ABATEMENT AND REVIVAL.

Survivor or abatement of actions, where death of parties intervenes, depends upon the state or local law. An action for malicious arrest and imprisonment under a state warrant, under regular proceedings, abates by the death of defendant (Code Civ. Proc Ohio, § 399). Under Civil Code Or. §§ 27, 37, an action does not abate by the termination or transfer of plaintiffs' interest therein pendente lite. Where, during the pendency of a suit, one of the defendants is released under the bankrupt law, the suit as to him abates, and the assignee should be made a party. The pendency of a suit in the state court may be pleaded in abatement to a suit subsequently brought by the same parties, and for the same cause, in a federal court.

ACKNOWLEDGMENT.

The magistrate's certificate of the acknowledgment of a deed is sufficient (in Pennsylvania) to admit it in evidence, though it be not under seal. A defective acknowledgment of a feme covert cannot afterwards be amended by the court before whom it was taken, by parol proof of the facts.

ACTION.

Numerous suits involving the same issues will not be consolidated on motion of plaintiff.

ACTION ON THE CASE.

Action on the case lies when there has been no contract, and a tort is unaccompanied by force, and is followed by a consequential injury; or where a contract, express or implied, exists out of which a common-law duty arises, and the party on whom that duty devolves is guilty of malfeasance, misfeasance, or nonfeasance in regard to it. Action on the case will lie where a railroad company, after engaging to carry a passenger and taking him on the train, wrongfully ejects him. An action upon the case for deceit will not lie for a breach of promise.

ADMIRALTY.

See, also, “Courts”; “Maritime Liens”; “Pleading in Admiralty”; “Practice in Admiralty”; “Shipping.” Jurisdiction—In general.
Admiralty has no jurisdiction either of a libel in rem or in personam for a seaman's share in the earnings of the vessel where the amount thereof is not ascertained.

Such court may entertain a libel in personam for a specific share in the ascertained profits of the voyage.

On such libel the court may inquire into the charges in account against libellant, relied upon as reducing or satisfying his share.

—Waters and places.

Admiralty jurisdiction extends to the lakes and navigable rivers of the United States; the same above as below tide-water.

Admiralty has jurisdiction of a contract of affreightment to be performed wholly on navigable water, though entirely within the state.

Admiralty has jurisdiction to enforce a contract for the carriage of goods by canal boat from the Buffalo river to New York City, by way of Lake Erie, the Erie Canal, and the Hudson river.

Whether admiralty has jurisdiction of collisions upon the Erie canal, or contracts for the carriage of goods from place to place exclusively upon the Erie canal, quaere.

A seizure in the St. Lawrence river within the territorial limits of the district gives jurisdiction of a libel in rem for collision without reference to the character of the vessel or her voyage.

—Torts.

Admiralty has jurisdiction of a libel in rem for damages for a personal injury caused by a collision between two vessels.

Procedure.

The admiralty creates its own forms of proceeding.

The district courts in admiralty, in the absence of action by the supreme court, will devise modes of proceeding to enable them to carry into effectual execution any law which they are called upon to administer.

A steam tug owned by, and exclusively employed in the service of, a municipal corporation, performing public duties, is not liable to seizure in a suit in rem for a maritime tort, while actually engaged in public service.

A stipulation filed to obtain the release of the tug is not a waiver of the question as to the original liability of the tug.

ADVERSE POSSESSION.

An actual residence on land is not necessary to constitute an adverse possession; but there must be such an occupancy, by exercising acts of ownership, enjoying profits, etc., as to give notice to the public and all concerned of the claim.
Paying taxes, suing trespassers, etc., is not enough to constitute an adverse possession.

**AFFREIGHTMENT.**

See, also, “Admiralty”; “Bills of Lading”; “Carriers”; “Charter Parties”; “Shipping.”

A stipulation giving the shipper the right to change the destination because of blockade does not authorize such change by the ship, on the advice of the consignee, because of a poor market.

Acquiescence in an unauthorized change of destination renders the shipper liable for the price agreed upon for the voyage, but not for the especial premium agreed to be paid upon delivery of cargo at the port designated in the contract.

An unusual difficulty in obtaining a master and crew will not excuse nonperformance of the contract.

The vessel which receives cargo at her anchorage is liable for its loss by the bursting of a boiler on a steam lighter provided at her expense, under the custom of the port.

Injury to tobacco caused by lard and oil carried by water leaking in the ship, through stress of weather, held within the exception of dangers of the seas.

Desertion of seamen is not a peril of the sea.

The vessel is obliged to protect cargo stowed near the center-board well from damage by the ordinary and usual leakage in the well, however difficult that may be.

The stipulation “only half freight to be paid for all barrels delivered in a broken state” covers all barrels broken when delivered, though some were broken when shipped.

The charter party alone will be looked to as the contract of the parties, where the consignee of the cargo had notice by reference to it in the bill of lading.

The sole consignee, or all the consignees, if unanimous, may direct the master to unlade at any usual and convenient wharf at the port of discharge.

In the case of a general ship having the goods of several shippers, the master may lawfully proceed to any such wharf without consulting the shippers.

The majority shippers, who have the right to chose the wharf under the usage of the port of Boston, must notify the master of their choice before he renders himself liable to the wharfinger of a wharf chosen by himself.

The master loses his lien for freight by complying with the charter stipulation requiring delivery of the cargo to the holders of the bills of lading as a condition precedent to receiving freight, and his recourse is against the consignee of the charterer.

A contract for the sale of a boat laden with a cargo stipulated that she should take on, at the port of discharge, certain property belonging to the purchasers, and deliver it with the boat for the stipulated price. Held an entire contract; and, where the title to the vessel failed, the purchasers were entitled to their property, free of freight.
Unaccompanied by any delivery of the goods, the contract of the master for their transportation creates no lien upon the vessel enforceable in admiralty by proceedings in rem

The ship is not liable for damage by rain to cargo delivered on wharf at request of consignee, whose clerk assumed charge thereof, but failed to employ sufficient drays to remove them before night

Libel for injury to wheat from odors of kerosene oil, near which it was stowed in a general ship, dismissed, it not appearing that the odors would not disappear on proper ventilation

In a suit against the consignees of the charterers for freight on cargo delivered to the holders of the bills of lading as stipulated in the charter, the burden is on defendants to show the extent of damages to the goods alleged as a defense

The general declarations of the owners, unaccompanied by any specific statements of disinterested persons, showing the nature and extent of the damage, are inadmissible

A rebate of customs duties for damage to goods obtained by the consignee is not to be considered in computing the damage recoverable against the vessel.

A bill for the amount of damage, made out after an appraisal, and presented, may be taken to show the difference in the market value of sound and damaged goods at that time

Where the goods are injured or destroyed on board the vessel in the port of shipment, the difference between the original cost and charges, and the sales at such port, and not the probable profits at the port of destination, is the measure of damages

**APPEAL AND ERROR.**

On the sale of a vessel on a decree for wages amounting to more than $50, the proceeds, after paying charges, were less than $50. *Held,* that the owner was entitled to appeal, the wages being the matter in dispute

On the erroneous refusal of an appeal by the district court in admiralty, application may be made to the circuit court, which will require the proper security to be given

On an appeal to the circuit court in admiralty, no citation is necessary, but only a written notice by the proctor to the proctor of the adverse party

The respondent in an admiralty suit appeared before the commissioner, and contested the damages after a default, but did not take any exceptions to his report. *Held,* that a motion to dismiss an appeal taken by him was not the proper remedy

The pendency of an appeal from a final decree, where no supersedeas exist, does not deprive the court below of the power to compel the decree to be executed
On an appeal in admiralty the appellee cannot raise the question of the right of the
district court to entertain a libel of review.
The decree of the district court in admiralty is of no effect where, on appeal, security
of damages is given; otherwise when security is not given.
After a reversal in the supreme court, where defendant entered an appearance, he
cannot object that no writ of error was sued out.

**APPRENTICE.**
An apprentice will be compelled after the expiration of the term to serve the num-
ber of days lost by an absence without consent of the master.
For failure to obey the order of the court, the apprentice may be punished as for a
contempt.

**ARBITRATION AND AWARD.**
Parol evidence may be given to explain the expression “certain controversies and accounts” in a written submission.
An award made upon part only of the subjects submitted will be set aside.

**ARMY AND NAVY.**
The fact that an enlisted man has a wife and child held not to invalidate the enlist-
ment.
A contract of enlistment irregularly made held to have been ratified by the receipt of rations and clothing, and the performance of duties as a recruit for 20 days.
Sufficiency of the oath of enlistment under the acts of 1812, 1858, and 1861.

**ASSIGNMENT.**
A state law as to the effect of an assignment by a debtor in failing circumstances is
inapplicable to an assignment made in another state of, an instrument executed in
the former state.
An assignment may, in point of law, be good, of goods and their proceeds, though
given by way of mortgage or as security for future advances.
A bona fide assignment of goods at sea and their proceeds will pass the legal title
to both, without an indorsement of bill of lading, so that replevin will lie.
The assignment of a nonnegotiable chose in action without notice of fraud or ille-
gality in its origin will not preclude a defense to an action thereon.
An assignment, with notice, of a negotiable chose in action, founded in illegality, will not protect the parties thereto.
In an action between the original parties to a contract, the defense of illegality cannot
be defeated by an assignment to a third person.
A person who sues as assignee is bound to allege an assignment to show title in
himself.
Construction and effects of Ohio acts of 1824, and 1842, in relation to assignments made by banks

Assignment for Benefit of Creditors.

See “Bankruptcy.”

ASSUMPSIT.

Assumpsit will lie for articles or services commonly charged on book account
Plaintiff, who contracted to do certain work on certain terms, may recover for the whole amount in his own name, though the work was done jointly with another
Upon a count for a certain sum for work and labor, plaintiff must prove an express assumpsit for a certain sum
A special agreement to do the work at certain prices cannot be given in evidence on a general indebitatus assumpsit
A partnership debt may be given in evidence to support a several assumpsit by one of the partners

ATTACHMENT.

See, also, “Garnishment”
Sufficiency of affidavit for attachment under the Ohio statutes

ATTORNEY AND CLIENT.

The court will not, on the motion of one attorney, order the names of other attorneys, whose appearance has been entered, to be stricken off the docket
The counsel in a case has power to enter into a stipulation for the entry of a decree against his client
The proctor of a seaman may proceed with his suit for wages where the master of the vessel secretly settles with the seaman after summons sued out, with knowledge thereof, and of the fact of an assignment to the proctor

AVERAGE.

The beaching of a vessel by the act of the master to prevent her foundering with a total loss of vessel, cargo, and crew, or to prevent her being driven on shore elsewhere, is a voluntary stranding, and the cargo must contribute in general average to the loss sustained
In estimating the loss where a vessel was beached to prevent her foundering, and went to pieces, the value must be taken as she was when the stranding was determined upon, without regard to her then peril

BANKRUPTCY.

See, also, “Chattel Mortgages.”
Operation and effect of bankrupt laws, and of proceedings thereunder.
The bankrupt law of 1841, upon going into operation in February, 1842, ipso facto, suspended all action upon future cases arising under state insolvent laws, where the insolvent persons were within the purview of the bankrupt law. Attachments in state courts, brought within four months before a commencement of proceedings in bankruptcy, are dissolved. A sale of property under such attachments gives the creditors no greater interest than if the property remained in specie. Judgments rendered in a state court cannot be corrected or annulled on petition in the bankruptcy court. The bankruptcy court cannot relieve a debtor who, being sued in another court on a debt arising before the adjudication, fails to plead his discharge, and judgment goes against him. Bankruptcy must be pleaded both at law and in equity. The court is not bound to notice the defense of bankruptcy on motion founded upon an affidavit. Commencement of proceedings—Voluntary bankruptcy. The refusal of the court to grant a discharge, on the ground that the application was not made within a year of the adjudication, is no bar to a new proceeding. —Involuntary bankruptcy. A distiller engaged in the purchase and sale of grain and the sale of alcohol into which it is converted, and the purchase of domestic animals, and the sale of them or of their flesh after being fattened, is subject to the operation of the act. A trader who has withdrawn from business may be proceeded against upon debts which were contracted while he was actually in trade. A mortgagee of the bankrupt held to be a creditor, notwithstanding an assignment of the mortgage to secure a debt, and a general assignment to a receiver appointed in suit against her. An absolute transfer was given to secure a debt on an extension of time to the debtor. Held, that the creditor, before the expiration of such time, had an existing indebtedness provable in bankruptcy. The pendency of a suit at law is not a bar to a petition by the creditor on a distinct and independent demand. The debtor alone is properly the “person interested” to appear and contest the facts stated as the grounds for the petition. The validity of the debt of the petitioning creditor cannot be inquired into by another creditor claiming adversely to the assignee. No replication is necessary to the denial by the debtors, according to Form No. 61, of the allegations of the petition.
The bankrupt is not bound to file an inventory of his estate and effects, or a list of his creditors. (Act 1841.)

Sufficiency of service of warrant on creditors, and marshal's return thereto

Commencement of proceedings—Acts of bankruptcy.

A resumption of payment of commercial paper after the expiration of the 14 days during which payment was suspended does not cure the act of bankruptcy unless the debtor's whole indebtedness is paid, and any creditor may petition

A secret partner, known to be such when an indebtedness was incurred, may be adjudged a bankrupt on petition against the firm, though he be entirely solvent

An assignment of property which bears no internal revenue stamp, being void, will not support the petition

A general assignment under the state law, made in good faith, by a debtor knowing himself to be insolvent, is not necessarily an act of bankruptcy

Such an assignment will be held an act of bankruptcy where the debtor did not turn over to the assignee money in excess of the authorized exemptions

The payment of a freight bill by furnishing lumber to a railroad, under an order procured by the debtor, held an act of bankruptcy

A mortgage of personal property to secure payment of a pre-existing debt, made with intent to give a preference, by a solvent debtor, held not an act of bankruptcy

An insolvent debtor compromised with all his creditors except one, whom he promised to pay in full on a large extension of time, transferring to him property as security therefor. Held an act of bankruptcy

The statutes authorizing the taking of testimony (Act 1789, § 30; Act 1817; Act 1872) do not apply to proceedings in bankruptcy

Testimony in bankruptcy proceedings can only be taken on commission, and cannot be taken on notice

Adjudication.

Section 40. Act 1867, relating to the effect of the adjudication, only refers to such injunctions as were granted simultaneously with the order to show cause

An adjudication founded upon a proper allegation in the petition as to the number and amount of creditors, is conclusive on such point in a collateral proceeding, in the absence of fraud

Sufficiency of allegations in such particular

An affidavit accompanying the petition held no part thereof, but evidence of good faith in admissions by bankrupts on which the adjudication was founded

The proceedings cannot be impeached by the fact that the petition was delayed until the assignee was barred from attacking certain transfers
The fact that the debtors solicited creditors to join in the petition furnished no ground for setting aside the adjudication Assignee.

On a separate adjudication against a member of a firm, the separate creditors have a right to vote for the assignee

A chosen assignee may, on application of a creditor, be required to give security

Meetings of creditors.

The time for opening a meeting or hearing is to continue one hour from the time fixed in the order

If the magistrate does not appear, and has not been heard from, within the hour, any party may have the meeting adjourned

An execution creditor enjoined by the circuit court from further proceedings may have his claim of priority of payment out of proceeds of the property determined at a general meeting of creditors, under section 27, subject to exceptions to the district court

Property of bankrupt—What constitutes.

The individual liability of stockholders for corporate debts to the amount of their shares is not an asset which can be enforced by the assignee of the corporation

The assignee of a bankrupt does not take the income of a trust fund which was to be applied to the support of the bankrupt and his wife and children, nor any part thereof

An agreement that a bank, as security for a loan to a company, should collect the calls for unpaid subscriptions to stock, partly executed, held an equitable assignment of the calls, which was not defeated by the subsequent bankruptcy of the company

A mortgage of personal property being (in Wisconsin) ineffectual to pass after-acquired property, the assignee in bankruptcy is entitled to such property as against the mortgagee

Oral evidence is, admissible to show that the factory building in which the bankrupt firm carried on its business was a part of the capital stock contributed to the business

—Possession and custody.

A bankrupt, failing to account for money belonging to the estate, collected either before or after filing the petition, will be summarily compelled to pay the same to the assignee

Payment of such moneys after the filing of the petition, for interest on mortgages will not be allowed unless shown to be for the benefit of the estate

A sheriff who delivers, to the assignee in bankruptcy, property attached before the bankruptcy as that of the debtor, has a good defense at law in an action in trover by
the fraudulent vendee of the debtor, and the district court will not enjoin the suit on his petition
—Exemptions.
The act of March 3, 1873, relating to exemptions, held constitutional in all cases where the petition in bankruptcy was filed after its passage
Household and kitchen furniture and other articles and necessaries, to the amount of $500, may be set apart in Pennsylvania
The discretion of the assignee is limited to the “other articles and necessaries.” Rules for exercising such discretion given
The exemption under the state law cannot include the same species of property as is named in the bankrupt act
The state exemption must be ascertained by the mode designated by the state law
A failure to comply with the requirements of the state law giving an exemption will prevent the exemption under the bankrupt act
The bankrupt cannot invoke the protection of the act of March 3, 1873, in favor of one to whom he sold a homestead, exempted under the state laws, before the filing of his petition
Real estate may be set apart as a portion of the bankrupt’s exemption where it will not injure the sale of other real estate, or work adversely to the interest of the creditors
Where no exceptions are taken to the action of the assignee in setting apart property as exempt, such property passes to the Bankrupt free from the jurisdiction of the bankrupt court
The mortgagee in a mortgage void under the statute of frauds is not entitled to have the property embraced therein set aside under the right of exemption to the bankrupt under the local law
—Liens.
A lien for rent due, or which may have accrued to the landlord, under the state law, is enforceable in bankruptcy
Failure to record a lease, as required by a state statute, held to prevent a lien for the rent stipulated
A stipulation in an unrecorded lease for a hen for rent upon all the fixtures and furniture in the store will be held binding as against the lessee's assignee only as to the goods, etc., in the store at the time the lease was made
A bank holding a customer's demand note has alien upon the proceeds of drafts delivered to it for collection, collected after filing of petition in bankruptcy as against his assignee
Where a national bank has a lien under its by-laws on stock for the liabilities of the stockholder to the bank, it need not transfer the stock to his assignee in bankruptcy

Proof of debts.
The state statute of limitations is applicable to a claim in bankruptcy

The statute of limitations ceases to run against the creditor from the commencement of the proceedings in bankruptcy

Before the creditor can be admitted to examine the rights of another creditor, he must, prove his debt. If the proof is not sufficient, it is amendable

Where a creditor has attempted to obtain a preference over other creditors, by fraudulently increasing the amount of his claim, the whole claim will be rejected

An accommodation indorser of partnership notes drawn by one partner, and fraudulently used in payment of his individual contribution of capital, held, on the evidence, chargeable with notice of the fraud barring him from proving them against the partnership estate in bankruptcy

The taking out of the amount of such notes from the partner’s interest on an agreement of dissolution held not a ratification, but an assumption of such notes as a separate debt by the other partner

The claim of a bank for fraudulent overdrafts of a customer, made by collusion with its cashier, may be proven directly against the estate in bankruptcy of a company, of which the customer was the principal shareholder, to which the checks were given, to the exclusion of the assignee in bankruptcy of the customer

The holder of a note may prove the entire amount against the maker’s, estate, dorser

Where the holder of a note fails to prove the same against the maker’s estate, the indorser may not prove it, and receive dividends, though he has not paid the note

An indorsed note held as security for the debt of the indorser, in a less amount, evidenced by a note, may be proved, to the amount of the debt, against the estate of the indorser in bankruptcy, and also against the estate of the bankrupt maker

A note made by a firm, and indorsed by one of the partners individually, may be proved against both the estate of the firm, and the individual estate of the indorser

Creditors must prove their debts absolutely, without any protest or qualification or reservation

A creditor holding security on property which never belonged to the bankrupt may prove his whole debt without first disposing of the security. (Act 1867, § 20.)

A mortgage given to lawyers to secure their fees for Preparing a petition and schedules in bankruptcy held invalid, but the claim may be proved as unsecured

The particulars of the consideration must be stated in the deposition

A demand by its terms payable in gold coin should be proved according to its terms

Proof of debt cannot be withdrawn from the files by the creditor
Payment of debts: Priority: Dividends.

A firm creditor cannot share in the assets of a bankrupt partner until his creditors are paid if the other partners are solvent, even if there be no firm assets.

A bank holding a draft drawn by one firm, and accepted by another, where both are adjudged bankrupts, cannot share equally with the individual creditors in the separate assets of one who was a partner of both firms.

Proper mode of distribution where a partner in two bankrupt firms had individual assets exceeding his individual debts.

In the distribution of the assets of the bankrupt derived from the collection of a promissory note, a creditor whose claim is in judgment has a priority.

A judgment creditor who had failed for 13 years to record his lien in the county in which the land was located, and to prove his judgment in bankruptcy until the proceeds of the land were distributed, will not be heard thereafter to assert his priority.

The share of the dividend which a member of a bankrupt firm is entitled to as a member also of a firm of petitioning creditors will be retained by the assignee to await the action of his individual creditors.

Examination of bankrupt, etc.

The bankrupt cannot object to the examination as a witness of one who has been enjoyed from disposing of property transferred to him by the bankrupt on petition filed by the assignee, on the ground that he has been made a party to the bankruptcy proceedings.

A witness must answer all proper questions relating to his trade and dealings with the bankrupt prior to bankruptcy, and, if necessary, produce any book containing the transactions with the bankrupt.

Costs: Fees: Disbursements.

Where a petition is dismissed, the debtor is entitled to receive by law the attorney's fees on a hearing in equity, $20. No fee can be taxed for petitioner's attorney.

Taxation of costs on the trial of specifications of opposition to a discharge.

The assignee is liable for expenses incurred in the settlement of the estate, from the commencement of the proceedings.

The use and occupation of the rented premises by the marshal for storage and sale of the property of the bankrupt is such an expense.

Where the assignee elects to take a term belonging to the bankrupt under a lease, he must pay the accrued rent.

A mortgagee in possession is not chargeable with any part of the costs in bankruptcy, or with the expenses of the sale of any of the property other than that on which his mortgage was a valid lien.
The assignee declined the mortgagee's offer to take the property for the debt. On a sale the mortgagee bought it in for less than the debt. Held, that the mortgagee should pay the costs and expenses of the sale out of the bid.

Discharge—Proceedings to obtain.

Where the act has been complied with, a discharge can be refused only on some ground set forth in section 29 Act 1867.

The bankrupt is not entitled to notice an opportunity to attend and cross-examine a witness subpoenaed, by a creditor pending application for a discharge.

—Opposition: Acts barring.

Objection based upon the fact that the debt was a fiduciary one is not good, for such debts are unaffected by the discharge.

Specifications opposing a discharge must particularize facts, constituting the grounds of opposition, setting forth time, place, person, etc.

Facts relied upon in opposition should be set forth alone, without reference to any matter aliunde.

All objections to specifications should be raised by the exceptions first filed.

The sustaining of exceptions to specifications in certain respects will be deemed a disallowance of them in all other respects preventing their renewal, in the absence of substantial amendment.

A discharge is not barred by the bankrupt's having concealed himself to avoid being arrested, such act not being of a fraudulent character. (Act 1841.)

A general assignment in trust to pay creditors without preference, made a few days before the filing of a petition against the bankrupt, will not bar a discharge under the act of 1841.

—Scope and effect.

The discharge is not a bar to an action for injury to goods shipped, caused by negligence, where the damages are not liquidated.

—Setting aside.

The court has power to recall a final decree granting a discharge upon application at the term at which it was passed.

Such power will be exercised where opposing counsel and creditors were prevented from being present at the hearing by sudden and overpowering accident.

Prohibited or fraudulent transfers.

The phrase "contemplation of bankruptcy" (Act 1841) means a contemplation of insolvency, and not of voluntary or involuntary proceedings under the bankrupt act.

Procurement to take in execution may be inferred from such relationship and apparent concert of action between the debtor and creditor as would ordinarily be incompatible with any other intention than to give a preference.
An adjudication of bankruptcy, in invitum, is not conclusive evidence as against such execution creditor as to the allegations in the petition for adjudication, found to be true by such decree.

A judgment creditor differs from a bona fide purchaser for a valuable consideration without notice, in that the title of the latter does not depend upon that of the seller. Creditors taking under a conveyance, fraudulent under the bankrupt act, are not to be treated as purchasers, but as creditors claiming under a defective title.

Transfers of personal property, void as to creditors under the statute of frauds of the state where the transactions occur, are void as to the assignee.

A general assignment by debtors, apprehending embarrassments in their business, to secure certain creditors, held void, under the act of 1841.

Security taken by a creditor on the dismissal of his suit on negotiable paper, in which the debtor made no defense, after knowledge that he was obliged to ask extensions, may be recovered by the assignee if taken within the time designated within the act.

A levy and execution under a judgment entered with knowledge of the filing of a petition in bankruptcy, where an attachment was previously issued, held void. (Act 1841.)

Suits and proceedings in relation to the estate.

The fact that there is no judgment creditor will not prevent the assignee suing to recover back property conveyed in fraud of the bankrupt act.

An assignee in bankruptcy can proceed against an adverse, claimant of property only by action at law or plenary bill in equity; but whether an adverse claimant may not proceed against an assignee by mere petition quaere?

Where an assignee, who had brought a suit in equity, and had entered an appearance in a suit brought against him, had absconded, held, that no further proceedings could be taken until proceedings were taken to bring the coassignee in, and compel him to elect whether he would be made a party.

A creditor levying on personalty under a judgment recovered more than six months before the filing of a voluntary petition on bill by a creditor in the circuit court may be enjoined from selling until the assignee is appointed.

A bill by creditors to restrain an alleged fraudulent transferee of the debtor from disposing of the property filed before a petition in bankruptcy, held to be an application under the bankrupt act.

A bill by a sheriff to restrain an action of trover by the fraudulent vendee of a debtor for attached property, which he had delivered to the assignee in bankruptcy, must be filed in the district court, as a distinct suit, and not as a petition in the bankruptcy proceedings.
The court will retain the bill as against the fraudulent vendee for an account of the property converted by him, though it refuse to enjoin the suit against the officer, on the ground that he has an adequate remedy at law.

Foreclosure suits in the state court were enjoined at the suit of the assignee, who denied the right of a national bank, a second mortgagee, to make the loan in question, though the expenses of litigating the question would be greatly increased.

Review.
The filing of a statement of the claim within 10 days after giving notice of appeal from the decision rejecting the claim, under general order No. 26, is not a jurisdictional requisite.

Arrangement with creditors.
The dismissal of proceedings in bankruptcy will not be vacated on the failure of the debtors to perform the agreement of composition, where the rights of third parties have intervened.

**BANKS AND BANKING.**


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.

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.

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.

**BENEVOLENT SOCIETIES.**

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

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.

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

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

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

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.

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.

**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.

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.

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.

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

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

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.

Demand: Notice: Protest.

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

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.

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

The loss falls on the holder of a check where he fails to present the same within a reasonable time, and the bank fails.
Where the holder of a check accepts the check of the bank in payment, he must 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 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 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 maker, 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 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.

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

Under a general averment that due notice of nonpayment was given the indorser of 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 of the carrier.

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

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

The bursting of a boiler of a steam lighter on which the cargo was conveyed to the 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 unavoidable 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 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, 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 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 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 of the vessel or cargo or voyage
Quaere, whether the maritime law requires the master to communicate with the 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 for necessary supplies, will only go to reduce the premium
A bond hypothecating a vessel for a particular voyage, and a specific period beyond its termination, held valid as a bottomry bond
The agents of a ship advertised for bids on bottomry, but gave a wholly insufficient 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 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 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
Commissions paid the master by the bondholder are not to be included in the 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 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 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 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 Passamaquoddy 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, 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. Whether the baggage accompanies the passenger or not, the carrier is responsible for its safe delivery.
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.
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.
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.
The burden of proof is on the shipper or owner to show nondelivery of the goods.
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.
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.
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.

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.
The making of a charter party held still subject to the condition to furnish a satisfactory guarantor, though duly executed, and guarantied by the person offered as guarantor. (Reversing 771).
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.
A stipulation that the charter should commence when the vessel was ready to load 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 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 excuse deviation to ship more seamen.
A charter was executed at Valparaiso of a bark then at sea bound for Caldera, to 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 Valparaiso 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 delivered, though the ship be lost on the return voyage.
But the owner and charterer, as between themselves, may make the whole freight 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 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 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 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 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.

**CHATTEL MORTGAGES.**

See, also, “Bankruptcy”; “Fraudulent Conveyances.”
The owner or lessee of land may give a valid mortgage upon his crop before it is raised.
The transfer to the purchaser of land of a note given to the former owner for rent, and the transfer of a mortgage on the crop to secure the note, invests such purchaser with the lien created by the mortgage.
A mortgage “of all the goods and merchandise” in a certain store does not include fixtures. 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.

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. 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. An intervener who did not participate in the making of a false oath by the original claimant is not prejudiced thereby. 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. The party who receives the sum awarded for the whole claim is a trustee for such as may be entitled to participate therein.

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. 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. 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. The failure to comply with the local regulation, where it did not contribute to the collision, will not render the vessel liable. Bad management, which is not the proximate cause of the collision, will not subject a vessel to damages. An erroneous maneuver in a moment of peril, brought about solely by the fault of another, will not be considered a fault. 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. 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.
Ferryboats running between Peck’s slip and Williamsburgh, on the East river, are 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 follow the usual channels.

The owners of rafts, barges, or other craft moored to the banks must foresee and 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 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 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 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 course, though she failed to receive a response to her first signal of one whistle.

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

A steamer which starboards her helm to make a pier, after blowing two whistles, 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 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 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 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 shaking off the sail vessel’s lights by changing her helm.

One vessel overtaking another.
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. 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.

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.)

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.
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. Held not a case of inevitable accident and that the barges were liable and prudence in getting his vessel under weigh

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

Tug held 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

Lights; signals, etc.
Act July 7, 1838, requiring steamboats to carry lights at night, does not apply to coal barges
But a coal barge which does not display within a reasonable time such a signal light as may be seen will be held in fault where the absence of the light contributed to the collision

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

A tug with tows carrying but one vertical light will be held in fault without speculating whether the absence of the proper light increased the danger of collision
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

A schooner sailing at night in a fog in a common thoroughfare, and hearing fog signals, held in fault for not exhibiting a lighted torch

Officers; lookouts, etc.
A mate near the wheelsman at the time of collision cannot be considered a proper lookout
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, held in fault of sailing short handed in a fog
The want of an adequate lookout is a culpable neglect, which will prima facie render the vessel responsible

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

Particular instances of collision.
Between two schooners on crossing courses,—one close hauled, the other two points free.—where the latter was held in fault for not keeping away
Between schooner close hauled and brig sailing free, near Sandy Hook, the latter, having no adequate lookout, being held in fault. Between vessel close hauled and vessel sailing free, off Barnegat, where the latter was held in fault for not keeping off, and failed to establish the claim that the former did not keep her course.

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.

Between tugs in the entrance of the Atlantic docks, where the signal of the incoming vessel was not heard by the outgoing vessel.

Between tug with tows on Delaware river, carrying but one vertical light, and steamship mislead thereby, where both were held in fault, the latter for changing her course.

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 held not in fault. (Reversing 1094).

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.

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.

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 held in fault, the schooner having a negligent lookout. (Reversing 986.)

Between ship and steamer on a starlight night, where both were sunk, and the steamer, having sighted the ship in due season, was held in fault for not keeping away, the latter not having changed her course.

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 held not liable.

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.

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 held solely at fault.

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.
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. Between sloop in Norfolk harbor and tug backing from wharf, the latter being held liable for want of a lookout.

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 held free from fault.

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 held solely in fault, though the schooner did not put out fenders, and might by lightening have got into shallower water.

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.

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.

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.

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.

Libelant must not only prove negligence of respondent, but also diligence and care by himself.

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.

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.

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.

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.

Rule of damages.
The measure of damages for a loss by a collision at sea of a cargo of guano, belonging to the republic of Peru, held to be its market value in Peru for purposes of export. (Modifying 213.).

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.

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.

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.

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.

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.

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.

The costs and expenses in defending a suit brought for services rendered in pumping and keeping the vessel afloat after the collision held not recoverable in a case of mutual fault.

Net freight, only, is recoverable; and it cannot exceed the amount claimed in the libel.

The freight, only, which the vessel was in the act of earning, is recoverable.

Interest will be allowed on the value of the cargo and freight and the amount of repairs.

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.

The proper rate of interest to be allowed on the value of the property lost held 6 per cent., and not 7 per cent.

The finding of the commissioner on contradictory evidence will not be disturbed when the preponderance of evidence is not palpable.

Division of damages.

In case of a loss of a schooner and her cargo by collision with a steamer, where both vessels were held in fault, the damages for the loss of the schooner were ap-
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
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

**COMPOSITIONS.**

An agreement of compromise which creditors are induced to make by false representations or fraudulent concealments is void
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
A statement that the debtor would have "some means" left after paying his creditors left than he actually paid the creditors
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
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

**CONSTITUTIONAL LAW.**

The term "ex post facto" is used solely with reference to laws affecting crimes and criminal cases
The inhibition against the enactment of law violating the obligation of contracts does not apply to congress
A state law authorizing the seizure and imprisonment of free negroes brought into the state on board of any foreign vessel is unconstitutional
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

**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
Persons guilty of contempt can be arrested at any time thereafter, when they come within the jurisdiction of the court. Prosecutions for contempt of court are criminal in their character, the United States being plaintiff. Whenever the vindication of the authority of the government requires it, the district attorney should appear in such proceedings. 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. Such practice comes within the exception in rule 19 of the supreme court. The court may, in its discretion, issue an attachment in the first instance, and without any rule to show cause. 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. The court will, at any time, give the party alleged to be in contempt full opportunities to be heard. 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. But one writ of attachment should issue for contempt in the disobedience of a mandamus directed to a board of officers.

**CONTINUANCE.**

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

**CONTRACTS.**

An assignment of a note is a new contract, and is governed by the law of the place where it is made. 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. 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. In an action on such contract, evidence is admissible to show the probable expectancy of duration of the policies. 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. 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.
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. Whosoever, by his own skill, labor, and judgment, writes a new work, may have a copyright therein, unless it be directly copied or evasively imitated from another work. 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. 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. In the case of a work published in several volumes at different dates, the copyright notice need only be inserted in the first volume. 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. New editions of maps are included in the copyright laws. Taking the boundaries of townships from another map without going to the common source of information is an infringement. 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. It is not a good ground of demurrer to a bill for infringement that the bill does not waive the statutory forfeitures and penalties. On the question of infringement, complainant may read affidavits in rebuttal on motion to dissolve the preliminary injunction. But complainant cannot read affidavits in rebuttal in support of his title on such motion. 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. 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. A declaration for such penalty in the name of two persons is bad on general demurrer.

CORPORATIONS.
Every act of incorporation must be construed in such a manner, if possible, as not to exceed the sovereignty of the legislature granting it. Where two corporations were created by adjacent states with the same name, held, that subsequent acts of the two states uniting their interests did not merge their separate corporate existence. The right to construct a dam by the Blackstone Canal Company, under a special act, determined. An action of debt lies to enforce the statutory liability of the directors for the debts of a bank. In an action to enforce the statutory liability of the officers for the debt of a corporation, 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. A state statute (Code Or. § 541) giving costs, of course, to defendant when plaintiff 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 be taxed in his favor against the other party. A decree for salvage services was modified on appeal by awarding compensation 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 chargeable with costs. Amount of attorney's charges where there were 11 suits, involving the same questions, with identical pleadings. Where separate writs of mandamus are issued against the members of a board of 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 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. On the death of plaintiff's surety for costs in sci. fa., pending the suit, new security 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. 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 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 the qualities of commercial paper. The pendency of a suit to restrain the transfer of negotiable county bonds, and a decree in such suit that they be delivered up to be canceled, are inoperative as respects a bona fide holder for value. Otherwise as to one having actual knowledge of proceedings when he becomes the 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 quare

An action of trespass in a state court against the marshal, for seizing goods of one 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 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 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 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 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 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 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 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.

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.

The citizenship alleged in the declaration need not be proved unless specially denied by plea.

The circuit court has jurisdiction to restrain infringement of a registered trademark, though the parties are both residents of the state.

Jurisdiction to enforce a mortgage on lands purchased by the United States merely to secure a debt depends upon the locality of the land.

—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.

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.

—District courts.

The district court, sitting in equity, has power to restrain the enforcement of a decree made by the same court sitting in admiralty.

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.

—Administration of state laws and decisions.

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.

The district court in bankruptcy will apply the state statute of limitations in a proper case.

In proceedings under state statute, the court will not follow it in matters of form where it is impracticable.

The construction of a state statute by the highest court of the state is conclusive in the federal court.

—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.
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.

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.

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.

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.

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.

CUSTOMS DUTIES.

Customs laws.

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

Rates of duty.

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

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.).

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.

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.

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.

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.

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.

The presentation of the consular certificate subsequent to payment of the duties is ineffectual.
Where the value in specie and in foreign paper currency are both set out in the invoice, the fact that the importer makes the entry in the specie value alone will not subject the goods to a penalty for undervaluation.

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 appraisement by more than 10 per cent.

The 20 per cent, additional duty for undervaluation may be imposed after the goods libeled for forfeiture have been discharged on a trial.

Appraisal.

Objections to the qualifications of the merchant appraiser, not made at the time of the reappraisement, will be deemed waived.

Actions for duties paid.

In an action to recover back duties, no ground of objection can be taken which was not specifically made in the protest.

The validity or accuracy of the appraisement cannot be questioned in a suit to recover back the duty paid, where the protest stated no ground of objection.

Violations of law: Forfeiture.

Innocence of an intent to defraud the revenue will not prevent a forfeiture where a violation of the statute is clearly prove.

Silver dollars are “goods, wares, and merchandize,” within Act March 2, 1799. c. 128, § 50, for the landing of which a permit from the customhouse is necessary.

The transshipment of a cargo from one vessel to another, while lying at a wharf in port, is an unlading and delivery within Act 1799, § 50.

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.

Customs officers.

A deputy or acting collector may appoint a merchant appraiser, on a reappraisement, and administer the oath to him.

Trover will lie against a collector who unlawfully detains the goods of an importer, and it is no defense that the collector acts under the instructions of the secretary of the treasury.

Under the act of March 3, 1863, the certificate therein provided for must be applied for in proper season.

After two years and notice for execution on the judgment, held, that the application for a certificate should not be granted.

DAMAGES.
$1,750 awarded to a farmer, 35 years old, for injuries resulting in a permanently stiffened knee

**DECEIT.**

The nonperformance of a promise is not sufficient to support an action on the case for deceit.

An action upon the case for deceit will lie against a person who by false and fraudulent representations induces the plaintiff to sell a slave for less than her value.

The vendors of a mine, directors of the purchasing company, are guilty of actionable concealment in withholding from their codirectors material facts affecting the mine, with intention to mislead, where the concealment operated to induce the purchase.

**DEED.**

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

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

The execution of a deed acknowledged and recorded need not be proved by witnesses.

A subsequently acquired title will not inure to the benefit of a grantee under a quit-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 grantor, will pass the same.

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

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

**DE HOMINAE REPLEGIANDO.**

The writ de homine replegiando, having for its object the discharge of the prisoner on bail, with a view to try the question of the validity of the law under which he is held in confinement, is of common right, and may be issued as of course. It will 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 circumstances.

Five days *held* a reasonable time in which to unload 507 tons of coal.

**DEPOSITION.**

The law in relation to the taking of deposition of witnesses residing over 100 miles from the place of holding the court, fully examined.
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. The court cannot supply a jurisdictional word, though the omission may appear to be merely clerical.

Sufficiency of certificate of magistrate taking deposition of a witness, upon his affirmation.

A certificate that deponent was “carefully examined, and cautioned and sworn to speak the whole truth,” held sufficient.

The certificate of a magistrate to a deposition cannot be impeached by the testimony of experts in handwriting.

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.

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.

A deposition read without objection will not afterwards be rejected because other depositions, duly excepted to, were disallowed.

Objections cannot be made to a deposition on a new trial where all objections were waived on the first trial.

**DETFINUE.**

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 held, contrary to the fact, an action en contract.

**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.

**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.

A title under Connecticut cannot avail the defendant in ejectment for any purpose in Pennsylvania.

The proof of boundaries, where the consent rule has been entered into, by a special rule of court, is dispensed with.

**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. Such deputy marshals are clothed with discretion in the exercise of their duties, under Rev. St §§ 2021, 2022. All the judges of an election in Georgetown, D. C., held not necessary to be present to constitute a legal session.

**EMBARGO AND NONINTER-COURSE.**

A vessel licensed for the coasting trade was not required to obtain a clearance or permit on departing from a port of the United States, but only when departing from a district of the United States. 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. Section 2 of the embargo law of April 25, 1808, held inoperative for ambiguity. Construction of Act March 1, 1809, c. 91, § 14.

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

**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. 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. 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.

**EQUITY.**

See, also, “Injunction”; “Pleading in Equity”; “Practice in Equity.” Mistakes and fraud are equally relievable in equity. Courts will not relieve a party from a contract or agreement entered into by mistake, where the mistake is one purely of law.
A recovery cannot be had on the ground of a mistake as to the land purchased, where full opportunities were given for examination, 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 circumstance disproving a material mistake, or proof of negligence in seeking relief.

Rescission of contract not allowed after the purchaser had taken timber from the 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 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 the equitable relief sought.

While the statute of limitations is not binding upon a court of equity, it will be applied in cases that are within the statute.

In cases of concurrent jurisdiction, equity will sometimes hold the lapse of time a 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 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 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 allowed, though the statute is not pleaded.

Where an assignee of certain drafts, in trust for the payment of debts incurred thereon, 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 common fund in equity inures to the benefit of all.

The express waiver of all objections by other creditors only affects the proportion 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.

**ESCAPE.**

A person escaping from an arrest on mesne process is liable to the sheriff for all 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.

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.

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.

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

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.

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.

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.

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.

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

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

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.

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.

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.

Comparison of handwriting is admissible in civil cases.
Testimony that a particular person’s pedigree was a matter of common reputation 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 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 the circumstances under which a judgment will be vacated for the purpose of allowing 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, and derived all its property from the public, cannot be taken in execution on a judgment recovered against it When the personal property of such an institution in Louisiana is levied on, it is not 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 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. A forthcoming bond, made payable to the creditor on a levy of a fi. fa., after his death, will support a judgment on motion by the administrator Where property is not sold, nor money made nor received by the marshal on execution, he is not entitled to half commissions

EXECUTORS AND ADMINISTRATORS.
The executor may pay a debt barred by statute The administrator is liable to a creditor of the intestate for the amount of an over-payment to the distributee on a final distribution A promise by an administrator to pay in consideration of assets will support a judgment de bonis testatoris On a finding for plaintiff on the issue of plene administravit, he is entitled to judgment de bonis testatoris for the whole debt

Exemptions.
See “Bankruptcy.”

EXTRADITION.
A crime subject to infamous punishment in Switzerland is an extraditable crime 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 the full price in specie, though he subsequently receives payment in bank notes at a depreciated value, upon suspension of specie payment in the state.

Factors at Kansas City, instructed by their principal to deposit proceeds of sale in a 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 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 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 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 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 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, but also that he was conscious of the fraud, or profited by it.

A contract to take stock in a corporation, induced by fraudulent representations of its officers, is not void, but only voidable at the option, of the stockholder.

The maker of a note given for stock, which has been held out as an asset of the corporation 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 a good title as against creditors if he uses 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 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, the result of his skill and judgment, but made in his wife's name, to conceal his interest from his creditors.

Proof of the purchaser's want of knowledge of the existence of a judgment against the seller, or that he was embarrassed, will negative the inference of fraud upon his part.

What circumstances are, or are not, badges of fraud, so as to make an assignment void as to creditors?

**GARNISHMENT.**

See, also, "Attachment."

A member of a firm indebted to defendant cannot be chargeable alone as garnishee. (Act Md. 1795, c. 56.).

The garnishee cannot be charged upon interrogatories unless he admits indebtedness to defendant.

**GRAND JURY.**

A grand juror may be fined and discharged for intemperance.

**GRANT.**

A grant described as the "place called 'Sanel,' its boundaries being the 'Serranias Altas' and the river," held sufficiently definite in description.

One who obtained a grant from the state with full knowledge of another's title is hound in equity to convey the land to the latter.

Construction of the resolve of 1801, in favor of the inhabitants of Bangor, and of the authority of the commissioners appointed to adjust the same.

**GUARANTY.**

To recover upon a guaranty to pay any balance that cannot be collected on a certain bond and mortgage, after due course of law, plaintiff must show that he has used reasonable diligence in resorting to every course of law necessary to reach the property of the obligor.

**HABEAS CORPUS.**

Act 1789, § 14, cl. 1, does not authorize the federal courts to issue the writ unless 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 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 of another state, as the matter in dispute has no pecuniary value, and cannot be estimated in money.
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. Where it clearly appears from the record that the state court exceeded its powers in committing such petitioners, the federal court may discharge them from imprisonment.

A writ issued by a state court must be discharged where it appears by the return that petitioner is held by respondent under color of authority from the United States. The state court in such case cannot determine the question whether the authority is valid. The wife of an enlisted man may prosecute the writ to inquire into the regularity of the enlistment.

The intent of the proclamation of the president of Sept. 15, 1863, suspending the privilege of the writ. Such proclamation was authorized by Act March 3, 1863. Such proclamation suspended all proceedings pending upon writs served prior to its date.

The person is in the custody of the court from the time of the service on the marshal of a writ of habeas corpus, and, until the proceedings thereon are terminated, he cannot lawfully be arrested on a warrant in extradition proceedings.

Homestead.

See “Bankruptcy.”

HUSBAND AND WIFE.

In Massachusetts a feme covert may convey her estate by deed, joining with her husband, as fully as the same could be conveyed in England by a fine or recovery. 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.

In Oregon the conveyance by a married woman alone, or in pursuance of a power executed by her, is void.

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.

To give validity to a deed, for the conveyance of land, executed by a feme covert, she must be privily examined as the statute requires.

INFORMERS.
The informer is entitled to his share, to be determined by the regulations in force when the proceeds of the sale of forfeited property are paid to the marshal

**INJUNCTION.**

A suit may be brought in a federal court to establish a defense, resting upon equitable grounds, to an action at law brought in such court by a nonresident; and the suit at law may be restrained in the meantime.

An injunction will not be granted nor a receiver appointed pending a plea to the jurisdiction of the court, but an immediate hearing of the plea will be ordered.

A motion to dissolve a preliminary injunction issued upon the bill, by consent, must be considered solely upon the questions raised by the answer.

Denials or allegations upon information and belief are not sufficient to dissolve an injunction.

On an appeal from a final decree dissolving an injunction, taken in such form as to operate as a supersedeas, the court below has no jurisdiction to restrain the successful party from prosecuting the previously enjoined work pending the appeal.

Rev. St. Nev. § 1182, giving authority to require security from plaintiff pending the litigation, or, in default, to dissolve any injunction in his favor, relates only to pending cases, not to cases already in judgment and closed.

One having knowledge of an injunction, and violating it, is guilty of contempt, although the same had not been served upon him.

A mortgagee of chattels, having been enjoined from enforcing his mortgage, held guilty of contempt by replevying the chattels, and condemned to a fine equal to the expense occasioned the owner of the property in the premises.

**INSOLVENCY.**

See, also. “Bankruptcy.”

A judgment lien, although there is no execution pending, is not destroyed by section 5 of the insolvent act of 1803.

What allegations are sufficient to prevent a discharge under the insolvent act of the District of Columbia.

Upon a verdict against the petitioner, he will not be ordered into close custody, if he is out upon a prison-bounds bond.

The discharge will bar a ca. sa. for costs, on a judgment for costs, confessed after the discharge in an action pending at the time.

A discharge under the insolvent law of one state will not bar a debt contracted in another state between persons resident thereof.

**INSURANCE.**

The substitution of a beneficiary under a proviso in a policy, payable to the wife of the assured (or, in case of her death, to her children), that, in case of her death
during his life, he may, at his option, make such substitution, must be made within a reasonable time after her death 394
The power of substitution is not executed by a bequest in the will of the assured, made a year after the death of the wife 147
"Throat disease," as used in an application, held not to include a temporary inflammation, completely cured at such time 398
The insurer, on electing to discontinue, held entitled to a paid-up policy, without first paying a premium note given by hi 178
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In the case of vague and inconsistent provisions, the court adopted a construction previously put upon similar policies by the insurer, as against its contention in this case 147
Warranties, unless strictly complied with, will invalidate the insurance, whether they are or are not material to the risk 300
Material statements in the answers of the applicant are considered as warranties, where the policy contains a clause declaring that the application forms a part of the policy 300
Proofs of loss are waived by a refusal to pay the loss on the ground of a forfeiture 178
The insurer is bound by the receipt of a premium, paid in good faith after forfeiture, by one who had for many years represented the company in doing all such business as usually devolves upon a local agent 178
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Plaintiff must prove a compliance with conditions precedent referred to on the face of the contract, or a sufficient excuse for noncompliance 275
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INTEREST.

See, also, "Bills, Notes, and Checks"; "Usury."

The lex loci contractus must prevail, in the computation of interest, up to the time of judgment 890
The laws of Missouri will govern as to the interest on bonds and coupons of a Missouri municipal corporation, when sought to be enforced in that state, though they are made payable in New York 1093
Rule for settling interest accounts in cases of partial payment 87
INTERNAL REVENUE.

A corporation, whose sole business consists in loaning and investing its capital on mortgages of real estate, in selling the mortgage securities, and guarantying the payment thereof, is not taxable as a "bank or banker," under Rev. St. § 3407.

A railroad company purchasing a railroad subject to an existing mortgage held liable for taxes subsequently assessed upon the coupons of the mortgage bonds. (Act July 14, 1870.).

JUDGMENT.

Validity.
A judgment is a nullity where it appears from the proceeding that the defendant had no notice
No errors in the proceedings after due notice to or appearance by defendant can make the judgment a nullity
Rendition and entry.
A motion for judgment on default of one of two joint promisors will be refused where the other files a good plea to the jurisdiction
A judgment having been once entered on a warrant of attorney, the warrant becomes functus officio, and will not support a second judgment
Where a debt for advances to a vessel in a foreign port is contracted in gold, the decree against the vessel therefor will be for the amount in gold
Operation and effect.
A judgment merges the contract, and the interest thereafter accrues only at the statutory rate, irrespective of the agreement of the parties
A judgment of nonsuit never operates as a bar to a subsequent action for the same cause
Belief against: Opening: Vacating.
A judgment may be enjoined in part, and allowed to proceed for the residue
Where a decree pro confesso is taken before the expiration of the time given to the defendant to answer, it is irregular, and will be set aside en motion, 1132, 1133
A federal court has no power to correct, after the lapse of 16 years, an alleged error in a decree of its predecessor, not due to a clerical mistake disclosed on the face of the record, but to a mistake which is disclosed only by additional proofs
Actions on judgments.
An action will not lie on a judgment rendered in another state after a discharge under the insolvent law of that state, made prior to the contract on which the judgment was rendered

JURY.
The constitutional right of trial by jury applies only to actions at common law. In suits in equity an inquiry by the jury depends upon the discretion of the court.

A justice of the peace has jurisdiction against executors and administrators, under the act of March 1, 1823.

Upon the plea of “no rent arrear,” the tenant may give evidence of work done and goods sold and delivered to the landlord, without notice of set-off.

Where property is taken from the owner openly and in his presence, and in the presence of others, with a felonious intent to steal the same, it is larceny.

Upon demurrer to a declaration in slander, if any of the words are actionable judgment must be for plaintiff.

See “Bankruptcy”; “Maritime Liens.”

The statute of limitations of the state where a judgment was obtained cannot be pleaded to a suit thereon in another state.

The statute of limitations is not a bar to a British debt contracted before the treaty of peace.

A suit upon a mortgage is not a suit for the “determination of any right or claim to or interest in real property,” but is a suit upon a sealed instrument, which must be brought within 10 years under Civ. Code Or. §§ 5, 378.

Absence of the mortgagor from the state, when or after the cause of suit accrues upon a mortgage, does not suspend or prevent the statute from running against a suit to foreclose the same.

The state of Delaware is “beyond seas,” in regard to the District of Columbia, within the meaning of the statute of limitations.
On service of citation on one only of two debtors bound in solido, prescription in favor of the other is suspended during the pendency of the action, and it is not merely interrupted.

An admission of mutual, unliquidated accounts, on which each party claims a balance to be now due to him, takes a case out of the statute of limitations.

The plea of non assumpsit infra tres annos is not a good plea to a count upon a promissory note, payable 30 days after date.

**LIS PENDENS.**

The pendency of a suit cannot operate as a notice, until after the service of process or publication.

**MANDAMUS.**

The federal circuit courts have power to issue writs of mandamus to enforce judgments against public corporations.

Cities being clearly within the spirit of Act Pa. April 15, 1834, mandamus may issue thereunder to enforce a judgment against a city although counties and townships only are mentioned therein.

A municipal officer evading, by ingenious devices, the duty to cause a judgment against the city to be paid as directed by mandamus, will be *held* guilty of contempt.

**MARINE INSURANCE.**

See, also, “Average.”

Owner of cargo *held* not required to abandon on receiving the first information of the capture of the vessel, where she was acquitted, and the cargo afterwards seized by the government.

A foreign decree for damages for collision is not admissible in a suit on an insurance policy as evidence of the collision, its causes or consequences, but only of the amount awarded.

A decree for damages for collision, satisfied, will bar a suit on an insurance policy only to the extent of the amount decreed.

In a suit on an insurance policy the amount recovered on a libel for collision is to be deducted from the gross amount of the damage, and not from the loss adjusted as a partial loss, with a deduction of one-third new for old.

**MARITIME LIENS.**

See, also, “Admiralty”; “Practice in Admiralty.”

The right to a lien.

The materials which constitute a ship become one as soon as she leaves the way.

A contract to furnish a ship with the means of propulsion or to change the mode of her propulsion, after she is launched and afloat, is not a contract to build a ship, and is a maritime contract.
No lien arises by the maritime law, for supplies furnished to a vessel, in her home port, although the furnisher have his residence in a foreign country
An express pledge of the vessel is not necessary to create a lien where necessary advances in a foreign port are actually made on the credit of the vessel.
Advances made to pay for supplies to a vessel in a foreign port, where neither master nor owners are known to have credit are presumed to be made on the credit of the vessel.
Where there is neither a real nor an apparent necessity for pledging the credit of a vessel in a foreign port, a material man who has not been misled, and has made no inquiry, has no lien for materials furnished
A ship chandler who charges directly to the vessel necessary supplies ordered in a foreign port, by the owner, without any special arrangement for payment, has alien therefor
The fact that the vessel is in a foreign port is prima facie evidence of a necessity for the credit of the vessel
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
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
A lien arises for advances necessary to repair a ship in a port of distress where her owners are without credit, though a draft on the owners, not given in payment, is taken for the amount.
A maritime lien attaches in favor of carpenters for services in lining a vessel to prepare her for receiving cargo
A carpenter making alterations in a vessel, in ignorance of the fact that she was held under a conditional sale, is entitled to a lien, where the vessel reverts to the seller on nonperformance of the conditions
Material men held entitled to a lien for iron used in constructing a vessel
Priority and enforcement.
The lien of a mortgage given for labor in the construction of a vessel is not preferred to the lien of a material man prior in date the mortgage
The $$ of a claim for supplies furnished a vessel $$ the course of navigation is preferred to that of a material man or mortgagee
The lien of a mortgagee of a vessel is subordinate to that of the owner of goods shipped for a loss in transit.
Claims for supplies and stevedores' services are subordinate to the claims of salvors of a vessel and cargo burned at a wharf. The seamen's lien for wages on the proceeds of a British vessel, libeled for collision, will be postponed to that of libelant in conformity to the rule adopted by the British courts towards our vessels in like circumstances. Persons furnishing supplies for the last voyage have precedence over those who furnished an earlier outfit. Marshaling of assets in the case of a mortgage on one-half, and a subsequent mortgage upon three-fourths, of the vessel. The assignment of a maritime claim does not extinguish the lien incident thereto. The assignment of a claim for towage does not transfer the legal title, and the original owner can sustain a libel in his own name. A sheriff who permits an attached vessel to be seized by admiralty process, without opposition, may intervene in the admiralty suit, and claim the proceeds in the registry. A mortgagee in possession may intervene to contest the validity of a lien. Long delay in enforcing a maritime lien does not affect libelant's right to interest from the time the debt fell due. One who obtains the first decree has no priority over others whose liens are of equal degree. Waiver: Discharge: Extinguishment. The lien is not waived by taking a note for the amount of the supplies unless so understood at the time; but the note must be surrendered at the hearing. A maritime lien arising for supplies furnished to a foreign vessel is of force against her in the hands of subsequent domestic purchasers with notice. As against bona fide purchasers, without notice, tacit liens for necessaries must be enforced with reasonable diligence. Such liens will be valid, even against bona fide purchasers, if there has been no want of diligence in enforcing them. 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. The fact that the boat had been released on bond in the prior suit does not alter the case; the sureties have a right to look to the boat for their indemnity, and the power of the court over it still continues. 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.
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. Notice to purchasers that previous owners are indebted for a set of sails furnished to the vessel is notice of a lien therefor. 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. 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. State legislation providing for the enforcement of maritime contracts by attachment of the vessel, not being a common-law remedy, is unconstitutional. 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. The discharge of the vessel from arrest or giving a satisfactory bond, as provided in a state statute giving a lien, terminates the lien. The cases on the subject of liens for repairs and supplies in the home port of a vessel given by the local law, and their enforcement in admiralty, reviewed and discussed. St. Mass. 1848, c. 290, gives a lien for alterations of vessels. Under Act N. Y. 1850, a lien does not arise unless lien specifications are filed within 10 days after the vessel leaves the port where the debt was contracted. Under Act N. Y. 1855, a lien does not arise unless lien specifications are filed within 10 days after the return of the vessel to the port where the debt was contracted.

MARTIAL LAW.

A person cannot be tried by a military commission for a murder committed in a rebel country five months after hostilities have terminated and the rebel army has surrendered.

MINES.

The terms “vein” and “lode,” as used by miners, and in the mining acts of congress, are applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. Claimants of an unpatented location are precluded from objecting to the issue of a patent to another, where they fail to present their objections after the prescribed notice has been given. The doctrine of “relation” cannot be applied so as to cut off the rights of the earlier patentee under a later location.
The silence of the first locator when a subsequent locator applies for a patent is a waiver of his priority.

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.

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.).

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.

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

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.

**MORTGAGES.**

See, also, “Entry, Writ of”; “Fixtures.”

Where the creditor purchases the property at a sale by the trustee without competition, the enforcement, of a deficiency judgment will be enjoined until the circumstances of the sale are ascertained upon final hearing.

**MUNICIPAL CORPORATIONS.**

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.

A municipal corporation is liable in damages for the defective condition of its streets to an individual suffering injury therefrom.

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

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.

**NAME.**

The omission or insertion of the middle name of a person in a conveyance is immaterial.

**NAVIGABLE WATERS.**
The federal court will not enjoin the erection of a bridge over the Raritan river, authorized by the New Jersey legislature, although it may completely intercept navigation, except as accommodated by draws, where congress has not legislated on the subject.

**NEGLIGENCE.**
An express agreement that a mercantile agency shall not be responsible for any loss to a subscriber by neglect of those collecting information will relieve it from liability even for gross negligence.

**NEW TRIAL.**
A verdict will not be set aside as against the weight of evidence where there was evidence on both sides, where the credibility of witnesses was in question, or where testimony was not rejected.
It is not sufficient that the court differed in opinion from the jury on the facts, but there must have been some apparent mistake or clear abuse of power by the jury.
A motion for a new trial on a case, before judgment, can be entertained after the expiration of the term at which the action was tried.

**PARENT AND CHILD.**
The father forfeits his right to the earnings of his child where he neglects the obligation to protect, nurture, and educate the child, and abandons him.

**PARTNERSHIP.**
See, also, “Bankruptcy.”
To constitute a partnership, there must be a community of interest continuing to the time of the disposal of the property in which the parties are interested.
It is the joint interest in the whole which constitutes the joint liability of all for the 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 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 a person who is to devote his whole time to the business, for a compensation of 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 of sale of goods consigned to the old firm, unless they came to the use of the new firm, who promised to pay the same.

**PATENTS.**
The power of congress.
Congress has the exclusive power to grant patents, and to renew or prolong the time for the continuance of the same.

Nature of the grant.

A legislative grant of an exclusive privilege in an invention for a limited time does not imply an irrevocable contract with the people that, at the expiration of the period, the invention shall become their property.

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.

The combination of old machines to produce a new and useful result is a discovery for which a patent may be granted.

A new and useful improvement on an old principle, applied to a new and useful purpose, is patentable.

An improvement, to be patentable, must be in the principles of the machine, art, or manufacture, and not merely in the form or proportions.

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.

A new and useful invention will not be impeached because it does not accomplish all the inventor claimed for it.

A device for raising the cutter bar of a mowing machine, to pass over obstacles, is not anticipated by a device which holds the cutter bar permanently above the ground.

Who may obtain patent.

The abandonment of the right to a patent by the original inventor does not entitle another to a patent therefor.

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.

The construction of a complete machine embodying the idea is not necessary if the discovery has been so manifested before the world that one skilled in the particular art would be able to reproduce it.

An invention must be reduced to practice before the granting of a patent. The making of drawings is not sufficient.

A bill to set aside a patent to another, on the ground that plaintiff was the original inventor, is not sufficient where it fails to allege that the invention was reduced to practice before the granting of the patent.
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.

Abandonment—Laches.

Eleven years' delay after making complete drawings before filing an application, where the invention had gone into use in the meantime under patent to a later discoverer, held an abandonment, where the only excuse was a mistaken belief that the drawings had been burned.

Prior public use or sale.

The two years' prior public use will render the patent invalid though such use was without the inventor's knowledge or consent.

The use of corset springs made for a person who subsequently became the wife of the inventor held to be a public use, invalidating the patent.

An agreement for the transfer of the invention, for the joint benefit of the inventors and those who will advance money for the manufacture or use of the machines invented, not carried into execution, and unaccompanied by any public use of the machine, will not affect the validity of the patent.

After four years from the grant of a patent, the invention will be presumed to have been carried into public use as against the first inventor then applying for a patent.

Section 7 of the act of 1836 does not apply to a public use by or under another independent inventor of the same thing.

Application and issue: Interference.

The allegations and suggestions in the application for a patent must at least be substantially recited in the patent as granted.

The patentee may put on file, with his specifications, drawings and written references, without their being mentioned in the specification: and, if the references are written on the drawings, the statute is complied with. (Act Feb. 21, 1793.)

Drawings annexed to a specification, and referred to by numbers and letters in the specification, constitute a part of the specification, and may be referred to in aid of the description to give it certainty.

The schedule annexed to letters patent is part of the patent so far as it is a description of the machine, but no further.

The old machinery with which an invention is to be connected need not be described or delineated in either the specification or the drawing, where the patent describes how the invention is to be applied.

The specification, on a patent for an improvement, must state in what the improvement consists.
Words will be so construed as to enlarge or contract the scope of the claim, so as to uphold the invention made and described, only when not absolutely inconsistent with the language of the claim. A patentee who has described devices in uniform motion only cannot claim them when working in a differential motion, by which only they were made successful; nor can he incorporate such principle in a reissue. Technical claims held to be construed with reference to the state of the art, and in connection with the specification, so as to limit the patentee to, and to give him the full benefit of, the invention made and described. As to the admissibility in evidence of the certified copy of a drawing filed after the original records in the patent office were destroyed by fire, see. On an interference the fact of priority is alone important; the length of time of such priority, whether a day, month, or year, is immaterial. 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. 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. And a use of either invention separately is an infringement pro tanto. A patent for a machine granted to the inventor of an improvement only is void. Reissue. Disclaimer. The reissue of patents, inoperative or invalid because of defective descriptions or specifications, is of course, the commissioner having no discretion. (Act 1836, c. 357, § 13.). The only limitation as to the reissued patent is that it shall be for the same invention. 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. 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. 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. The patent office has no power to make rules restricting the evidence in such cases to that furnished by its records. 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.
The applicant for a reissue on interference declared must show that the improvement was invented before the date of the original patent. Where the reissued patent is of doubtful construction, reference may be made to the original.

**Extension: Renewal.**

An extension of the patent does not affect the rights of previous purchasers from the patentee or his assignees. The right to replace such parts as are temporary depends upon the right to use the 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 machine erected after the expiration of the original term, and before the passage of the act, held an infringement.

**Assignment.**

An instrument vesting the grantee with an exclusive territorial right of making and 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 renewals and extensions.

**Licenses.**

A grant to use and sell or dispose of machines made according to letters patent, within a specified territory, is a mere license. One of three patentees owning an unequal share may make a valid license to use the thing patented, patentees being tenants in common.

Licenses are available against subsequent purchasers, though not recorded. A parol agreement as to the use of an invention held, as against the licensee, to 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 built or leased. An assignment of the revenues of a railroad, and of the use of the rolling stock to a 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 capacity of his tannery, held to have the right to use the improvement in a subsequent 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.

In a suit for license fees after revocation of the license, *held*, that the licensee was estopped by the admission in the license from setting up the invalidity of the patent as a defense.

**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.

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.

**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.

Two machines are not the same if their mechanism is substantially different, though they produce the same result.

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.

A difference in mode of operation or result obtained is evidence that the mechanism is different.

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.

**Preliminary injunction.**

Will be refused where the court is in doubt as to the validity of the patent.

Refused where a reissue was granted just before bringing the suit, where irreparable injury was not averred.

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.

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.

**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.

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.
In the case of a renewed patent, plaintiff cannot recover for a violation under the old patent without a distinct and independent count. The failure to deny the use of a machine as alleged and described in the bill is an admission of such use. 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. A decree of a circuit court taken pro confesso will not preclude full inquiry and investigation by another court.

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. 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. Copies of drawings of foreign patents are not admissible without a notice in the answer, as required by the statute. Plaintiff is restricted to proof of a violation during the time specified in his declaration. Evidence of plaintiff's declarations held admissible to prove that he asserted a right as the discoverer, and described the invention.
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. A person offering to take a license from the patentee is not thereby estopped to deny that the patentee is the original inventor. The court may inspect a model exhibited in evidence, and from such inspection decide the question of patentability. 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. Reliance will not be placed upon the recollection of a witness who describes a machine from memory only, after the lapse of 21 years.

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. 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.
Where plaintiff exercises his monopoly by selling licenses, the amount of damages will be controlled by such license fees.

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.

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.

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.

Various particular inventions and patents.

Boot trees. No. 14,951, for improvement, held valid and infringed

Car brakes. No. 8,552, for improvement in railroad car brakes, held valid

Carpet lining. No. 52,835 (reissued, No. 4,296), and No. 60,476 (reissued, No. 4,066), for improvement, held to be infringed

Clapboards. No. 10,903 (reissued, No. 3,268), for an improved clapboard joint, held invalid for want of novelty

Dry docks. Application for patent for pumping apparatus refused for want of invention.

Flour. Construction of patent granted to Oliver Evans for an improvement in the art of manufacturing flour.

Hats. No. 46,553 (reissued, No. 3,217), for improvement in machines for stretching hat bodies, construed, and held valid and infringed

Horserakes. No. 21,712 (reissued, No. 2,994), for improvement, held to be infringed

Screw peg. No. 85,374, for a self-clinching metallic screw peg for fastening soles of shoes, held valid, but not infringed

Sewing machines. No. 37,033, for improvement in machines for filling and crimping, held valid and infringed

Sheep-shears. No. 42,572 (reissued, No. 5,701), for improvement, held valid and infringed

Shingle-machines. No. 11,858, for improvement, construed, and held valid, but not infringed

Shingle mill. Patent to Earle of December 28, 1822, for improvement, held valid and infringed.

Soap. No. 118,440, for improvement, held valid and infringed.

Sole-cutting machine. Priority in arrangement of vibrating knives awarded to Richards.

Tobacco. No. 140,020, for improvement in plug and bunch tobacco, held valid.
Truss. No. 70,324, for a truss and supporter, held invalid for want of novelty

PAYMENT.

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

A contract to pay 1,000 pounds sterling, lawful money of Great Britain, agreed to 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 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 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 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 provisions 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 mere rule of the court.

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

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

A plea in bar overrules a plea in abatement.

A demurrer extends to the first error in pleading.

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

An amendment may be allowed of a declaration after a special plea, replication, and 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 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.

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

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

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

**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.

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

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

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

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

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.

**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.

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.

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.

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

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

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

The answer of a defendant who has no personal knowledge of the facts alleged, though responsive to the bill, is not evidence.
A new defense not allowed to be inserted by amendment after a reference to a master before whom it was available to defendant
A bill by creditors to restrain an alleged fraudulent transferee of the debtor from disposing of the property held sufficiently verified by the oath of an agent
A signing by counsel on the back of the bill is sufficient
A bill not signed by counsel is demurrage, but leave to amend will be given, as a matter of course
Domicile or citizenship in a dilatory plea may be sworn to as of belief
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

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

PRACTICE AT LAW.
Defendant is not entitled to nonsuit the plaintiff for not producing papers as noticed without first obtaining an order
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
If a declaration is fatally defective, the court will affirm a judgment nonsuiting a plaintiff, without considering whether nonsuit was proper

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
Sundays are not excluded in the 14 days required before the return of process in rem, in admiralty
On the appearance of defendant after attachment of their property on a warrant of arrest, the attachment must be discharged
If defendant fails to appear, the attached property will be held until final decision, when it may be proceeded against by execution
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
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
Motion to remand vessel into custody, and cancel stipulation, *held* premature where made before process returned on other libels by which the security of the stipulators was endangered

The court has power to order the rearrest of a vessel if the stipulation to answer 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 proper application, be stricken from the record

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

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

Where respondent's counsel does not object to the examination of the libelants 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 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 collision 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 commissioner, or to control the proceedings before him, can only be had on a certificate as to his proceedings.

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

A person having an agreement for a mortgage upon a vessel has no such interest as 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 are properly adjudicated

Until all libels and petitions have been heard, the proceeds are not distributed except 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 clothed with no privilege, and not reduced to judgment, may be satisfied out of surplus proceeds in the registry

The court has no power to order paid out of surplus proceeds in the registry a demand which could not be enforced in admiralty by a suit either in rem or in personam
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. But not so with moneys advanced to purchase fuel to enable the vessel to continue her trip, or to pay expenses of bonding he

**PRACTICE IN EQUITY.**

See, also, “Equity.” On the filing of a bill the court may grant a stay order pending motion for an injunction. 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. 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. A rehearing will not be granted on the mere certificate of counsel as to the sufficiency of the reasons therefor. A new hearing of exceptions to a master's report will not be allowed. The master is bound to follow the orders and directions of the court in the decratal order under which he is appointed. A special allowance made to a master for his services in executing a decree. 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.

**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.

**PRINCIPAL AND AGENT.**

A principal is liable for drafts drawn by an agent after the expiration of his authority, to pay for prior purchases, duly authorized. The possession of property by an agent to sell, under a special agreement for that purpose, is the possession of the owner. 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. 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.

**PRINCIPAL AND SURETY.**
The surety on an assignee’s bond is not liable for a default actually complete before 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 well as on the high seas, by virtue of the delegation of admiralty and maritime jurisdiction

On a libel by the owners for restitution and damages, the court will ascertain 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

Rights and liabilities of captors.
All property captured in time of war belongs to the government, unless granted by it to other persons
The filing of a libel by the United States against a vessel captured by a transport 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 his doing so will weaken his command, so as to endanger the public service
A captor may forfeit his title by misconduct

Procedure.
In cases of recapture, French owners have the benefit of American laws in our 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
It is irregular to subjoin to the claim anything besides a test oath
Such irregularities will be corrected on motion, without formal exceptions
The defense, in the claim, must be limited to a contestation of the allegations of the libel
The practice stated as to the claim and test oath, the interest of the claimant, the 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 war or not
The delay of the claimant until the hearing to object that only two of the persons on board the captured vessel were produced as witnesses held a waiver
But in such case the court suspended the final decree to give libelants an opportunity to submit further proof. 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. 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. 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. 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 neutral. The mutilation of a log book of a vessel in a position to violate a blockade is ground of condemnation where not satisfactorily explained. 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, held prima facie liable to condemnation. 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. 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. 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. 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. 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. 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. If the party filing a libel against property, as prize of war, is not entitled to it, condemnation will go to the United States.
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.

Distribution of proceeds on capture of prize by United States steam transport ship, 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.

Various cases of condemnation or acquittal.

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

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

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

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

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

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

Vessel and cargo condemned on various grounds.

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.

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.

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.

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.

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.

What are continuous or connected lines within the Missouri statutes allowing the purchase or lease of one road by another.
A lease in perpetuity of another road *held* ratified by the stockholders by acquiescence after three years' delay, as respects innocent holders of bonds issued under and secured by such lease.

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.

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.

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.

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.

A mortgage expressly including all after-acquired personal property, covers fuel collected and stored by the company for the use of its engines.

A mortgage on the road, covering also the rolling stock and other property appertaining thereto, need not be recorded as a chattel mortgage.

Such mortgage does not cover coal, oil, and personal property which may be used for other than railway purposes.

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.

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.

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.

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.

Whether a transaction by an officer of the railroad company amounted to the purchase or the payment of coupons determined on the facts.

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.

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...
Construction of special provisions of deed of trust and decree as to reorganization 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 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 abatement.

**REAL PROPERTY.**

Possession under a deed extends to a whole tract, if there be no adverse possession. A tenant put into possession by the grantee, without definite boundaries, will be 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 occupancy. Possession may be held by other means than actual residence or by a fence. Procedure on an assessment under the Ohio occupying claimant's law of 1831.

**RECEIVERS.**

A petition for the delivery of certificates of shares of stock in the hands of a receiver 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 attached 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 abstracted 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 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. The citizenship of formal and unnecessary parties plaintiff will not control the right of removal. Defendants cannot prevent a removal by calling in warranty parties who are citizens of the same state with plaintiffs in a cause pending in a Louisiana state court, though

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* Denotes legal citation numbers. Numbers in parentheses indicate page numbers in the source material.
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.
The timely presentation of the petition and bonds for removal will suspend all the 524
powers of the state court
A bond in the form prescribed by the act of 1875 held properly given on an appli-
cation for removal under the act of 1867.
No action of the state court upon either bond or petition is required to effect the 39
removal. (Act 1875.)
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 defen-
dant who was not served a party
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 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 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 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 necessity, 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 of salvage in saving property
No award can be made for saving, from a wreck, bills of exchange or other papers, 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 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* entitled only to reasonable compensation for towage
Towing into port a vessel in distress, but in no great danger of loss, is not strictly salvage service, and is worthy of but small compensation
A steamer with broken propeller blades, proceeding from St. Thomas to New York, under sail, when 150 miles from Sandy Hook, and not in distress, was spoken by another steamer, which towed her into port without any price being fixed for such service. *Hold* not a salvage service.
The master and crew of a disabled vessel taken in tow will not be allowed salvage 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 unconscionable, they will not be enforced
A contract for salvage services to be rendered a vessel in distress will not be disturbed where fairly made, and not in excess of the amount which would have been awarded without the contract
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.

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.

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.

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, held reasonable.

Amount.

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.

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.

Unforeseen contingent events which might have increased the peril or occasioned a total loss cannot increase salvage compensation.

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.

The measure of compensation for services rendered upon the ocean will not be adopted in the case of services upon the Great Lakes.

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.

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.

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.

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.

A vessel found entirely deserted or abandoned at sea is, in the sense of the maritime law, a derelict.

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.
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
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
One-ninth awarded owners of salvor vessel for towing 40 miles, into port, derelict vessel, worth with cargo $9,300.
Thirty per cent. allowed on $60,000, the value of cargo and materials saved by salvors, employed five weeks
Forty-seven per cent. allowed on the value of cargo and materials saved
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
Eight hundred dollars allowed on a valuation of $12,000, for towing into port a vessel in distress, but in no great danger
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
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
Bemedies 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
Possession is not necessary to give validity to a lien for salvage on the property saved
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
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
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
In cases of salvage, the salvors, though interested, are admitted as witnesses, from necessity
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
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

Libelants are not responsible for the expense incurred in effecting an average between the respective owners

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

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 salver vessel

The rate of salvage allowed in the court below will be adhered to on appeal unless the evidence clearly calls for a different proportion

Apportionment.

An assignment and release by a seaman, to the owners of the salver vessel, of a claim for salvage, executed in ignorance of the facts, will not deprive him of his share

The owners of the salver vessel are always entitled to a portion of the award, the amount usually being one-third

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

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.

An accidental or unintentional deficiency in the allowance to the crew will not subject the master or owner to the penalty

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

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

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
Courts of admiralty cannot properly apply to maritime contracts the same strictness that prevails at common law.

If a vessel be intended to cruise as well as trade, the seamen’s articles must be construed with reference to this double object.

Immaterial erasures in shipping articles will be disregarded. (Act 1840.).

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.

Effect of capture on the contract for wages

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.

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.

The burden is on the master to show, to reduce the recovery, that the seaman has been engaged in other profitable employment.

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.

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.

The decision of a master degrading a cook for incompetency or misconduct will, in ordinary cases, be considered as final.

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.

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.

When punishment is necessary to maintain discipline and subordination on board a vessel, damages will not be given, unless it was manifestly excessive.

Officers are liable only for the actual pecuniary damages sustained where, in administering merited punishment with unnecessary harshness, a severe injury is unintentionally done.

The subordinate officers have no authority to punish a seaman when the master is on board.

Wages—Right to.
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.

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.

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.

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.

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.

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.

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.

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.

Compensation may be allowed for extra services carrying a higher rate of wages than those agreed to be rendered.

The measure of compensation is the difference between the two rates of wages for the time employed in the extra service.

—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.

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.

The death of the owner, who was also master, will not affect the seaman’s lien on the vessel.

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.

A seaman cannot sue for wages until the completion of the voyage by the unlading of the cargo or ballast.
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.
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.).

In some cases 15 days are allowed for the discharge of the cargo and payment of wages.

An action for wages earned on a previous voyage may be instituted before the vessel is discharged of her cargo at the return port.

An objection that the suit is brought before the cargo is discharged is waived by appearing and contesting the claim on the merits.

The father, whose name was used as prochein ami, in a suit by a minor for wages, secretly settled the same, giving a receipt in full. Held, that the receipt should be set aside, and full wages decreed the minor.

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 res gestae.

The deposition of a master, who has interposed a claim and answer in an action in rem, and continues a party to the suit, cannot be read in evidence, on the part of the owners of the vessel.

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.

Counsel fees will not be allowed as costs, unless the defense is merely vexatious, or there are special reasons therefor.

—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.

An innocent seaman need not contribute to such a loss.

One-half of a month's wages was deducted for disobedience, and one month's wages deducted for insolence.

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.

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.

The conduct of a seaman in going ashore against orders, and in breaking away when apprehended, held to amount to a desertion.
Quaere whether an unauthorized absence, after termination of voyage in home port, 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. A motion against a sheriff for not paying over to plaintiff money made upon a fi. fa. may be made in the name of the original plaintiff in the fi. fa., although he had taken the insolvent oath

SHIPPING.


Public regulation.

A bill of sale, made without consideration, for the purpose of fraudulently obtaining 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 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 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 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 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 under section 32 of the coasting act.

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

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

A steam tug engaged exclusively in towing, on the Connecticut river, within the limits 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.

It must appear that the vessel was seized before filing the libel, to sustain a conviction for such failure.

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.

Master.
The master of a vessel has no lien upon a vessel for services as pilot, he acting in both capacities.

The admissions and declarations of the master within the scope of his authority when upon the voyage are admissible against the principal.

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.

A vessel is liable for embezzlement by the master of a portion of the cargo.

The vessel is liable on the sale of the cargo by the master at an intermediate port for the full value, unless some justification is affirmatively shown.

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.

Notwithstanding the language of section 4, it can be carried into effect by a court of admiralty.

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.

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.

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.

SLAVERY.

There can be no binding contract between a slave and his master.
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.
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.

Right to freedom on removal to the District of Columbia

The right to remove slaves from one county to another in the District of Columbia determined

Manumission of slave, what constitutes

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.

**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.

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.

**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.

**STATUTES.**

Where a law bears upon its face the requisite authentication, the vote by which it was passed cannot be inquired into.

The legislature cannot create an obligation or impose a penalty for an act which, when done, incurred no such liability.

A statute declaring the construction of a prior statute is unconstitutional and void as regards prior contracts.

Remedial statutes should be liberally construed, to advance the remedy, rather than strictly to the destruction of a right.

A reversal of a previous ruling by a court of last resort construing the law is retroactive except as to executed contract.

The language of the statute is to be particularly adhered to in the construction of penal laws.

The rule that penal statutes are to be strictly construed will not prevent the courts from inquiring into the intention of the legislature.

Where there is such an ambiguity in a penal statute as to leave reasonable doubts of its meaning, the penalty will not be inflicted.

**TAXATION.**
See, also, “Internal Revenue.”
The corporation of Alexandria held authorized to tax the Farmers' bank, and to collect the tax by distress, etc.
The person claiming under a tax deed must show compliance with all the legal requirements.
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.

**TOWAGE.**

One who contracts to tow a vessel from sea into port must furnish sufficient force for the undertaking.
Steam tugs are not liable as common carriers for the safety of vessels which they are towing, or of their cargo.
The burden is on the libelant to show failure on the part of the tug.
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.
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.
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.
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.
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.
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.

**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.
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.

**TREATIES.**
Under the treaty with Prussia of May 1, 1828, the district court has no jurisdiction 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.**

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

**TRIAL.**

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

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

A libel and answer accompanying an issue sent from the orphans' court to be tried 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 different 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, that he is incompetent, his testimony will be set aside

The court will not permit testimony offered to discredit a witness on the opposite 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 refused

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

In an action by the assignee in bankruptcy to recover property fraudulently transferred 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 several joint defendants was served with process

The judgment will be arrested where the verdict is general and one of the counts is 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 when his title is denied

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

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

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

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

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

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

VENDEEEE 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

VENUE IN CIVIL CASES.

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

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

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

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

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

Military law.
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. 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. Confiscation.

Debts, credits, and corporeal property of an enemy, found in the country on the breaking out of war, are confiscable. A cargo belonging to enemies, and found in our ports at the breaking out of a war, is confiscable jure belli, without any special act of congress authorizing the seizure.

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. Neutral vessel held 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.).

Civil War of 1861–65.

Inhabitants of Chincoteague island, separated from the coast of Virginia by a ship canal, held not to be enemies on the ground of their residence. 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. A proclamation of amnesty cannot relieve such person of the disabilities imposed upon him in such case.

The insurgent government of Virginia during the Civil War held 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. Notes issued by the city of Richmond in 1861 and 1862 held to have been intended to give aid and support to the Rebellion, and incapable of being validated. 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. 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. 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.
The bar to an action provided in section 6 of the “Confiscation Act” applies only 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 local law.

The lessee of a wharf is entitled (in Pennsylvania) to a lien for wharfage upon vessels using the wharf.

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

Act La. March 6, 1869, does not confer upon the railroad company or those claiming 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 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 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 marriage, the whole of the estate to be given to testator’s daughter and her heirs, forever, the daughter takes a vested remainder in fee.

The effect of an introductory clause, and of the words “remainder” and “residue,” in the construction of a will.

A Kentucky will, by which testator bequeathed “every part of my estate, of every 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 bankrupt on an examination in bankruptcy, on the ground that his answer may furnish 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 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).

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.

Seamen not interested in the event, though interested in the question, are competent to testify for each other.

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.

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.

An agent who purchased a chattel, and is interested, therein, is not competent for plaintiff in a suit for fraud in a sale.

Upon the issue of plene administravit, a surety in the administration bond is a competent for defendant.

In a suit for infringement of a patent, a witness who uses a machine resembling that of the plaintiff is incompetent for defendant.

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 held not incompetent for defendant.

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.

A person attending court, in obedience to process, both as a juror and a witness, is entitled to compensation for each service.

**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.

Such writ may be amended, by consent of parties.

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.

Process in admiralty may be served by a person deputized by the marshal by memorandum indorsed thereon.