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Construction of Act Mich. March 15, 1837, to organize and regulate banking associations 963

Where a bill of exchange is indorsed and delivered to a bank, to be transmitted to another bank for collection, the latter becomes the agent of the payee, and is answerable to him alone for breach of its duty 1036

A bank holding a check for collection, which accepts the certification of the bank upon which it is drawn, in lieu of payment, is liable to the owner for the amount thereof, with interest from the date of certification, though the drawee bank was without funds of the drawer 789

A by-law of a national bank, declaring that no transfer of the stock by a shareholder indebted to the bank should be made without consent of the directors, is invalid, under Act June 3, 1864, § 35; and the bank has no lien such stock as against a bona fide transferee. 891; contra 48

BENEVOLENT SOCIETIES.

In the Knights of Honor, the financial reporter of the local lodge is not an officer of the supreme lodge 275

It is optional with the local lodges to allow sick benefits, and they are under no legal duty to pay the amount thereof, when allowed, upon the assessments of their members 275

If the member fails to object to a misappropriation of the funds contributed by him, his beneficiary cannot complain thereof 275

Such a misappropriation would not excuse the nonpayment of subsequent assessments, or justify a member in refusal to pay 275

The rule charging with assessments all members who take the final degree “on and prior to” a certain date makes them liable to contribute to all deaths occurring during that calendar day 275

The act of an agent in receiving money at a time not authorized by the rules of the society does not bind the society 275

To establish a waiver as to such act, plaintiff must show knowledge and acquiescence on the part of the managing officers of the central society 275

A new assessment may be made where drafts have been made upon the fund in the hands of the treasurer sufficient to reduce it below the limit, though such drafts have not been paid 275

BILLS, NOTES, AND CHECKS.

Validity.

A promissory note given by the treasurer of a manufacturing corporation for the accommodation of a third person without authority is valid in the hands of an innocent purchaser for value before maturity 794

Negotiability.

A note containing a provision for the payment of all taxes and charges that might be levied upon it, or the mortgage securing its payment, is not negotiable 1068

Indorsement and transfer.

The indorsement of a negotiable note in different states by different indorsers will be governed by the local law where each indorsement was made 30

An assignment of a promissory note by one of two payees when not in partnership will not enable the assignee to sue the maker 187

A bona fide purchaser is not bound to inquire into the character of a note which on its face is valid 794

Circumstances that would put a prudent man on inquiry will not affect the title of the purchaser of a note before maturity, if he did not in fact know of any defect in the title 794

Demand: Notice: Protest.

Where a check is presented and not paid, notice of dishonor must be given the maker, in order to charge him 1090

The holder of a check makes the drawee his agent where he sends it by mail to the drawee for collection and return, and must bear any loss arising after the time when the check could have been presented by express or other usual method 1090

The holder of a check cannot extend the time for which the drawer would be liable 1090

The loss falls on the holder of a check where he fails to present the same within a reasonable time, and the bank fails 1090

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Where the holder of a check accepts the check of the bank in payment, he must 1090
present and collect it the same day, or be chargeable with laches

A statement in the protest of a demand on a drawer, of nonpayment, and that notice 408
was given to the indorser, is prima facie evidence of due notice

Payment.

If the holder receive an inland bill for the money due by the note, it is a discharge 92
of the note, unless the parties otherwise agree

Release or discharge of indorser.

An intention of the parties, appearing from the circumstances, on releasing the mak- 408
er, to preserve the liability of the indorser, will be given effect equal to an express
declaration

In Virginia the indorsee of a promissory note may recover at law against a remote 92
indorser, without having given notice of nonpayment by the maker

Actions on.

A covenant not to sue one maker of a promissory note is no release of the others 1170

A partial failure of the consideration cannot be set up as a defense to the note given 574
on a purchase

Under a general averment that due notice of nonpayment was given the indorser of 190
a note or bill, all the facts may be given in evidence

BILLS OF LADING.

See, also, "Affreightment"; "Carriers"; "Charter Parties"; "Shipping."

The signing of a bill of lading, after damage to the cargo, will not increase the liability 358
of the carrier

An acknowledgment that goods were shipped in good condition raises an inference 719,
that damage thereto, discovered on unloading, happened by the fault of carrier. 720

The words "contents unknown" merely require the shipper to prove that the goods 719,
were actually laden on board, not that they were in good condition when shipped 720

The bursting of a boiler of a steam lighter on which the cargo was conveyed to the 358
ship at anchor is not a peril of the sea, or of navigation

A sunken log or stump in the channel of a river, concealed from view, *held* an un- 1103
avoidable danger of the river, within die exception in the bill of lading

The burden is upon the earner to show that the damage to goods shipped under 673
die ordinary bill of lading was caused by perils of the sea

Such burden is not sustained by showing that the damage was occasioned by a leak, 673
and suggesting that it arose from some inexplicable action of the elements, without
negating other causes for the leak, which would leave the carrier liable

Where the owner successfully repudiates a bill of lading, he cannot, at the same 358
time, set it up as merging a prior contract

BONDS.

See, also, "Municipal Corporations"; "Railroad Companies."

Possession of uncanceled coupons, detached from negotiable bonds, is prima facie 19
evidence of title, with all the rights of purchaser

BOTTOMRY AND RESPONDENTIA.

The loan on a bottomry bond, if made by the owner, need not be for the necessities 711
of the vessel or cargo or voyage

Quaere, whether the maritime law requires the master to communicate with the 816
owners of vessel and cargo before giving a bottomry bond

The objection of want of authority, where a bottomry bond is given in good faith 816
for necessary supplies, will only go to reduce the premium

A bond hypothecating a vessel for a particular voyage, and a specific period beyond 711
its termination, *held* valid as a bottomry bond

The agents of a ship advertised for bids on bottomry, but gave a wholly insufficient 816
notice. *Held*, that the premium on the bond taken by themselves should be reduced

Bond taken with bills of exchange on the owner, for the amount of advances, *held* 334
to be upon the risk of the voyage, and valid as a bottomry bond

Validity of bottomry bond given in foreign port by master appointed by the lender 334
on the death of the master of the outward voyage, where owner had no agent at the
port

Freight prepaid is not liable to the bottomry holder 816

Commissions paid the master by the bondholder are not to be included in the 816
bond, though, if the master has paid them to the owner, he is to repay them without
interest

A delay of a few weeks after the right to enforce a bottomry bond has accrued does 711
not impair the remedy, or enable a junior creditor to take precedence by reason of
a prior attachment

Where there is no exclusive occupation of a river or bay, the law of nations gives 984
to the nations inhabiting the opposite sides a territorial jurisdiction to the middle of
the stream

But each nation may also have a common right of passage and navigation over the 984
whole river or bay, where it is necessary for the convenient access and trade of its
own ports

The boundary line between the United States and the British provinces on the Pas- 984
samaquoddy is the middle of the stream or channel, running the line at low-water
mark

Ancient boundaries may be proved by hearsay or reputation, known to the public, 532
but not by hearsay as to a specific fact

CARRIERS.

See, also, "Affreightment"; "Bills of Lading"; "Charter Parties"; "Railroad Companies".

A common carrier may by contract limit his common-law liability, but he cannot contract for immunity from liability for his own negligence or misconduct 259

Whether the baggage accompanies the passenger or not, the carrier is responsible for its safe delivery 582

Where personal baggage, not arriving in time to be carried with the passenger, is put on board a later vessel, and a bill of lading given therefor, the vessel is liable as on the ordinary shipment of goods on freight 582

A carrier is responsible for loss of jewelry when he makes no inquiry as to the contents of the package, and the shipper had no notice of a rule requiring such a disclosure 1132

A notice that the express company will not be liable for more than \$50 on unvalued packages will prevent a recovery of a greater sum by a shipper, who, with knowledge thereof, failed to disclose the value of a package to avoid paying a greater rate 259

The burden of proof is on the shipper or owner to show nondelivery of the goods 959

Where the bill of lading of goods specifies that they are to be delivered to A. or B., in an action for nondelivery it is not enough to show nondelivery to A. 959

Goods shipped under a bill of lading containing the clause "weight, contents, and value unknown," found to be injured, after delivery on the opening of the cases in which they were shipped, will be presumed to have been properly packed, in the absence of evidence to the contrary. 719, 720

The owner may recover for injury to goods in transportation, discovered after delivery to him, though he sells them before making a claim against the carrier, and without giving it opportunity to inspect them 579

CHARTER PARTIES.

The charter party is a mere contract of affreightment where the owner retains possession, command, and navigation of the ship, and contracts to carry the cargo on freight for the voyage. 237, 757

The making of a charter party *held* still subject to the condition to furnish a satisfactory guarantor, though duly executed, and guaranteed by the person offered as guarantor. (Reversing 771.). 768

The implied covenant that a vessel shall sail for the port of lading within a reasonable time, and with reasonable dispatch, is not a condition precedent, and the charterer cannot cancel the contract unless the delay is so great as to frustrate the voyage intended 1115

A stipulation that the charter should commence when the vessel was ready to load 1115
does not mean that the charter party does not attach until the vessel arrived at the
place of loading

The vessel chartered being delayed in arriving, another vessel was dispatched with 1115
the cargo, but her destination was subsequently changed, and the chartered vessel
made the voyage for which she was chartered. *Held*, that the charterer was liable
under the contract

The failure to have a sufficient crew when the vessel sailed on the voyage will not 798
excuse deviation to ship more seamen

A charter was executed at Valparaiso of a bark then at sea bound for Caldera, to 798
proceed thence to Iquique to load with cargo for New York. The vessel loaded
at Iquique, commencing her voyage with an insufficient crew, and stopped at Val-
paraiso to ship more seamen. *Held* not a justifiable deviation, and the vessel was
liable for all loss

Under a charter out and home, freight is due to each port where the cargo is deliv- 757
ered, though the ship be lost on the return voyage

But the owner and charterer, as between themselves, may make the whole freight 757
depend on the safe arrival at the home port or any other contingency

The right of seamen or bottomry lenders to a lien on freight cannot be affected by a 757
condition making the freight dependent on other than the safe delivery of the cargo

Where the charter provides for monthly freight, and leaves it doubtful whether the 757
voyage is single or divisible, it will be presumed to be divisible, though the freight
be made payable on the return to the home port

Where freight is not made payable on any other contingency than the delivery of 757
the cargo, the presumption is that the voyage is divisible

Master *held* entitled to lien for the freight of the outward cargo, on the cargo 458
shipped for the homeward voyage on account of an assignee of the charter party,
where, under its terms, the whole freight for the round voyage was to be paid on
arrival at the home port

Parol evidence is inadmissible to enlarge or vary the terms of a charter party 455

CHATTEL MORTGAGES.

See, also, "Bankruptcy"; "Fraudulent Conveyances."

The owner or lessee of land may give a valid mortgage upon his crop before it is 529
raised

The transfer to the purchaser of land of a note given to the former owner for rent, 529
and the transfer of a mortgage on the crop to secure the note, invests such purchas-
er with the lien created by the mortgage

A mortgage “of all the goods and merchandise” in a certain store does not include fixtures 412

The delivery of possession must be immediate, and a mortgage, void at its inception for want of such delivery, is not made valid by a subsequent taking of possession before a creditor acquires his lie 324

CLAIMS.

The award under the French convention of 1831 was properly made to the legal and ostensible owner of the property at the time of seizure 159

The judgment of the commissioners did not deprive a person of the right to resort to the ordinarily tribunals of the country to establish his claim to participate in the sum awarded 159

An intervener who did not participate in the making of a false oath by the original claimant is not prejudiced thereby 159

In a contest between two litigants respecting a sum awarded, it is not necessary to make all the other claimants, under the convention, parties to the suit 159

The party who receives the sum awarded for the whole claim is a trustee for such as may be entitled to participate therein 159

COLLISION.

Nature of the liability—Contributive fault.

Where a collision occurs from inevitable casualty, without the fault or negligence of either party, each must bear his own loss 461

A collision is not an inevitable accident merely because it could not have been prevented after realization of the dangerous position of the vessels, if they were negligently brought into that position 960

Notwithstanding improper lights carried by a sail vessel mislead a steamer, the latter will be held at fault if, after discovering the sail vessel, she could have avoided the collision by the exercise of great care and diligence 686

The failure to comply with the local regulation, where it did not contribute to the collision, will not render the vessel liable. 951, 986

Bad management, which is not the proximate cause of the collision, will not subject a vessel to damages 461

An erroneous maneuver in a moment of peril, brought about solely by the fault of another, will not be considered a fault. 960, 1099

A custom that vessels lying aground in a Hatteras Inlet channel must bear their own loss from collision cannot control the liability under the law of the colliding vessel 516

Rules of navigation.

A ferryboat ascending the East river is not entitled to hug the shore as against a sail vessel coming down the river 297

Ferryboats running between Peck's slip and Williamsburgh, on the East river, are 297
within the local law requiring vessels navigating the river to keep to the middle.
(Act N. Y. April 12, 1848.).

Steamers and other water craft navigating the Mississippi river have the right to fol- 1108
low the usual channels

The owners of rafts, barges, or other craft moored to the banks must foresee and 1108
provide against accidents liable to be caused by the swell of passing steamers

The rule of the supervising inspectors of steam vessels requiring a vessel on the 420
port tack in a fog to sound two blasts of her fog horn *held* to be binding as a usage
of the sea

It is a gross fault in a steamer to pass along the mouths of the ferry slips in the East 1099
river, in close proximity thereto, at a speed at Which all efforts to stop her, when
danger of collision with a ferryboat coming out of her slip appears, are ineffectual
Sail vessels meeting.

A ship *held* in fault for collision with a schooner in an attempt by crowding on sail 767
to get into a harbor ahead of her

Steam vessels meeting.

A tug rounding the Battery in New York harbor *held* not in fault for holding her 372,
course, though she failed to receive a response to her first signal of one whistle. 373

A steamer, in the absence of an imperative necessity, has no right to attempt to pass 372,
to the left until she has obtained, by signal from the other, consent to such a move- 373
ment.

A steamer which starboards her helm to make a pier, after blowing two whistles, 330
and without waiting for a reply, is guilty of negligence

A tug incumbered with a ship in tow, proceeding stern foremost from a slip, *held* 438
not subject to the rule of navigation requiring the vessel on the port hand to give
way where steamers are meeting on crossing courses

In a collision between a steamer and a ferryboat just leaving her slip in the East 434
river, both were *held* in fault, the former for not slacking speed, and the latter for
not holding back for the steamer to pass ahead

Steam vessel meeting sail vessel.

A steamer will be *held* in fault in presuming that a sail vessel will change her course 690
so as to avoid the steamer, where she gives no indication of an intention to do so
up to the last minute

A steamer is bound to check her speed as soon as she discovers that she is not 204
shaking off the sail vessel's lights by changing her helm

One vessel overtaking another.

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- A sail vessel ahead has no right to change her course without reference to the position of an overtaking steamer, so as to involve risk of collision 513
- Tugs and tows.
- The tug is not liable for a collision between a tow alongside and a vessel at a pier, where her motions are directed by a pilot in the employ of, and on board and in charge of, the vessel in tow 303
- A tug will be *held* liable for injury to third vessel by a sheer of a canal boat towed astern, where she had notice that the latter steered badly, and did not take proper measures to arrest the sheer and avoid the collision. (Reversing 939.) 937
- A tug towing a vessel by a hawser astern will be *held* liable for a collision between the tow and a vessel moored at a wharf, where, knowing the tow steered badly, and having ample sea room, she follows a course near the wharf 1107
- A tug towing canal boat stern foremost from a pier into the East river must use great care and give due warning to approaching vessels 330
- River and harbor navigation.
- A ferryboat, approaching her slip in a crowded harbor, must be *held* in fault, in the absence of vis major, for running upon a sloop, visible at a distance of 130 yards, which held her course 345
- A steamer coming down the East river *held* in fault for a collision with a ship backed out by tugs from pier on the Brooklyn side for failure to slacken speed 438
- Vessels moored, etc.
- A custom of leaving fishing vessels at anchor in the harbor all night without any one on board can only extend to and be justified in ordinary weather, and not in time of storm 285
- The burden is on a schooner which, having dragged her anchors at night, collided with a sloop at anchor, to show that the collision was caused by inevitable accident 158
- Two anchors, together weighing 300 pounds, *held* insufficient for a fishing schooner of 54 tons, such insufficiency rendering her liable for a collision resulting from dragging her anchors in a storm 285
- A vessel is liable for a collision caused by dragging her anchor in a storm, where the master had knowledge of the approaching storm, and failed to put out a second anchor 581
- A vessel anchoring in the daytime in the track of a ferry, and having been requested to remove, *held* solely liable for injuries by collision with the ferryboat, which used due caution, at night in a fog 933
- A schooner will not be *held* chargeable with a contributing fault in anchoring near piers in violation of local regulation, where it appears that vessels were in the habit of anchoring in such spot 245

Steamers laid up for the winter alongside a pier broke from their moorings from the force of ice driven by the wind and tide against barges which made fast to them for the night. <i>Held</i> not a case of inevitable accident and that the barges were liable	712
The master or pilot in command of a vessel is only bound to exercise ordinary skill and prudence in getting his vessel under weigh	461
Speed: Fogs.	
The speed of a steamer in a fog must be such that she can be stopped within the distance in which an approaching vessel may be discovered	420
Tug <i>held</i> in fault, when running free with the current in a fog at eight miles an hour, for collision with tug and tows coming up the stream	555
Lights; signals, etc.	
Act July 7, 1838, requiring steamboats to carry lights at night, does not apply to coal barges	541
But a coal barge which does not display within a reasonable time such a signal light as may be seen will be <i>held</i> in fault where the absence of the light contributed to the collision	541
A green and red light placed in the center of a schooner forward, and separated only by a board, is not a compliance with the statute	686
A tug with tows carrying but one vertical light will be <i>held</i> in fault without speculating whether the absence of the proper light increased the danger of collision	547
Nothing short of an absolute certainty that a torch at night in a fog on board a sail vessel could do no good, to be established by proof, will justify its omission	420
A schooner sailing at night in a fog in a common thoroughfare, and hearing fog signals, <i>held</i> in fault for not exhibiting a lighted torch	420
Officers; lookouts, etc.	
A mate near the wheelsman at the time of collision cannot be considered a proper lookout	686
A schooner having only two men on deck, one attending to going about, and acting as a lookout, and the other steering and blowing the fog horn, <i>held</i> in fault of sailing short handed in a fog	420
The want of an adequate lookout is a culpable neglect, which will prima facie render the vessel responsible	654
The want of a proper lookout on a sail vessel cannot be considered a contributing fault where she kept her course, as was her duty, on meeting a steamer	686
Particular instances of collision.	
Between two schooners on crossing courses,—one close hauled, the other two points free.—where the latter was <i>held</i> in fault for not keeping away	517

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Between schooner close hauled and brig sailing free, near Sandy Hook, the latter, having no adequate lookout, being <i>held</i> in fault.	653, 654
Between vessel close hauled and vessel sailing free, off Barnegat, where the latter was <i>held</i> in fault for not keeping off, and failed to establish the claim that the former did not keep her course.	478, 479
Between sail vessels on courses which would have cleared each other, where one, failing to discover the other's lights, until she was within a short distance, made a wrong maneuver in the moment of peril	1148
Between tugs in the entrance of the Atlantic docks, where the signal of the incoming vessel was not heard by the outgoing vessel	927
Between tug with tows on Delaware river, carrying but one vertical light, and steamship mislead thereby, where both were <i>held</i> in fault, the latter for changing her course	547
Between steamer coming up the East river, near the Brooklyn side, and ferryboat, as the latter was leaving her slip, where the ferryboat erred in the moment of peril in not holding her course, and was <i>held</i> not in fault. (Reversing 1094).	1099
Between schooner beating through East river against the tide, and steamer whose pilot mistook the distance from the schooner, and ran her down when in stays	569
Between schooner in charge of incompetent navigator, and without proper lookout, and tow in the East river, where the former might have avoided the disaster by running out her tack	951
Between steamer and schooner in the East river, where the latter was hugging the New York shore to avoid the current, and the steamer attempted to pass too close, both being <i>held</i> in fault, the schooner having a negligent lookout. (Reversing 986.)	989
Between ship and steamer on a starlight night, where both were sunk, and the steamer, having sighted the ship in due season, was <i>held</i> in fault for not keeping away, the latter not having changed her course	204
Between propeller and schooner overhauled in Hell Gate, where, the wind dying out, the schooner anchored, to avoid danger of drifting on Hallett's Point, where the propeller was <i>held</i> not liable.	435
Between pilot boat at anchor off Quarantine, with sails up to dry, and bark towed in from sea, carried against the former by the tide on being brought too close	651
Between barge towed astern and cast loose from the tug, to permit the latter to come alongside to make a landing, and schooner at anchor near piers, in violation of local regulation, where both tug and barge were <i>held</i> solely at fault	245
Between a tug with tow alongside, ascending the East river near piers, and canal boats towed at the end of a hawser stern foremost from pier	330

Between vessel at pier and vessel making adjoining berth, alleged to have been hindered by another vessel assigned to the same berth by the harbor master.	293
Between sloop in Norfolk harbor and tug backing from wharf, the latter being <i>held</i> liable for want of a lookout	105
Between schooner entering the mouth of Buffalo creek, from the lake, in a gale, with wet rigging, and canal boat projecting too far into the channel, where the former was <i>held</i> free from fault	870
Between schooner aground across a Hatteras Inlet channel and steamer attempting to pass after making soundings, which failed to obey her helm because of scraping the bottom, the steamer being <i>held</i> solely in fault, though the schooner did not put out fenders, and might by lightening have got into shallower water	516
Procedure.	
A foreign judgment in a suit at law against the vessel owner for damages for a collision is no bar to a suit in rem in this country; but such judgment is conclusive as to the extent of the damages	265
A bona fide change of ownership, without notice. does not divest the lien for damages arising from collision, where there is no laches by the injured party	350
The owner of a tow may libel both the tug and the vessel with which she collided, and thus compel them to interplead and settle their respective liabilities	736
Where it is doubtful whether the tug or the vessel with which the tow collided was in fault on a libel by the owner of the tow against the tug, a decree will be given the tow, leaving the tug to recover the whole or a portion of the damages from the other vessel	736
Libelant must not only prove negligence of respondent, but also diligence and care by himself	541
The testimony of competent witnesses on board the vessel as to her movements is of greater weight than that of persons on board the other vessel	960
The subject may be referred to persons skilled in navigation, and their report acted upon, where the rights depend upon questions of nautical skill in the management of a vessel	654
Under a libel charging a collision to have been caused by the joint negligence of two vessels, a decree may be rendered against one found to have been solely in fault	293
The master of a tug whose tow is lost, through his negligence, is not bound to defend the tug against a valid claim for such loss, nor notify other persons having liens thereon, and he may purchase the same at a sale under a decree therefor	920
Rule of damages.	

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The measure of damages for a loss by a collision at sea of a cargo of guano, belonging to the republic of Peru, <i>held</i> to be its market value in Peru for purposes of export. (Modifying 213.).	207
Such value is determined by deducting from its value, at the port of destination, shipping expenses, freight, duties, insurance, port charges, and commission for selling, and from the net proceeds 10 to 12 per cent., for mercantile profit	207
The alleged depreciation in the market, resulting from the mere fact that the vessel has been injured, is too variable and uncertain to be allowed as damages, where the intrinsic value of the vessel is made good	1099
Damages for the detention of a pilot boat, injured by a collision, should include only her value as a vessel to be used as a pilot boat. and not an allowance for the loss of time of the pilots on board	652
In the absence of evidence as to the market value of such a vessel, resort may be had to the judgment, as to such value, of persons acquainted with the business and with her earnings	652
The loss of the use of a ferryboat while undergoing repairs is allowable, though the owners supplied her place by a spare boat, without any decrease in the receipts of the ferry.	1098, 1099
Damages to the injured vessel, which was sold at auction, and afterwards repaired by the buyers, are ascertained by a reference to the cost of repairs instead of the result of the sale	686
The costs and expenses in defending a suit brought for services rendered in pumping and keeping the vessel afloat after the collision <i>held</i> not recoverable in a case of mutual fault	1098
Net freight, only, is recoverable; and it cannot exceed the amount claimed in the libel	369
The freight, only, which the vessel was in the act of earning, is recoverable	369
Interest will be allowed on the value of the cargo and freight and the amount of repairs	686
Interest on the value of the vessel, and on the net freight, from the time of the loss, may be allowed, though it was not claimed as such in the libel	369
The proper rate of interest to be allowed on the value of the property lost <i>held</i> 6 per cent., and not 7 per cent	207
The finding of the commissioner on contradictory evidence will not be disturbed when the preponderance of evidence is not palpable	369
Division of damages.	
In case of a loss of a schooner and her cargo by collision with a steamer, where both vessels were <i>held</i> in fault, the damages for the loss of the schooner were ap-	420

portioned between the two vessels, and a decree was given the owners of the cargo for the full amount of their loss, and the steamer credited on the decree in favor of the schooner against her for a sum equal to one-half of the decree in favor of the owners of the cargo

Costs.

The ordinary practice where both vessels are found in fault is to refuse costs to either 1098

In a libel for collision, where there is strong probable cause of action, but the libel is dismissed, costs will not necessarily be imposed on the libellant 461

COMPOSITIONS.

An agreement of compromise which creditors are induced to make by false representations or fraudulent concealments is void 443

Such compromise is avoided by false representations or concealments of the debtor's agent, though innocently made, where the former was aware of the real state of the facts at the time 443

A statement that the debtor would have "some means" left after paying his creditors 45 cents on the dollar *held* a false representation, where he had a greater amount left than he actually paid the creditors 443

A note given to one creditor for the balance of his claim, in pursuance of a secret agreement, to induce him to enter into the composition, *held* void ab initio 1138

The acceptance by a creditor, under a previous secret arrangement with the debtor, of a sum in excess of the proportion due under the composition deed, will not bar an action upon the original obligation, brought upon the ground that the composition deed was fraudulently procured 443

CONSTITUTIONAL LAW.

The term "ex post facto" is used solely with reference to laws affecting crimes and criminal cases 886

The inhibition against the enactment of law violating the obligation of contracts does not apply to congress 846

A state law authorizing the seizure and imprisonment of free negroes brought into the state on board of any foreign vessel is unconstitutional 493

A constitutional provision that "the legislature shall pass no act of incorporation unless with the assent of at least two-thirds of each house" (Const. Mich, art 12, § 2) does not prevent the creation of an indefinite number of corporations by one act 963

CONTEMPT.

See, also, "Injunction"; "Mandamus"; "Patents."

Officers representing a corporation defendant are not in court for punishment for contempt for disobedience of an order, unless they personally knew of the order 997

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Persons guilty of contempt can be arrested at any time thereafter, when they come within the jurisdiction of the court	997
Prosecutions for contempt of court are criminal in their character, the United States being plaintiff.	128, 997
Whenever the vindication of the authority of the government requires it, the district attorney should appear in such proceedings	128
On the filing of affidavits charging a person with disobedience of the orders or process of the court, the practice is to enter a rule on him to show cause why attachment should not issue	997
Such practice comes within the exception in rule 19 of the supreme court	997
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The filing of a supplemental bill, for the purpose of bringing some of the defendants into contempt, is not a waiver of the rule nisi previously entered	997
The court will, at any time, give the party alleged to be in contempt full opportunities to be heard	997
It seems that if a man imprisoned for contempt of a federal court breaks jail, and escapes to another state, he can be arrested and returned	997
But one writ of attachment should issue for contempt in the disobedience of a mandamus directed to a board of officers	128

CONTINUANCE.

Where there is a rule to employ new counsel, the cause may be continued after the fifth term	1142
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CONTRACTS.

An assignment of a note is a new contract, and is governed by the law of the place where it is made	30
An engagement to perform a future act is subject to an implied condition that the performance is not rendered impossible by an accident of major force or fortuitous event	459
A contract between an insurance company and its agent, by which he was to receive a percentage on all renewals of policies procured by him, is indivisible	728
In an action on such contract, evidence is admissible to show the probable expectancy of duration of the policies	728
In an action on contract, the plea is good in bar to show that the contract was made in time of war, with a public enemy, by a party in allegiance to the government in whose courts the suit is brought	449
It is no defense to a breach of promise to keep a slave for the promisor's personal use that the slave was unfit for such use	1142

COPYRIGHT.

- Any new and original plan, arrangement, or combination of materials will entitle the author to a copyright therein, whether the materials themselves be new or old 615
- Whosoever, by his own skill, labor, and judgment, writes a new work, may have a copyright therein, unless is be directly copied or evasively imitated from another work 615
- The requirements of the copyright statutes are not merely directory, but their performance is essential to a vesting of the copyright, and relief in equity for alleged infringement 917
- The delivery to the secretary of state of the first volume of a work within six months after its publication, and the rest of the volumes before suit for infringement, is a sufficient compliance with the law 183
- In the case of a work published in several volumes at different dates, the copyright notice need only be inserted in the first volume 183
- The copyright notice may be inserted in a second edition of the same work published in a different number of volumes, without impairing the copyright 183
- New editions of maps are included in the copyright laws 1022
- Taking the boundaries of townships from another map without going to the common source of information is an infringement 1022
- To constitute a piracy of copyright of a compilation of old materials, it must be shown that the original work has been either substantially copied, or has been so imitated as to be a mere evasion of the copyright 615
- It is not a good ground of demurrer to a bill for infringement that the bill does not waive the statutory forfeitures and penalties 1022
- On the question of infringement, complainant may read affidavits in rebuttal on motion to dissolve the preliminary injunction 1022
- But complainant cannot read affidavits in rebuttal in support of his title on such motion 1022
- In the case of the importation from England and the sale of copies of a book copyrighted in America, *held*, that the jury were authorized in finding a verdict of 50 cents for every sheet contained in the whole number of volumes imported 183
- The penalty imposed for putting the imprint of a copyright upon a work not legally copyrighted, and given to "the person who shall sue for the same," cannot be recovered in the name of more than one person 1161
- A declaration for such penalty in the name of two persons is bad on general demurrer 1161

CORPORATIONS.

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Every act of incorporation must be construed in such a manner, if possible, as not 1059
to exceed the sovereignty of the legislature granting it

Where two corporations were created by adjacent states with the same name, *held*, 1059
that subsequent acts of the two states uniting their interests did not merge their sep-
arate corporate existence

The right to construct a dam by the Blackstone Canal Company, under a special 1059
act, determined

An action of debt lies to enforce the statutory liability of the directors for the debts 963
of a bank

In an action to enforce the statutory liability of the officers for the debt of a cor- 963
poration, *held*, that its existence was sufficiently stated by way of recital, without a
special averment of the incorporation

COSTS.

Costs must share the fate of the principal debt 681

A state statute (Code Or. § 541) giving costs, of course, to defendant when plaintiff 801
is not entitled to them, is inapplicable to actions in federal courts; Act Feb. 26, 1853,
having provided for such cases

Witness fees and mileage for the attendance of a party to an admiralty suit cannot 473
be taxed in his favor against the other party

A decree for salvage services was modified on appeal by awarding compensation 663
for towage services merely. *Held*, that libelant should be allowed his costs in the
district court, while claimant should have costs of appeal

On a dismissal of a libel against a vessel for damages to the cargo, libelants *held* 946
chargeable with costs

Amount of attorney's charges where there were 11 suits, involving the same ques- 1161
tions, with identical pleadings

Where separate writs of mandamus are issued against the members of a board of 128
officers for disobedience of a mandamus, the marshal and clerk will be allowed
costs in each case

A charge by defendant, for services in putting in special bail a second time, is not 1161
taxable, where the second service was made necessary by the failure of the bail first
put in to justify

Taxation of costs reformed on motion 780

On the death of plaintiff's surety for costs in sci. fa., pending the suit, new security 180
will be required on motion, although the administrator of the former security has
assets

When a cause is continued at the costs of a party, no execution can issue for them. 1146
The proper remedy, if they are not paid, is an attachment for contempt

An attachment will not lie for nonpayment of costs of a continuance until after rule 223
to show cause and personal service of the order to pay the costs, nor unless the bill
of costs states the particulars

COUNTIES.

Bonds and the coupons attached, issued by counties, payable to bearer, possess all 117
the qualities of commercial paper

The pendency of a suit to restrain the transfer of negotiable county bonds, and a 117
decree in such suit that they be delivered up to be canceled, are inoperative as re-
spect a bona fide holder for value

Otherwise as to one having actual knowledge of proceedings when he becomes the 117
owner and holder

Coupons.

See "Bonds" "Counties"; "Municipal Corporations"; "Railroad Companies."

COURTS.

Comparative authority of federal and state courts: Process.

Whether sheriff's sale is a proceeding in court under Act March 2, 1793, c. 22, § 5 109
quaere

An action of trespass in a state court against the marshal, for seizing goods of one 875
person under an execution against another, cannot be enjoined in a federal court

A decree admitting a will to probate and record, made by a probate court, given 550
plenary powers as to contest, cannot be set aside by the circuit court of the United
States, on a bill filed by testator's heirs at law

Federal courts—Grounds of jurisdiction.

The vendee of plaintiff in an action to recover possession of real property is not a 537
party thereto, and his citizenship in no way affects the question of jurisdiction

A citizen of Massachusetts, appointed a receiver of an Ohio corporation by the 1017
United States circuit court in the latter state, may sue in said court for the recovery
of the assets of such corporation wrongfully withheld

Ejectment pending in a state court against one cotenant will not bar a suit to quiet 776
title, brought against the plaintiff in a federal court, by a nonresident cotenant

Section 11 of the act of 1789 is inapplicable to the assignment of a mortgage, and 28
an assignee thereof may file a bill of fore-closure in the federal court without regard
to the citizenship of his assignor

A bill in equity to enjoin a judgment of the circuit court, brought in such court, is 75
not an original suit (Act 1789, § 11); and it is immaterial that the original plaintiff is
a resident and citizen of another state

As a person may reside in one state and be a citizen in another, an averment of 845
residence alone is not sufficient to show jurisdiction

If a party is described as a citizen of the southern district of New York, he is sufficiently described as a citizen of the state of New York	347
A description of defendant as of the town and county of W., in the Connecticut district a citizen of the United States, and sheriff of said W. county, is equivalent to describing him as a citizen of Connecticut	136
The citizenship alleged in the declaration need not be proved unless specially denied by plea	845
The circuit court has jurisdiction to restrain infringement of a registered trademark, though the parties are both residents of the state	181
Jurisdiction to enforce a mortgage on lands purchased by the United States merely to secure a debt depends upon the locality of the land	538
—Circuit courts.	
The circuit court has no jurisdiction of a suit to recover a penalty for aiding and abetting in the fitting out of a vessel for the slave trade	836
The circuit court has no power by mandamus to compel the district court to set aside its decree in admiralty, or to grant a rehearing, or to allow an appeal after expiration of the time therefor	736
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The district court, sitting in equity, has power to restrain the enforcement of a decree made by the same court sitting in admiralty	153
The jurisdiction of the district court to enforce the personal liability of a foreign corporation for damages for a collision is properly exercised by issuing an attachment against its property	207
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The state laws in relation to the examination of an adverse party before trial, and the production of books and papers, do not obtain in the federal courts, congress having specially legislated on such subjects	271
The district court in bankruptcy will apply the state statute of limitations in a proper case	414
In proceedings under state statute, the court will not follow it in matters of form where it is impracticable	101
The construction of a state statute by the highest court of the state is conclusive in the federal court	881
—Procedure.	
All motions, in a suit at common law, which are required, by the practice of the state courts of New York, to be made at a special term of a state court, may be made at a stated term of a federal court	677

A federal court may adopt, as the practice of the court, the provisions of a state statute relating to proceedings by attachment, as well in respect to debts to become due as to those already due 600

The words "forms of mesne process, and modes of proceeding," used in the act of 1828, embrace, not only process, but the whole course of the proceedings in an action 600

A district judge in New York may refer a case involving long accounts to referees, in conformity to the practice of the state courts under the state law 232

Other courts.

The circuit court of the District of Columbia has no jurisdiction on an issue sent up by the orphans' court as to the authority of rival counsel 1136

COVENANTS.

In an action for breach of a covenant that lands conveyed are of a certain quality, the measure of damages is the value of the land at the time of the covenant broken or date of the deed 798

CUSTOMS DUTIES.

Customs laws.

An article is provided for in a revenue law when it is aptly described as well as when it is named 1110

Rates of duty.

Saltpeter, known in commerce as "crude saltpeter," held entitled to free entry as such, though partly manufactured. (Act 1832). 1054

Webbing made of India rubber, silk, and cotton held taxable as a manufacture of India rubber, silk, and other articles. (Act July 14, 1866, § 8.). 1110

Act June, 1872, making a reduction of 10 per cent. on all manufactures of India rubber, gutta percha, and straw, means articles composed wholly of those materials 1110

The 10 per cent, ad valorem discriminating duty imposed by Act Aug. 5, 1861, § 3 does not apply to goods not charged with duty by such act 283

Manifest: Invoice: Entry.

The master of a vessel entering a port of the United States with merchandise subject to duty consigned to such port is bound to deliver his manifest, though he intend such merchandise to be returned to a foreign port 982

Parol evidence is not admissible to control the intention as expressed on the face of the manifest, showing the vessel and cargo to be consigned to an American port 982

The presentation of a consular certificate showing the specie value of depreciated foreign currency is a prerequisite to any correction of the invoice, or to any relief. 168, 170

The presentation of the consular certificate subsequent to payment of the duties is ineffectual 170

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- The collector cannot impose the penalty prescribed by Act July 30, 1840, § 8, where the invoice valuation of goods imported by the manufacturer is increased on appraisal by more than 10 per cent 113
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- Innocence of an intent to defraud the revenue will not prevent a forfeiture where a violation of the statute is clearly prove 982
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- The carrying out of salt, and its return to the port of departure by a fishing vessel, which touched at a foreign port, is not a bringing of goods from a foreign port, in violation of Act 1799, § 50. 398
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stiffened knee

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The nonperformance of a promise is not sufficient to support an action on the case 1142
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An action upon the case for deceit will lie against a person who by false and fraud- 1144
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The vendors of a mine, directors of the purchasing company, are guilty of actionable 677
concealment in withholding from their codirectors material facts affecting the mine,
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DEED.

A deed of land in Michigan, executed in another state, according to the laws of 1048
such state, is valid in Michigan

It is not necessary that delivery be shown by the acknowledgment; the possession 98
by the grantee is prima facie evidence of delivery

The execution of a deed acknowledged and recorded need not be proved by wit- 330
nesses

A subsequently acquired title will not inure to the benefit of a grantee under a quit- 1048
claim deed; but, under a warranty, such title will inure by way of estoppel

A quitclaim deed made before, but acknowledged after, the date of the title of the 1048
grantor, will pass the same

A deed of land described as bounded bylines and marks on a river bank conveys 75
the land only to high-water mark

The owner takes the bank as it is, and may continue to be, by alluvion or decrease, 75
by the flow of the river

DE HOMINE REPLEGIANTDO.

The writ de homine replegiando, having for its object the discharge of the prisoner 493
on bail, with a view to try the question of the validity of the law under which he
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not, however, lie against a sheriff who has the party in custody under process

DEMURRAGE.

The charterer of a vessel takes all risks as to delay from any unforeseen circum- 787
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Five days *held* a reasonable time in which to unload 507 tons of coal 787

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The law in relation to the taking of deposition of witnesses residing over 100 miles 861
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A deposition, taken under the act of 1789 must be reduced to writing by the magistrate, or by the deponent in the presence of the magistrate	322
The court cannot supply a jurisdictional word, though the omission may appear to be merely clerical	72
Sufficiency of certificate of magistrate taking deposition of a witness, upon his affirmation	536
A certificate that deponent was “carefully examined, and cautioned and sworn to speak the whole truth,” <i>held</i> sufficient	322
The certificate of a magistrate to a deposition cannot be impeached by the testimony of experts in handwriting	536
Deposition must be suppressed when it does not affirmatively appear that the witness resided more than 100 miles from the place where the cause was to be tried	72
A motion to suppress depositions brings up the regularity of an order directing them to be taken, as well as the competency of the witnesses examined, where the objection has not been waived	780
A deposition read without objection will not afterwards be rejected because other depositions, duly excepted to, were disallowed	861
Objections cannot be made to a deposition on a new trial where all objections were waived on the first trial	322

DETINUE.

See, also, “War.”

Notwithstanding the artificial words of a declaration in detinue, if the action be grounded on a tortious seizure by the defendant of the property mentioned, it will not be <i>held</i> , contrary to the fact, an action en contract	449
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DISTRICT ATTORNEYS.

The district attorney is entitled to but one fee for all cases arising out of one writ of mandamus. If they are separately brought, he should move for their consolidation	128
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EJECTMENT.

See also, “Adverse Possession” “Real Property.”

If defendant does not set up a title under the state, he cannot allege negligence in the plaintiff in not having surveyed his warrant in time	1134
A title under Connecticut cannot avail the defendant in ejectment for any purpose in Pennsylvania	1134
The proof of boundaries, where the consent rule has been entered into, by a special rule of court, is dispensed with	98

ELECTIONS AND VOTERS.

The federal election law (Rev. St. tit. 26) is constitutional, and special deputy marshals of the United States will be protected by the federal courts in discharging their duty thereunder 716

Such deputy marshals are clothed with discretion in the exercise of their duties, under Rev. St §§ 2021, 2022. 716

All the judges of an election in Georgetown, D. C., *held* not necessary to be present to constitute a legal session 1121

EMBARGO AND NONINTER-COURSE.

A vessel licensed for the coasting trade was not required to obtain a clearance permit on departing from a port of the United States, but only when departing from a district of the United States 468

A coasting vessel sailing from New York into Long Island Sound, without a clearance, is forfeited, such waters not belonging to either the district of New York or the district of Connecticut 468

Section 2 of the embargo law of April 25, 1808, *held* inoperative for ambiguity Construction of Act March 1, 1809, c. 91, § 14. 732 981

EMINENT DOMAIN.

The taking of private property where payment or a deposit is not made, will be enjoined where the constitution requires payment of compensation before such property can be appropriated, and the injury is irreparable 383

The making of an embanked roadway for public use *held* to be an irreparable injury, within the meaning of the rule 383

In such a case the landowner may have an injunction pending an appeal taken by him from the assessment of damages, where compensation has not been paid or deposited, and no different provision is made by law 383

ENTRY, WRIT OF.

A writ of entry to foreclose a mortgage may be maintained against a tenant in possession, lessee at will of the mortgagor 969

A declaration is not good in a writ of entry to foreclose a mortgage, unless counting on a mortgage, and using words to show that a foreclosure is desired rather than possession to take the profits 1192

When amended in proper form, non tenure is a bad plea to such a declaration, whether put in by the mortgagor or any other person in possession, who is sued 1192

EQUITY.

See, also, "Injunction"; "Pleading in Equity"; "Practice in Equity."

Mistakes and fraud are equally relievable in equity 75

Courts will not relieve a party from a contract or agreement entered into by mistake, where the mistake is one purely of law 37

A recovery cannot be had on the ground of a mistake as to the land purchased, 1170 where full opportunities were given for examination, and an examination was made, and no falsehood or fraud appears in any material representations, or act in relation to them

The occupation of premises for nearly six years without complaint is a strong cir- 1170 cumstance disproving a material mistake, or proof of negligence in seeking relief

Rescission of contract not allowed after the purchaser had taken timber from the 1170 land, and the foreclosure of a mortgage given by him

A release by defendant in ejectment of the right to the land in controversy to a third 75 person will not prevent his maintaining a bill to enjoin the judgment, where his equity is a mere possibility or contractive equitable trust, created by the decree of the court of equity

Equity will determine the whole cause where damages are claimed as incident to 1165 the equitable relief sought

While the statute of limitations is not binding upon a court of equity, it will be ap- 1165 plied in cases that are within the statute

In cases of concurrent jurisdiction, equity will sometimes hold the lapse of time a 1165 bar to relief, when the prescription is not fully acquired at law

In cases of concurrent jurisdiction, the party will be left to his legal remedy, where 1165 he has slept on his rights until, through a change of circumstances, the court is powerless to do equal justice between parties

When a common fund is equally liable as a security for various claims, it can only 19 be administered for the benefit of all, and this whether the claims have matured or not

In distributing a trust fund between creditors, a claim barred by statute will not be 1029 allowed, though the statute is not pleaded

Where an assignee of certain drafts, in trust for the payment of debts incurred there- 1029 on, recovers on some, and not on others, the amount recovered should be applied pro rata to the several drafts

The opposition of one creditor to the claim of another on the administration of a 19 common fund in equity inures to the benefit of all

The express waiver of all objections by other creditors only affects the proportion 19 of the fund to which they would be entitled on exclusion of the disputed claim

The finding of a jury in an equity case is not conclusive; it only aids the court 604

ESCAPE.

A person escaping from an arrest on mesne process is liable to the sheriff for all 136 damage sustained by the latter by reason of the escape

The sheriff is liable for the escape to the extent of the damage sustained by the party issuing the process 136

EVIDENCE.

Judicial notice.

The courts will judicially notice powers of a public nature conferred upon a municipal corporation, created by legislative act, though the act is not in terms declared to be public 1092

Best and secondary.

Original entries in the handwriting of a deceased clerk must be produced. It is not sufficient to give a copy in evidence 532

Documentary.

A deed made in pursuance of a decree is admissible in evidence without the record of the decree 98

State statutes and judicial precedents are admissible in the federal courts as evidence of the law of the state without special plea or proof of witnesses 843

The party's own books of account are not evidence in his favor, although in the handwriting of a deceased clerk, unless they contain the first entry of the charges 1135

The surveyor's remarks on the plat beyond the objects which, in the discharge of his duty, he must ascertain, are not admissible to show the boundary 532

Parol, etc., affecting writing.

Where a mortgage is satisfied by payment and receipt indorsed, parol evidence of any agreement contradicting the receipt is not admissible 37

Parol evidence *held* inadmissible to impeach the measurement and valuation of work reduced to writing, under agreement of the parties 836

Declarations.

The declarations of a chain man, since deceased, as to the beginning corner of a survey, are inadmissible 532

In an action for the fraudulent sale of a mine, letters by one defendant to the other in relation to the mine, written at the time of the alleged conspiracy, are admissible in favor of both defendants 677

Competency: Relevancy: Materiality.

Minutes of the meeting of directors of a foreign corporation, held abroad, *held* inadmissible to charge a nonresident director, not present, with knowledge of what transpired at such meeting 677

In an action for the fraudulent sale of a mine, statements of third persons to defendants, favorable to its character and value are admissible in reply to evidence of unfavorable statements made to defendants 677

Comparison of handwriting is admissible in civil cases 92

Testimony that a particular person's pedigree was a matter of common reputation 142
construed, and its effect determined

Weight and sufficiency.

In the case of contradictory oaths of a party, the one will be taken as true which 1079
bears most strongly against himself

EXCEPTIONS, (BILL OF).

The rule stated as to when a bill of exceptions may be signed and filed, and as to 230
the circumstances under which a judgment will be vacated for the purpose of allow-
ing a bill of exceptions which was not signed at the proper term to be subsequently
signed and filed

EXECUTION.

The property of a seminary of learning which is under the control of state officers, 1122
and derived all its property from the public, cannot be taken in execution on a judg-
ment recovered against it

When the personal property of such an institution in Louisiana is levied on, it is-not 1122
necessary to file a bill in equity to restrain the sale. It may be done by intervention
and third opposition

A levy by a sheriff on personal property under a state judgment gives a prior lien 250
over a subsequent levy made on the same property by the marshal

The sheriff cannot levy a fi. fa. upon money in his hands made upon another fi. fa 1136

A forthcoming bond, made payable to the creditor on a levy of a fi. fa., after his 739
death, will support a judgment on motion by the administrator

Where property is not sold, nor money made nor received by the marshal on exe- 780
cution, he is not entitled to half commissions

EXECUTORS AND ADMINISTRATORS.

The executor may pay a debt barred by statute 955

The administrator is liable to a creditor of the intestate for the amount of an over- 980
payment to the distributee on a final distribution

A promise by an administrator to pay in consideration of assets will support a judg- 1110
ment de bonis testatoris

On a finding for plaintiff on the issue of plene administravit, he is entitled to judg- *954
ment de bonis testatoris for the whole debt

Exemptions.

See "Bankruptcy."

EXTRADITION.

A crime subject to infamous punishment in Switzerland is an extraditable crime 1007
under the treaty with that country, although not subject to such punishment in this
country

The crime is shown to be subject to infamous punishment in Switzerland by showing that it is punishable by imprisonment in the state prison, by the laws of the canton of Berne, in which it was committed

The substance of the offense charged should be clearly set forth in the complaint praying for the issuing of the warrant

The complaint must be as specific as in the case of an offense committed in the United States

The complaint need not allege that a warrant was issued abroad against the offender, as the issuing of such warrant is not a necessary preliminary step

The verification of a complaint by a foreign consul may be on information and belief

The authority of the commissioner to issue a warrant for the apprehension of a fugitive must appear upon the face of the warrant, or it is void

The authority of the commissioner is sufficiently shown where it appears that he was authorized to issue warrants generally in cases of extradition, embracing the one covered by such warrant

The warrant is void, unless it shows on its face that a requisition has been made, under the authority of the foreign government, on the government of the United States, and the authority of the latter government obtained, to apprehend such fugitive

A mandate, purporting to be issued by the government of the United States, and issued under the hand of the secretary of state and the seal of the department of state, is a sufficient mandate

Where the complaint is made upon information and belief only, the accused cannot claim the right to cross-examine the affiant before the prosecution gives evidence

Forged papers produced to and deposed to by witnesses giving depositions abroad, where the charge is forgery, need not be produced here before the commissioner

To render papers admissible in evidence under Act June 22, 1860, it is not necessary that they should be papers on which a warrant of arrest was issued abroad

What is a sufficient certificate of authentication of papers under Act 1860.

The preliminary examination of the accused must be conducted according to the mode of procedure which prevails in the state where the offender is found

On an investigation before a commissioner sitting in the state of New York, the accused has the right to be examined as a witness in his own behalf

The commissioner *held* justified in not adjourning the case to allow time for the prisoner to procure alleged evidence on his behalf from abroad

The warrant remains in force, notwithstanding the commitment under it was set aside for errors in the examination before the commissioner

FACTORS AND BROKERS.

A consignee selling goods under a del credere commission is bound to account for 103
the full price in specie, though he subsequently receives payment in bank notes at a
depreciated value, upon suspension of specie payment in the stat
Factors at Kansas City, instructed by their principal to deposit proceeds of sale in a 772
certain bank in Denver to his credit, are liable for a loss by the failure of a bank in
Kansas City in which they deposited the money to the credit of the bank in Denver
A factor is bound to good faith and reasonable diligence. He cannot pledge the 884
property of his principal for his own debts, but he may for the payment of the duties
accruing on the specific goods

FIXTURES.

Fixtures placed in a brewery by the owner, after mortgaging the premises to secure 1027
payment of a debt, pass to the purchaser of the premises on a foreclosure sale

FORFEITURE.

The remedy of the claimant where the libel of information does not distinctly state 388
the grounds of forfeiture is by motion to make the pleading more definite
The government will not be compelled to elect which of the several allegations in a 388
libel of information will be relied on to sustain the forfeiture prayed for
If the claimant does not show a good title to the property, it will not be restored to 455
him, although it is not condemned as forfeited. But it will be retained in the registry
until the real owner appears and proves his title

FRAUD.

See, also, "Equity."

To charge a respondent on account of fraud, there must not only be evidence of it, 1170
but also that he was conusant of the fraud, or profited by it
A contract to take stock in a corporation, induced by fraudulent representations of 1076
its officers, is not void, but only voidable at tie option, of the stockholder
The maker of a note given for stock, which has been held out as an asset of the cor- 1076
poration for two years, was not allowed, as against its assignee in bankruptcy, to set
up the defense that the sale of stock was induced by the fraudulent representations
of the officers of the corporation

FRAUDULENT CONVEYANCES.

See, also, "Bankruptcy"; "Chattel Mortgages."

The purchaser of property transferred abroad, either as security or absolutely, takes 193
a good title as against creditors if he use due diligence to take possession of the
proceeds upon their arrival, although consigned to the seller
The validity of such transfer is not affected by the proviso in the customs act of 193
1799 (chapter 22, § 62), relating to the transfer before entry of goods

The creditors of an embarrassed debtor are entitled to the benefit of a transaction, 407
the result of his skill and judgment, but made in his wife's name, to conceal his
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erty of the obligor

HABEAS CORPUS.

Act 1789, § 14, cl. 1, does not authorize the federal courts to issue the writ unless 909
it is necessary in aid of jurisdiction in a case or proceeding pending therein

The case of a father claiming the custody of an infant child is not one in which the 909
writ can issue, as ancillary to the exercise of jurisdiction, under such act

Nor can the circuit court take jurisdiction under § 11, although the father is a citizen 909
of another state, as the matter in dispute has no pecuniary value, and cannot be
estimated in money

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- A federal court may issue a writ of habeas corpus in favor of petitioners imprisoned for contempt by a state court for acts committed in the performance of duties created by laws of the United States 427
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- A conveyance by a husband and wife of her estate to a third person and his heirs, to the use of the grantees during their joint lives, and for the use of the survivor in fee simple, is valid and operative under the statute of uses 118
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- The rule of the common law that the husband, by virtue of the marriage, became seised of an estate in the inheritance of his wife for their joint lives, is not changed by the statutes of Oregon, which provide that, upon the death of the wife, the husband shall be tenant by the curtesy, whether they had issue born alive or not 545
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An injunction will not be granted nor a receiver appointed pending a plea to the 931
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A motion to dissolve a preliminary injunction issued upon the bill, by consent, must 1022
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Denials or allegations upon information and belief are not sufficient to dissolve an 1022
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On an appeal from a final decree dissolving an injunction, taken in such form as 829
to operate as a supersedeas, the court below has no jurisdiction to restrain the suc-
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Rev. St. Nev. § 1182, giving authority to require security from plaintiff pending the 829
litigation, or, in default, to dissolve any injunction in his favor, relates only to pend-
ing cases, not to cases already in judgment and closed

One having knowledge of an injunction, and violating it, is guilty of contempt, al- 1124
though the same had not been served upon him

A mortgagee of chattels, having been enjoined from enforcing his mortgage, *held* 1124
guilty of contempt by replevying the chattels, and condemned to a fine equal to the
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The discharge will bar a ca. sa. for costs, on a judgment for costs, confessed after 681
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The consignee of a vessel, in a foreign port, who furnishes necessary supplies on credit, not having funds of the owner in his hands, may have a lien therefor upon the vessel	488
The owner of a ship yard who places a mast in a vessel on the order of one who contracted with the master to furnish the same for an agreed price, and who was paid therefor when the work was done, has no lien on the vessel therefor	442
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The assignment of a maritime claim does not extinguish the lien incident thereto	674
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As against bona fide purchasers, without notice, tacit liens for necessaries must be enforced with reasonable diligence	488
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A libel for loss of goods filed two years and ten months after the loss, and after a bona fide assignee of a shipper's bill of lading had seized the boat, cannot be maintained	1101
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Where the lien holder and owner of a vessel are both residents of the same district, the former need not pursue the vessel in another district to prevent his claim becoming stale	674

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An attachment in the hands of the marshal of the district where the vessel is owned, kept alive by successive renewals, will prevent the claim becoming stale. Simply filing a libel will not have that effect 674

Notice to purchasers that previous owners are indebted for a set of sails furnished to the vessel is notice of a lien therefor 728

The sale of a vessel under a decree in admiralty on a libel to enforce a maritime lien will free the vessel from all other lien 920

Liens under state statutes.

A state may create liens for materials and supplies furnished a vessel in her home port where not amounting to a regulation of commerce, and may enact reasonable regulations for their enforcement 308

State legislation providing for the enforcement of maritime contracts by attachment of the vessel, not being a common-law remedy, is unconstitutional. 308, 313

Under the twelfth rule in admiralty as amended in 1872, a lien given by the local law for supplies and repairs in the home port is enforceable in a court of admiralty 313

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The doctrine of “relation” cannot be applied so as to cut off the rights of the earlier patentee under a later location 819

The silence of the first locator when a subsequent locator applies for a patent is a waiver of his priority. 819

The provision of the act of 1872, requiring the lines of each claim to be parallel to each other, is merely directory, and no consequence is attached to a deviation from its direction 819

The locator may follow his vein for the prescribed number of feet on the course of a ledge, and to any depth within that distance. (Act 1866.) 819

If, under any circumstances, a patent issued after the passage of the act of 1872 may be valid without the parallelism of lines required by that act, the law will presume that such circumstances existed, as public officers are presumed to do their duty 819

A patentee, under the acts of 1866 and 1872, cannot follow the vein outside of the end lines of the claim vertically draw down through, the lode, but he may follow the vein with its dips, angles, and variations to any depth beyond the side lines 819

In the case of lode claims, a dividing line between them, fixed by agreement, upon the surface at a given point, or for a given distance, must be extended along the dip of the lode, so far as that goes, and must necessarily divide all that the location on the surface carries, or it will not constitute a boundary between the claims 819

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Interest coupons attached to bonds do not form part of the principal debt, so as to invalidate the bonds as issued in violation of a constitutional provision prohibiting an indebtedness exceeding 5 per cent. of the valuation of taxable property 117

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This liability is not affected by the fact that the street is in the proprietorship of a private corporation 753

The annual estimate by municipal officers of the funds needed for the coming year *held* not an appropriation to pay a particular debt, and a judgment against the city will have preference over other debts 881

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authorized by the New Jersey legislature, although it may completely intercept navigation,
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A verdict will not be set aside as against the weight of evidence where there was 1118
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It is not sufficient that the court differed in opinion from the jury on the facts, but 1118
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A motion for a new trial on a case, before judgment, can be entertained after the 677
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The father forfeits his right to the earnings of his child where he neglects the oblig- 803
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contracts of one, and not the credit which is given to all, as in the instance of a
dormant partner

A partnership, as to third persons, can only arise either by contract between the 392
partners themselves, by implication of law arising from a contract which does make
them partners as to third persons, or by some act or declaration of the partners by
which third persons are reasonably led to suppose that the partnership exists

A contract with a firm to open a store in another place for the sale of its goods by 392
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one-half of the net profits, does not constitute a partnership as to third persons

A firm formed by the taking in of a new partner *held* not liable for the proceeds 322
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Patentability.	
The discovery must not only be useful, but new; and it must not have been known and used before in any part of the world to sustain the patent	846
The combination of old machines to produce a new and useful result is a discovery for which a patent may be granted.	254, 846
A new and useful improvement on an old principle, applied to a new and useful purpose, is patentable	886
An improvement, to be patentable, must be in the principles of the machine, art, or manufacture, and not merely in the form or proportions	846
If a change in the mode of operation involves such ingenuity as to show the exercise of inventive faculties, the discoverer is entitled to a patent, though it be the result of accident	908
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The want of knowledge of the utility of an invention by the first discoverer will not prevent his being entitled to a patent as against a subsequent inventor	1016
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An invention must be reduced to practice before the granting of a patent. The making of drawings is not sufficient	560
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The inchoate right of an inventor to the issue of original letters patent, and all foreign letters, renewals, and extensions, maybe conveyed by an instrument containing apt terms to show an intention to convey all the rights springing from the invention	681
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The two years' prior public use will render the patent invalid though such use was without the inventor's knowledge or consent	370
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On a second interference, granted for cause shown, testimony taken on the former interference is admissible, although a new party has been introduced, by way of assignment	243
Several inventions, contrived to be used conjointly to a common end, may be covered by a single patent, though they are capable of being used separately	628
And a use of either invention separately is an infringement pro tanto	628
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No more can be embraced in a reissue than was invented before or at the time of the original patent, and omitted therefrom by accident or mistake, and without fraud or deceptive intention	222
No presumption arises, from the fact that claims made in a reissued patent are not found in the original, that such claims were not intended to be made in the original	376
The office records as to whether or not there was an honest mistake are not conclusive, but the applicant may introduce any competent testimony in support of his contention	215
The patent office has no power to make rules restricting the evidence in such cases to that furnished by its records	215
Rule 26 of the patent office, limiting evidence on amendment of specification to the records of the office, refers to rejected applications for original patents, and not to cases of reissue under § 13, Act 1836.	215

The applicant for a reissue on interference declared must show that the improve- 222
ment was invented before the date of the original patent

Where the reissued patent is of doubtful construction, reference may be made to 604
the original

Extension: Renewal.

An extension of the patent does not affect the rights of previous purchasers from 1088
the patentee or his assignees

The right to replace such parts as are temporary depends upon the right to use the 1086
machine, and is not affected by an extension of the patent

The use after the granting of an extension by special act of January 21, 1808, of a 872,
machine erected after the expiration of the original term, and before the passage of 889
the act, *held* an infringement.

Assignment.

An instrument vesting the grantee with an exclusive territorial right of making and 1088
using the thing patented, and of granting that right to others, is an assignment. Any
conveyance short of this is a license

A conveyance by a patentee *held* to cover the right to foreign letters patent and all 681
renewals and extensions

Licenses.

A grant to use and sell or dispose of machines made according to letters patent, 1088
within a specified territory, is a mere license

One of three patentees owning an unequal share may make a valid license to use 44
the thing patented, patentees being tenants in common

Licenses are available against subsequent purchasers, though not recorded 1088

A parol agreement as to the use of an invention *held*, as against the licensee, to 915
have been merged in the written license prepared by him

A license to a railroad company gives no right to use the patent on lines afterwards 649
built or leased

An assignment of the revenues of a railroad, and of the use of the rolling stock to a 648
preferred creditor, is not a transfer of corporate entity or property, and the assignee
is not guilty of infringement in using on the cars patented appliances licensed to the
company

Defendant, having the right under a license to use a patented improvement to the 714
capacity of his tannery, *held* to have the right to use the improvement in a subse-
quent addition to the tannery without payment of additional fees, where the entire
use did not exceed the original capacity

Defendant, who uses a patented improvement under a license which stipulates for a right to continue the use after expiration of the term agreed, cannot continue the use after such time without payment of the fee stipulated therefor	714
In a suit for license fees after revocation of the license, <i>held</i> , that the licensee was estopped by the admission in the license from setting up the invalidity of the patent as a defense	915
Sale of patented, machine or product.	
The sale of a patented machine, the valuable or novel part of which must be replaced at intervals of a month or so, carries with it the right to replace such part	1086
The sale of a machine, by virtue of a license to use and sell, carries with it the right to use, by implication, and such machine may be again conveyed without words of assignment	1088
Infringement—What constitutes.	
A person who constructs a machine with knowledge that another is the first inventor acts at his peril, and a subsequent patent will prevent its use by him	888
Two machines are not the same if their mechanism is substantially different, though they produce the same result	239
A difference in form, proportions, and utility between machines substantially the same, and operating in the same manner to produce the same result, will not prevent one being an infringement of the other	856
A difference in mode of operation or result obtained is evidence that the mechanism is different	239
A machine is not the same if either the devices, or the mode of applying them, be substantially different from that of the patented machine	239
Preliminary injunction.	
Will be refused where the court is in doubt as to the validity of the patent	972
Refused where a reissue was granted just before bringing the suit, where irreparable injury was not averred	261
Refused where complainant's right is in doubt, and defendants are amply able to answer in damages, and would suffer great injury by suspension of their work	791
An unconditional injunction will be granted, irrespective of the hardship to defendants, and the security to plaintiff, if there be no substantial doubt of plaintiff's right	604
Procedure.	
All parties having title to a patent are necessary parties to a suit for infringement. If their title is disputed, they should be made defendants	303
The remedy of parties joined as complainants who have no title to the patent is not a dismissal of the bill, but merely of their names as parties	303

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In the case of a renewed patent, plaintiff cannot recover for a violation under the old patent without a distinct and independent count	269
The failure to deny the use of a machine as alleged and described in the bill is an admission of such use	604
The construction of a patent is a question of law for the court; and, where its meaning cannot be ascertained satisfactorily upon its face, it is void for ambiguity	628
A decree of a circuit court taken pro confesso will not preclude full inquiry and investigation by another court	902
Evidence.	
Where the general issue is pleaded, there is no limitation of the period in which defendant may show that the patentee is not the original inventor	846
Defendant may give evidence of the use of a machine by other persons, and in other places than those mentioned in the notice of special matter, where the general issue is pleaded.	846, 874
Copies of drawings of foreign patents are not admissible without a notice in the answer, as required by the statute	250
Plaintiff is restricted to proof of a violation during the time specified in his declaration	269
Evidence of plaintiff's declarations <i>held</i> admissible to prove that he asserted a right as the discoverer, and described the invention	861
On the question of abandonment the patentee is entitled to give evidence of the filing of his drawings, or of any other act done by him in assertion of his right	628
A person offering to take a license from the patentee is not thereby estopped to deny that the patentee is the original inventor	846
The court may inspect a model exhibited in evidence, and from such inspection decide the question of patentability	902
Experts will not be allowed to testify, nor will an issue be awarded to a jury, where the court is convinced, upon an inspection of the machine and the patent, that there is no infringement	604
Reliance will not be placed upon the recollection of a witness who describes a machine from memory only, after the lapse of 21 years	604
Accounting: Damages.	
On a bill in equity the right to damages follows the decree under the general prayer for relief. Complainant need not pray for damages eo nomine	640
The price of the machine, the nature, actual state, and extent of the use of plaintiff's invention, and the particular losses to which he may have been subjected by the piracy, are all proper to be considered by the jury in estimating damages	254

Where plaintiff exercises his monopoly by selling licenses, the amount of damages will be controlled by such license fees	640
The fact that defendant acted in good faith, and might have used an unpatented machine with equal advantage, cannot control complainant's damages as fixed by license fees	640
A decree for damages for the amount of the established license fee, gives defendant no right to use the invention for the life of the patent	640
Exemplary damages will not be awarded where defendant purchased the infringing machine in the open market, not knowing it was patented, and abandoned all the patented appliances on notice	640
Various particular inventions and patents.	
Boot trees. No. 14,951, for improvement, <i>held</i> valid and infringed	239
Car brakes. No. 8,552, for improvement in railroad car brakes, <i>held</i> valid	649
Carpet lining. No. 52,835 (reissued, No. 4,296), and No. 60,476 (reissued, No. 4,066), for improvement, <i>held</i> to be infringed	972
Clapboards. No. 10,903 (reissued, No. 3,268), for an improved clapboard joint, <i>held</i> invalid for want of novelty	902
Dry docks. Application for patent for pumping apparatus refused for want of invention	908
Flour. Construction of patent granted to Oliver Evans for an improvement in the art of manufacturing flour.	846, 861
Hats. No. 46,553 (reissued, No. 3,217), for improvement in machines for stretching hat bodies, construed, and <i>held</i> valid and infringed	376
Horserakes. No. 21,712 (reissued, No. 2,994), for improvement, <i>held</i> to be infringe	303
Screw peg. No. 85,374, for a self-clinching metallic screw peg for fastening soles of shoes, <i>held</i> valid, but not infringed	795
Sewing machines. No. 37,033, for improvement in machines for filling and crimping, <i>held</i> valid and infringed	573
Sheep-shears. No. 42,572 (reissued, No. 5,701), for improvement, <i>held</i> valid and infringed	252
Shingle-machines. No. 11,858, for improvement, construed, and <i>held</i> valid, but not infringed	892
Shingle mill. Patent to Earle of December 28, 1822. for improvement, <i>held</i> valid and infringed	254
Soap. No. 118,440, for improvement, <i>held</i> valid and infringed	270
Sole-cutting machine. Priority in arrangement of vibrating knives awarded to Richards	243
Tobacco. No. 140,020, for improvement in plug and bunch tobacco, <i>held</i> valid	741

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Truss. No. 70,324, for a truss and supporter, *held* invalid for want of novelty 400

PAYMENT.

An express contract to pay in gold, made since the passage of the legal tender acts, 307,
is valid and enforceable. 656,

661

A contract to pay 1,000 pounds sterling, lawful money of Great Britain, agreed to 307
be worth a certain sum “in the gold coin of the United States,” is solvable only in
gold coin

The recovery on such contract must be for so many dollars in gold and silver coin 307
as are equivalent, at the rate agreed upon, to the pounds sterling

Bills purchased and remitted to pay a foreign debt may be given in evidence as 955
payments, on the issue of plene administravit, if purchased and remitted before the
writ was served on defendant

PILOTS.

The exhibition to the master of the vessel of the pilot’s warrant is a necessary part 417
of the tender of services, under Act Wash. T. Jan. 26, 1863.

PLEADING AT LAW.

See, also, “Abatement.”

A declaration founded on an amendatory act, which refers to and continues the pro- 963
visions of a former act, should conclude “against the form of the statute,” and not
“statutes.”

The order of pleading is part of the common law, and does not depend upon a 1144
mere rule of the court

A plea in abatement, not upon oath, may be treated as a nullity, and will be ordered 1144
to be stricken out

In the federal courts a plea to the jurisdiction is waived by the filing of any other 845
plea

A plea in bar overrules a plea in abatement 1144

A demurrer extends to the first error in pleading 371

Inducement should consist of such facts as authorize an inference against the right 371
asserted by the other party

An amendment may be allowed of a declaration after a special plea, replication, and 1192
demurrer, provided the cause of action remains the same, and costs are paid, arising
from the demurrer

Leave to amend a declaration in assumpsit blank as to dates and amounts, allowed 1164
on payments of full costs, after plea of the statute of limitations

An amendment of the ad damnum clause in a declaration in trover after verdict for a greater amount will only be allowed upon condition of a new trial and payment of costs 581

After issue joined upon nul tiel record, and the cause is called for trial, defendant will not be permitted to plead that plaintiff was never administrator 180

Whenever time is material, whether in matters of contract or of tort, the plaintiff is strictly bound by the time specified in the declaration 269

A note substantially different from that described in the declaration cannot be given in evidence upon a writ of inquiry 1036

PLEADING IN ADMIRALTY.

The absence of the notarial seal from the jurat of a verification of a libel in admiralty is, at most, but an irregularity, not available, after decree, in a collateral proceeding 920

An answer which neither admits nor denies a material averment in the libel is insufficient, and may be excepted to on that ground 481

An exception for irrelevancy taken to a pleading which is not irrelevant, but is only insufficient, will be overruled 481

Objections for variance will not be allowed after the evidence is closed and the argument for the defense begun 105

Facts will be assumed as broad as the libel will warrant, where it is not objected to for lack of precision and certainty 792

The rule in equity that the answer, when responsive to the bill, must be overcome by the testimony of two disinterested witnesses, etc., does not obtain in admiralty 224

PLEADING IN EQUITY.

Complainant is not required to set out all the minute facts of his case; the general statement of a precise fact is usually sufficient 41

A disclosure cannot be asked in a supplemental bill after the receiver, under a decree for complainants, has proceeded to reduce defendant's assets into his possession 41

If the plea is only to some part of the bill, the defendant must answer to the residue, unless it be proper for a demurrer 1151

An answer to the same matter covered by a plea, which alleges that defendant is not bound to answer, overrules the plea 1151

There is no difference between dilatory pleas and any other pleas as to the time when they may be filed 929

New matter charged in a special replication, which denies all material parts of the answer, will be considered as surplusage 111

The answer of a defendant who has no personal knowledge of the facts alleged, though responsive to the bill, is not evidence 159

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A new defense not allowed to be inserted by amendment after a reference to a master before whom it was available to defendant	915
A bill by creditors to restrain an alleged fraudulent transferee of the debtor from disposing of the property <i>held</i> sufficiently verified by the oath of an agent	1137
A signing by counsel on the back of the bill is sufficient	187
A bill not signed by counsel is demurrage, but leave to amend will be given, as a matter of course	187
Domicile or citizenship in a dilatory plea may be sworn to as of belief	929
The fact that a plea is not sufficiently verified will not justify complainant in treating it as a nullity, and taking a decree as pro confesso	929

POST OFFICE.

The liability of a deputy postmaster and of his clerks for negligence in the forwarding of letters, and the sufficiency of pleadings, and admissibility of evidence in an action for damages, determined	88
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PRACTICE AT LAW.

Defendant is not entitled to nonsuit the plaintiff for not producing papers as noticed without first obtaining an order	48
The court will not permit the plaintiff, who is a trustee merely, to become non pros, where the cestui que trust offers security for cost	1028
If a declaration is fatally defective, the court will affirm a judgment nonsuiting a plaintiff, without considering whether nonsuit was proper	249

PRACTICE IN ADMIRALTY.

See, also, "Admiralty"; "Maritime Liens."	
The judge or court may stay proceedings on a commissioner's order for admiralty process, or act upon the petition de novo	228
Sundays are not excluded in the 14 days required before the return of process in rem, in admiralty	920
On the appearance of defendant after attachment of their property on a warrant of arrest, the attachment must be discharged	792
If defendant fails to appear, the attached property will be held until final decision, when it may be proceeded against by execution	792
The question of the right to sue ship or freight or master or owner for supplies or repairs does not depend on the twelfth rule, but on the general admiralty and maritime law	440
It is not essential to the jurisdiction of the court on a libel for collision that the marshal should continuously retain the vessel in his custody	920

Motion to remand vessel into custody, and cancel stipulation, *held* premature where 685
made before process returned on other libels by which the security of the stipula-
tors was endangered

The court has power to order the rearrest of a vessel if the stipulation to answer 1104
a judgment has been accepted by mistake or fraud, and the sureties were never
bound

In admiralty the name of any party who has lost his interest in the suit can, on a 960
proper application, be stricken from the record

A minor, suing by his *prochein ami*, will be protected against the acts of the latter 803
done in bad faith

Libels or petitions against a vessel are heard by a court of admiralty in any order in 993
which they are brought up

Where respondent's counsel does not object to the examination of the libelants 1157
themselves as witnesses, the court will receive their evidence

A joint libel against two or more persons for a maritime tort may be dismissed as 584
to one, even if there be some evidence against him to permit his being used as a
witness for the other defendants

The proceedings on a reference to a commissioner to compute damages in a colli- 295
sion case are to be conducted in the manner usual on a reference in chancery

Application to the court in the case of improper or irregular proceedings by a com- 295,
missioner, or to control the proceedings before him, can only be had on a certificate 296
as to his proceedings.

It is discretionary with the court to entertain, after a decree, a motion for a re-argu- 542
ment on the question of costs

A person having an agreement for a mortgage upon a vessel has no such interest as 1104
will entitle him to claim the proceeds of her sale in the registry of the court

Surplus moneys in the registry will not be distributed until conflicting claims thereto 990
are properly adjudicated

Until all libels and petitions have been heard, the proceeds are not distributed ex- 993
cept to those who have an undoubted priority, such as seamen and salvors; and this
not without notice to all others

Uncontroverted claims which are within the jurisdiction of the court, although 990
clothed with no privilege, and not reduced to judgment, may be satisfied out of sur-
plus proceeds in the registry

The court has no power to order paid out of surplus proceeds in the registry a 990
demand which could not be enforced in admiralty by a suit either in *rem* or in *per-*
sonam

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A loan to the master to enable him to discharge a lien for seaman's wages and relieve the boat from arrest may be satisfied out of the surplus in the registry 990
But not so with moneys advanced to purchase fuel to enable the vessel to continue her trip, or to pay expenses of bonding he 990

PRACTICE IN EQUITY.

See, also, "Equity."

On the filing of a bill the court may grant a stay order pending motion for an injunction 997

Orders obtained upon motion may be discharged upon motion, and orders obtained ex parte may be thus discharged when they have never been assented to by the other party 780

On motion for a decree on the bill (for an account of license fees) and the answer, *held*, that an affidavit and counter affidavits could not be considered 915

A rehearing will not be granted on the mere certificate of counsel as to the sufficiency of the reasons therefor 626

A new hearing of exceptions to a master's report will not be allowed 1127

The master is bound to follow the orders and directions of the court in the decretal order under which he is appointed 1127

A special allowance made to a master for his services in executing a decree 766

An officer of a corporation, party to a suit, can be compelled by subpoena duces tecum to bring its books before a master to whom the cause is referred 761

PRESIDENT.

The interposition of the president to protect abroad the lives and property of citizens of the United States is a matter resting in his discretion 111

PRINCIPAL AND AGENT.

See, also, "Factors and Brokers."

A principal is liable for drafts drawn by an agent after the expiration of his authority, to pay for prior purchases, duly authorized 1029

The possession of property by an agent to sell, under a special agreement for that purpose, is the possession of the owner 750

An engineer hired to serve on board of a steamboat, by a man who appeared to have full control, may hold him personally for wages, though he did not state that he was an agent 1079

In a suit for wages a loss sustained by the owners in consequence of the engineer's leaving cannot be set up by such hirer as a defense 1079

PRINCIPAL AND SURETY.

The surety on an assignee's bond is not liable for a default actually complete before 271
the bond was given, in the absence of language in the bond showing an intent to be
bound

PRIZE.

See, also, "War."

Jurisdiction.

The courts of the United States have jurisdiction over all prizes made in ports, as 697
well as on the high seas, by virtue of the delegation of admiralty and maritime juris-
diction

On a libel by the owners for restitution and damages, the court will ascertain 1112
whether there is a real question of prize to be tried, and, if so, will direct the captors
to institute proceedings

What constitutes prize.

An enemy vessel in the naval service of the enemy as a gunboat will be condemned 549
Rights and liabilities of captors.

All property captured in time of war belongs to the government, unless granted by 697
it to other persons

The filing of a libel by the United States against a vessel captured by a transport 666
vessel in its service, not commissioned as a vessel of war, is a ratification equivalent
to an original seizure by authority of the government

The captor will be excused from sending in his prize for adjudication, only where 1112
his doing so will weaken his command, so as to endanger the public service

A captor may forfeit his title by misconduct 1112

Procedure.

In cases of recapture, French owners have the benefit of American laws in our 975
ports if American owners are allowed the benefit of American laws in the admiralty
courts of France

The proper form of a libel in prize is a mere general allegation of prize 691

It is irregular to subjoin to the claim anything besides a test oath 691

Such irregularities will be corrected on motion, without formal exceptions 691

The defense, in the claim, must be limited to a contestation of the allegations of the 691
libel

The practice stated as to the claim and test oath, the interest of the claimant, the 691
inspection by the claimant of the ship's papers, and the proofs in preparatorio

The first hearing is limited to the inquiry whether the captured property is prize of 691
war or not

The delay of the claimant until the hearing to object that only two of the persons on 463
board the captured vessel were produced as witnesses *held* a waiver

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But in such case the court suspended the final decree to give libelants an opportunity to submit further proof	463
On special order the testimony of the captors and witnesses present at the capture was allowed, the master, crew, and passengers having inadvertently been allowed to escape	958
Relief for irregularities in the admission of testimony, or in the method of conducting the examinations before the prize commissioners, can be had only by special motion. Such matters will not be noticed on final hearing	943
The practice of American prize courts is to make final condemnation of enemy property at the hearing of the cause, upon the ship's papers and the evidence in preparatorio	958
The suspension of a year and a day after a default is allowed only when it is doubtful upon the evidence whether the property captured belongs to the enemy or is neutra	958
The mutilation of a log book of a vessel in a position to violate a blockade is ground of condemnation where not satisfactorily explained.	506, 508
A vessel clearing from Nassau for St. John, N. B., laden with arms and munitions of war, found off Charleston, S. C., during a blockade, <i>held</i> prima facie liable to condemnation	467
The court has power to appraise property captured as prize, and to transfer it to the use of the government before condemnation, at its appraised value	505
Where the captured property is taken for the use of the government, its value is to be ascertained by sworn appraisal, and deposited in court or in the treasury, subject to the order of the court	504
The appraised value at which a prize is accepted by the United States and devoted to the public use will be regarded as her true value in decreeing a forfeiture	939
Control and custody of property.	
It is the usage of prize courts to exercise jurisdiction over property captured on board a vessel without having the vessel itself brought within their cognizance	341
The property captured is never delivered to either party on bail before a hearing, unless by consent. If perishable, it should be appraised and sold	815
Sale, and distribution of proceeds.	
Where a vessel in a perishing condition, liable to be a total loss if not cared for constantly, will be ordered to be sold	506
If the party filing a libel against property, as prize of war, is not entitled to it, condemnation will go to the United States	697

Freight on property captured as prize by a government vessel, shipped on board a merchant vessel under a bill of lading, will be paid out of the proceeds of the property in court 388

Distribution of proceeds on capture of prize by United States steam transport ship 667
A vessel, to share with the actual captor, must show her position to have been such that the usual signals from the actual captor could have been read from the deck or topgallant forecastle. 498

Various cases of condemnation or acquittal.

Fishing vessel condemned for violating a blockade, and as enemy property 939

Cargo in an enemy vessel condemned as enemy property, and for a violation of blockade in a case of spoliation of papers 341

Vessel and cargo condemned as enemy property, for violating blockade, and for carrying contraband of war. 943, 945

Vessel and cargo condemned for violation of blockade of Charleston, S. C 614

Condemnation of vessel for violating blockade of Wilmington, N. C, where her papers were destroyed immediately before capture 666

Vessels captured at Elizabeth City, and at Newbern, N. C, condemned as enemy's property 549

Vessel and cargo condemned on various grounds 463

PUBLIC LANDS.

A lease by a squatter on lands within the "Hot Springs" reservation is absolutely void, and the lessee is not estopped to deny his landlord's title in a suit for rent 107

QUIETING TITLE.

A court of equity will not direct a deed, void upon its face, to be surrendered and canceled. This should only be done where a deed is void for matters wholly extrinsic 543

QUI TAM AND PENAL ACTIONS.

In an action on a statute, the party prosecuting must allege every fact necessary to make out his title and his competency to sue 1161

RAILROAD COMPANIES.

After the construction and operation of a road under a charter, the same cannot be abandoned, though the charter was permissive, merely, and not mandatory 1045

A grant of land in consideration that the grantee shall build a road, duly accepted, creates a contract binding on the grantee, performance of which may be enforced by mandamus 1045

What are continuous or connected lines within the Missouri statutes allowing the purchase or lease of one road by another 232

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A lease in perpetuity of another road <i>held</i> ratified by the stockholders by acquiescence after three years' delay, as respects innocent holders of bonds issued under and secured by such lease	232
The rights of a banking firm, financial agents of a railroad company, one of whose members was its president, to deal with the funds of the road as against other creditors in case of its insolvency, determined	19
Municipal aid bonds and coupons, being made payable to bearer, pass by mere delivery, and no assignment is necessary to enable the holder to sue	843
A railroad company may guaranty punctual payment of coupons attached to municipal aid bonds, and may be sued in the first instance, and without demand or notice	843
Bonds and mortgages.	
The power to mortgage franchises and property includes, as incident thereto, power to pledge everything that may be necessary to the enjoyment of the franchise and road	41
A mortgage expressly including all after-acquired personal property, covers fuel collected and stored by the company for the use of its engines	41
A mortgage on the road, covering also the rolling stock and other property appertaining thereto, need not be recorded as a chattel mortgage	1053
Such mortgage does not cover coal, oil, and personal property which may be used for other than railway purposes	1053
Equity will hold the road to be included in the mortgage of the right of way, when, from its terms, such appears to be the intention of the parties	40
The equity of a contractor who built the road tinder an agreement that he should retain possession until receipt of payment out of the income is superior to that of bondholders under a prior mortgage upon the right of way, before the road was built	40
On mortgage foreclosure the court has no power without the consent of the bondholders to apply the income to a floating debt previously incurred to pay interest on bonds and for supplies and repairs	17
Coupons severed from bonds are not entitled to priority of payment over the principal or coupons subsequently maturing, in the absence of express provisions to that effect	19
Whether a transaction by an officer of the railroad company amounted to the purchase or the payment of coupons determined on the facts	19
Bondholders, on purchasing at the foreclosure sale, may pay in bonds the residue of their bid. after satisfying the costs and charges of the litigation	25
Bondholders not subscribing to a reorganization plan were allowed to participate in the purchase or reorganization on an equal footing with the others, providing they should come in by a day named	25

Construction of special provisions of deed of trust and decree as to reorganization 1042
of a new railroad company, where the trustee purchased the property of the former
company under a foreclosure decree for the benefit of the bondholders

Appeal from the order confirming foreclosure sale granted, but supersedeas denied,*1042
under the facts of the particular case.

Individual bondholders, not parties to a decree of foreclosure, have no legal right to 1037
have the same executed pending an appeal which does not operate as supersedeas

REAL ACTION.

To most real actions, non tenure is in Massachusetts a good plea, either in bar or 1192
abatement

REAL PROPERTY.

Possession under a deed extends to a whole tract, if there be no adverse possession 532

A tenant put into possession by the grantee, without definite boundaries, will be 532
held to be in possession to the extent of the tract

Where there is an entry without claim of title, the possession is limited to the actual 532
occupancy

Possession may be held by other means than actual residence or by a fence 532

Procedure on an assessment under the Ohio occupying claimant's law of 1831. 101

RECEIVERS.

A petition for the delivery of certificates of shares of stock in the hands of a receiver 763
held should be denied where the petitioner was unable to identify any certificates
as belonging to him

A person depriving certificates of stock in the hands of a receiver of a privilege at- 762
tached thereto *held* guilty of a spoliation which he should be required to restore by
summary process

The circuit court can compel, by summary process, the restoration of property ab- 762
stracted from its custody, whether the person abstracting it be a party to the suit or
not

RELEASE AND DISCHARGE.

A release cannot be set aside as having been procured by false representations as to 96
matters of law or as to facts which the party giving the release was bound to know

REMOVAL OF CAUSES.

Right of removal.

Corporations are within the act of 1867, in respect to the removal of causes 1052

The citizenship of formal and unnecessary parties plaintiff will not control the right 305
of removal

Defendants cannot prevent a removal by calling in warranty parties who are citizens 524
of the same state with plaintiffs in a cause pending in a Louisiana state court, though

under the local law the trial of the call in warranty cannot be separated from the trial of the main issue

The fact that decrees have been made in the state court as to incidental questions, 1043 from which appeals have been taken to the state appellate court, cannot interfere with the right of removal

Proceedings to obtain. 524

The timely presentation of the petition and bonds for removal will suspend all the powers of the state court

A bond in the form prescribed by the act of 1875 *held* properly given on an application for removal under the act of 1867. 1043

No action of the state court upon either bond or petition is required to effect the removal. (Act 1875.). 39

An appeal does not lie from an order of a state court for the removal of a cause, 524 and it is ineffectual to prevent a removal

Effect of removal: Subsequent proceedings.

Where there is a controversy between citizens of different states, the removal takes 1043 the whole suit, notwithstanding there were other controversies in it

On removal by one of two joint defendants, both of whom are nonresidents, one of 976 whom only was served, plaintiff is entitled to process against the other

But in such case the court may hear and decide the case without making the defendant who was not served a party 976

Irregularities in the removal are no ground for remanding after several years where 305 all objection to the jurisdiction has been obviated by amendment

For the purpose of a motion for judgment on default of a defendant, the court will 97 compute the terms as if the action had continued in the state court

Where the cause is removed on defendant's application under the act of 1789, 554 plaintiff is entitled to costs, though he recover a verdict for less than \$500.

REPLEVIN.

Replevin will not lie by one joint owner, but the objection can only be taken by plea 193 in abatement where he sues for the whole

Goods distrained by a collector of taxes in Washington, D. C., cannot be replevied 204 without a special order from a justice of the peace, as required by Act Md. 1790, c. 53.

Where plaintiff in replevin never had possession of the goods, the court will, of 610 course, order them to be returned to defendant, on motion, upon the usual security

In replevin, upon the issue of non cepit, proof that the defendant took the goods as 193 marshal, is sufficient proof of the caption

SALE.

See, also. "Vendor and Purchaser."

On the receipt of goods ordered from abroad, where no price was stipulated, *held* 1140 that the purchasers were only liable for their value at the time and place of shipment, irrespective of the invoice price

A delivery after the failure of the purchaser of goods purchased before, procured 190 by a fraudulent suppression of the fact, is ineffectual to transfer the title

A delivery on board the purchaser's vessel, on condition of compliance with the 190 terms of the contract that indorsed paper shall be given to secure the purchase price, does not pass the title

SALVAGE.

Salvage services: Right to salvage compensation.

Wherever services have been rendered in saving property on the sea, or wrecked 704 on the coast of the sea, there is a salvage service in the sense of the maritime law

A voluntary contract for a fixed compensation, made without any controlling neces- 704 sity, will not alter the character of the services

No award can be made for saving life, but it may be considered in fixing the amount 611 of salvage in saving property

No award can be made for saving, from a wreck, bills of exchange or other papers, 611 the evidence of debts or of title to property

A person authorized by the master of a vessel on fire to save what he can, and look 638 to the property for compensation, is to be regarded as a salvor

Owners of steamboat, towing a burning vessel from one shore to another, *held* en- 638 titled only to reasonable compensation for towage

Towing into port a vessel in distress, but in no great danger of loss, is not strictly 739 salvage service, and is worthy of but small compensation

A steamer with broken propeller blades, proceeding from St. Thomas to New York, 657, under sail, when 150 miles from Sandy Hook, and not in distress, was spoken by 663 another steamer, which towed her into port without any price being fixed for such service. *Held* not a salvage service.

The master and crew of a disabled vessel taken in tow will not be allowed salvage 202 for their exertions in pumping to keep the vessel afloat while being towed

Contracts for salvage services.

Salvage contracts are presumed prima facie to be fair, but, if proven to be uncon- 224 scionable, they will not be enforced

A contract for salvage services to be rendered a vessel in distress will not be dis- 509 turbed where fairly made, and not in excess of the amount which would have been awarded without the contract

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But it must appear that no advantage was taken of the situation of the owners, and that the rate of compensation is just and reasonable	704
A contract for salvage services procured by the salvors upon the false representation that other persons, to whom the contract was originally given, had abandoned the same, is not enforceable	420
The salvors' terms cannot be repudiated after they have been rendered by permission of the master, under the impression that they had been assented to by him, where they were not compulsory or unconscionable	509
Four thousand dollars, the contract price for raising a sunken steamboat in the Mississippi, valued at \$20,000, where the work was performed in 12 hours, by the use of machinery and diving bell worth \$20,000, <i>held</i> reasonable Amount.	224
The amount of the reward is left in the discretion of the court upon a just estimate of all the circumstances of the particular case	704
In determining the amount, the court will consider the value of the property saved, the extent of the labor, and the degree of merit and gallantry shown	704
Unforeseen contingent events which might have increased the peril or occasioned a total loss cannot increase salvage compensation	704
Services rendered in lightening a vessel, with the understanding that they are to be compensated on the basis of daily wages, cannot afterwards be turned into a higher grade, without supervening circumstances changing either the peril or the contract	704
The measure of compensation for services rendered upon the ocean will not be adopted in the case of services upon the Great Lakes	725
The question whether the crew of a grounded vessel could have got her off without assistance is important as tending to show the degree of peril she was in, and the proper amount to be awarded as salvage	502
As large a compensation should be given where a vessel and cargo are saved without injury, as in cases where the cargo only, or a portion of it, is saved	813
In cases of derelict the usual allowance is a moiety; but the rule is not inflexible, and a greater or less proportion may be allowed	474
A case of derelict can arise only when there has been an abandonment by the master and crew, without any intention of returning to the wreck	704
A vessel found entirely deserted or abandoned at sea is, in the sense of the maritime law, a derelict	838
Salvors of a grounded ship, which was in no great peril, and could have been got off without assistance by jettison of a part of her cargo, are entitled to only moderate compensation	515

One-third allowed on cargo and materials, valued at \$31,220, of vessel wrecked on the American reef, saved by four vessels, carrying 49 men	946
Three hundred and twenty-six dollars allowed for saving additional property, of the value of \$632 by small boats picking up goods and materials afloat and ashore	946
One-ninth awarded owners of salvor vessel for towing 40 miles, into port, derelict vessel, worth with cargo \$9,300.	838
Thirty per cent. allowed on \$60,000, the value of cargo and materials saved by 145 salvors, employed five weeks	492
Forty-seven per cent. allowed on the value of cargo and materials saved	644
Forty-five and fifty per cent. of \$8,276, the net value of materials and cargo saved, awarded salvors who worked five days in rough weather trying to float a vessel aground on Carysfort reef	477
Eight hundred dollars allowed on a valuation of \$12,000, for towing into port a vessel in distress, but in no great danger	739
Two thousand dollars awarded a propeller valued with cargo at \$200,000, for towing 45 miles, into harbor, a steamer, worth with cargo \$85,000, temporarily disabled in a storm on Lake Michigan	725
Fifteen thousand dollars awarded for floating ship, aground on Carysfort reef, worth with cargo \$46,470, and navigating her, through intricate channel, to open sea	813
Bemidies for recovery: Procedure.	
The rights acquired by the salvors are only in rem, to be paid by the property. They have no claim in personam against the owners, if they choose to abandon the goods	611
Possession is not necessary to give validity to a lien for salvage on the property saved	224
It requires the most unequivocal acts on the part of the salvors to show that they intend to abandon their lien, and resort to the owners for payment	224
Where the property is delivered by the salvors to the owners, before a compensation for saving them is made, the salvors may maintain a libel in personam for the salvage	611
Increased security, under rule 55, will not be required where the security given under rule 44 is not apparently insufficient, where a single libel is filed against a cargo belonging to numerous persons	356
In cases of salvage, the salvors, though interested, are admitted as witnesses, from necessity	474
The value of the vessel to the owners for purposes of repair will be adopted as the value of the vessel in fixing the salvor's award. Such value is determined by deducting from the value of the vessel just before the accident the cost of repair	509

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Where the subject-matter is bags of gold dust, owned by different persons, a sale of so much as may be necessary to raise the amount awarded will be ordered, and not an average on the different parcel	356
Libelants are not responsible for the expense incurred in effecting an average between the respective owners	356
Nor are they answerable to claimants for sums deposited on bonding the attached property, as rule 68 changes the former practice by securing the return of costs to successful claimants	356
The master will be allowed, out of the fund for disbursements, for pumping necessary to save the vessel after arrival into a port in which she was towed by a salvor vessel	202
The rate of salvage allowed in the court below will be adhered to on appeal unless the evidence clearly calls for a different proportion	704
Apportionment.	
An assignment and release by a seaman, to the owners of the salvor vessel, of a claim for salvage, executed in ignorance of the facts, will not deprive him of his share	341
The owners of the salvor vessel are always entitled to a portion of the award, the amount usually being one-third	838
Where some of the salvors decline asserting a claim for salvage compensation, their proportion will not accrue to the benefit of either their cosalvors or to the owners of the saving vessel	838

SEAMEN.

Protection and relief.	
The penalty of extra wages for short allowance of provisions does not accrue unless the vessel was not provisioned as the act requires, and the crew were actually put on short allowance.	470, 1157
An accidental or unintentional deficiency in the allowance to the crew will not subject the master or owner to the penalty	470
The answer to a libel for extra wages for short allowance is insufficient if it fails to set forth that the vessel shipped the provisions required by law	481
Proof of short allowance casts the burden upon the owner to show that the vessel had on board the quantity of provisions required by law	481
The contract of shipment.	
An agreement on the shipment of seamen to enter the naval service of a foreign government is illegal, and, will not prevent their claiming a discharge upon the change of the flag of the vessel	144

Courts of admiralty cannot properly apply to maritime contracts the same strictness that prevails at common law	556
If a vessel be intended to cruize as well as trade, the seamen's articles must be construed with reference to this double object	556
Immaterial erasures in shipping articles will be disregarded. (Act 1840.).	228
Seamen shipped for a voyage to "a port of discharge in the United States" cannot maintain a libel for wages after leaving the ship at a port of distress in the United States	953
Effect of capture on the contract for wages	634
A master who neglects, before leaving an intermediate port, to inquire at the hospital for seamen who have gone there from the vessel, is liable for loss of wages	1081
The measure of damages where seamen have been wrongfully discharged or left at an intermediate port is governed by the equities of the case, and is usually the wages for the voyage and expenses	1081
The burden is on the master to show, to reduce the recovery, that the seaman has been engaged in other profitable employment	1081
A mate who takes command on the death of the master is entitled to maintain a libel for the entire voyage at his contract price as mate	996
Conduct of master or mate in respect to seamen.	
A master may displace a mariner, and allot him other services than those for which he shipped, in case of his incapacity, or because the health or safety of the ship's company requires the change	935
The decision of a master degrading a cook for incompetency or misconduct will, in ordinary cases, be considered as final	481
The master is justified in discharging a mate who had been drunk several times on board the vessel, and got drunk on the day of her departure, and joined her, while drunk, at another port	406
A master, lawfully discharging a drunken mate, is responsible for a loss of his personal effects caused by putting him on shore at night, without necessity, and without a responsible companion	408
When punishment is necessary to maintain discipline and subordination on board a vessel, damages will not be given, unless it was manifestly excessive	584
Officers are liable only for the actual pecuniary damages sustained where, in administering merited punishment with unnecessary harshness, a severe injury is unintentionally done	584
The subordinate officers have no authority to punish a seaman when the master is on board	584
Wages—Right to.	

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When a vessel is lost on the homeward voyage, and has or might have earned freight on the outward voyage, seamen's wages are due for the outward voyage and for one-half the time spent in the port of destination	1082
The standard of seaworthiness, with respect to liability for seamen's wages after a wreck, varies with the character of the voyage and the nature of the cargo	1082
Voluntary stranding for the purpose of repairs, and subsequent capture by Indians, resulting in loss of the vessel, are good defenses to suits for seamen's wages	1082
In the case of a slave illegally discharged abroad, his master was allowed full wages up to the time when he might have returned to the United States	634
Coercing seaman into remaining on board a vessel sold to a foreign government is equivalent to a discharge, entitling them to the three months' wages given under Act 1803 on a discharge abroad	144
Where seamen voluntarily enter the service of a foreign government on the sale of the vessel to such government, they are not entitled, on a subsequent discharge, to the three months' wages	144
The three months' wages (Act 1803) are recoverable on a discharge in a foreign port, whether made at the termination of the seaman's agreement or before such termination	144
On a libel for wages the court will enforce the payment of the three months' wages given by Act 1803, where the seaman was discharged abroad	634
Compensation may be allowed for extra services carrying a higher rate of wages than those agreed to be rendered	935
The measure of compensation is the difference between the two rates of wages for the time employed in the extra service	935
—Remedies for recovery.	
Seamen on board a vessel sailing under letters of marque are entitled to the remedies of seamen in the merchant service, and may sue for wages in a neutral port	559
The seaman does not lose his lien on the vessel by taking an order on the owner or charterer for the balance due at the close of the voyage	268
The death of the owner, who was also master, will not affect the seaman's lien on the vessel	996
Seamen may maintain an action against the vessel owner to recover as wages their portion of the three months' wages required by Act 1803, to be paid on a discharge in a foreign port	144
A seaman cannot sue for wages until the completion of the voyage by the unloading of the cargo or ballast	228

A delay beyond a reasonable time to unload the vessel may be regarded as equivalent to a discharge of the seamen; but the burden of showing the discharge in such case is on the seaman alleging it, and his own oath is not sufficient evidence	228
The seaman cannot sue until 10 days after the discharge of the cargo have elapsed, unless there be a dispute as to the wages. (Act July 20, 1790.).	228
In some cases 15 days are allowed for the discharge of the cargo and payment of wages	355
An action for wages earned on a previous voyage may be instituted before the vessel is discharged of her cargo at the return port	333
An objection that the suit is brought before the cargo is discharged is waived by appearing and contesting the claim on the merits	333
The father, whose name was used as <i>prochein ami</i> , in a suit by a minor for wages, secretly settled the same, giving a receipt in full. <i>Held</i> , that the receipt should be set aside, and full wages decreed the minor	803
The declarations of the master concerning the contract of the seamen are admissible in a suit against the owners, though not strictly part of the <i>res gestae</i>	729
The deposition of a master, who has interposed a claim and answer in an action in <i>rem</i> , and continues a party to the suit, cannot be read in evidence, on the part of the owners of the vessel	935
Interest, as a general rule, will be allowed from the time the wages were due until a tender or payment under the decree, but no interest is allowable upon extra wages for short allowance	481
Counsel fees will not be allowed as costs, unless the defense is merely vexatious, or there are special reasons therefor	481
—Deductions: Extinguishment, etc.	
The value of portions of the cargo embezzled by the fraud or negligence of a seaman may be deducted from his wages	351
An innocent seaman need not contribute to such a loss	351
One-half of a month's wages was deducted for disobedience, and one month's wages deducted for insolence	481
Only a qualified forfeiture will be imposed where a seaman, who had gone ashore by permission, and without knowing that the vessel was about to sail, failed to rejoin her because of drunkenness	751
The punishment of seamen by the master, and continuing them in his employ after absence without leave, is a waiver of all claim to forfeiture of wages	470
The conduct of a seaman in going ashore against orders, and in breaking away when apprehended, <i>held</i> to amount to a desertion	751

Quaere whether an unauthorized absence, after termination of voyage in home port, 481
but before the seaman is entitled to his discharge, is a desertion which will forfeit
wages

SHERIFFS AND CONSTABLES.

A sheriff who neglects to sell property seized on execution is liable in damages 93
A motion against a sheriff for not paying over to plaintiff money made upon a fi. 1136
fa. may be made in the name of the original plaintiff in the fi. fa., although he had
taken the insolvent oath

SHIPPING.

See, also, "Admiralty"; "Affreightment"; "Average"; "Bills of Lading"; "Charter Par-
ties"; "Demurrage"; "Maritime Liens"; "Salvage"; "Seamen."

Public regulation.

A bill of sale, made without consideration, for the purpose of fraudulently obtaining 1177
an American register, is a nullity, and the vessel is subject to forfeiture on the oath
of ownership by the vendee

The sale of a British vessel, at Alaska, after ratification of the treaty of purchase 1177
with Russia, but before the country was turned over to the American government,
for the purpose of having such vessel thereby become an American bottom under
the treaty, *held* fraudulent

The want of a seizure prior to the commencement of proceedings in a cause of 1176
seizure under the laws of impost, navigation, and trade, under Act 1789, § 9, is fatal
to the jurisdiction, though the objection be first taken upon appeal

A "foreign port or place," within the meaning of Act July 6, 1812, c. 129, § 1, is a 455
port or place within the sovereignty of a foreign nation

The sixth section, of the coasting act of February, 1793, c. 8, inflicts a forfeiture of 455
the ship and cargo only in cases of unregistered vessels, found with foreign goods
on board, in the coasting trade, and not of vessels licensed for the fisheries

If a vessel licensed for the fisheries be engaged in an illegal traffic, she is forfeited 455
under section 32 of the coasting ac

In such a case, if the property has been engaged in a trade with the enemy, the 455
United States may proceed against it, as prize of war

Ferryboats running under a ferry franchise granted by the state are not required to 488
be enrolled under the act of 1852.

A steam tug engaged exclusively in towing, on the Connecticut river, within the lim- 1069
its of the state, vessels engaged in interstate commerce, is not subject to inspection,
under Act June 8, 1864, § 4.

A vessel is not liable under Rev. St. § 4233, rule 10, for failure to exhibit a light while at anchor at night, where its light was accidentally extinguished only for a short time, and without negligence of the owners	291
It must appear that the vessel was seized before filing the libel, to sustain a conviction for such failure	291
Title to vessels.	
A bill of sale of a ship and cargo merely by way of mortgage or security, if bona fide made, is good as against creditors, though possession is not taken by the purchaser	193
Master.	
The master of a vessel has no lien upon a vessel for services as pilot, he acting in both capacities	740
The admissions and declarations of the master within the scope of his authority when upon the voyage are admissible against the principal	224
Liabilities of vessels or owners.	
The vessel is not liable for misrepresentation or concealment of facts by her master or owner in respect to her tonnage or capacity on the making of a charter part	455
A vessel is liable for embezzlement by the master of a portion of the cargo.	668, 672
The vessel is liable on the sale of lie cargo by the master at an intermediate port for the full value, unless some justification is affirmatively shown	718
Limiting liability.	
Act March 3, 1851, limits the liability of the owner of a ship for injuries to persons, equally with liability for injuries to property	744
Notwithstanding the language of section 4, it can be carried into effect by a court of admiralty	744
In case the fund provided for by the act is insufficient to satisfy the demands against it, the claimants on the fund must share pro rata	744
Vessel owners, by allowing a final decree for damages for collision in the district court, waive their right to institute proceedings under the act of March 3, 1851, to limit their liability.	*207
Where the vessel owners have not instituted any proceedings to have the limitation of their liability adjudged, and have not surrendered the savings from the wreck, they are not entitled to the benefit of the act of March 3, 1851, or to the limitation under the general maritime law.	*207

SLAVERY.

There can be no binding contract between a slave and his master	995
The child of a female slave is a slave, although the mother has the promise of the master that she shall be free at the end of a certain term of years	995

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A slave escaping from his master in Virginia, found in Washington, and there sold by his master, does not thereby acquire a right to freedom	611
Right to freedom on removal to the District of Columbia	797
The right to remove slaves from one county to another in the District of Columbia determined	1146
Manumission of slave, what constitutes	1175
A suit for a penalty for aiding and abetting in the fitting out of a vessel for the slave trade can only be brought in the district where the offense was committed	836

SPECIFIC PERFORMANCE.

An action will not lie by one who has contracted to construct a railroad for the specific performance of the contract by the company, and to enjoin it from entering into a contract with another for the same work	977
An entry by consent of the obligor under a bond for title, after consideration partly paid, and the making of improvements, will entitle the obligee to specific performance	1127

STATES.

See, also, "Navigable Waters."

Quaere if the legislature of one state can authorize a dam locally in that state to be raised, so as to flow back a public river running into another state, to the injury of mill privileges locally situate in the latter state	1059
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STATUTES.

Where a law bears upon its face the requisite authentication, the vote by which it was passed cannot be inquired into	963
The legislature cannot create an obligation or impose a penalty for an act which, when done, incurred no such liability	963
A statute declaring the construction of a prior statute is unconstitutional and void as regards prior contracts	30
Remedial statutes should be liberally construed, to advance the remedy, rather than strictly to the destruction of a right	324
A reversal of a previous ruling by a court of last resort construing the law is retroactive except as to executed contract	37
The language of the statute is to be particularly adhered to in the construction of penal laws	1161
The rule that penal statutes are to be strictly construed will not prevent the courts from inquiring into the intention of the legislature	732
Where there is such an ambiguity in a penal statute as to leave reasonable doubts of its meaning, the penalty will not be inflicted	732

TAXATION.

See, also, "Internal Revenue."

The corporation of Alexandria *held* authorized to tax the Farmers' bank, and to collect the tax by distress, etc 1031

The person claiming under a tax deed must show compliance with all the legal requirements 98

A record from the books of the county auditor must show the transactions as they occurred. A historical account of the events is not a record. The auditor must state facts, not conclusions 98

TOWAGE.

One who contracts to tow a vessel from sea into port must furnish sufficient force for the undertaking 102

Steam tugs are not liable as common carriers for the safety of vessels which they are towing, or of their cargo. 102, 736

The burden is on the libellant to show failure on the part of the tug 102

The tug will not be held liable, as between the tug and the tow, for the condition and strength of a hawser furnished by the tow, where it is not shown that it was parted by the negligence of the tug 284

Owners of tug *held* liable for grounding of tow where the master of the tug did not take the channel agreed, and gave confused and contradictory orders 171

The tug is not responsible for damages done by the tow, whether lashed alongside or drawn by hawsers, except it be proved that the injury was owing to want of care or skill in the tug, in performing the duties belonging to her 939

The responsibility for navigation where the tow is lashed to the side of the tug, and depends wholly upon it for motive power and steerage, is wholly on the tug 171

The master of a vessel towed on a line astern is bound to obey all proper orders of the master of the tug, and the latter is not liable for damages caused by refusal or negligence in such particular 171

A propeller, having barges in tow, left them outside of the port of Cleveland, while she went in to take on fuel. *Held*, that she was liable for a loss by a storm during the night 577

TRADE-MARKS AND TRADE-NAMES.

The words "Fairbanks' Patent," used by Fairbanks & Co., *held* not a trade-mark; and another manufacturer will not be enjoined in using such words on scales made in imitation of Fairbanks' scales after the patents have expired 951

The fraudulent intent, as charged in a bill for infringement of a trade-mark, must be taken as confessed, on demurrer to the bill, and complainant will be entitled to an injunction 724

TREATIES.

Under the treaty with Prussia of May 1, 1828, the district court has no jurisdiction 588
of a suit in rem for wages by the crew of a Prussian vessel, where the Prussian
consul has previously adjudicated on the claim. (Reversing 592.).

TRESPASS.

Possession alone is sufficient to support trespass quare clausum fregit against one 330
who has no title

TRIAL.

The party upon whom the burden of proof is thrown by the issue is to open and 91
close the argument

Plaintiff *held* entitled to a continuance where he sent away his principal witness to 282
obtain testimony to meet a new ground of defense

A libel and answer accompanying an issue sent from the orphans' court to be tried 861
in the circuit court of the District of Columbia may be read in evidence

Where defendant shows that plaintiff's witness made statements at other times dif- 532
ferent from those sworn to, plaintiff cannot show other statements corroborative of
his evidence

Where it subsequently appears, on examination of a witness sworn on his voir dire, 846
that he is incompetent, his testimony will be set aside

The court will not permit testimony offered to discredit a witness on the opposite 846
side if, in its opinion, the testimony will not have that effect

Prayers for instructions not complied with by the court are to be considered as re- 628
fused

Exceptions will lie to the refusals of the court to give instructions when requested, 628
in like manner as to the instructions actually given

In an action by the assignee in bankruptcy to recover property fraudulently trans- 324
ferred by the bankrupt, a finding of the value of the property in "gold coin" will
support a judgment for coin

Judgment will be arrested on verdict for plaintiff in assumpsit where only one of 322
several joint defendants was served with process

The judgment will be arrested where the verdict is general and one of the counts is 1142
bad. It cannot be amended after it is recorded by applying it to the good count only,
unless the evidence given was applicable only to that count

TROVER AND CONVERSION.

In trover for the conversion of goods, plaintiff must prove title as against the world 397
when his title is denied

Possession at the time of seizure is prima facie evidence of ownership, shifting the 397
burden of proof

In trover for the conversion of goods, it is a good defense that plaintiff obtained possession of the same on a sale in fraud of the bankrupt act, and that the title and right of possession is in the assignee in bankruptcy of his vendor 397

UNITED STATES.

The United States, purchasing land within a state merely to secure a debt, takes it as any other corporation, and cannot claim any of the immunities or prerogatives of a sovereign 533

USURY.

A bank, on discounting a note for an indorser at the legal rate, gave time post notes, not bearing interest. *Held*, that the transaction was usurious, and the bank could not recover on the discounted note 1028

Payment of commissions to a loan broker in addition to the lawful interest does not make the contract of lending usurious, unless it appear that the claim for commissions was but a device to evade the law 298

A special state statute, authorizing certain banks to charge more than the legal rate of interest, cannot operate to give national banks within the state a right to exceed the legal rate 11

The action against a national bank to recover a penalty for usury in the case of successive renewal notes *held* to accrue at the time the interest taken was applied to the principal, or when judgment is entered therefor 11

VENDOR AND PURCHASER.

A vendor who has not parted with the legal title has a lien for the unpaid purchase-money, enforceable either against the vendee, his representatives or assigns 722

VENUE IN CIVIL CASES.

A venue in the body of the declaration is sufficient without being stated in the margin 190

WAR.

See, also, "Prize."

Alien enemies—Rights and disabilities.

An alien enemy cannot sustain a claim in a prize court; nor can a citizen claim the property of an enemy in a prize court, upon an alleged sale since the war 697

In a plea of alien enemy in abatement of an action of detinue, it must be averred that such was the status of plaintiff at commencement of the suit 449

If the disability arise afterwards, the further prosecution of the suit is suspended merely until peace is restored 449

It is no answer to a plea of alien enemy to aver that the plaintiff has taken the oath prescribed by the amnesty proclamation 449

Military law.

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Upon a declaration of war, the president may lawfully authorize the capture of enemy property whenever, by the law of nations, it is liable to capture	697
Lawful and public orders from the president and from the secretary of the navy are a good defense to a suit against a naval officer for the destruction of property by a bombardment of a foreign town	111
Confiscation.	
Debts, credits, and corporeal property of an enemy, found in the country on the breaking out of war, are confiscable.	*697
A cargo belonging to enemies, and found in our ports at the breaking out of a war, is confiscable <i>jure belli</i> , without any special act of congress authorizing the seizure	*697
Blockade.	
Vessel and cargo owned by aliens residing in the enemy's country will be restored where delivered to the blockading squadron on fleeing the country to save it from the enemy	896
Neutral vessel <i>held</i> not subject to forfeiture for sailing to a blockade port with knowledge of a proclamation declaring an intent to blockade the port, where it was not its intention to violate an actual blockade. (Reversing 692.).	695
Civil War of 1861-65.	
Inhabitants of Chincoteague island, separated from the coast of Virginia by a ship canal, <i>held</i> not to be enemies on the ground of their residence	476
In the Rebellion, a resident in the "Confederacy," and subject to its control, is a public enemy, although he may have committed no act of disloyalty	449
A proclamation of amnesty cannot relieve such person of the disabilities imposed upon him in such case	449
The insurgent government of Virginia during the Civil War <i>held</i> a de facto government, and its acts regulating the common transactions of life were valid: but otherwise as to acts intended to subvert the authority of the United States	884
Notes issued by the city of Richmond in 1861 and 1862 <i>held</i> to have been intended to give aid and support to the Rebellion, and incapable of being validated	884
The remedy provided by the act of March 3, 1863, for the recovery of property captured or abandoned in the enemy's country, whether the capture be in accordance with its provisions or not, is exclusive in the court of claims	449
A plea in detinue, based on the act of March 3, 1863, which does not aver that the property had been taken in a district which had been declared in insurrection, is bad	449
The plea must exclude the idea of any special property in the plaintiff, with a present right of possession in him, in order to be good	449

The bar to an action provided in section 6 of the "Confiscation Act" applies only 449
to property seized under the act. A plea in detinue which does not allege that the
property was seized under the act is bad

WHARVES.

A domestic vessel can be subject to no lien for wharfage except that given by the 252
local law

The lessee of a wharf is entitled (in Pennsylvania) to a lien for wharfage upon ves- 252
sels using the wharf

A recovery cannot be had for an entire contract price where the vessel was not at 252
the dock the whole period

Act La. March 6, 1869, does not confer upon the railroad company or those claim- *524
ing under it the right to collect wharfage dues from vessels, etc., landing at the levee
front of its riparian property.

WILLS.

Where a gross sum in debts, etc., is charged by the will on the estate devised, and 1154
not on the devisee, the devisee in a general devise to him takes only an estate for
life. But where the charge is on him personally, in respect of the devise, he takes a
fee

Under a devise as follows: "As to my worldly goods, I devise to my wife, A., all and 1154
singular my goods and effects, both real and personal, of what kind soever, after my
debts and funeral expenses are paid,"—*held*, that the wife took a fee simple

Under a devise to testator's wife "during her widowhood," and, in case of her mar- 1032
riage, the whole of the estate to be given to testator's daughter and her heirs, forev-
er, the daughter takes a vested remainder in fee

The effect of an introductory clause, and of the words "remainder" and "residue," 1154
in the construction of a will

A Kentucky will, by which testator bequeathed "every part of my estate, of every 73
kind whatsoever, to be equally divided (by sale or otherwise, as may seem best)
between" his wife and children and their heirs, forever, *held* not to authorize the
executors to divide or sell real property in Ohio

WITNESS.

A witness cannot refuse to answer questions concerning his dealings, etc., with the 1111
bankrupt on an examination in bankruptcy, on the ground that his answer may fur-
nish evidence against him in a civil case, by the assignee

In a case falling within Act March 3, 1865, the evidence of the party cannot be 780
taken and admitted under Equity Rule 70, on the ground that the witnesses are old
and infirm

An ex parte order obtained by complainant before process issued for his own examination as a witness does not qualify him as such, on the ground that he is required by the court to testify. (Act March 3, 1865).	780
An execution creditor of complainant in a bill filed to establish a parol trust in lands, against the heirs and representatives of an intestate, is an "opposite party" to complainant, within Act March 3, 1865.	780
Seamen not interested in the event, though interested in the question, are competent to testify for each other	470
In an action against a sheriff for an escape upon mesne process, the escaped prisoner is not competent to prove his bankruptcy at the time of his escape	136
A liability for costs in the event of a recovery on notes prevents the person so liable, from being a competent witness in a suit to have the notes surrendered and canceled.	1165, 1170
An agent who purchased a chattel, and is interested, therein, is not competent for plaintiff in a suit for fraud in a sale	1165
Upon the issue of plene administravit, a surety in the administration bond is a competent for defendant	955
In a suit for infringement of a patent, a witness who uses a machine resembling that of the plaintiff is incompetent for defendant	856
Where a verdict in a suit for infringement of a patent will not avoid the patent, a person using a machine similar to that used by defendant <i>held</i> not incompetent for defendant	861
On an interference, depositions of an inventor, who has assigned his rights, and of his wife, as to priority of invention, are incompetent and inadmissible	243
A person attending court, in obedience to process, both as a juror and a witness, is entitled to compensation for each service	343

WRITS AND NOTICE OF SUITS.

Where a writ is served on a person of a different name from the one against whom it was issued, and there is no appearance, the plaintiff cannot proceed	541
Such writ may be amended, by consent of parties	541
The court will allow a subpoena in equity to be served on defendant's attorney at law only in cross suits, and in suits to stay proceedings at law, where defendant resides out of the state.	288, 600
Process in admiralty may be served by a person deputized by the marshal by memorandum indorsed thereon	920