharge is necessary 27
Bankrupt is discharged by composition accepted and approved only from claims of27
creditors whose names, addresses, and debts are placed on the statement produced
at the meeting of creditors
Objections that the claim of a creditor voting for the composition is fictitious or in-715
valid cannot be raised for the first time upon motion for confirmation
A member of the committee held not entitled to compensation for preparing the856
bankrupt's stock for sale, and in effecting settlement of litigation

BANKS AND BANKING.

No title passes to savings bank on deposit of check representing moneys belonging577 to a third person where it has notice of his claim

Bona fide indorsees before maturity of paper discounted by a cashier are not affected577 by the fact that it was unauthorized by the discounting committee of the bank, if the paper passed through the bank in the usual course of business

A new bank, incorporated with the same name as an old bank, whose charter is144 about to expire, and with nearly the same stockholders, is not responsible for notes of the old bank

One to whom shares of national bank stock are transferred as collateral security, but1029 under a transfer made absolute in due form on its books, is liable to its creditors as a stockholder

A transfer of national bank shares, with intent to relieve the transferrer from liability1034 to creditors, is void as against the creditors

A letter from the comptroller of the currency is not sufficient evidence to establish1034 the liability of a stockholder of a national bank to contribute the entire amount of his stock to meet its liabilities

The officers of a national bank may borrow money of the bank the same as other577 persons

BILLS, NOTES, AND CHECKS.

The fact that a note is made payable in exchange with rate not specified does1155 not prevent its being a promissory note. The rate is subject to proof

A promissory note, made and indorsed in Virginia, *held* not mercantile nego-1154 tiable paper

A promissory note signed by one as agent of a corporation does not upon its1156 face import a personal obligation. The burden of proof in such case is upon the holder

An agent is not personally liable upon a promissory note made by him to one1156 who took it with knowledge that it was given by him as agent of a corporation

Where a bill is drawn with directions to charge to another, and it is accepted100 generally, the drawer is not ordinarily liable to the drawee

Acceptance is evidence against the acceptor, in behalf of the drawer, of so much190 money, under the money counts

The words "value received" in negotiable paper are not necessary 190

A note payable to M., cashier, is a note payable to the bank, and the bank is577 liable on an indorsement and discounting by him

An action will not lie by an indorsee against a remote indorser upon a promissory1154 note which is not mercantile negotiable paper

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Delivery, without indorsement, of a note payable to a payee named, or bearer, is1168;
not sufficient to authorize the assignee to sue in his own name contra,
1132

The maker may set up the same defense against a note in the hands of an as-1168
signee that he might make if it were *held* by the payee

Demand of payment on day after last day of grace is too late 63

A note made “negotiable” at a certain bank is not “payable” at that bank, and63
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Proof of demand at the place named is not necessary in an action against the319
maker

Notice of demand and nonpayment need not be given during business hours 853

Notice of nonpayment is excused where the holder called at the indorser’s place1069
of business, in business hours, and found it closed

The owner, voluntarily destroying a promissory note, can neither recover upon888
the note, nor upon the debt for which it was given

A note payable “with interest” will not support a count upon a note payable with748
out interest

Plaintiff allowed to strike out his indorsement after the note was offered in evi-748
dence

BILL OF LADING.

The contract to deliver will be construed as subject to all restraints of government, 1180 such as sanitary or prohibitory laws

The engagement as to delivery is controlled by a usage of consignees at the particular 1180 port to receive shipments during the Quarantine season, at the quarantine grounds

Special usage in a trade may give consignee right to choose place of discharge 927

The vessel is not liable for failure to deliver according to the bill of lading, where the 742 regular warehouseman, because of personal difficulties with the consignee, would not receive the goods, and the master caused them to be stored with another. (Reversing 744.)

The words "in good order and well-conditioned," in a bill of lading of bales of cotton, 1183 have reference only to external condition

The vessel is liable for unexplained loss of raisins from boxes, notwithstanding ex-136 ceptions in bill of lading of loss by breakage of boxes

The fact that a cask of wine, shipped under a bill of lading excepting dangers of the 536 sea, arrived with one of its heads crushed in, is prima facie evidence of negligence in handling or stowage

Vessel *held* not liable for cargo of barley shipped under bills excepting dangers of 748 the sea, and damaged by salt water from a leak caused by heavy weather

Consignee of barrels of flour *held* entitled to identical barrels shipped, though de-155 scription in bill of lading was not complete

Consignees are entitled to reasonable opportunity to ascertain whether goods deliv-1180 ered correspond in quantity and condition with the description given in the shipping documents

Parol evidence is admissible to explain or rectify statements in the bill respecting the 1180, condition of the goods at the time of loading, as between the original parties, but not 1183 as against consignees who have made advances upon the faith of such statements, irrespective of the amount

On a libel for not delivering coal according to the terms of the bill of lading, it being 927 landed at a wrong wharf, the measure of damages is the value of the coal less the freight charges

Counsel fees in a replevin suit by a shipper to recover the coal are not included in 927 the damages assessed

BONDS.

The bond of a corporation, payable to bearer, *held* to be commercial paper passing 1172 by delivery

Bond obtained by falsely representing to obligors that obligee had a requisition to 110 take them to another state, to answer a criminal charge, is void

An obligor may set up any defense to a bond, as against the assignee, which he had¹¹⁰ against the obligee

A railroad company is liable on a negotiable municipal bond, indorsed by it 853
Schoolhouse bonds issued under Act Mo. March 21, 1870, *held* valid, and enforce-850
able by the ordinary remedies

BOTTOMRY AND RESPONDENTIA.

Lender is bound to ascertain necessity for advances and absence of other resources 918

Master has no power to hypothecate vessel in foreign port if owners have a represen-901
tative there, or if advances may be procured by other means

CARRIERS.

A sleeping-car company is neither liable as a common carrier nor as an innkeeper 755

A sleeping-car company is liable for a loss, caused by its negligence, of articles usually⁷⁵⁵
carried by a passenger about his person, and of money reasonably necessary for trav-
eling expenses, in failing to take reasonable care to prevent thefts

Proprietor of stagecoach is liable for injury to passenger due to intoxication of driver,⁴⁵³
though his reputation previously was of the highest character

One who sells goods on credit cannot maintain an action against the carrier for their⁷⁵³
loss. In shipping, he acts as agent of the purchaser

A carrier is justified in selling goods which the consignee refused to receive on their⁷⁸³
arriving damaged and in a perishable condition from causes for which he is not re-
sponsible

The common-law rule of liability is not applicable to steamers and railroads having a³⁹⁵
regular time of arrival and departure

When the question of diligence arises at all, the carrier is bound, like other bailees³⁹⁵
for hire, warehouseman, or wharfingers, to the exercise of due diligence only

CHARTER PARTIES.

The words "charter and to freight let" do not imply a covenant, in law, that the vessel¹⁰⁷⁰
is or shall be seaworthy

Charterer of vessel for cargo of timber undertakes to furnish timber suitable to ca-⁴⁸
pacity and condition of vessel, and owners are not bound to widen portholes to suit
timber furnished. (Reversing 47.)

Charterer *held* chargeable with knowledge of tonnage and draught of water of vessel¹⁵⁰
and state of harbor, rendering vessel unable to complete loading in harbor

Charterer's failure to provide means of loading guano *held* to justify master in re-⁴⁹²
turning with partial cargo

Custom of deducting for defective pieces of timber cannot control stipulation as to¹⁵⁰
freight

Arbitration between consignee of vessel and consignee of cargo of timber as to measurement of timber not binding upon charterer

Charterers who have voluntarily surrendered possession to the owners have no right to reclaim it

Charterer not presumptively liable for services rendered in floating stranded vessel under contract made with owner

Libelants suing for breach of charter party are bound to show that there was no fault on their part

Vessel *held* liable for goods taken aboard by mistake of mate and wharfinger, in excess of the cargo stipulated, and delivered to charterer

CHATTEL MORTGAGES.

A chattel mortgage on a stock in trade expressly stipulating that the mortgagor may continue the business is void

COLLISION.

Nature of the liability: Contributive fault.

The fact that a collision was caused by a hurricane is no defense if it could have been avoided by foresight, precaution, and nautical skill

Error in moment of peril, brought about by fault of another, will not subject vessel to damages

A schooner's change of course when four miles from a steamer, in dense fog, *held* 543
not a contributive fault

The failure of libelant to properly lash a propeller wheel in which he was working 1024
is no defense to an action for injuries caused by a collision therewith, which caused
the wheel to revolve

The respective liabilities of tow and tug considered 86

Tug *held* prima facie liable for collision between ship in tow manned by landsmen 86
only and lighter at dock

Where a ship and tug lashed together are navigated under the direction of the master 1103
of the tug by the use of both helms, they are liable, as joint tort feasers, for a collision
by the ship

Rules of navigation.

The officer of the deck may take the helm and act upon the direction of the lookout 740
Vessel will be *held* in fault in attempting to run across the track another is known to 930
be intending instantly to take

The British merchants' shipping act has no application to the equipment or conduct 127
of a British vessel When meeting a foreign ship on the high seas

Sail vessels meeting.

A vessel running with the wind free must give way to another closehauled, without 740
regard to their respective tacks

The vessel closehauled must keep her course, though not carrying lights 127

Steam vessel meeting sail vessel.

Schooner *held* not in fault for not changing her course on meeting steamer in dense 543
fog

A steamer, meeting a schooner closehauled on the high seas, so shaped her course 180,
that the vessels would have passed 40 feet apart. *Held*, that luffing when near was a 182
change in extremis

Vessels moored, etc.

Both tug and barge in tow *held* in fault for collision with a steamer moored, caused 1024
by failure to stop her headway on approaching a berth

Local ordinance in relation to anchoring is binding on all navigators 36

Presumption of law is against vessel colliding with another anchored in a proper 10
place

Vessel lying at anchor in roadstead with out anchor lights, and lookout asleep, *held* 326
solely in fault

Vessel *held* negligent in anchoring 400 feet to windward of another, and not taking 10
due precaution to avoid collision from increasing wind and sea

Schooner anchoring in dense fog within 60 yards of track of ferry, in violation of local ordinance, *held* at fault 36

Ferryboat knowing of anchorage of schooner in violation of ordinance, and refusal to change, *held* equally liable for collision in fog 36

River and harbor navigation.

A steamer approaching her usual berth with due care *held* not liable for collision with a barge in tow 751

Speed: Fogs.

A speed of eight knots in a dense fog, in South Vineyard channel, *held* immoderate 543

Lights, signals, etc.

Sailing vessels coming into port in the nighttime *held* not bound to carry lights 740

Sailing vessels navigating high seas are not obliged to carry signal lights 34

Failure of sail vessel to carry lights does not excuse steamer from duty to avoid her if seen in time 34

Lookouts.

Pilot boats, equally with other vessels, are guilty of gross negligence in running at night without competent lookout forward 740

The man at the wheel is not a sufficient watch 740

Failure to keep proper lookout is prima facie evidence that collision was caused by such neglect 12

Particular instances of collision.

Between steamer and lighter attempting to cross her bows in North river 260

Between lighter propelled by oars and ship lashed to the side of a tug, making the same pier 1103

Between schooner and propeller in Chesapeake Bay, where both *held* in fault 805

Between competing passenger steamboats attempting to gain advantage in starting from the same pier at the same time 930

Procedure.

Testimony of experts as to the bearing of a steamer's speed upon her navigation, but not as to its propriety, is admissible 543

Rule of damages.

Hypothetical or consequential damages will not be considered 740

A recovery is allowed of an amount sufficient to restore the injured vessel to the condition she was in at the time of the collision 740

Demurrage is not allowable for a delay in discharging the cargo after the vessel was raised with the owner's knowledge 1198

The direct effect of a collision with a lighter being to cast its cargo overboard, the colliding vessel is liable for the loss thereby sustained 1103

CONSTITUTIONAL LAW.

A law providing separate public schools for white and colored children is not un-294 constitutional

The provision securing the right of trial by jury applies only to criminal cases and 821 civil cases where the right is to be tried at law; not to mere collateral questions of damages, when no suit is pending and the rights of both parties admitted

The clause in the fifth amendment "when in actual service in time of war" has no 796 reference to the regular army or the navy, but refers only to the militia

A state law imposing a special rate of interest upon judgments against foreign corpo-288 rations is not repugnant to article 4, § 2, as a corporation is not a citizen within that section

An act authorizing the sale of land devised for life, with power of appointment in fee, 559 the proceeds to be invested in other realty with like trusts, *held* not unconstitutional

The inhibition against the impairment of obligations of contract is inapplicable to the 729 federal government

A state law which relieves from a contract cannot be enforced against nonresidents 65 of the state, or in cases where the contract was prior to the law

A state, in regulating the remedy, may protect insolvents from imprisonment 65

The constitution protects property against arbitrary seizure or divesture only, and a 821 law divesting vested rights is void only if the right is by a contract, and compensation is not provided or made

The provision that private property cannot be taken for public use without just com-1190 pensation is applicable to inventions secured by patents and to the government

The government, in a case of extreme necessity, in time of war and of immediate and 1190 impending public danger, taking an invention secured by a patent, is bound to make full compensation to the owner

The provision of the bankruptcy act of 1867 (section 14) adopting state exemption laws is uniform in its operations

Quaere, whether a carriage of freight out of a state into another, not being a mere transit through the state, is interstate commerce, so that the carriage within the state is beyond its power of regulation

The issuing of a policy of life insurance is not "commerce," within the constitutional provision giving congress power to regulate commerce among the states

CONTEMPT.

It is a contempt to serve process, either of summons or capias, in the actual or constructive presence of the court

Granting of attachment for disobedience of subpoena running beyond the district is discretionary, and will be refused where circumstances render it oppressive

A marshal obeying orders of secretary of war, rather than that of court, should not be punished for contempt of court

As process committing the marshal for a contempt would run to him in his official capacity, the issue of such process will be refused as impracticable

CONTINUANCE.

A notice given at the trial term in Alexandria that security for costs will be required is no ground for postponing the trial

Suit at law not continued because plaintiff failed to answer a bill of discovery which also sought relief

Where a writ of inquiry is set aside at the trial term, plaintiff is entitled to continuance until next term, at defendant's costs

CONTRACTS.

Where a parol agreement was to be reduced to writing, a party cannot escape its obligation by refusing to execute the writ ten instrument

A party waives a fraud if, with knowledge thereof, he offers to perform the contract on a condition which he had no right to exact

Extra work done upon a house built by contract cannot be recovered unless there was an express or implied agreement there for

The mere knowledge of the doing of extra work and failure to object will not of itself raise a contract

Construction of agreement to pay money after the promisor should obtain, or be in legal capacity to obtain, certain land

A demand is necessary if no time be fixed in the contract or by other agreement for payment

Under a contract to build bridges to be paid for at a certain sum per foot, where no time of payment is fixed, no recovery can be had until a complete performance

A custom to make monthly payments as the work progressed, under a contract silent⁸⁵⁷ as to time of payment, establishes a rule of payment under the contract binding on the parties

The mode of paying for extra work, where not stipulated, *held* to be the same as that⁸³⁷ provided for in the original contract

A railroad company is not disabled from performing a contract to pay for bridges in⁸⁵⁷ stock by having mortgaged its road to secure the payment of debts due to others

Damages are recoverable for failure to pay a sum of money as agreed, out of funds⁶⁹⁹ expected to come into the promisor's hands, if, by his own fault, the money did not come into his hands

Measure of damages for breach of contract to deliver goods at Boston for shipment to¹⁸ foreign market is the difference between contract and market price at Boston

COPYRIGHT.

A dramatic composition is entitled to copyright as original, although a reproduction⁹⁷⁷ of old materials in a new form and combination

The rule stated for determining whether a copyrighted work is an original one in the⁹⁷⁷ sense of the law

A copyright cannot subsist in a chart as a general subject. The copyright therein is⁷⁶³ violated only when another copies there from, and avails himself of the labor and skill of the author

A person is not entitled to a copyright on an historical print composed and executed⁴²¹ by artist's employed and paid by him. (Act April 28, 1802.)

Residence entitling an alien to the benefit of the copyright laws is determined by the⁹⁸⁸ intention existing at the time of filing the title, and is unaffected by any change of intention

An agreement to write a play for another, and to act in it, with a share in the profits⁹⁷⁷ as compensation, does not create a legal or equitable title in the latter, which will prevent the author taking out a copyright

Consent of the author to publication abroad places him in the position of a foreign⁹⁸⁸ author, and is an abandonment of his rights to a copyright

The performance, with the author's consent and for his benefit, of a play which has⁹⁷⁷, not been printed by him, is not an abandonment to the public, nor a publication,⁹⁸³ within the copyright act 988

Deposit of title of drama not original with depositor does not preclude its use by oth-²⁰¹ers, who have previously applied it to dramatic composition

The right of action at law as well as in equity may accrue after the filing of the title,⁹⁸⁸ and before actual publication

The exclusive right to publicly perform a dramatic composition, under Rev. St. §983 4966, is dependent upon the existence of a copyright

A copyright may be assigned to be transferred to a person not entitled, under the act,977 to take out a copyright

The unauthorized use by a map maker of the surveys upon which a copyrighted map762 is based is an infringement of the copyright

It is not necessary that a play to infringe the copyright of another should be identical,988 word for word

An injunction will not be granted in the first instance if it is doubtful whether there763 has been infringement

A bill for infringement, filed four months after the deposit of the title of a dramatic985 composition, which does not allege a publication or a delivery of copies to the librarian of congress or any reason for the failure, is demurrable

It is a proper question for the jury whether one production is a copy of the other or763 Hot, and, where there is a small variance, whether it is not merely colorable

In a qui tarn action for infringement of the copyright of a chart, the question whether762 defendant copied from plaintiff's survey is for the jury

On the trial of an action for violating the copyright of a play, a witness cannot testify977 as to identities between parts of the play and a book from which it is alleged to have been dramatized, where either the book or play is not produced in court or its absence accounted for

The right to an account does not depend upon the right to an injunction 685

Equity will settle a disputed title to a copyright in a suit to enjoin infringement 421

CORPORATIONS.

A foreign corporation becomes a domestic corporation by having its charter duplicated by the state legislature 527

Whether a charter be a continuation of an old corporation or the creation of a new one must be decided by the legislative intent, and not by the conduct of its officials 144

A corporation does not cease to exist by ceasing to do business and distributing its assets and debts to the stockholders 1150

A company incorporated by a descriptive name *held* to have the power, independently of special provisions, of purchasing patents relating thereto 653

The treasurer of a corporation, having general authority to pay debts and borrow money, may give his consent to a transaction by which a selling agent assumes and pays a debt due another 1159

The directors of an insolvent corporation will not be allowed to secure a preference over other creditors 1142, 1146

An officer of a corporation embarrassed, and without funds, may, with his own means, purchase its past-due outstanding bonds, and hold them as against the company 1172

A corporation may make a valid contract with its president increasing the rate of interest upon its own past-due bond, *held* by him, the contract being a fair and equitable one 1172

Corporate rights and interests wrongfully affected must be asserted and defended, both at law and in equity, in the corporate name 1159

Corporate assets are regarded in equity as *held* in trust for payment of the corporate debts, which equity will enforce, though the matter in controversy may not be cognizable in a court of law 1142

Bona fide alien creditors of corporation may maintain bill in equity in federal court to hold its assignees accountable for improper conduct, and for appointment of receiver 116

An averment that defendant corporation is duly chartered under the laws of the state can only be denied by plea in abatement to the jurisdiction 527

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 Party appealing in collision case, and securing division of damages, is entitled to costs 36
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 Payment of costs of bill of discovery by defendants should be borne by them on their 1088
 final defeat
 Party allowed to prosecute suit without giving security for costs, where he makes 1129
 oath to his poverty, and an attorney certifies to merits
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 Fees paid witnesses who actually attend trial are taxable 29
 Travel fees for witnesses who live out of the district may be taxed to extent of 10029
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 ined, are taxable, as is also the proctor's fee for taking his deposition, if it is admitted
 in evidence
 A party is entitled to a detailed bill under oath of commissioner's fees which are to 29
 be taxed against him. showing the items, and that they are legally chargeable
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 Attachment will be granted against plaintiff and his sureties for costs for which he is 1087
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COUNTIES.

A county is not liable on the bonds of a levee district issued to pay for building levees 910
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 expense of building. levees will not make county liable to general judgment for the
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 A change by statute of the time of holding courts does not affect the business therein, 961
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Priority of jurisdiction is determined by date of service of process, and not commencement of suit 1101

The time of the appointment of a receiver for an insolvent corporation, and not the commencement of suit therefor, determines priority of jurisdiction 586

Federal courts—Jurisdiction in general.

A court of equity in foreclosing a consolidated mortgage by a consolidated corporation of different states has exclusive jurisdiction over all the property in all the states 527

____ Grounds of jurisdiction.

The circuit court has no power to administer common-law relief in a suit between citizens of the same state 983

It is no ground of jurisdiction under the patent law that the contract between the parties relates to a patent right 726

The parties to a contract respecting patent rights not provided for or regulated by act of congress stand upon the same ground as other litigants in respect to the jurisdiction of the court 640

Where jurisdiction depends upon the fact that one of the defendants is a foreign consul, and he is *held* not liable, judgment cannot be rendered against the others 488

Jurisdiction as to resident defendants in suit by aliens is not affected by non residence of others 116

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A controversy as to the custody of a child, between citizens of different states, is within the judicial power of the United States to determine by writ of habeas corpus 212

It is no objection that plaintiff: acquired title to enable him to sue in the federal courts if the transaction is real, and not colorable 527

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A defendant corporation "is found" within the district where sued if it does business there by authority of law 527

A corporation authorized by the statute of a state, doing business there, and reciting in its contracts that it is chartered by the state, is estopped to deny, when sued in the federal courts, that it is duly organized under the state laws 526

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Such receiver cannot sue as the bearer on a note payable to the bank or bearer 1132

The fact that a corporation is not suable in a circuit court will not prevent its agents being sued therein 821

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The citizenship of a defendant in ejectment, residing upon the land, and intending to remain permanently, cannot be alleged as of another state 483

The assignee of a bail bond is not such an assignee of a chose in action as is contemplated by section 11 of the Judiciary Act 788

An instrument not negotiable by the law merchant, although made negotiable by local statute, is not within the exception (Act March 3, 1875) authorizing suits by assignees 320

The objection that the cause of action arose in another district is waived when not raised in the answer 517

A plea of the general issue waives proof of jurisdiction of the person if served within the state 494

A foreign corporation, by filing an answer, waives the right to be sued only in the district of the state creating it, and jurisdiction is not limited to its property situated within the district

The parties cannot by consent confer jurisdiction not shown in the proceedings
Defendant may at any time before trial object to the jurisdiction on motion, or by plea, or on the general issue with notice to the adverse party

After a trial on the merits, and a verdict or judgment given, defendant is estopped to controvert the fact of citizenship, as laid in the declaration

Federal courts—Circuit courts.

Circuit court sitting in Alexandria has only the powers of a county court of Virginia in relation to ferries

_____ District courts.

Though all parties are foreigners, the court within whose jurisdiction the thing is situated has jurisdiction in rem, unless it is brought within the jurisdiction by violation of the sovereign right of another nation

A district court has no jurisdiction by habeas corpus over a political prisoner moved from its district before the petition is filed, nor will it compel such prisoner to be brought within the district that relief may be granted

_____ Administration of state laws and decisions.

On a commercial question the federal court is not bound to follow the decisions of the state court

A federal court can inquire only into the constitutional power of state legislatures, not as to the policy, justice, or wisdom of their acts

A state law compelling parties to testify is enforceable in the federal court

The rule that remedies given by state laws may be pursued in federal courts sitting in the state applies to an action for partition

An attachment issued by a federal court under a state law, not adopted by congress or by rule of court, cannot be sustained

State insolvent laws may be adopted by a rule of court

State insolvent laws cannot affect proceedings in federal courts unless they are adopted as rules of proceeding

Decisions of state tribunal on a construction of their statutes are binding on federal courts

Imprisonment for debt, having been abolished in the state, cannot be used to force a final decree in the federal court

A federal court in equity will enforce, at the suit of the beneficiary, a contract made for his benefit by another person, where, under the jurisprudence and laws of the state, want of privity is not an obstacle to such enforcement

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The measure of damages for breach of a covenant for quiet enjoyment made by the 855
lessee, on a transfer by him, where the covenantee is evicted, is the fair rental value,
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A tenant by the curtesy, guardian for the remainder-man, cannot apply the ward's 1003
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den seed and all other seeds not otherwise provided for"

Vermilion *held* dutiable as such, and not as a "mercurial preparation" 1023

The similitude clause of Act Aug. 30, 1842. does not contemplate that the non-enu-808
merated articles shall in every particular bear a similitude to an enumerated article

Invoice: Appraisal.

Costs and charges actually paid should be added to the invoice, and not arbitrarily fixed 192

Freight and transportation from port of shipment is not a dutiable charge, under Act 192
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Where sales are free on board, the addition of transportation charges from the place of production is illegal 714

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Sea freight is not a dutiable charge 714

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Goods imported by their manufacturer are not subject to a penalty of 20 per cent. ad valorem for undervaluation (Act 1846, § 8), but to a penalty of 50 per cent, of the duty (Act 1842, § 17) 451

The statutory provision requiring the appraiser to view the property when the appraisement is made upon an increased valuation is waived by failure to protest 808

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The recovery of excess duties can only be had on the grounds stated in the protest 808
Protest not required as to each particular entry, but may be prospective and continuous. (Act March 3, 1857) 192

A protest that "the appraisers had not used or employed sufficient means, or made sufficient examination," to determine value, *held* sufficient 807

Illegal exaction cannot be proved by adjustment by customs official on incomplete statement 192

Report made at request of customs officials, without instructions from treasury department, inadmissible as evidence of proper charges 192

Additions to entry made by importer to obtain possession of goods are not voluntary, and appraisement is not conclusive 192

Failure to appeal from decision of collector does not bar a recovery against him for the excess of duty exacted 192

Action to recover excessive duties will be referred where it involves numerous items 192

New trial granted on payment of costs where papers were lost in customhouse, and there was a question whether all the facts were presented 807

Violations of law; forfeiture.

A forfeiture for unloading imported goods before reaching port of discharge (Act March 2, 1799) applies to both foreign and American vessels 303

A libel for such forfeiture need not allege the goods to be of foreign growth 303

A libel for a forfeiture should substantially agree with the terms of the statute 303

Goods landed under a permit obtained by collusion with a deputy collector are forfeited 968

A forfeiture for landing goods under a collusive permit may be enforced upon a general count charging that the goods were landed without a permit 968

DEATH BY WRONGFUL ACT.

Only the amount of the actual pecuniary loss is allowable (Act Ill. Feb. 12, 1853); nothing can be added for grief or loss of society 1196

DEED.

The grant to a town of all the proprietor's ways called "highways" conveys only those in existence; not those reserved, but not laid out 899

The part excepted in a grant remains in the grantor, and needs no words of perpetuity 1076

DEPOSITION.

The deposition of a seafaring man may be taken on one day's notice to the adversary's attorney. (Act Md. 1721, c. 14, § 14) 1070

Notice served on counsel during court, or which would deprive him of attendance at the commencement of court, is not good 110

A commission directed to an officer to be executed in one county cannot be executed in another 993

The commissioner should state when and where the depositions were taken 993

The verification of a deposition may be taken before a notary 615

A deposition taken under Act 1789, § 30, must be certified by the judge that it was reduced to writing by himself or by the witness in his presence 604

The mistake of the clerk in misnaming one of the parties in a commission may be amended after the death of the witness 879

A deposition cannot be read unless due diligence be first used to obtain the attendance of the witness at the trial or his evidence under commission 687

The deposition of a witness, living out of the state, and more than 100 miles from court, cannot be read unless taken under a commission 687

In a suit by 100 plaintiffs, depositions taken in a suit by 5 of them are not admissible 993

Depositions taken between other parties on the same point may be read to prove pedigree, as hearsay or declarations, the witnesses being dead 993

Depositions cannot be read where proper interrogatories are not answered 100

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DESCENT AND DISTRIBUTION.

The Virginia act concerning guardians, etc. (1 Rev. Code, c. 108, § 12), and the act concerning wills, intestacy, and distribution (Id. c. 104, § 60), construed in relation to the claim of a ward as to priority and the liability of heirs and devisees 507

DETINUE.

Detinue will lie for a slave, although defendant obtained possession tortiously²⁷⁷

DISCOVERY.

There is a distinction between a bill for discovery merely and one for discovery and¹¹⁹ relief

A bill of discovery, to aid a prosecution at law, should aver the materiality of the facts,¹¹⁹ and that they can only be proved by defendant's oath

A plea to a bill of discovery presenting the issue as to who is best acquainted with¹¹⁹ the facts of the case is not good

It is no sufficient answer that the facts can be proved by another, who is interested 119

DIVORCE.

A divorce leaves the wife competent to choose her own domicile 212

Custody of children may be awarded to either parent. (Hitt. Laws Cal. § 2419.)²¹²

DOMICILE.

Page A man is not prevented from acquiring citizenship in a place to which he goes 580
with the purpose of permanently residing there, and in which he votes, by the fact
that his wife and children remained at his old home

DOWER.

Dower, unassigned, cannot be barred by a tax sale 719
Upon a writ of dower, the marriage may be proved by parol evidence of cohabitation 720
as man and wife

EJECTMENT.

Ejectment by one claiming title under a Mexican grant will lie at any time within five 466
years after its final confirmation. (Act Cal. 1855, § 6; Act 1803, § 6.)
The issuing of the patent is the final confirmation, except where the survey is con- 466
firmed by the district court, when final confirmation dates from the decree
An averment of seisin is essential, and it must be alleged to have been within the 791
time limited for bringing the action
Defendants, showing no title, cannot depend upon the invalidity of the documentary 1112
title of plaintiff, accompanied by possession
An objection to jurisdiction on the ground that plaintiff's title is merely colorable is 1112
not available under a general answer
"Rodeo boundaries," under the California customs and usages, constituted as notori- 1112
ous evidence of possession as cultivation or fencing in an old, settled country
A tenant in possession under a defective title from the commonwealth is entitled to 905
the full value of his improvements

ELECTION OF REMEDIES.

Where timber cut upon public lands willfully, fraudulently, or negligently is made into 767
saw logs, the government may elect to replevy such logs, or sue in trover for their
value as such

EMBARGO AND NONINTER-COURSE.

Voluntary arrival at port of destination, though without breaking bulk, constitutes an 925
importation
Goods placed on board with intent to import them are forfeited, irrespective of own- 925
ers' intention to violate act
The informer should be named as a party to the information, and the judgment should 811
ascertain and decree his share
Procedure on seizure and information 811

EMINENT DOMAIN.

A railroad or canal for the conveyance of the public and their goods generally, on 821
payment of reasonable and uniform tolls, is for a public use

Property destroyed by city officers to stay the progress of a conflagration is not private¹⁰³⁸
property taken for public use

An act incorporating a company to build a railroad, and providing for the assessment⁸²¹
of damages to the owners of land through which it passes, *held* not unconstitutional

The obligation to make compensation is concomitant with the right to take private⁸²¹
property for public use

The payment for land taken must be simultaneous with the disseisin and the appro-⁸²¹
priation

The mere entry on land for the purpose of making a survey of a road is not a taking⁸²¹
requiring compensation to be made

A law is not void because it contains no provision for compensation for property tak-⁸²¹
en, or the mode of ascertaining it, where a subsequent law contains such provision

But its execution will be enjoined till such provision is made by law and the com-⁸²¹
pensation paid

Contractors of the government *held* to derive no power, by virtue of their contract,¹¹⁹⁰
to take private property, or apply the same to fulfill their contract obligations, without
the owner's consent

EQUITY.

Relief will be given in equity if it be not complete at law 1076

Equity has jurisdiction of a bill by bond holders to enjoin railroad commissioners⁸⁴⁶
from putting in force a statute alleged to be unconstitutional, and injurious to their
rights

Where a contract is not enforceable at law, and there is a fund to which the creditor³⁰
has a right to resort, equity will relieve

A delay of 36 years to enforce a ferry right adversely used by another will bar relief¹⁰⁷⁶
in equity

A claim is rendered stale after 10 years from removal of involuntary disability of in-³⁸
fancy, notwithstanding further disability of coverture

ESCROW.

A promissory note delivered in escrow *held* valid in the hands of the payee, al though⁸⁸⁰
agreement not complied with

ESTATES.

The tenant for life is bound to keep down the interest on an incumbrance on the¹⁰⁰³
entire estate, but not to pay any part of the principal

ESTOPPEL.

Estoppel by a former suit is not available unless alleged in anticipation of the defense⁶⁷⁵

A person who, by overt act, deprived himself of the legal capacity to do an act, *held*⁶⁸⁷
estopped from denying that he had such capacity

EVIDENCE.

Judicial notice.

A federal court will take notice of the organization of a state court to uphold a certificate to a copy of a record

Best and secondary.

An affidavit of loss and inability to produce a paper after the use of due diligence is sufficient to let in secondary evidence of its contents

Documentary.

Act May 26, 1790, prescribing mode of proving judicial records of a state, does not apply to their use in federal courts

Copies of accounts certified by notary public, though admissible by law in state court, *held* inadmissible in federal court

A register of the treasury department is not authorized to certify to copies of papers on file in his office

Defendant's book of account of original entry in his own handwriting is not evidence for him

A check book competent but for certain interpolations is admissible

16

A testamentary declaration of master of vessel, though not under seal, *held* admissible in evidence 557

Parol, etc., affecting writings.

A bill of lading and invoice may be contradicted both as to genuineness and truth 557

Declarations: Admissions.

Declarations of the seller prior to the making of a bill of sale are admissible to prove it fraudulent as to creditors 1069

What a party has said on one day against his interest cannot be explained by declarations on a subsequent day 699

A testamentary declaration *held* admissible, though impeaching negotiable paper signed by the declarant 557

At former trial and in another suit.

Evidence of deceased witness' testimony at former trial must be of his very words 212

No one can take the benefit of a verdict or of depositions who would not have been prejudiced by them had they been other wise 993

Competency: Relevancy: Materiality.

A power to release a debt cannot be proved by general reputation 212

Evidence of similar previous fraudulent transactions with third persons is admissible on the question of fraud in a particular transaction 968

EXECUTION.

An execution issued before the expiration of 10 days from the judgment will be set aside on motion 787

The fact that plaintiff failed to return certain securities taken for the debt will not prevent his proceeding with execution where the condition on which they were given was not performed by defendant 693

A second execution levied during suspension by order of the, creditor of the first execution takes precedence 290

A judgment of a justice of the peace cannot be seized and sold under a *fi. fa.* issued by a justice of the peace 1055

EXECUTORS AND ADMINISTRATORS.

An administrator appointed in another state may intervene in behalf of his intestate 918

A person receiving letters testamentary on a will duly proved is authorized to perform every act proper for an executor, notwithstanding the pendency of a question relative to the validity of the will 1128

An executor *held* entitled to expenses in supporting in good faith the probate of a will subsequently declared invalid, and to commissions for managing the estate while in his hands 1128

Letters granted in New York upon a suggestion of assets found will enable the ad-769
ministrator to recover assets in the District of Columbia, under Act June 24, 1812. §

11

One administrator may release or dispose of the estate without the other 993

Money received by defendant, for the estate of intestate, in the first administrator's 769
lifetime, may be recovered as assets in an action by a subsequent administrator

Construction of 1 Rev. Code N. C. c. 65, in relation to the limitation of actions 834
against executors and administrators

Executor and trustee paying money to remainder-man through his counsel is charge-57
able with his knowledge as to bankruptcy proceedings against remainder-man

EXEMPTIONS.

See, also, "Bankruptcy."

A merchant is entitled to an exemption of implements or stock in trade, given "any 488
mechanic, miner, or other person."

The right of exemption attaches, as against partnership creditors, to partnership prop-488
erty transferred to one of the partners after dissolution

EXPRESS COMPANIES.

Express company *held* not liable for delivery by the agent of a railroad company, who 667
was also its agent, of goods shipped by freight, and consigned to the shipper, but
marked upon the railroad receipt to be delivered to another, against whom a draft was
drawn and sent to the agent by express, with the receipt, for collection

FACTORS AND BROKERS.

The undertaking of a factor is merely a guaranty of payment of the debt of the buyer, 1159
and it is not collateral within the statute of frauds

All moneys advanced by the factor on account beyond the amount agreed constitute 1159
a present legal debt giving a present legal right of action

In an action to recover such surplus the factor will not be compelled to offset it 1159
against immature acceptances and bills for the principal upon which he is liable

A principal procuring and receiving the benefit of advances cannot object that they 1159
do not comply with the agreement of the factor

FERRY.

A ferry right (in Indiana) may be as signed 1076

The ferry right is an incorporeal hereditament. It grows out of the soil, and may be 1076
granted the same as a rent or an advowson

The grantor of land excepting the right of ferry has a right to use the soil for a ferry 1076
way, and may enjoin obstruction thereof

FISHERIES.

YesWeScan: The FEDERAL CASES

The first iron placed gives title to the whale, whether attached to the boat or not,1002 though the whale is killed by the crew of another vessel

The compact between New Jersey and Pennsylvania recognizes the right of fishery221 in riparian owners on the Delaware

The right to the bed of the Delaware river was originally in the crown, and the com-221 pact of the New Jersey proprietors of 1676 did not give a common right of fishery therein

The legislature of New Jersey has power to regulate fisheries on the Delaware, by221 prohibiting the exercise of a common-law right

Neither the state nor federal constitutions secures a common right of fishery in the221 Delaware to the people of New Jersey

Construction of New Jersey laws regulating fishing on Delaware river 221

FRAUD.

Parol evidence is admissible in all cases to establish fraud 968

Collateral facts are admissible to establish intent or guilty knowledge where material968 to the issue of fraud

FRAUDS, STATUTE OF.

Agreement to extend time of payment of debt secured by deed of trust need not be³¹⁴
in writing

A verbal promise to a dying person by heirs to convey his property in a certain way is³⁸
void under the statute of frauds, and is not enforceable in absence of fraud

FRAUDULENT CONVEYANCES.

See, also, "Bankruptcy."

It is not necessary that the wife should have known of the fraudulent intent of the⁵²
husband, to make void a voluntary conveyance to her

Delay of 18 months to record deeds of conveyance to wife through third person *held*⁵²
a badge of fraud

A voluntary conveyance to wife through a third person *held* void 52

The wife acquires no separate rights in a homestead purchased in fraud of creditors⁸⁹⁵

GRANT.

A state grant of a right to mine phosphate rock for a certain royalty *held* not exclusive.¹¹⁶⁵
(Act S. C. March 1. 1870.)

The "general title" of sutler, derived from Gov. Micheltoarena, *held* valid *236

GUARANTY.

A guaranty made subsequent to the contract must be founded on a distinct consider-¹²
ation

A letter of credit to a particular firm is not binding if the purchase be made of other⁶⁹⁵
persons

But the guarantor is liable if the goods were purchased in his name, and he examined⁶⁹⁵
and approved the invoices

In such case no notice of the acceptance of the guaranty is necessary 695

To charge a guarantor on his principal's failure to deliver flour, a demand when due¹²
must be made, and a reasonable notice of failure to deliver given

A declaration on a guaranty *held* not demurrable because it failed to allege steps taken¹⁷⁸
to collect securities

GUARDIAN AND WARD.

The father, if guardian, must support his child if of sufficient ability, but it is within¹⁰⁰³
the discretion of the court to allow him compensation out of the estate

A guardian who used the ward's estate as if it were his own, filing neither in ventory¹⁰⁰³
nor account, must pay interest on its value

A ward (in Mississippi) is not concluded by his guardian's annual account, filed and¹⁰⁰³
passed upon, without notice by the probate court, during his infancy

The whole administration is subject to challenge and examination upon filing the fi-¹⁰⁰³
nal account

The Mississippi statute creates the relation of creditor and debtor between the ward and guardian on the latter's failure to account to the ward on his arriving at age 1003
The pendency of the settlement of the guardian's accounts does not preclude the ward from proving a claim in the probate court 1003

HABEAS CORPUS.

The president has no constitutional power to suspend the privilege of the writ of habeas corpus, at any time, without authority of congress 159

The power to issue the writ may be exercised by the judge at chambers 212;
contra.
159

The proviso in section 14 of the judiciary act restricts the issue of the writ only in cases of state prisoners 212

The judge of the court which the grand jury attended is to make the order for the discharge of prisoners against whom no indictment is found. (Act 1863, c. 81. § 3.) 752

Where the prisoner is beyond the jurisdiction, and an order for his discharge on habeas corpus would be ineffectual, it should not be granted 159

The marshal's statement on return of the writ that he had disobeyed it, and deported the prisoner in accordance with instructions from the secretary of war, is a sufficient return 159

A warrant of commitment must be under seal, and show a charge upon oath 204
If commitment be informal or insufficient, prisoner will be discharged, but recommitted in proper form if there be sufficient cause 204

A former conviction and a statute of limitations, being matters of defense, and not affecting the jurisdiction, cannot be inquired into 796

The only questions to be determined where it appears on the return that petitioner is held for trial by naval court-martial are whether the court has jurisdiction and is proceeding regularly 796

Certiorari issued on request of prisoner to committing magistrate to certify proceedings 204

HOMESTEAD.

Where a leasehold is not susceptible of division, the debtor may retain \$1,000 out of its proceeds, under laws of Missouri in force in 1864 26

HUSBAND AND WIFE.

A married woman is bound by articles of copartnership signed in her name by her husband, by her authority 292

A married woman, member of firm, represented therein by her husband, is not liable as a partner in new firm continuing old business after limitation of copartnership, without her consent 292

It is only by statute that the wife's rights and liabilities are enlarged, and only to the extent specified therein

The statute rendering the separate property of the wife liable for her contracts must be strictly construed

The wife cannot, as a general borrower of money, bind herself so as to render her separate property liable, no matter for what purpose the money may be afterwards applied

The meaning of the words "for family supplies or necessaries," as used in the statute, validating the wife's contract, defined.

INDEMNITY.

A judgment obtained by the obligee of a bond of indemnity against the debtor is conclusive on the surety, except in case of fraud or mistake

265

A breach alleged in the terms of the bond is sufficient

265

A set-off of notes subsequently acquired by the surety cannot be pleaded as a set-off against the creditor's demand

INJUNCTION.

Equity may inquire into the motive of one seeking an injunction 821
The kind of injury impending, and the degree of its danger as a ground for an injunction, considered 821
A proceeding to collect by distress the penalty provided for selling lottery tickets without having paid the tax will be enjoined 909
It is no objection to the granting of an injunction that defendant acts under the authority of the law, if it is unconstitutional or he exceeds or abuses his power 821
But in such case it will only be granted when the right is clear 821
Notice, previous to motion for an injunction, required by Act March 2, 1793, § 5, may be waived by appearance and filing answer 1158
The application should contain a description of the property sought to be protected, and appropriate allegations of the danger or loss impending, 534
To show waste, affidavits are admissible, on motion for a preliminary injunction, even after answer filed 1158
Allegations upon information and belief merely, unsupported by other proof, are not sufficient to sustain an injunction 733
A petition in bankruptcy cannot be tested on an application for an injunction 534
An injunction will be dissolved where it appears that complainant has been guilty of intentional delay in prosecuting his cause 1158
The right to an account in patent and copyright cases does not depend upon the right to an injunction 685

INSOLVENCY.

An assignee in insolvency in one state cannot avoid a conveyance of personalty in another state, good as against the insolvent, but invalid against creditors, under the laws of the latter state 311
A discharge of defendant under an insolvent law of the state where the contract is made, after the bail bond has been assigned to plaintiff, will not release the surety 784

INSURANCE.

Premium not required by policy to be paid in money may be paid by act of agent accepting responsibility of third person in 229
Act of agent in accepting responsibility of another for premium *held* to be ratified 229
A loss by fire communicated from an other building set on fire by Union forces, to prevent stores falling in the hands of at tacking rebels, *held* not caused by an unlawful and rebellious attack on the city, within the meaning of a proviso *871
Acceptance from a mortgagee of the renewal premium is a ratification of an assignment of the policy to him without the insurer's consent 388

A conveyance of the fee by the mortgagor to the mortgagee will avoid a policy to the mortgagor, though the insurer previously consented to an assignment of the policy
It seems that equity will relieve against a forfeiture from inability to pay premiums caused by the Civil War, and reinstate the insurance on payment of all premiums, with interest

A reply to a letter asking a continuance of insurance suspended during the Civil War that the policy is forfeited dispenses with tender of premiums

Erroneous affidavits of loss will not prevent recovery unless willfully false 318

Delay in furnishing proofs of loss and value will not prevent recovery unless fraudulent

Notice of loss to agent of insurer, in absence of knowledge of revocation of his agency, is notice to insurer

Provisions for notice and proofs of loss are for insurer's benefit, and can be waived. 229

The giving of proofs of death is not a "condition" of the policy, within a provision that a waiver must be made at the head office, and signed by an officer

An offer to compromise a suit is a waiver of proofs 288

Repudiation of liability for loss waives objection to notice of loss and the necessity of furnishing proofs

A parol assignment of the right of action on a fire policy after a loss is sufficient 229

Proposals, answers, and declarations, made a part of the insurance policy by its express terms, must be stated in the complaint in an action thereon

Under a general denial, defendant cannot prove a breach of any conditions other than such as are conditions precedent to plaintiff's right to recover

INTEREST.

Interest does not accrue during the Civil War between the parties thereto 364

For the purpose of computing interest, the Civil War, so far as Virginia was concerned, terminated on the establishment of the government at Richmond, May 26, 1865.

An open account does not carry interest, but interest may be given as damages in an action thereon

A jury may give interest as damages after six months, in an action on an account for goods sold, where the custom was to charge interest after six months from the sale

INTERNAL REVENUE.

Authority of supervisor to issue summons to produce books and papers, made co-extensive with that of assessors (Act July 20, 1868), is not affected by subsequent transfer of assessor's authority to collectors

A summons issued to a person not engaged in a business particularly affected by revenue laws must be limited to books and papers concerning the subject of investigation, and describe them with reasonable certainty

Summons reciting appropriate statute and section as authority need not refer to section of Revised Statutes embodying it

Adjournment of hearing does not necessitate a new summons 205

Order for attachment for failure to obey summons to produce books and papers will be conditional

The term "distilled spirits" (Rev. St. §§ 3289, 3299) includes all spirits which have been distilled, whether they have been subsequently rectified or not

The fact that a person has, in good faith, made advances upon distilled spirits, is no defense to an action for their forfeiture

Testator died in 1847. Plaintiff came in to possession in 1867, under his will, after the death of the first life tenant. *Held*, that she was liable for the succession tax. (Act June 30, 1864.)

JUDGMENT.

Rendition and entry.

Judgment in vacation cannot be entered unless in pursuance of a positive statute, whose provisions must be fully complied with

The authority to confess judgment, in Wisconsin, must be in the statutory form, and be produced before the officer

A court of the United States is not empowered to grant a nonsuit in a case where evidence has been taken

Operation and effect.

A judgment in attachment is not to be treated as a nullity because the affidavit does not appear in the record

A decree of a state court awarding custody of children on divorce of parents cannot be questioned collaterally

A decree of divorce providing that it may be modified upon application of either party, on sufficient cause shown, is not a temporary decree, and the presumption that it remains unchanged can only be overcome by record evidence

The decree of the Pennsylvania orphans' court settling a deceased guardian's account, the subsequent guardian of the infant being a party to the controversy, is conclusive

A judgment of a foreign court of admiralty can be impeached only for fraud or want of jurisdiction

To hold a sentence of a foreign court in rem conclusive on the parties, personal or public notice to the parties and proper judicial proceedings must appear

The lien given upon the docket of a judgment (Civil Code Or. § 266) arises from the docketing, and not the judgment

A judgment which by its terms cannot be enforced against the property of a party cannot become a lien thereon

The entry of a judgment cannot be referred to for the purpose of supplying omissions or explaining ambiguities in the docket from which the lien arises by statute

If, from the whole entry of the docket, the amount, date, parties, and court appear, it will be *held* sufficient

A judgment of a justice of the peace, unlike a judgment of a court of record, is not entitled to priority in payment

Amendment.

An entry on the clerk's docket, after judgment, intimating that it is for the use of a third person, cannot be stricken out after the term

Judgment not opened after the term to permit retaxation of costs 570

Relief against: Opening: Vacating.

An injunction will be granted as to portion of judgment recovered by surprise against foreigners though plaintiffs acted bona fide

Equity will not relieve from a judgment at law unless it appear that it is unjust and inequitable, and ought not to be enforced

Wrongfully depriving a debtor of an opportunity of making a defense is no ground of the relief in equity from a judgment at law unless a defense, apparently, would have been available

A judgment at law will not be enjoined to await the recovery of unliquidated damages by the debtor against the creditor unless good ground exists to believe that the former would not be able to obtain payment of his recovery

On motion by defendant to vacate a judgment, the court may, the proper papers being before it, render a new judgment and issue execution

JURY.

No peremptory challenges are allowed where a jury has already been struck on both sides

The provisions of Act March 3, 1865, as to waiving a jury, do not extend to district courts

LANDLORD AND TENANT.

A landlord does not lose his lien by a note taken for rent, which is not paid at maturity

The landlord of an assignor for the benefit of creditors is entitled to his rent out of the proceeds of a sale by the trustee, turned over to an assignee in bankruptcy

A lessor cannot recover, in an action for use and occupation, the rent of his tenant after his title ceased by a sale, though the tenant did not attorn to the vendee

Landlord *held* entitled to recover in ejectment without demand, where rent was in arrear, under a lease giving a right of reentry for nonpayment of rent

LARCENY.

Value of stolen coins need not be averred 28
Averment that coins stolen were the "goods and chattels" of the prosecutor is sufficient averment of ownership 28

LIBEL AND SLANDER.

Evidence of words spoken in the second person will not support an averment of words spoken in the first person 425

LIMITATION OF ACTIONS.

Limitation in admiralty is determined by the wants and convenience of commerce and the analogies of the local law of limitation 696

The limitation law became effective as to nonresidents by Act Ark. Jan. 14, 1843 1108

Construction of such act as to written obligations 1108

The statute of limitations in Indiana does not run against nonresidents; but the complainants may be barred by lapse of time 1076

Code Proc. N. Y. § 100, construed with reference to its applicability to foreign corporations 735

Act N. Y. 1788, *held* not invalid as applying to existing actions 791

The formal renewal of a note given by a husband to his wife's brother, in trust for the wife, with privilege of renewal for one year, is unnecessary 16

In New York the fact that the defendant is a corporation of another state is a legal answer to a plea of the statute of limitations 735

An allegation in a replication that defendant corporation was out of the state when the cause of action accrued is a sufficient legal answer to the plea that the action did not accrue within six years; but otherwise with an allegation that defendant "is" a corporation existing under the law of another state 735

LITERARY PROPERTY.

Irrespective of statute, an author has no exclusive right to multiply copies or control subsequent issues after the first publication of his work 977, 988

MALICIOUS PROSECUTION.

To maintain the action, both malice and want of probable cause must concur; but malice may be inferred from want of probable cause 700

The advice of counsel is only admissible in evidence when given before the commencement of the suit, and accompanied with a statement of the facts upon which it was given 760

MANDAMUS.

Mandamus is the proper remedy for failure or refusal of county court to assess a tax,910 as provided by law, on lands made liable for local improvement

MARINE INSURANCE.

It is only an honest effort to obtain full disclosure and a communication of all facts329 obtained that will relieve assured from a charge of misrepresentation or concealment

A seizure made bona fide upon reasonable grounds, however unfounded in fact,1184 *held* within the exception of a loss from seizure or detention on account of illicit or prohibited trade

Survey at port of delivery is not necessary to maintain action for an average loss 241

To recover an average loss, *held* that plaintiff need not produce invoice or prove241 prime cost of goods

If deviation was not within purposes, and for objects, authorized by usage, the in-241 sured cannot recover

A stoppage or deviation to save property, but not to save life, will discharge the in838 surer

A stoppage to save lives in jeopardy or property in extraordinary hazard is ' not a932 deviation

MARITIME LAW.

The custom of a particular port, embracing an entire business, *held* to supersede the1002 general maritime law

MARITIME LIENS.

Want of jurisdiction to enforce lien in particular locality not fatal to its existence 918

The builder of a foreign vessel has a lien for work and materials 68

A vessel is not chargeable with supplies in a foreign port unless furnished on her*1088 credit and an apparent necessity existed therefor

Lien not valid beyond the termination of voyage for which supplies were furnished918

Owners of cargo disposed of in foreign port to raise money for necessary repairs918 have lien upon vessel for value of goods at destination

Work done upon a vessel in the dry dock, in scraping her bottom preparatory to1136 coppering, is not of a maritime character

The master of a vessel which brings to the United States the crew and a portion1122 of a wrecked vessel has a lien on the property for the freight, but not for passage money of the seamen

A lien given by local law upon a vessel for supplies and materials furnished in a1134 home port outranks a mortgage lien

Seamen are not entitled to a lien for an increase of wages in an intermediate port722 prior to that of creditors for advances

As between claimants of same class last furnisher of supplies sometimes preferred⁹¹⁸
to the first

Libel by firm of three members against vessel in which two of them owned an in-²⁵⁶
terest cannot be maintained

Sale of a vessel on credit does not destroy a material man's lien 68

A sale of a vessel by a state court is subject to prior maritime liens in the purchaser's⁸¹⁷
hands

The district court in admiralty in Pennsylvania will take jurisdiction of claims for⁸⁷⁶
work and materials furnished to a domestic ship, the local law giving a lien therefor
Parties may be paid out of surplus on petition, though they could not sustain an⁹¹⁸
original action in rem

The proceeds of a sale may be appropriated in payment of liens on the original¹¹²²
property other than that under which it was sold, but not of debts arising on per-
sonal contracts

A creditor of libelant to whom money in court has been decreed to be paid cannot¹¹²²
compel its appropriation to his debts

Lien of a material man is assignable 918

Married Women.

See "Husband and Wife."

MARSHAL.

The acts of the marshal after the appointment of a new one, and before he received¹⁰⁶²
notice thereof, are good

A marshal selling under a vend, ex., has no power to pay arrears of taxes out of the⁶⁹⁴
proceeds of other property sold under the same writ

Fees, when not regulated by law, are to be allowed upon the principles of a quantum⁹⁷⁵
meruit

In case of dispute the matter will be referred to an auditor 975

The marshal has no right to the fees provided by law in case of settlement where⁸⁴⁸
the settlement is made before the claimant appears in court

A marshal who takes sureties not free holders on a replevin bond (in Indiana) is⁴⁵⁷,
liable on their failure 460

A declaration in an action against a marshal for neglect to make the money on a⁴⁵⁷
judgment must negative every presumption of duty on his part

An averment that the marshal took insolvent sureties, and not freeholders on a re-⁴⁵⁷
plevin bond, is sufficient to charge him

MECHANICS' LIENS.

On "factory and other buildings" will not include machinery or fixtures or sup ports⁶⁹
therefor, not necessarily connected with or forming part of building

Promissory notes, transferred or discounted, and taken up on maturity by payee, will⁶⁹ not be treated as payment

MORTGAGES.

A deed absolute may, on bill in equity, be shown to be a mortgage, by evidence of²⁴⁴ the circumstances under which it was given and subsequent transactions and admissions between the parties

A grantee assuming a mortgage is liable to the mortgagee both in equity and at law,³¹⁷ and cannot be released without the consent of the mortgagee

In such case the mortgagee will be entitled to a deficiency decree against him on⁴⁶¹ foreclosure

The bringing of a foreclosure suit is a sufficient acceptance of the grantee's promise ⁴⁶¹

A power in a mortgage to sell the mortgaged property is a matter of contract, and¹⁰⁵⁶ will not be overthrown by the court

A mortgage to secure a debt executed by public act according to the law of¹⁸⁶ Louisiana, although it imports confession of judgment, and there is a statutory remedy on it, may be enforced by suit in equity

MUNICIPAL CORPORATIONS.

Counties and towns are, as to their corporate existence, completely within the control³⁰ of the legislature

What constitutes buying up "any provision or article of food coming to market" ⁹⁶²

A warrant for the violation of a by-law and the judgment thereon should specify the by-law and the manner of violating it

Statutory authority to blow up buildings to prevent the spread of fire, when consented to by certain officers, does not render the city liable for buildings blown up without such authority

The liability of a city for buildings destroyed to stay the progress of a fire is wholly statutory, and plaintiff must bring his case strictly within the statute to sustain a recovery

A city may be liable for the wrongful acts of its officers where, if not wholly ultra vires, they were expressly authorized by the governing body, or were within the scope of their duties, and subsequently ratified

No action at law can be maintained against a town which has been obliterated by legislative act

A contract entered into by a town is not destroyed and annulled by its subsequent obliteration by legislative act

Municipal corporation to which the territory of another is assigned, on its being legislated out of existence, must pay its existing debts in the ratio of territory obtained

Municipal bonds, though issued in violation of a condition that they should only be issued upon a certain amount of work being done, are enforceable in the hands of innocent purchasers

NAVIGABLE WATERS.

The common-law rule that rivers are only navigable where the tide ebbs and flows is not applicable in this country

The proprietors of New Jersey had no right in the Delaware river beyond low water mark

NEGLIGENCE.

The failure of a pedestrian to use reasonable care and caution in crossing a swing bridge will prevent recovery for his death, even though the city was negligent.

NEW TRIAL.

Not granted where construction given by jury to the evidence appears to be consistent with the justice of the case

A verdict awarding excessive damages may be set aside in the discretion of the court
Granted where special verdict is ambiguous or uncertain 144

A verdict not founded upon either of two distinct grounds claimed, but partly upon both, will be set aside

A verdict will be set aside for a misdirection which might have noticeably affected it

The reliance of counsel upon an obiter dictum is no ground of awarding a new trial 1031
Where damages are excessive, the court may allow plaintiff to remit the excess 760

NOTICE.

Publication "once a week, for three successive weeks,"—meaning of 121

OFFICE AND OFFICER.

The presumption of law in favor of the innocence of a public officer charged with 968
fraud may be overcome by proof of previous delinquencies of a similar nature

The sureties on an official bond are liable for noncompliance with subsequent as well 860
as past laws, or orders justified by law.

The rule that payment is to be applied to the oldest debt if the debtor gives no direc- 860
tions is applicable to the liability of sureties on successive bonds

PARTIES.

Bill to obtain benefits of verbal promise to dying person by heirs to convey his prop- 38
erty in a certain way must make executors or administrators parties

All persons whose interests will be affected should be made parties unless without 1076
the jurisdiction of the court, when such fact should be stated

Where the proper parties are not made, the court will suspend decree to bring them 1076
in

An objection to the competency of an administrator as a party claimant must be taken 918
on his appearance

An objection that some of plaintiffs have no interest cannot be made at the hearing. 1076
That persons are unnecessarily made defendants does not oust the jurisdiction as to 1076
those who are properly before the court

PARTNERSHIP.

An agreement which 757

does not provide for
sharing in the profits

does not constitute a
partnership

The receipt of a stated 349 An agreement to contribute capi-349 Holding one's self 176
portion of the profits tal or labor to carry on a business out to the world as
of an enterprise as with equal participation in the a partner will make
compensation for ser- profits will constitute a partner- him liable as such to
vices will not alone ship as to third persons, although one who may be in-
constitute the recipient the agreement expressly stipu- ferred to have knowl-
a partner lates to the contrary, and although edge thereof, though
such third persons had no knowl- he in fact has no in-
edge of the actual relation terest in the concern

Agreement between¹⁰²⁴
owners of tug and
barge to operate them
jointly in the freighting
business, profits to be
shared in proportion
to the stipulated val-
ues of the vessels,
constitutes a partner-
ship

To rebut declarations,¹⁷⁶
as conducing to estab-
lish a partnership in
fact, a parol contract
between the parties
may be proved

The assignment of all⁵⁴⁹
the interests in a firm
to a copartner carries
the right to the exclu-
sive use of a firm
trade-mark

Dormant partners³⁴⁹
need not give notice of
the dissolution of the
firm

Admissions of a part-⁴⁵⁵
ner after dissolution
are inadmissible to
charge the firm.

Action for goods sold²³¹
belonging to a partner-
ship, of which defen-
dant was ignorant,
must be brought in
the name of all the
partners

PATENTS.

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The power of congress.

A retrospective act giving a patent for an invention already in public use is within⁶⁴⁸ the power of congress

Congress may, by special act, grant an extension of a patent which has been once⁷²⁹ renewed

Nature of the grant.

The exclusive grant in a patent is the construction and use of the thing patented. 1095

Patents, being granted to promote science and the liberal arts, and not as monopolies,⁶⁴⁸ are to be liberally construed

An act giving a patent will not be construed to operate retrospectively unless such construction is unavoidable

An invention secured by patent cannot be taken by the government without compensation

Patentability.

The application of a principle to some practical and useful purpose, and not the principle itself, is patentable

A new and patentable use suggested in the specification does not prevent the invention being anticipated by a prior machine of substantially the same construction

A new application of a principle not producing a new result is not an invention.

The true criterion of mechanical equivalence is identity of purpose, and not of form or name

The substitution of a wheel and axle for a screw held not to constitute invention

The change of lateral motion from one part of a machine to another held no invention

Experiments of others not resulting in discovery are no bar to a patent

The question of novelty is to be settled by a comparison of prior machines with the machine patented, rather than the machine in use

The question of novelty does not depend upon comparative value

Superiority over prior invention is proof tending to show novelty

A combination of old devices, involving only mechanical, and not inventive, skill, is not patentable

A combination producing a new and useful result, though of old devices, is patentable

A combination may be legitimate when all the elements perform their several functions in immediate succession

“Useful invention” means an invention which may³⁷
be applied to a beneficial use in society, in con-
tradistinction to one injurious to the moral health
or good order of society

In determining whether an invention is useful, it is³⁷
immaterial whether its utility be general or limited

The patent raises the presumption of utility 96

Who may obtain patent.

Improvements introduced by workmen without²⁵⁹
patentee’s knowledge cannot be appropriated by
him

Act Aug. 29, 1842, § 7, applies to design patents 883

Prior public use or sale.

Public use prior to discovery by patentee, however³⁷,
limited, if other than experimental, defeats patent 944

Neglect to apply for a patent within two years after⁶⁷⁵
a sale or public use is fatal.

“Public use” for more than two years which will⁵³⁷
defeat a patent, means use in public, not necessar-
ily use by the public.

Public use more than two⁴⁴¹
years before application, if in
good faith for experimental
purposes, will not avoid the
patent

The two-years public use must be dated back from⁹⁶
original application, and not from amended specifi-
cation, 26 months later, where there is no evidence
of abandonment

A technical withdrawal of the first application is³²⁰
not necessary to interrupt the continuity between it
and a succeeding one. 320 Continuity of successive
applications is a question of fact

A delay of less than a year in filing a new applica-⁶⁷⁵
tion after final rejection upon appeal held not un-
reasonable

A new application, made about two years after⁶⁷⁵
the first application, which was rejected, amended
specifications being filed, and finally rejected upon
appeal, held to relate back to the prior application

A patent will not be invalidated on the testimony⁵⁹⁰, of a single witness of the public use of an alleged⁵⁹⁸ prior machine some 20 years before

Abandonment—Laches.

Concealment of invention for a number of years²⁶⁰ will forfeit right to patent as against later discoverer and patentee

Abandonment or dedication to the public may be⁹⁶ made after patent granted

An abandonment cannot be predicated upon two⁴⁴¹ years' delay in filing the application, due wholly to the neglect of the patentee's solicitors, of which he was ignorant

Delay of 10 years to amend an application or re-³²⁰verse the decision of the patent office is not excused by the fact that the rejection of the application was wrongful

Undisputed acts of abandonment are entitled to³²⁰ more weight than testimony of an intent not to abandon

Caveat.

Will not protect inventor who allows his invention⁹⁶ to go into public use before application filed

Application and issue.

The applicant need not point out all possible con-⁶²²trivances by which the principle of his invention can be applied

Ambiguity and uncertainty, requiring conjecture to⁶¹⁰ make out the true meaning of a claim, will invalidate the patent, regard less of the question of good faith, and irrespective of individual merit

The new parts in a patent for a combination with⁶⁰⁷ old parts must be distinctly pointed out

The patentee is not controlled by the title of the⁹⁶ patent, but only by the patent, specifications, and drawings

A patent for ornamental designs for figured silk⁸⁸³
buttons held not to cover the process for winding
the silk upon the molds

Where the right consists in certain instruments by¹⁰⁹⁵
which a thing of a particular structure is made, the
structure or use of these instruments is prohibited
The failure of a machine, which it is claimed will⁶⁵³
turn any irregular surface or form like the model,
to turn a square shoulder, is too remote a defect to
destroy the patent

Appeals from commissioners' decisions.

No appeal lies where the issues tried were the¹⁰⁵³
same, in effect, as those tried on a former interfer-
ence

The court may assume that the time for appeal was⁵³⁷
enlarged by the commissioner

An assignment of a reason of appeal must point⁵³⁷
out the precise matter of alleged error with such
reasonable certainty as to satisfy an intelligent mind
That a decision rejecting an application is against⁵³⁷
evidence is too vague and in definite as a reason
of appeal

The court will consider the correspondence be-⁹⁹⁷
tween the commissioner and applicant, wherein
facts are stated, acted upon, and not denied

Claim of utility not made by specification is of but⁴⁵²
little weight on question of novelty

Reissue: Disclaimer.

A reissue is valid where the only ingredients⁸⁶⁸
which entered into the invention were described in
the specification and specified in the claim of the
reissue

The question whether the claim of a reissue is vague and uncertain or too broad⁶¹⁰ is one of law, to be determined by the state of the art

The commissioner's decision awarding a reissue is conclusive in the absence of^{441,610} fraud or irregularity arising on the face of the papers or clear repugnance between the original and the reissue

The issue of fraud can only be raised by distinct and special allegations in the plea⁶¹⁰ or answer

As to the sufficiency of such allegations in general 610

A reissue can be impeached for fraud only by bill in equity in the name and by⁴⁴¹ the authority of the United States

A surrender and correction of a patent give effect to it in all cases of infringement^{706,729} subsequently accruing, though the patent was originally invalid, and will be considered as having been made at the time it was originally issued

Extension: Renewal.

Act June 30, 1834, granting extension of patent to Blanchard, held without force⁶⁴⁵ be cause of variance in describing the date of the patent.'

The grant of extension to Blanchard by Act Feb. 6, 1839, of a patent for machine⁶⁴⁸, for turning irregular forms, held valid, and such act construed 653

Under such extension, assignees of the old patent were given equally exclusive⁶⁵³ privilege in the extended term

An assignee or licensee of a patent or a machine constructed thereunder has no⁷²⁹ right or interest in the renewal of a patent, unless given by the statute or by express contract

A person building a patented machine between the expiration of the term and⁶²⁸ the granting of an extension held not entitled to use the machine after a second extension, though the act granting the first extension contained a proviso allowing the use of machines so constructed

Assignment.

A paper purporting to be an assignment of an expired patent is void as an assign-¹⁰⁸ment, though it may be enforced as a power of attorney

An assignment is rendered invalid by the omission to record it within three⁶⁵³, months (Act 1876, § 11), as against subsequent bona fide purchasers for valuable¹⁰⁹⁶ consideration, but not as between the parties

An assignment, after three months from a prior unrecorded assignment to a third¹⁰⁹⁶ person, with notice, is valid

Licenses.

The right to construct a patented machine is distinct from a right to use it 334

The right to use necessarily implies the right to repair, or, when destroyed or worn out, the right to purchase another.

Neglect to pay price for license and its abandonment is a forfeiture, and licensee is liable as an infringer

The patentee has no right, either during the original term or the extended term of his patent, to a patented machine constructed by another with his consent, or to prevent its use

Surviving partner is entitled to license granted to the firm 84

It is no defense by way of plea in bar to a suit for license fees that plaintiff was not the first and original inventor

Infringement of exclusive right granted by patentee to defendant is no defense by way of special plea in bar to a suit by him for license fees

License to use held to be inferred from the receipt of compensation for a use acquiesced in for a long time, though the patentee at the time reserved the right to claim an additional compensation

The patentee is estopped to deny the validity of a transfer by a licensee where he has made settlement with and received royalties from such transferee

Sale of patented machine or product.

The purchaser of a machine from a patentee during his original term may continue use during the term extended by act of congress

The sale of the product of a patented machine is not an infringement, but, if made by the manufacturer, he is liable for damages, and may be enjoined

The injunction may issue by the court having jurisdiction of the person, although the machine may be used beyond its jurisdiction

The court will not enjoin the sale of a similar article under the same patent, in a particular district assigned to an individual, though manufactured in a different district.

Infringement—What constitutes.

The mere unauthorized making of a patented machine, although it is neither used nor sold, is an infringement

The construction of two machines under authority to use one only is an infringement, though both were never in operation at the same time

The sale of an article for use in a patented combination to persons who intend to use it is an infringement, although the manufacture and sale would not per se be an infringement

A patent for a particular structure intended to accomplish a particular end does not import an exclusive right to every possible mode of accomplishing the same end

A question of identity depends upon whether one machine produces the same⁶³³, result by substantially the same principle or mode of operation as the other 638

Tests for determining the identity of machines on questions of infringement 617

If the mechanical combinations of the members of the two machines be such that⁵⁹⁸ the action and mode of operation differ, they are not mechanical equivalents

Hydraulic pressure operating through a piston rod for moving the jaw in a stone⁶⁰¹, crusher *held* a mechanical equivalent for toggle levers operated by a lever and⁶⁰² crank rod

A change in the mode of construction without changing the principle, involving a⁵⁹⁰ loss of power, but gaining a quicker motion, will not prevent the machine being an infringement

It is an infringement to use a part of the invention embraced within the patent 604

It is no defense that the particular form which defendant has infringed is unnec-⁵⁸⁴ essary to the operation of the apparatus

Blanchard's patent for a machine for turning and cutting irregular forms is in-⁶¹⁷ fringed by a machine using the same combination, but which will make only wag- on spokes

There is no infringement of a patent for a combination unless all the essential⁹⁶ parts of the combination are substantially imitated

A patent granted for a mere combination of old devices to produce a new result is⁷¹¹ not infringed by a production of the same result without using all of such devices

The patentee can lawfully claim an arrangement which he uses, when used for the⁵¹⁷ purpose for which he employs it, notwithstanding he disclaims such arrangement, irrespective of the purpose for which and the manner in which it is employed

Infringement—Remedy, generally.

A patentee who has conveyed the exclusive right to the patent within the jurisdiction of the court, with the reservation of his rights in suit, is entitled to damages only to the time of the conveyance, and not to an injunction

Where, owing to many transfers, it is doubtful whether action at law for infringement can be maintained, equity will afford relief

Where the use of a patented machine is not unlawful, the patentee will be denied relief in equity

_____ **Who liable.**

The purchaser of patented articles from an infringer is not liable as an infringer 652

The recovery of profits and damages from the manufacturers of an infringing machine bars a recovery from a user for its use

Authority to contractor for street pavement to use a patented process will relieve the city from liability for infringement, notwithstanding a reservation to the contrary

The unlawful use of a patented device by city officials for city purposes is not an act of nonfeasance or misfeasance, within a statute relieving the city from liability

_____ **Preliminary injunction.**

Denied where defendant, setting up a license, offers to pay into court the amount of complainant's fixed license fees to abide a final decision 594

Denied where the patentee, before making his application, had sold a large quantity of the manufactured article in packages marked as imported 883

The court should grant the preliminary writ without evasion if of opinion that plaintiff is entitled to it by law 638

A prior decision is controlling in the absence of new evidence 583

A decision between the same parties in another circuit is not controlling where the alleged infringing articles are not shown to be the same 589

Complainant will be given the benefit of rights adjudicated against a defendant in another suit in which defendant herein contributed to the defense 441

_____ **Procedure.**

A person owning the exclusive right of use within a district may prosecute for piracy therein 334

A suit at law for the infringement of a patent for turning irregular forms, by the turning of shoe lasts, is properly brought in the name of the patentee, rather than one who has an assignment of the right to use the patent for that purpose 624

Parties to suit in equity *held* not competent witnesses 640

The question whether a design patent is abandoned to the use of the public by putting the manufactured article onto the market, two or three months before the application. *held* to be a question of fact 883

The verdict of a jury in a patent case is of the same force as a verdict in any other
action at law, and a verdict on conflicting evidence will not be set aside
Notwithstanding prior decisions upon the validity of the patent, held, that the case
should be tried anew upon additional facts proved

_____ **Evidence.**

Actual tests are admissible on question of practicability where evidence is conflict-104
ing.

An admission as to time of discovery, made deliberately to intending purchaser, is260
admissible against inventor to prove laches

Licensee held entitled to offer in evidence letters patent of his licensor as a defense*683
to an action against him for infringing a prior patent

Both parties, when claiming under patents, are entitled to the benefit of the pre-633
sumption that the patent is prima facie for a new and useful invention

Persons alleging invalidity of patent after it has been repeatedly sustained in other602
circuits must show indisputable grounds

_____ **Bond for damages, etc.**

Where defendant gave bond and continued to manufacture the alleged infringing450
article, held, that complainant, though not within the district at the time, should be
enjoined from bringing suits against his vendees

Where complainant's right will be fully protected, defendant will only be required601
to give a bond and file accounts, though patent has been repeatedly sustained

_____ **Damages.**

Accounting may be had, though the term of the patent expires before the final685,
hearing 726

Where the amount of the license fees varies greatly, it cannot be considered in es-505
timating damages

The actual profits are those which are made by the use of the patented device, and1194
not those made upon the machine as a whole

Plaintiff held entitled only to the profits accruing from the use of his patent, the505
burden of proving which is upon him

The difference in profits between the use of complainant's patent and other meth-96,
ods open to the public generally is the measure of compensation 525

Price of coal saved by use of improvement for utilizing waste heat held proper119
measure of damages

The rule that gains and profits are the proper measure of damage in equity suits is1194
inapplicable where the injury sustained is greater than such amount

Interest on profits will not be allowed 1194

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Plaintiff's expenses and counsel fees in prosecuting an action cannot be allowed by653;
the jury as part of his actual damages contra,

957

The provision as to trebling the verdict does not apply to mere collection suits108
brought upon expired patents

_____ **Injunction.**

It seems, will be denied where cessation of alleged infringement would be injurious594
to the public

Injunction withheld on final hearing where infringing hose couplings were neces-706
sary for the daily use of defendant city in the prevention of fires, but accounting
decreed

_____ **Violation of injunction.**

An attachment for contempt for violating an injunction will not be issued unless448
the violation is plain and clearly proven

The question of identity of the machines on motion for commitment for contempt448
for violating an injunction is one of fact

In determining such question, in the absence of models, the testimony of experts is448
controlling

Various particular inventions and patents.

Beverages. No. 193,476, for an improvement in syrups and mineral waters, *held*1070
valid

Bottle machine. Reissue No. 5,903 *held* invalid for a want of novelty 944

Casters. Blake's patent for improvement in, *held* valid 604,

607

Cheese presses. Reissue No. 5,256, for improvement in, *held* valid 868

Coupling bumpers. Bishop's invention of sliding block with V-shaped cham-ber, for guiding link, *held* not patentable 452

Firearms. Cutting away obstructing portion of hinge of breach piece, *quaere*, whether patentable 259

Furnaces. No. 12,678, No. 18,874, and reissue No. 440, for improvement in furnaces for burning wet fuel, etc., construed, and *held* valid 517

Grain separators. Patent of December 20, 1859, *held* valid 886

Hose couplings. Reissue No. 3,768, for improvement in, *held* void as for worthless invention 707; *contra* 709, 711

Such patent *held* infringed 709

Lamps. Reissue No. 7,417, for improvement in, *held* invalid 540

Portable steam engines. No. 21,059, for a bed plate, construed, *held* valid and in fringed 675; *see*, also, 671

Rubber-cutting machines. Reissue No. 5,903 *held* invalid for want of novelty 944

Seed-hulling machine. Reissue No. 1,299 *held* valid 441

But not infringed 448

Sewing machines. Anti-friention surfaces for thread *held* not patentable 284

Soda-water apparatus. No. 40,811, for improvement, *held* valid 584

Soda-water apparatus. Reissue No. 2, 711, for improvement, *held* valid in part, and infringed by apparatus constructed under patent to Matthews, Oct. 3, 1865 357

Stone crushers. Reissue to Blake, January 9, 1806, for improved machine, *held* valid and infringed 590, 610

Stone crushers. Blake's patent for an improved machine *held* not infringed by Hamilton's machine 598, 602

But *held* infringed by machine constructed under Smith's patent 601

Thistle digger. Boughton's invention *held* not anticipated by Hilton's invention 997

Turning lathe. Blanchard's patent for a machine for turning irregular forms construed, and *held* to be infringed 622, 638

Wood-bending machine. Blanchard's patent of December 18, 1849, reissued November 15, 1859; and Morris' patent of March 11, 1856, reissued May 27, 1862,—construed, and *held* to be for different machines 633

PAYMENT.

A simple contract debt is not extinguished by taking new security, unless so agreed, or the security is of higher nature 305

A provision that work shall not be done for less than seven dollars per 1,000 feet is satisfied, although the work at that rate was paid for in lumber instead of cash 726

Act March 3, 1843, fixing the value of the "mark," does not apply to its value for commercial purposes 722

The amount decreed to seamen shipped at Hamburg for a return voyage, which⁷²² was broken up at New York, is the amount of their wages in Hamburg money reduced to United States coined dollars, without adding anything for the premium on gold

Credit for payment in Confederate money for damages to land *held* should be scaled³⁶⁵ down to the gold value at the time, in computing the liability of the one receiving it

Judgment for sterling money. Difference between English and Irish sterling 842

Under an act authorizing the court to settle the rate of exchange, witnesses may be⁸⁴² examined to prove such rate

The presumption that negotiable security given for a preexisting debt is in payment³⁰⁵ may be controlled by proof to the contrary

Payment of an account *held* to be sufficiently shown by authority to another to settle¹¹⁵⁹ it, followed by the rendition of an account by the creditor showing credit in full

Books of a bank, not showing whether checks drawn upon it were payable to bearer¹¹⁰⁰ or to order, nor the names of the payees, are not evidence of money paid to any particular person

Payment is no ground of quashing the proceedings in a suit on the debt 407

PLEADING AT LAW.

Under the plea of nul tiel record to scifa. on a judgment entered on the penalty of²⁶³ an indemnity bond, the judgment only is put in issue

An unsworn plea denying the signature to the instrument on which the action is¹⁸⁰ brought admits the signature

On demurrer judgment will be given against the one who committed the first fault⁷³⁵, in pleading 791

The general plea of non est factum is proper where an obligation under seal is void⁹⁶⁸ ab initio, but a special plea is required where it is merely voidable

The verification of a plea should be made when it is filed; it cannot be made at the¹⁸⁰ trial

The citizenship of parties may be stated in the present tense in an amended declara-⁴⁴⁶ tion

Amendment of declaration as to defendants not served will not authorize plea of¹⁰² statute of limitations

Objections to a replication for not alleging time and place and for duplicity can be⁷³⁵ taken only by special demurrer

A defect of jurisdiction appearing in the pleadings may be taken advantage of by⁴⁹⁴ motion in arrest of judgment or writ of error

PLEADING IN ADMIRALTY.

The libel should show jurisdiction 870

A libel for possession of a vessel should unequivocally state the extent of libellant's interest, and that he was owner at the time of filing the libel

An amendment will be allowed where a defect in such particular arises from accidental omissions

A supplementary libel alleging new matter and an answer may be filed after appeal in the discretion of the court

An admission in an answer to a libel for seaman's wages that the seaman shipped for the voyage, and performed the services, is sufficient to entitle him to recover without evidence, though defenses are set up

Libellant in a suit for seaman's wages is entitled to use an admission of the answer as to the date of his service without being bound by the allegation of the answer as to the time when it began

PLEADING IN EQUITY.

A party may frame his bill in the alternative, if the title to relief will be the same in either alternative, although the case be presented upon allegations resting on wholly distinct and independent grounds

A demurrer to evidence is not a good plea to a bill in equity 534

The verification of the bill may be taken before a notary 615

It is good cause of exception to an answer that, to the denial that defendant has no knowledge of the facts charged, it is not added "that he had no information or belief" of them

The allegations and proof must set forth and support the same cause of action. Relief cannot be granted for matters not charged 1138

Complainant is not entitled to relief under a bill setting up a case of fraud, by establishing the facts independent of fraud, although they might create a case under a distinct head of equity

A bill in equity averring a deed to have "been a mortgage need not aver that it came so by a defeasance, in order to let in. proof of a defeasance

POST OFFICE.

Payments by the post-office department to the treasury may be carried in quarterly" large" covering warrants."

The sureties on the official bond of a deputy postmaster are liable for his neglect as an agent of the postmaster general

POWERS.

A power of attorney is revoked by the death of the principal, except so far as the attorney has an interest coupled with the power

While the intention to execute a power of appointment must be clear, it need not appear in express terms

A devise of "all the residue of my estate, of every name and kind," in a residuary clause, *held* sufficient as the execution of power of appointment

PRACTICE AT LAW.

A voluntary discontinuance by plaintiff will not prevent another suit 407

Plea of limitation not permitted after rule day upon affidavit showing it to be a fair defense under the circumstances of the case

Papers are not made evidence by a notice calling on the opposite party for them, and he may waive reading them

A formal order must be entered upon the decision of the court. The decision will not be regarded as an order

Defendant not ruled to argue a demurrer at the term joined in by him 1076

PRACTICE IN ADMIRALTY.

There can be no suit in rem unless there is a lien on the thing sought to be charged

A claim for wages and one for damages for an assault committed on the same voyage may be joined in a libel in personam

Objection to jurisdiction founded on personal privilege of declining the forum must be made before general appearance and answering to the merits

To discharge a foreign attachment, where defendant is not found, he must furnish a bond to satisfy the full decree

A cause of possession, civil and maritime, must be conducted as a proceeding in personam

A suit in admiralty will be conducted, tried, and decided according to the usage and practice of that court, though jurisdiction is dependent upon a local law

Evidence taken must be in writing 932

Objections to rulings of commissioner on admission of evidence, on reference to as 11
certain damages, may be brought up on exceptions after report made, or on certificate
pending reference

In a suit in personam, defendants not being within the district, and not appearing, 1100
the decree will go only against the property attached

Under a stipulation for value, making the rules of court a part thereof, where the 128
decree is in excess of the amount, interest is recoverable

Sureties in stipulations or appeal bonds are not required to appear before the court 664
for examination concerning their property after final decree

A final decree for payment of money in a suit in rem is enforced, as prescribed by 664
rule 21, by execution

The court has no power to enforce the decree by sequestration of the sureties' prop- 664
erty, nor by contempt proceedings

PRACTICE IN BANKRUPTCY.

See, also, "Bankruptcy."

A claim may be amended by adding the amount if done in good faith 570

A formal plea in bankruptcy will be treated as a motion 867

A creditor of a corporation upon whose petition it has been adjudged a bankrupt 946,951
should be allowed to intervene to prevent bankruptcy proceedings subsequently
commenced in another state

PRACTICE IN EQUITY.

Where newly-discovered testimony would not change the result, a rehearing will not 252
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A rehearing should be allowed in equity only for reasons sufficient to justify a new 252
trial at law

On application for leave to file a new bill upon the discovery of new facts, the counter 680
affidavits must be examined and considered by the court

A delay of 18 months after the discovery of new facts *held* fatal to the application. 680

Where the question of priority of invention was put in issue, evidence of other alleged 680
anticipations is merely cumulative.

Practice as to issuance of commission of rebellion. 996

PRINCIPAL AND AGENT.

Authority to sell real estate must be clear and distinct 914

The answer "I will sell" on terms specified, to a letter from a real estate agent asking 914
for authority to sell, does not confer authority

Agent not having authority to sell real estate cannot bind principal by receipt of 914
earnest money

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Failure to answer letters from an agent as to the consummation of a sale does not constitute ratification 914

Acts of agent in accepting notes and mortgages in payment are ratified by creditors' refusal to return them and bringing suit thereon 177

The duties of receiver of a bank and agent *held* not inconsistent 178

The Civil War did not revoke an agency established in a seceding state before the war by a citizen of a loyal state 976

An agent in Virginia who collected a claim for a citizen of Kentucky in Confederate money, and invested it in Confederate bonds, by order of the state court, *held* liable for the value of the Confederate money as of the date when received 976

An agent is not personally liable on transactions with his principal made through him unless so expressly agreed 1130

The remedy for an illegal act of an agent in refusing to deliver goods sent by the principal to him for others is against the principal 1130

Declarations of an agent made after the relation has ended are not binding upon the principal 699

The motives or inducements of a contract with an agent may be proved by his letters or declarations admitting facts

PRIZE.

It is the duty of captors to bring in the prize crew, or at least the master and principal officers, with the prize, for adjudication

Neutral property in an enemy's ship is forfeited by the treaty with France (article 14)

Portion of cargo clearly owned by neutral not confiscated because of his claim of ownership to the whole, unless fraudulently made.

Mortgaged property put on board a belligerent vessel by the mortgagor, rightfully in possession, is subject to capture

Either spoliation of papers or falsified destination creates a legal presumption of hostile ownership

Where there has been destruction of papers and falsified destination, further proof refused

Previous notorious enemy ownership and illicit trade *held* sufficient to condemn vessel where bona fide purchase and voyage not shown

A capture *held* collusive, and further proof denied to the captors 962

In the case of collusive capture, the vessel was condemned to the United States. 962

Members of the crew of a privateer on a cruise broken up by distress are not entitled to share in prizes made in a second cruise 625

The courts of other nations may inquire into the question of jurisdiction of a foreign court of prize acting in rem 1184

Vessel and cargo forfeited for attempt to run a blockade 131,695

PROHIBITION, WRIT OF.

The circuit court has power to issue the writ of prohibition only when necessary for the exercise of its jurisdiction 407

A circuit court having jurisdiction of a petition for review in bankruptcy will not prohibit suits by the petitioner in the state court in respect to the property involved 407

PUBLIC LANDS.

French grantees of Louisiana lands *held* not entitled to indemnity from the United States for land diverted from them by a grant under the succeeding Spanish government 1001

In the case of overlapping patents, *held*, that the patentees under the elder grant, though it was the last finally located and patented, had the better right 466

A selection of other land by claimant, and a disclaimer made after a location against his protest, *held* would not estop him from setting up title derived under his patent 466

sub sequently granted, as against those locating on the same land before the final location of the grant

The commissioner of the general landoffice has jurisdiction to revise or set aside a466 survey of a Mexican grant made under Act March 3,1851

The district court had jurisdiction under Act June 14, 1860, to revise the location of466 the Boga grant

Proceedings by the district court to confirm surveys of Mexican grants are judicial,466 and its judgments conclusive

Such proceedings are in the nature of proceedings in rem, and all parties interested466 must intervene or be concluded

The proceedings of the board of land commissioners for confirmation of Mexican1110 grants are judicial in their character, and their decree is conclusive between the parties and their privies

The Mexican grant to Ramon Mesa *held* sufficiently proven, there being no opposing1125 testimony

Government may waive all regulations and irregularities, except as against vested272 rights of others

The government may proceed both civilly and criminally for cutting timber 767

In prosecutions for cutting timber, the official plats and books in the land office are767 admissible to show title

Parol evidence is inadmissible to show that the locus in quo was swamp land 763

RAILROAD COMPANIES.

A constitutional provision that charters may be altered or repealed at any time after846 their passage is to be read into all subsequent charters

A consolidation with a company chartered by another state will not affect the opera-846 tion of such principle

The constitutional power to alter a charter warrants an alteration reducing trafficrates 846

A railroad corporation, when not restricted by its charter, may acquire lands ad libitum527

Construction of the charter of the Camden. & Amboy Railroad Company in reference821 to the taking of land for a right of way.

Railroad aid bonds issued by the city of Jeffersonville, Ind., *held* invalid 483

The salaries of officers may be paid out of the construction fund as a part of the ex-527 penses of construction

Act Wis. March 11, 1874, regulating rail road traffic, *held* not repealed by Acts March846 12, 1874

The court in which a bill to foreclose a mortgage has been filed and a trustee appoint-379 ed has jurisdiction to determine the conflicting rights arising out of its orders in the premises

A trustee appointed by a federal court in foreclosure proceedings has no right to deal³⁷⁹ with the court of another jurisdiction, and his acts in dealing with such court are void, and no justification to persons acting thereunder

REAL PROPERTY.

Question of title where property was sold on attachment and the judgment in the ac-362
tion was afterwards reversed

Proceedings against nonresidents in relation to land within the state given by special⁹⁵⁹
statute (Ohio), can only affect the land specifically named in the bill, and the decree
cannot affect the property of defendants generally

RECEIVERS.

Appointment of receiver is discretionary with court 49

Receiver will be appointed at suit of creditors of corporation where its assignee's¹¹⁶
conduct is improper and prejudicial to their rights

A receiver appointed on a voluntary dis solution of a corporation (in Michigan)¹¹³²
stands in the relation of the assignee of an insolvent debtor.

The validity of a receiver's act in selling or exchanging property will not be ques-¹¹⁷²
tioned in a collateral suit in another court.

RELEASE AND DISCHARGE.

A release under seal of one of copartners is a sufficient release as to the rights of both¹⁵³

REMOVAL OF CAUSES.

Right to removal.

Receivers of national banks have no right as such to have cases against them re-⁴²⁹
moved

Nonresident attachment creditors substituted under state law, for sheriff in replevin,⁶¹
may remove cause

One of several defendants cannot remove the suit unless the controversy is separable⁴⁸⁷
as to him. (Act July 27, 1866.)

All defendants who are not merely nominal parties must be citizens of another state⁴⁸⁷
or other states, and must unite in the petition to remove the cause. (Act March 2,
1867.)

A foreign corporation against which jurisdiction is obtained by attachment of its⁷¹⁵
property may remove the case, although no suit could have been commenced in the
federal court by original process against it.

The intention of the removal act of 1866 is to protect revenue officers and agents¹⁵⁸
against suits in the state courts

Time of removal.

After reversal in a state supreme court on appeal, with instructions to dismiss the⁸⁰⁵
suit, the party has no right of removal.

Proceedings to obtain.

Action against commissioner to recover money illegally exacted as fees in a criminal¹⁵⁸
proceeding cannot be removed by certiorari, under Act July 13, 1866, § 67

The affidavit for removal must be taken and certified as required by the state law for¹⁰⁴⁶
affidavits in its courts

An affidavit purporting to be taken and certified in conformity with Laws N. Y. 1869,¹⁰⁴⁶
c. 133. must have attached the certificate required by section 2

Effect of removal: Subsequent proceedings.

On the removal of a cause, an injunction granted by the state court falls ¹⁰⁵⁶

Plaintiff may proceed after removal with a reference made to take the deposition of³⁸⁶
a witness to be used in the suit

The pleadings in a case removed must conform to the federal rules and practice. ⁹⁴³⁹⁴³

A complaint which does not so conform is demurrable

Where an action was commenced by summons and complaint, further pleading on³⁸⁶
the part of plaintiff after removal is not necessary

REPLEVIN.

A re-replevin will be quashed⁴²⁵

RIPARIAN RIGHTS.

The right of a proprietor, bounded by a navigable river, extends to high-watermark;1076
if the river be unnavigable, to then middle of the stream

The right to apply for a ferry license belongs to the riparian proprietor, and cannot1076
be taken without compensation

The owner of land bounded by a navigable river may convey the soil, excepting the1076
right of ferry

The riparian right is protected as any other right 1076

SALE.

A sale of a thing not in existence is void. 296

A sale of flour branded "Gallego," described as "Haxall," *held* not void 296

A sale on condition that the title shall not pass until the purchase money be paid and390
the goods delivered is valid even as against subsequent bona fide purchasers.

As against subsequent bona fide purchasers, the seller has the burden of showing the394
sale to be conditional

The seller is estopped by his silent allowance of claim of title by another to assert that394
the sale was conditional

The possession of the fixtures and outfit of a tobacco manufactory does not create any390
presumption as to title

A sale cannot be avoided on the ground that the buyer knew himself to be insolvent,361
and had no reasonable expectation of being able to pay

The purchaser is not bound to answer the seller's inquiries respecting the state of the771
market

The condition "provided it is not sold" *held* to apply to the present status of the article771
Description in sale note of flour as "Hax all" amounts to warranty 296

The right of stoppage in transit does not affect the right of property in the purchaser 753
Goods cannot be stopped by the seller after reaching a forwarding merchant in whose361
hands they are to await instructions of the buyer as to further transit

Goods are deliverable in a reasonable time if no time for delivery is fixed, and the771
contract is broken by refusal to deliver on demand when no objection is made to the
time

The rule of damages for breach of the contract is the market price at the time that the771
goods were deliverable, though defendant's refusal was made with a view to profit

Where no price is fixed, the jury may give any rate appearing by the evidence 771

SALVAGE.

Right to salvage compensation.

The rescue of a steamer grounded in the Ohio river, and in imminent peril of loss,555
is a salvage service

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Compensation not awarded as for salvage service for towing into port foreign vessel⁸⁰⁴ which only needed a pilot, irrespective of agreement made

Pilots conducting into port vessels in distress or in apprehension thereof are entitled⁷⁵⁹ to salvage compensation therefor

Salvors entitled to compensation for services rendered within the ebb and flow of⁹³² the tide, without regard to location

Giving the benefit of skill and experience and other incidental acts of relief may con-⁷⁷⁸stitute a salvage service, though there is no actual labor or effort

Rescuing a stranded vessel from impending peril is a salvage service, though not in-⁷⁷⁸dispensable nor attended with danger.

A vessel owned by a corporation engaged in the wrecking business may earn salvage.⁴³⁹

A passenger who assisted in saving the property is entitled to a portion of the salvage⁸³⁸

One purchasing vessel while wrecked cannot be considered a salvor 191

The freighter, being on board and consenting to deviation to save property, is entitled⁸³⁸ to salvage; otherwise not.

Contract to perform services.

A contract to perform salvage service for a certain sum will bar a recovery of a greater¹⁰⁰² amount, irrespective of the value of the labor performed

An agreement by underwriters engaging a steamer to relieve a vessel in distress for liberal compensation if successful is for salvage 1072

Employment of wrecking tackle, under an agreement to arbitrate the value of services rendered, is a salvage service, and not a hiring of the articles on a quantum meruit. 778

Owner of tug chartered by wrecking company to perform salvage service, but without stating the services intended, is entitled to salvage compensation 437

Forfeiture or reduction of salvage. Salvage is forfeited by embezzlement, but only as to the shares of those taking part therein, and this irrespective of the location of the property at the time 932

The refusal of a tug to render towage services to a disabled ship on request *held* to reduce the grade of salvage allowance. 818

The fact that employes of a wrecking vessel, by their contract of employment, were not entitled to share in salvage compensation, will not reduce the amount of the award 1072

Amount.

The only rule for determining the amount is that which is dictated by a sound discretion, under the particular circumstances of the case 838

Salvage should be so liberal as to afford a sufficient inducement to similar exertions to preserve the life and property of others. 838

Amount awarded is to be adjusted in conformity rather with the claims of the owner of property put at risk than with those of salvors for personal courage and heroism 439

The value saved is of little importance in awarding salvage when the danger is not immediate and other assistance would probably have been rendered 1072

The mere possibility that a deviation for the purpose of rendering a salvage service might have forfeited the insurance will not be considered in fixing the amount 555

A low rate (in this case 5 per cent.) awarded for mere towage service to disabled vessel in no immediate danger 818

Property is derelict when abandoned by owner without intention of returning and resuming possession 41

Vessel left by master and crew in sinking condition, who were picked up while yet in sight of the wreck, considered derelict. 932

Moiety allowed for bringing into port abandoned vessel, found in sinking condition 88

One-third allowed where a brig deserted by her crew was navigated to port with great difficulty by relief crew from another vessel 835, 838

Forty-two per cent, allowed for saving, in bad weather, at considerable risk, brig aground on Alligator reef, worth, with cargo, about \$18,500 234

Twelve per cent, awarded on \$118,202, the appraised value of cotton saved 334

5,500 awarded to two steamers for towing vessel worth, with cargo, \$160,000 1072

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Owner's exclusive right of possession is not lost by temporarily leaving goods for the purpose of obtaining aid	41
The finder, who takes possession with intention of saving derelict goods, gains a right of possession maintainable against the true owner, and a lien for salvage.	41
All the parties should be named in the libel and brought before the court	932
Underwriters not having accepted an abandonment are not proper parties	932
The libel should state the subject-matter in articles, and the answer should meet each material allegation, with an admission and denial or a defense. No evidence is admissible except it be appropriate to an allegation	932
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This rule applies to seamen employed on lakes and navigable rivers 183

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Libel for assault in inflicting punishment dismissed where master acted justifiably. 232

The weapon used for punishing is entitled to consideration and weight 258
Wages—Eight to.

A sailor who shipped at an intermediate port, where the voyage was subse-722
quently broken up, and who rendered services in port only, *held* entitled to a
lien

Seamen of captured vessel entitled to wages up to time of condemnation, and,900
in case of restoration, entitled to wages for the voyage

Owners decreed to pay the usual monthly wages, upon proof of the voyage and1022
of the mariner's doing duty on board vessel captured

A sailor made a second mate is entitled to wages, as such, from the time of his722
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A master may discharge or degrade a steward for embezzlement or habitual in503
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A sale of a vessel on a decree for advances in an intermediate port is a preven-722
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_____ Remedies for recovery.

Seamen have a lien on freight for wages. 1036

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A mariner has a lien for wages on a sail vessel engaged in transportation on the817
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Contract by master for wages of himself and son *held* severable, and son to191
have a lien for his wages

A seaman hired by master with knowledge that the vessel is run on shares, and336
belief that it is not liable for his wages, has no lien

The taking by a mate of an agreement from the master to share the profits in722
place of interest on money loaned will not prevent a lien for wages

Negotiable note given for wages will not extinguish lien unless accompanied by305
additional security as compensation for renouncing lien

A tacit lien is lost or will be deemed waived by unreasonable delay in enforcing815
it

A lien may be enforced against the vessel in the hands of a bona fide purchaser⁸¹⁷ if the seaman pursues his claim at the first opportunity after his debt has accrued.

A lien of a seaman for wages on a vessel on the Hudson river *held* not enforceable after a year from the sale of a vessel to a bona fide purchaser without notice

A seaman serving on a small vessel navigating the interior waters of the state⁸¹⁵ should seek his remedy for wages in the local courts of the state if the owner is known to him and responsible

But, where the owner has refused payment, the burden is upon him to show⁸¹⁷ that the seaman had an adequate remedy in the local courts

Cooks and stewards may sue as mariners. 503

Libel not entertained by foreign seamen for wages against foreign vessel, where¹³ voyage not ended, in absence of special circumstances, against protest of consul

An assignment by libellant, for bona fide consideration, of his claim for wages,³³¹ is a good defense

_____ Deductions: Extinguishment, etc.

A forfeiture of wages by misconduct must be shown by clear proof 258

Seamen bound to remain with captured vessel until an adjudication 900

A temporary absence, without objection of master, while vessel is loading or⁸⁹⁷ unloading, is not a desertion

Three weeks' time consumed in discharging and taking in cargo at intermediate³³⁰ port does not show abandonment, justifying desertion

To justify desertion on the ground of unseaworthiness or unwholesome provisions, the proof must be clear³³⁰

Claim of desertion not allowed in defense where no entry was made on log³⁰⁸ book, and wages were promised

Legal cause for desertion set up in defense may be shown without alleging it in³³⁰ the libel

All of seamen *held* liable to contribution for embezzlements, although there¹¹³⁵ was no reason to impute to them any participation in the act

SEIZURE.

The court has jurisdiction in revenue causes, although the property seized may never⁸¹¹ have come into possession of its officers

SET-OFF AND COUNTERCLAIM.

A bank holding an indorsed note may off set it against the maker's general deposit⁵⁷⁴ account

SHERIFFS AND CONSTABLES.

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A constable suspended from office before rule to show cause 1075

SHIPPING.

Public regulation: Title to vessel.

The provisions concerning registry are constitutional (Act July 29, 1850) 629

The permanent register must issue from, and be recorded in, the office of the collector of the home port as defined by law. 629

Such office is the proper place for the register of a conveyance or hypothecation of a vessel 629

A purchaser without notice acquires a good title as against a prior unregistered mortgage 801

A joint interest in a vessel is a tenancy in common, carrying with it the privileges and limitations of that interest at common law. 1177

One owner is bound by a bona fide sale by a co-owner, though not evidenced by a bill of sale, where he has previously authorized it, or has accepted part of the purchase money 1177

A part owner, whose interest does not exceed a moiety, cannot demand the entire possession or sale of the vessel in invitum against his co-owner 1177

The sale of an entire vessel by one part owner in common does not authorize his co-owner to treat the sale as a tortious conversion 1177

Intemperance of the master is a sufficient ground to require the majority owners to give the dissenting owners a stipulation for the safe return of vessel from a proposed foreign voyage 1199

Employment of vessel.

The handling of goods shipped is a part of the stowage, for negligence in which the vessel is liable

A master who follows the advice of a duly-constituted survey in unloading cargo to repair a leak and in reloading cannot be *held* negligent.

The master.

No formalities are necessary to the appointment of a master. Sufficiency of evidence to show appointment The master has a lien on the freight for his wages and necessary disbursements for the use of the ship

A usage for masters of whalers to wait for their lays until the owners sell the oil is unreasonable and void

The burden of proving such an agreement, made for valuable consideration, is on the owners

The master is not to suffer a diminution of his lay for oil sold on credit and never paid for, though due diligence was exercised by the owner

The master's liability to the owners is not governed by the same rules which fix his liability to the shippers. He is liable only for reasonable care and diligence

The stowing of cargo in steamboats on the western rivers is under the special charge of the mate, and the master is not liable to the owners for negligence therein.

Liens.

See "Maritime Liens."

SLAVERY.

An inhabitant of Washington county cannot purchase a slave in Alexandria county, and bring him into Washington county for sale

A person is not liable for taking up, as a runaway, a colored man, born a slave, where his freedom is not notorious

No presumption as to freedom of one born a slave arises from his being permitted to go at large without restraint

The loan of a Virginia slave to a son-in-law in Washington, D. C., *held*, not to give the right of freedom

A mortgage of a slave for his full value within three years after bringing him into the District of Columbia will not entitle him to his freedom

Deed of manumission, acknowledged and recorded according to law, relates back to time of execution

No implied emancipation arises from a legacy of \$25 to slaves ordered by the will to be sold

A will not admitted to probate is not admissible in favor of petitioners for freedom Nor is it admissible as an instrument of manumission, under Act Md. c. 67, § 29

The general issue on a petition for freedom is that which puts in issue the simple155 question whether free or not

Imported slave does not gain freedom by noncompliance of master with statute (Act155 Md. 1783. c. 23)

An affidavit is not necessary to continue negro petitions at the first term 154

Upon a petition for freedom, defendant not required to give security for wages of154 petitioner during the litigation

Recording of deed of trust of slaves. (ActVa. Dec. 1792) 842

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An agreement must be certain, fair, and just in all its parts, and made with full1058 knowledge of all the facts, to be enforced in equity

Specific performance will be decreed as against one who has received the consider-462 ation for a conveyance

The distinction between ordering a contract to be rescinded, and decreeing a specific1058 performance, commented upon

STATES.

A state legislature cannot by any law impair the obligation of a contract 221

The constitution of New Jersey confers general powers of legislation. 221

The rights of the crown devolved on the states by the Revolution, and were confirmed221 by the treaty of peace to them in their sovereign capacity.

STATUTES.

A mistake in descriptive words, if of the essence of the act, and permitting its refer645 ence to other than the subject intended, is fatal

A mistake apparent upon the face of the act, if it may be corrected by other language645 therein, is not fatal

Equivalent provisions cannot be substituted by the court for positive statutory provi-851 sions

A court will not substitute other words and dates to maintain an act making erroneous645 references to the things aliunde.

A statute will not be construed as retroactive unless the intention appears on its face,385 and not then where it will impairvested rights or violate a contract

Penal acts should be interpreted according to the manifest intent of the legislature 811

TAXATION.

A state cannot tax the funds in the hands of an assignee in bankruptcy 881

Special assessments may be imposed on districts for purposes of building levees. etc.,910 the benefit being special

The tenant, until assignment of dower, is bound to pay the taxes 719

Tax sale of part of lot *held* void for failure to state its number in the advertisement1137
of sale

A purchaser at a sale for taxes acquires only the right of the person in whose name719
the property was assessed

The receipt of a dog tax after suit brought is a waiver of the penalty 961

TELEGRAPH COMPANIES.

Are entitled to a reasonable time for the delay on account of other business at the re-74
peating office

Liable only for nominal damages where the despatch does not on its face indicate that74
the sender is liable to sustain loss if not promptly forwarded, and the company is not
so informed.

Not guilty of negligence where message left at small station during reasonable absence74
of operator is forwarded on his return

TENDER.

A tender is dispensed with by a previous refusal to accept it 699

Tender made before suit brought, and not repeated in court, does not bar costs1002

TORTS.

The rule which restricts damages to such as may reasonably be supposed to have1024
been contemplated by the parties has no application to cases of tort

Either partner is liable in tort for damages caused by the negligence of the servants¹⁰²⁴ and agents of the partnership while conducting its business

TOWAGE.

A tug is not liable as a common carrier upon a contract of towage 967

The promise of a tug, which had towed a schooner from imminent danger of fire, and,⁹⁶⁷ with the assent of her master, left her at an apparently safe berth, to return in case of danger, is without consideration, and the tug is not liable for a breach there of.

A contract to tow a vessel out to sea is maritime, though the service does not extend³¹⁸ beyond the district

A steamboat, towing canal boats between New Brunswick and New York, *held*, neg-⁶⁶²ligent in venturing beyond the mouth of the Raritan river in a high wind

TRADE-MARKS AND TRADE NAMES.

Words, to be up *held* as a trademark, must either be merely arbitrary or indicate⁵⁴⁹ origin or ownership

One who designs and uses a trademark during nonuser of a previous equivalent trade-⁵⁴⁹mark may acquire an exclusive right therein, and have enjoined the prior trade mark when, subsequently used to deceive the public

Infringement may consist in an imitation, though not amounting to forgery, yet so close⁵⁴⁶ as to deceive an unwary purchaser.

The right of exclusively using the word "Durham" in labels on smoking tobacco be-⁵⁴⁹longs to manufacturers in the town of Durham, N. C.

The right of exclusively using the word "Durham" in connection with the picture of a⁵⁴⁹ Durham bull, on smoking tobacco, *held* to belong to W. T. Blackwell & Co

A trademark consisting of the words "Genuine Durham Smoking Tobacco," with the⁵⁴⁶ side figure of a bull as a symbol, is infringed by the use of the words "The Durham Smoking Tobacco," in connection with the head of a bull

The owner of the trade-mark "Best Spanish Flavored Durham" cannot enjoin the use⁵⁴⁶ of "Genuine Durham Smoking Tobacco" where he used the word "Durham" as a mere unmeaning incident

The right to use a trade-mark *held* for feited by nonuser for eight years 549

On an application for a preliminary injunction to enjoin the use of a trade-mark, the⁵⁴⁶ court cannot pass upon the merits of the defense

TRESPASS.

All who instigate, promote, or co-operate in the commission of a trespass, or aid, abet,²⁸⁶ or encourage its commission, are guilty.

But the mere presence of persons will not make them trespassers 286

Where the defendants are sued jointly, the jury must find a single verdict, and esti-²⁸⁶mate the damages according to the most culpable of the joint trespassers

Circumstances stated which will authorize the jury to give exemplary damages. 286

TRIAL.

No civil cause is to be tried, except by consent, unless it has stood one term at issue.1103

Admission by opposite party to prevent continuance that absent witness would testify299

as stated in affidavit will not estop him to meet such testimony at the trial

Defendant, by reading debit side of account filed by plaintiff makes the whole ac-102
count evidence

Where the evidence for a party having the burden of proof is not such as would1038
warrant a verdict in his favor, the judge need not submit the case to the jury

Abstract, irrelevant, vague, or general instructions need not be given 968

An instruction stating a fact contrary to a previous correct instruction *held* to be mis-604
leading

The judge may express his opinion to the jury on a matter of fact in a clear case819
regarding the infringement of a patent, although the question is for their decision.

TROVER AND CONVERSION.

For the conversion of a whale in the Okhotsk sea, the measure of damages is the1002
value of the oil and bone at the home port, less the expense of cutting and boiling,
freight and insurance, with interest

TRUST.

Verbal promise to dying person by heirs to convey his property in a certain way,38
though fraudulent, does not raise a trust adhering to the land

A bequest of a fund to be "applied to the support of missionaries in India," under780
the direction of a certain board of missions, is void for uncertainty

A trust cannot be executed by one of two joint trustees either in the lifetime of the878
other or after his death, unless there is a provision as to survival in the deed of trust.

Third persons cannot object to the unauthorized investment of trust funds 559

All presumptions are against a trustee who does not keep accurate and distinct ac-1003
counts

A trustee who previous to the Civil War appropriated the trust estate to his own1003
use is liable for interest during the war.

USURY.

Charging different rates of discount for different localities, if not intended as a cloak1156
for usury, *held* not usurious

The question whether such transaction is bona fide is one for the jury 1156

Act Ill. Feb. 12, 1857, *held* inapplicable to a contract where no rate of interest was1155
fixed by agreement

A mortgagee will not be required to account that he may be charged with usury. 1056

WAR.

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Confiscation under Act Mass April 3, 1779, divests only the estate of the absentee, 905 and not the estate of a remainder-man.

Orders of the war department of August 8, 1862, relative to the arrest of disloyal persons, etc., construed

WAREHOUSEMEN.

A warehouse receipt to the order of a third person may be impeached if no advance has been made or responsibility incurred by him on account thereof

WASTE.

Equity will enjoin a tenant in common from stripping the land of its timber pending a bill in equity

A vendee or mortgagee in possession, with the great bulk of the purchase money¹¹⁵⁸ due and unpaid, will not be permitted to cut and take away the timber to the prejudice of the security

WILLS.

Testator's intention, when clearly expressed, will control technical words and set⁵⁵⁹ phrases

Rev. St. Mass. 1835, c. 62, § 21. providing for the case of a descendant omitted from⁵⁵⁹ the provisions of a will, is inapplicable to wills made in execution of a power of appointment

A devise of "all the residue of my estate, of every name and kind," *held* sufficient to⁵⁵⁹ pass real estate

Devise to executor for use of wife for life, remainder to persons named, gives vested⁵⁷ interest to remainder-man, which will pass to his assignee

WITNESS.

The rules as to the incompetency of witnesses for interest do not apply in salvage⁹³² cases except as to facts occurring in port after the property is brought in

Consignee who has delivered goods to the owner without the payment of freight is⁹⁰² competent in a suit by the master to recover freight

The rule that a party to an instrument shall not be permitted to discredit it by his¹¹⁵⁴ testimony is applicable only to mercantile negotiable paper

Where, in a case of collision between vehicles, the question of negligence is not set-¹⁵³ tled, plaintiff's driver is incompetent without a release

A witness will not be compelled to disclose names of persons whom opposite party¹¹⁹⁴ may desire to call to disprove his adversary's case

Matters relating to a conveyance to an attorney by his client, and a reconveyance to¹³² the client's wife, are not within the attorney's privilege

WORDS AND PHRASES.

"Coming to market" 902

"provision or article of food"⁹⁶²

WRITS AND NOTICE OF SUITS.

The privilege of a person while attending court as a party or witness extends only to⁷⁰⁴ exemptions from arrest