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1214

1214

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A chattel mortgage permitting the mortgagor to retain possession, and act 67
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The question of fraud in such mortgage is one of fact for the jury 67

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Steam ferryboat *held* justified in attempting to run between New York and 241
Brooklyn, in broken and running ice, and collision with schooner in slip,
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1215

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Between steamer hove to and ship towed to sea, drifting in tide after hawser cast off.	923
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Section 9, art. 1, of the federal constitution, does not apply to state governments. 904

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A wanton attack upon the character of a register in bankruptcy in a paper filed before the judge is a contempt. 44

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CONTINUANCE.

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CONTRACTS.

Effect must be given to a contract according to the law of the country which gave it validity, which law, so far as it affects the construction, mode of discharge, or obligation, is essentially incorporated into the contract 1130

A law of a foreign country, which protects the party to a contract from execution, will be enforced in the courts of the United States. 1130

A contractor with the state cannot insist that his contract is invalid for failure to make the deposit required by law. 853

Vessels registered as American, and cargoes entered as such, were jointly owned and owned by an alien and a citizen. *Held*, that the transaction was in violation of the laws of impost and tonnage, and an action would not lie between the parties to recover a balance of accounts. 1086

A scroll made with a pen, inclosing the letters "L. S.," will be held to be a seal, if so intended, though not expressly stated in the instrument. 867

Contract for sale of undivided half of land, and to pay for same out of proceeds of sales in parcels, construed 563

COPYRIGHT.

A compilation of information respecting railroads, express, telegraph, and post offices, etc., such as "Bullinger's Guide," is a proper subject of a copyright 649

The author cannot claim an exclusive right in a combination in his guidebook of old methods, previously separately published 649

Bullinger's Guidebook *held* not infringed by Mackey's Guide 649

The fact that the plan, arrangement, and combination of a copyrighted work originated in the brain of its author may be proved by some other person than such author. 649

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Power to borrow is implied in the creation of all business corporations 12

Subscriptions to stock pledged upon a circulated paper, conditional upon a specified amount being pledged, are binding contracts so soon as the condition is performed 79

The nonperformance of a condition upon which a subscription was to be binding is no defense, where the withdrawal of the subscription prevented such performance 79

A withdrawal of subscriptions to enable the subscribers to establish a rival company will not relieve them from liability. 79

The delivery of stock to an officer of the company, with a request to transfer it, is not sufficient to pass the legal title, where by its terms it is transferable only on the company's books 350

An election of officers by minority stockholders, effected by the exclusion of other shareholders by a court having jurisdiction, is legal 420

An irrevocable power of attorney or proxy to vote upon stock *held* not contrary to public policy 420

A court of law cannot inquire into the right of a stockholder to a distributive share in the assets remaining after adjustment of the corporate affairs 350

A cashier, holding the proceeds of corporate property sold by him, is deemed the agent of the managing board, and not of the stockholders 350

One becoming a stockholder after bill filed by him against the corporation cannot claim relief as a stockholder 1089

COSTS.

Costs in equity are in the sound discretion of the court; but in the ordinary course of practice, when a bill is dismissed, they are not awarded to plaintiff 271

A libel joined a claim of \$6.75 for wages j-with one of \$75 for salvage service. The salvage claim was disallowed, and a decree entered for wages due, "with costs." *Held*, that plenary costs were taxable 1028

Costs were refused a seaman who sued to recover wages, where the difference between the tender and claim was only \$2, although the money was not paid into court under Rule 17 318

1217

No costs are allowed in the circuit court where a case is dismissed on account of want of jurisdiction over the person, in the absence of a statute allowing costs in all cases to the prevailing party 775

Plaintiffs in a cause removed to the federal court <i>held</i> not entitled to costs, where the recovery was less than \$500, but should not pay costs. Act March 3, 1875, § 6; Rev. St. § 968	298
Defendant is not entitled to costs where a bill is dismissed upon the merits because plaintiff failed to show sufficient title, where a demurrer might have been put in	271
Money paid by the marshal for insurance of arrested vessel cannot be taxed as costs.	745
A party can tax for attendance of only three witnesses to one fact.	885
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The payment of costs, given on leave to amend, is not a condition precedent	929
A rule security for fees is not of itself a sufficient ground for a rule security for costs	204
A bond as security for costs is good without naming the obligee	562
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An indictment for circulating counterfeit coin need not charge the offense to have been committed in territory within the jurisdiction of the United States	1201
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Comparative authority of federal and state courts: Process.	
The court first acquiring possession of the subject of action or jurisdiction over the matter by process against the person has exclusive jurisdiction	858
Jurisdiction having vested in the circuit court, it cannot be divested, by any subsequent proceeding, in a state court	1162
Comparative jurisdictions of state and federal courts of suit to foreclose railroad mortgage bonds	308
The circuit court cannot discharge from criminal process, issued under authority of the state, an attache of a foreign legation, though privileged from civil and criminal process, nor can it quash the proceedings	964
A district court has not power to enjoin the prosecution of an action in a state court, even in aid of proceedings in bankruptcy .	786,1153
A federal court in equity may enjoin, at the suit of a nonresident, the levy upon his land of a state court execution against another	50
A summary application by motion is the proper proceeding, where a state court seeks to control the execution of process out of a federal court	284
A state court judgment cannot be assailed in the bankrupt court, but the assignee and creditors must resort to the state court	786

Federal courts—Jurisdiction in general.

The jurisdiction of the courts of the United States, is limited; and, the inferior courts can exercise it, only in cases in which it is conferred by an act of congress 964

The court has jurisdiction of all proceedings consequent upon the judgment to obtain satisfaction, for the suit is not terminated until satisfaction 1163

The federal court has jurisdiction of all questions arising in the course of the levy and collection of a tax directed by it to be made by a municipality to enforce its judgment 284

Grounds of jurisdiction.

Petition to confirm a grant lying mostly in another state dismissed, for want of jurisdiction 1074

The title of one owning shares in a body of land, the legal title to which, originally in three trustees, was conveyed to him, under a six years' lease, with covenant to sue to recover the same, is sufficient to give the circuit court jurisdiction 440

In a case of asserted fraud or constructive trusts created by operation of law, jurisdiction does not depend upon the location of lands affected by the decree 116

A federal court may by injunction protect the right of the patentee or his assignee from infringement, irrespective of the citizenship of the parties 302

The fact that the subject-matter of a contract is a patent right does not give the federal courts jurisdiction of a bill for specific performance 302,813

A receiver appointed by a federal court cannot maintain a suit in a federal court of a state other than that of his appointment 124

In respect to jurisdiction of the federal courts, a person can be a citizen of but one state, and that is determined by his domicile. 902

The motive of the act of moving from one state to another in order to prosecute suits in the federal court, if the removal be real, cannot be inquired into 117

A judgment entered on a bond with warrant of attorney was set aside, both parties being citizens of the state 954

Where a necessary party defendant, not brought in, is a citizen of the same state with plaintiff, the court cannot take jurisdiction on the ground of diversity of citizenship 124

The equitable jurisdiction of the federal court, in suit between citizens of different states, is not affected by the fact that a state law gives relief at law 50

A federal court has jurisdiction where the declaration for money had and received describes the parties as citizens of different states, and plaintiff proves his case by a note to a third person, who is a citizen of the state with him 414

A tenant in common of land, who is a citizen of another state, may sue in the circuit court for his portion, irrespective of the citizenship of his cotenants 440

A deed which is not intended to give, and which does not give, jurisdiction to the court, cannot be said to be given in fraud of the law, merely because it changes the nature of the suit 353

The holder of a note, payable to a certain person "or bearer," may sue thereon in the federal court, if a citizen of another state, regardless of the citizenship of the payee named 624

The indorsement of a writing obligatory is regarded as a new contract, and the indorsee, being a citizen of another state, may sue his immediate indorser in the federal court irrespective of the citizenship of the maker 1173

But as against remote indorsers, except in the case of a foreign bill of exchange, plaintiff must show that the intermediate indorsers could have sustained an action in the federal court 1173

The provision in relation to suits by assignees (Act 1789, § 11) is inapplicable to a conveyance of land between citizens of different states 117

The citizenship of plaintiff and his assignor must be stated as of the date of commencement of the suit, not at the time of the assignment 1218

See, also, "Domicile."

Federal courts—Circuit courts.

The circuit court has jurisdiction of an action by an assignee in bankruptcy to recover property, or the value thereof, transferred contrary to section 35 of the bankrupt act of 1867 (§2) 228

A bill filed in one state by a complainant residing in another will be dismissed, where respondent shows that he has his domicile in still another state 773

District courts.

The district court has no jurisdiction in rem for seamen's wages for services exclusively within the state 297

Division of Spanish claim not allowed in the district court 654

District court in admiralty is not in all cases bound by the city ordinances regulating navigation 524

Administration of state laws and decisions.

State laws as to rights furnish rules of decision for the federal courts; otherwise as to remedies 1161

A construction by the legislative and executive departments of a state of its constitutional provisions in respect to taxation will be followed by the federal courts, unless manifestly erroneous 284

Where objections have not previously been raised as to the legality of a tax, the federal court will not delay judgment to await a decision by the state court	284
A state statute prohibiting the sale on execution of an equity of redemption does not become a rule of practice of the federal court until adopted	1175
State laws do not constitute a rule of decision to United States courts sitting as courts of equity	858
Circuit court has jurisdiction to declare void a fraudulent assignment, notwithstanding special provisions of state statute directing procedure in such cases	858
Proceedings supplementary to execution, substituted by state law for proceedings by creditor's bill, cannot be resorted to in a federal court	941
State court decisions on questions of general jurisprudence are not binding upon the federal court	15
State court decisions are not controlling on a question as to the general power of brokers in dealing with their principal property	4
Procedure.	
Common-law practice of state court not followed in federal court, except as it existed at the passage of the act of 1789, and as adopted by rule since "Practice" defined, and the practice act construed	82 916
CREDITORS' BILL.	
The vigilant creditor acquires, by pursuing his claim, a preferable equity, which attaches and becomes a specific lien by the filing of his bill	858
CRIMINAL LAW.	
The author and publisher of a libel in the District of Columbia may be there indicted and punished for an offense against the United States	587
A district judge will not issue a warrant for the removal of an offender indicted in another district, where the indictment is fatally defective in averments essential to constitute an offense in such district	587
CUSTOM AND USAGE.	
Proof of usage is inadmissible where the law is settled to the contrary	402
CUSTOMS DUTIES.	
Customs laws.	
The repeal of a paragraph in a revising act <i>held</i> not to revive or leave in operation a similar paragraph of the original act	910
Rates of duty.	
Calcutta, in the British East Indies, is to be regarded as a country beyond the Cape of Good Hope. Act July 14, 1862, § 14	1157
"Calf-hair goods," manufactured of cotton and hair, the warp being cotton, and the woof being cattle hair, is not dutiable as a manufacture of hair, but as a manufacture of cotton. Rev. St. §§ 2499, 2504	921

“Terne tin” in strips formed of short plates locked together, and coated, 468
held dutiable as “terne tin,” and not as articles or manufactures of tin. Act
July 14, 1862

Invoice: Appraisal.

The actual amount arriving, and not the amount shipped, is liable for duty, 475
in the absence of proof that the loss in transit improved the quality of the
goods. Acts 1846, § 8; 1842, § 16

The dutiable value in case of loss by leakage is ascertained by deducting 475
from the dutiable value of the invoice amount the amount of deficiency
shown by the returns of the official weigher and gauger

A pro rata abatement is also made upon the amount of incidental charges 475
at port of shipment, and upon the value of the hogsheads, etc

The appraisal is void, where the appraisers do not, in substance and 726
effect, open and examine at least one package in every ten

A failure in such respect is available under a protest that “the goods were 726
not fairly and faithfully examined”

Defects in the collector's proceedings in the assessment are not available 726
to plaintiff unless he has relied on them in his protest

Defects in the proceedings of government appraisers are immaterial, 726
where the importer claims an appeal to merchant appraisers

Payment: Protest: Appeal.

Protest is not required to be made before the payment of the estimated 475
duties

The protest is legally made when the duties are finally determined and the 475
amount assessed by the collector

A protest is not required to be made with technical precision 726

A protest to “extend to all our importations of since the operation of the 475
present tariff” *held* to apply to all subsequent importations of like
character, but not to duties previously paid

Violation of law: Forfeiture.

Where goods were not entered on manifest, and master failed to produce 888
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A license to a person, with privilege to employ a certain number of persons, and no more, in the manufacture of a patented article, cannot be assigned in part	261

Quaere, if a license is not such a personal privilege that the entirety cannot be assigned, notwithstanding it was given to one and his assigns	261
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A sale of a machine by a person who has a license merely of use does not give an implied right to use it	305
A contract between a patentee and one granted an exclusive right that no suit for infringement should be instituted without the consent of both parties, does not prevent the latter making a bona fide settlement with an infringer, binding upon the former	695
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The nominal elimination of a part whose office is performed by something else, under a different name, will not prevent the machine from being an infringement	294
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There is no infringement where the two contrivances do not perform the same function, by the same means, and one cannot be used in place of the other	427
An improvement of a patented machine by the use of a substantially different device, or a substantially different combination of parts, though capable of performing the same functions, is not an infringement	701
It is no infringement of a patent for a combination to use any one or all of the parts in an essentially different combination	935
To establish an infringement of a combined machine, all the parts which form the combination must be imitated	255, 275
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The use by a foreign vessel, in its structure or equipment, of an improvement for which a patent has been obtained in the United States,	369

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The making and selling of the separate materials for a patented combination is not an infringement	938
The sale of dials, to be used with an infringing time detector, for which defendant has accounted, is not an infringement	597
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Mechanism for marking dial paper by forcing points upward from below <i>held</i> equivalent to device for marking it by pressing points downward on surface	593, 598
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Only nominal damages should be given in such case, where the manufacturer acted without knowledge of the patent	521
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Neither the question of novelty nor that of infringement justifies a preliminary injunction until full hearing has been had	825
Chancery will not decree an injunction before the right is established at law, unless it is clear	255, 750
A patentee in exclusive possession of long duration need not previously establish his right at law	392, 546
Verdict for plaintiff in suits against other parties is a controlling consideration, if the infringing machines are substantially similar	821
Affidavits may be read on both sides as to facts unconnected with the title	247
An answer to an injunction bill, though filed without a rule, will be treated as an answer, on a motion to grant or continue an injunction	247
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A person interested in a patent, though not within the particular district in which the suit to restrain infringement is brought, may be made a party to the bill	546
A plea to an answer setting up a license, that defendant has abandoned the license, must state the acts showing the abandonment	305
A replication to the answer, merely traversing the license, would not lay a foundation for evidence of abandonment	305
The question whether the licensee has abandoned his license can only be brought up by amendment to the bill. Equity Rule 45	305
The objection that the answer, raising the defense for want of novelty, fails to specify time, place, etc., if not taken when the testimony is introduced, is waived, and defendant will be allowed to amend to conform to his proofs	377
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The awarding of an issue at law on the question of infringement is in the sound discretion of the court	294
An issue at law will be directed where the testimony is conflicting	255
The construction of the patent is for the court	1011
It is a question of law whether the thing invented is sufficiently described	275
Letters patent offered in evidence in the trial of feigned issues to show want of originality in the complainants' invention must be construed by the court; and, if having no tendency to support the issue, should be rejected	1011
Where witnesses differ on the fact of an infringement, the matter should be submitted to a jury	247
To determine infringement the two machines must be compared, in the light of their devices, and their process and product, inquiry being directed to the essential parts	1011
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The opinions of experts, or persons skilled in the structure of machines, is evidence	275
If in describing the invention, technical terms be used, peculiar to mechanics, evidence may be given as to the import of such terms, and a jury must decide	275

Original letters patent are not admissible on trial of feigned issues presenting no issue of fraud or mistake, where the bill of complaint was founded exclusively upon the reissued letters	1011
Copies from the records of the patent office of assignments are evidence	275
A transcript from the patent office may be corrected by another duly certified	275
Copies of the specifications and drawings are not alone sufficient evidence to prove a patent	294
Evidence of new experiments upon the machines in question, on the trial of feigned issues, in a patent suit, cannot be offered by the complainant in rebuttal	1011
———Bond for damages, etc.	
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Only actual damages are given, and they are determined by the ordinary profit derived by the patentee from the sale of the article containing the invention infringed	550
Damages not estimated solely by the profits which defendant actually realized, for he may have conducted his business unskillfully	1157
The true question is, what advantage might defendant, by skill, have obtained by using the patented device, instead of the old device	1157
The price for which territorial rights were sold is no criterion by which to determine the damages	1157
Damages must be limited to the value of plaintiffs patented improvement, in connection with the other elements of the machine in question	695

1230

Plaintiff is entitled only to nominal damages, where he fails to show the proportion contributed to the machine in question by his improvement	695
A contract by the owner of a territorial right, giving an agent power to sell without limit, will prevent his recovery of damages on the principle of profits, regardless of his declaration of intention to make a close monopoly	695
Nominal damages only can be recovered where plaintiff, not being entitled to damages on the principle of profits, fails to prove a license price	695
Amount of defendant's profits, he not being a wilful infringer, <i>held</i> adequate compensation	594
The power to increase actual damages should be exercised only to remunerate parties in cases of wanton and persistent infringement	202
Infringement—Injunction.	
A court of equity may in a proper case grant a permanent injunction upon a final hearing, though there has been no trial at law	529
The fact that after suit brought defendant stopped using the infringing device, where he did not disclaim the right to it, is not a reason why a decree for an injunction should not be granted	659
———Violation of injunction.	
It is a matter of discretion whether the court on motion for attachment for contempt in violating an injunction will require expert testimony as to the infringement	718
Evidence is inadmissible to vary the construction given by the court to a patent on a motion for attachment for contempt for violating the injunction	718
A bond acknowledging the validity of a patent reciting an infringement <i>held</i> no evidence of breach of injunction subsequently granted	935
The decision on motion for attachment was made without prejudice to the raising of the same question of infringement on the accounting under the interlocutory decree	718
“Various particular inventions and patents.	
Augers. Reissue No. 5,624, for an improvement in machinery for manufacturing curved or gauge-lip augers, construed, and <i>held</i> valid	470
Cooking stoves. Patent for raising oven shelf by closing oven door <i>held</i> not to cover nil methods of raising the shelf by closing the door	94
Cooking stoves. No. 1,157, to Buck for improvement, construed, and <i>held</i> valid and infringed	547, 550
Cultivators. Reissue No. 3,932, for improvement in, <i>held</i> valid and infringed	1071
Dam. No. 80,492, for improved portable and adjustable stillwater dam, construed, and <i>held</i> not infringed	1133
Door mat No. 19,347, for cellular India-rubber door mat, construed, and <i>held</i> not infringed	427

Fire gong. Reissue No. 6,831, for combination with fire-alarm gong, of attachment automatically releasing horses from stalls, <i>held</i> infringed	7
Gutters. Reissue No. 6,675, for machine for making, <i>held</i> not infringed	605
Hand cars. Reissue No. 500,274, for improvement, construed to cover combinations only, and not infringed by machine omitting an essential part	392
Hats. No. 4,472 to Wells, and reissues to Burr and others, for improvement in making and hardening bats of wool, or fur for hat bodies, construed, and <i>held</i> valid, but not infringed	801, 806
Such patent <i>held</i> infringed	821
Hayrakes. No. 21,712, for improvement in, construed and <i>held</i> valid and infringed	437
Horseshoes. No. 17,665, for improved machine for making, construed	701
Leather dressing. No. 82,925, for improved bronze dressing, <i>held</i> valid and infringed	1003, 1005
Matches. Phillips' patent of 1836, for improvement, <i>held</i> valid	510
Musical instruments. Reissue No. 484, for improvement in reed musical instrument, <i>held</i> void, as broader than original	997
Paper pulp. No. 17,387 to Mellier, for improvement in manufacture, construed, and <i>held</i> valid and infringed	529
Planing machine. Patent granted to Woodworth <i>held</i> valid	275
Reed organs. No. 87,241, for improvement, <i>held</i> valid and infringed	*712, 718
Reservoir cooking stoves. Reissue No. 5,435, for improvements, construed and <i>held</i> infringed	886
Seed planters. Reissues Nos. 1,036–1,040 and 1,091–1,095 <i>held</i> invalid for want of novelty of invention	*429
Shade rollers. No. 11,638, for improvement in spring rollers, <i>held</i> valid and infringed	38
Stamps. Reissue division A, No. 4,143, for an improvement in post-office postmarking and cancelling hand stamps, <i>held</i> valid	*1168
Tan bark. Reissue No. 1,922, for improved process of extracting, <i>held</i> invalid	89
Such patent <i>held</i> not infringed	92
Watchmen's time detectors. No. 48,048, for improvement in, <i>held</i> valid and infringed	593
Watchmen's time detectors. No. 40,048 and reissue No. 3,869, for improvement in, <i>held</i> valid and infringed	598
White oxide of zinc. Burrow's invention, of furnace for producing, <i>held</i> to have been anticipated by Wetherill's	845
PAYMENT.	
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