

INDEX.

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

9FED.CAS.

9FED.CAS.—77

9FED.CAS.—78

ABATEMENT AND REVIVAL.

| | Page |
|--|------|
| See, also, “Bankruptcy.” | |
| A suit in equity does not abate by the death of a co-plaintiff or co-defendant. If one plaintiff and one defendant survive, the suit is open for amendment | 138 |

ACTION.

| | |
|--|-----|
| Debt or covenant is the appropriate remedy on a writing obligatory | 801 |
|--|-----|

ADMIRALTY.

See, also, “Courts”; “Maritime Liens”; “Pleading in Admiralty”; “Practice in Admiralty”; “Shipping.”

Jurisdiction—Waters and places.

| | |
|---|-----|
| The admiralty jurisdiction on the western lakes and rivers is not limited to cases within Act Feb. 26, 1845, but may be sustained under Act Sept 24, 1789 | 291 |
|---|-----|

| | |
|--|-----|
| Such jurisdiction is not limited to tide waters, but embraces the lakes and navigable rivers through which interstate and foreign commerce is carried on | 701 |
|--|-----|

| | |
|--|-----|
| The master of a scow took, without authority, a lighter lying in a fish pond staked off from the Detroit river, and used it in carrying wood from the shores of Lake St. Clair to the scow, and neglected to return it <i>Held</i> , that admiralty had jurisdiction in rem for the tort | 294 |
|--|-----|

—Rights and controversies.

| | |
|---|-----|
| A contract for building a ship, or supplying materials for her construction, is not a maritime contract | 534 |
|---|-----|

| | |
|---|------|
| As the laws of the state of Pennsylvania provide for shipwrights and material men at the port of outfit, and also regulate domestic pilotage, admiralty will not take cognizance of these matters | 1192 |
|---|------|

| | |
|--|-----|
| Admiralty has jurisdiction over petitory suits | 822 |
|--|-----|

| | |
|---|-----|
| A libel in rem will lie for the refusal to receive on board, and the refusal to deliver, cargo contracted by the master to be carried from New York to Brooklyn | 252 |
|---|-----|

| | |
|---|-----|
| Where the possession of movable property has been changed, against the right of the true owner, by a maritime tort, or by the breach of a maritime contract, to which the property was subject, the owner may vindicate his title in admiralty by a proceeding in rem | 200 |
|---|-----|

The owner of cargo shipped under a bill of lading can maintain a libel in rem for its restitution, where it has been separated from the vessel by the wrongful act of the master. 200

The forcible deportation of a citizen to a foreign country in an American ship, commanded by an American master, in pursuance or execution of a sentence of banishment of an illegal and self-constituted body of men, is a marine tort 1091

The master of the vessel who willingly and knowingly carries such sentence into execution is liable for exemplary damages 1091

No damages can be recovered in admiralty for injury to character, etc., by such sentence, or from protracted exile caused by fear to return 1091

ADVERSE POSSESSION.

See, also, "Ejectment"; "Limitation of Actions"; "Real Property."

Adverse possession for the time limited by the statute not only bars the remedy, but extinguishes the right, and vests a perfect title in the adverse holder 592

The possession of one claiming title without definite metes and bounds, will not, in law, be deemed to extend beyond the actual possession proved 723

A plea which alleges just title, good faith, the requisite period of possession, and that possession continued peaceful and without interruption, is sufficient (in Louisiana) to show title by prescription 1036

Information, knowledge or belief, obtained since the possession commenced, cannot impair the efficacy of such possession as a ground of prescription 1036

The alienee of a disseisor in possession has a good title as against all persons not having a paramount title 202

AFFREIGHTMENT.

See, also. "Admiralty"; "Carriers"; "Charter Parties" "Demurrage"; "Shipping."

The owner is not excused from the performance of a contract for transportation of a cargo by the freezing in of the vessel and the death of the master, but is entitled to a reasonable time to procure a new master, and to await the relief of the vessel 255

Measure of damages for breach of contract where part of the cargo had been taken on board 255

Cargo *held* liable only for the freight specified in the bill of lading given by the master for goods purchased by the charterer, which stated that delivery was to be, made to the order of the seller "without prejudice to charter party." 591

Freight paid in advance on a cargo lost by calamity may be recovered back 260

On refusal of consignees to pay the freight, the owners may retain sufficient of the cargo to cover the amount 630

A partial conveyance is not a compliance with the contract 260

YesWeScan: The FEDERAL CASES

Delivery of cargo according to the usage of the port is equivalent to delivery to the consignee personally or at his warehouse 20

An underdeck cargo of grain shifted in a storm because of the absence of shifting boards, and contributed to produce a list of the ship. *Held*, that the vessel was liable for the value of cattle washed overboard after the list 260

The measure of damages for negligence causing injury to cargo is the difference between its cost and the proceeds of sale 530

ALIENS.

A plea in bar in a suit between aliens, that the contract was made abroad, *held* good 41

APPEAL AND ERROR.

Where the writ of error pending in the supreme court was not taken out in time to operate as a supersedeas, execution against the bail will not be stayed, nor will an injunction issue 651

Nothing can be assigned for error, which contradicts a record 15

Where the merits have been fully examined in the court below on the evidence and law, the judgment there rendered though appealed from, is *prima facie* right until shown to be wrong 980

A judgment, broader and more advantageous than a party is entitled to, will be reversed or modified, although, upon the record, it appears to be technically correct 592

An appellate court will not reverse a judgment on technical grounds, where substantial justice has been done 137

APPEARANCE.

An appearance cannot be entered upon the docket, out of court 802

ARBITRATION AND AWARD.

Where a third person was to be chosen in case the two arbitrators disagreed, it need not appear in the award that the two disagreed, or that the third was appointed in writing 973

ARREST.

See, also, "Bail."

The nonimprisonment act of New York (1 Rev. St. p. 807, § 1 does not, by force of acts of congress of 1839 and 1811, embrace arrests upon process issued out of maritime courts 1188

Since the adoption of the rules of 1815, parties are liable to arrest and imprisonment on process issuing out of the United States courts, irrespective of subsequent legislation in the several states abolishing imprisonment on like process 1062

Act Jan 14, 1841, does not adopt subsequent state laws imposing restrictions and conditions on imprisonment for debt 751

Act Mass. May 21, 1885, to abolish imprisonment for debt and to punish fraudulent debtors, does not abolish imprisonment for debt, and is not adopted by any act of congress so as to affect process out of that court. 751

ASSIGNMENT.

Payments made to the original creditor, after notice of the assignment of the debt, cannot be given in evidence in a suit brought by the assignee in the name of the original creditor. 1202

ASSIGNMENT FOR BENEFIT OF CREDITORS.

See, also, "Bankruptcy."

A general assignment for creditors *held* fraudulent, where, from the course of business, the assignor must have had ample assets, but the same were not revealed 986

The assignee of one partner *held* to have a prima facie title to notes taken by the other partner for goods sold after the assignment, as against a purchaser with notice. 134

ASSUMPSIT.

Assumpsit will not lie for work and labor done under a sealed agreement unless the whole work has been done according to the contract *810

A payment by an executor while in commitment upon a ca. sa., issued upon a judgment of a justice of the peace in an action against him, is under duress, and may be recovered back 649

ATTACHMENT.

See, also, "Garnishment."

An attachment on mesne process is only a contingent and conditional charge, until the judgment and levy 508

A foreign attachment is a remedy, and may be defeated by any act, that bars, or takes away the remedy or right to judgment under it 508

The remedy by a foreign attachment in Pennsylvania cannot be pursued except for a demand arising under contract, and where the measure of damages can be averred 120

Such remedy may be pursued in an action for breach of a contract, made in a foreign country by persons who had never resided in the state, to deliver a quantity of tea of a particular quality 120

It is no ground for dismissing a foreign attachment, instituted in the federal court, that plaintiff had sued out another attachment against the defendant in a state court, and afterwards discontinued it 120

ATTACHMENT OF PRIVILEGE.

A clerk of the circuit court of the District of Columbia is not entitled to sue by attachment of privilege 455

ATTORNEY AND CLIENT.

An attorney, who enters an appearance, without authority, is answerable in damages, for the injury he may thereby have occasioned the parties 15

AVERAGE.

A three-masted schooner, being unable to keep her head to the wind through the loss of her mizzen sail in a severe storm, was put before the wind, and, the storm continuing, was finally beached on the New Jersey coast, it being considered safer to run such risk than to attempt to bring her head to the wind. *Held* a voluntary stranding, and that the vessel owners were entitled to contribution from the cargo 196

BAIL.

The administrator of appearance-bail cannot be allowed to appear as appearance-bail and plead for the principal 71

Bail is not discharged by a discontinuance of the suit at the rules, if it be reinstated 1025

BANKRUPTCY.

Operation and effect of bankrupt laws, and of proceedings thereunder.

Pending proceedings in bankruptcy, either before or after the decree, a prior attaching creditor cannot proceed in his suit to trial and judgment 508

| | |
|--|-----|
| In such case, the bankruptcy court will enjoin further proceedings in the attachment suit, but will allow it to be continued until the discharge is obtained | 508 |
| Whether, if the bankrupt fail to obtain his discharge, the attachment would be gone by the mere operation of the bankrupt act; or whether a judgment in personam may be rendered against him, quaere | 508 |
| The bankruptcy court will not interfere after the process of the state court has been executed by a sale of the bankrupt's property | 978 |
| A bankrupt, surrendered by his bail, during the time allowed for his examination, will not be committed in execution under the bankrupt law of 1800 | 644 |
| Under the act of 1841, the district courts are possessed of the full jurisdiction of courts of equity over all subject matters arising in bankruptcy | 508 |
| The district court has full power, as a court of equity, to settle all controversies between the bankrupt and his creditors, | 616 |
| The district court has the same power to restrain creditors in judgments at law against a bankrupt that a state court would have in case the debtor were not a bankrupt | 616 |
| Jurisdiction. | |
| The residence or place of business must be within the district to give the court jurisdiction. The objection cannot be waived by the debtor | 330 |
| The bankrupt carried on business for nearly two years, and until it finally discontinued business, up to four months of the filing of the petition, in New York City and in Massachusetts, and nowhere else. <i>Held</i> , that the petition was properly filed in the Southern district of New York | 521 |
| Commencement of proceedings—Voluntary bankruptcy. | |
| The pendency of a petition in involuntary proceedings, not carried to adjudication, a composition having been made, <i>held</i> no bar to a voluntary petition, where the composition was set aside | 239 |
| A petition by a corporation in voluntary bankruptcy should be authorized by a vote of a majority of the corporators at a legal meeting called for the purpose | 760 |
| Stock of an intestate, on whose estate administration has not been granted, is not to be counted | 760 |
| Such meeting need not be called in the manner prescribed by section 21 of Act N. Y. Feb. 17, 1848, in regard to the formation of corporations | 760 |
| Where the court has jurisdiction over the debtor, an adjudication on his petition cannot be resisted on the ground that he is solvent, as the filing of the petition is an act of bankruptcy | 614 |
| —Involuntary bankruptcy. | |

YesWeScan: The FEDERAL CASES

| | |
|--|------|
| The proceedings abate by the death of the debtor between the time of serving the rule to show cause and the adjudication | 737 |
| Secured creditors or those claiming liens are not counted in determining whether the requisite number of creditors have joined in the petition. Act June 22, 1874 | 965 |
| Creditors may unite in the proceedings until the judicial ascertainment, made on notice to creditors, that the requisite number and amount have not joined | 958 |
| The judgment of the court that the requisite number and amount of creditors have petitioned is final, and the matters so adjudged are not thereafter re-examinable, except for fraud | 1005 |
| Petitioners will not be allowed to amend the petition, to show jurisdiction, after an unexcused delay of nearly a year | 810 |
| The petition inures to the benefit of all the creditors, any of whom may come in, within a reasonable time, and prosecute it. | 744 |
| Seventeen months after discontinuance <i>held</i> not a reasonable time | 744 |
| Where the proofs disclose acts of bankruptcy not averred, the petition may be amended so as to conform to the proofs | 1108 |
| A petition by one partner against another is quasi in invitum, and the objecting partner may show that the firm is not insolvent | 614 |
| The answer of the debtor must be in writing and verified, and the facts alleged as in pleadings in common-law cases | 55 |
| The oath of the petitioning creditor to his debt, without further proof, is not sufficient, where the debtor offers prima facie evidence that it is not due | 507 |
| It is discretionary with the court to order a trial by jury where the existence of the debt is denied, though the creditor does not desire it | 507 |
| The court may in its discretion issue a special venire and impanel a jury to try the issue at any time, without waiting for a regular term | 55 |
| —Acts of bankruptcy. | |
| A general assignment for the benefit of creditors, without preferences, is an act of bankruptcy | 958 |
| Voluntary aid given by the debtor in taking his property upon attachment, or in perfecting an attachment previously incomplete, is an act of bankruptcy | 127 |
| The debtor suffers his property to be taken under legal process, by not defending | 180 |
| There is no concealment where the debtor makes a bona fide conversion of his property, and shows good faith in respect to the care of the money received therefrom | 626 |
| A mortgage of a stock of goods to secure the mortgagee as surety on the mortgagor's note, given with the understanding that the mortgagor should continue his business | 524 |

| | |
|--|--------------|
| in the ordinary way, and the subsequent taking possession thereunder, <i>held</i> acts of bankruptcy | |
| The time to be taken at which to test the condition of the bankrupt, and the knowledge of the creditor, <i>held</i> to be the time when a confession of judgment was given, and not the time the execution was issued to enforce the claim | 9 |
| Where the only proof of an act of bankruptcy is the statement of the bankrupt, such statement must be accepted, in its entirety, as true | 709 |
| An act of bankruptcy by one member of a firm will sustain an adjudication against the other members, where they are all insolvent, and both their joint and separate property will pass to the assignee | 127, 1077 |
| An assignment of firm property by two resident members to secure certain creditors, though dissented to by the other members immediately on hearing thereof, <i>held</i> an act of bankruptcy | 1077 |
| Schedule. | |
| The description of property as “an interest in half a lot in Buffalo” is not sufficient | 959 |
| Amendments of schedules will be allowed on payment of costs where there is proof that the errors arose from inadvertence | 959 |
| Assignee—Appointment and removal. | |
| If a power of attorney is given to a firm, and not to either member, one alone is not authorized to vote upon it in the choice of an assignee | 704 |
| The discretion to approve or disapprove the creditors election of assignee (Act 1867) is a legal discretion, and a disapproval must be based upon sound reasons | 1004 |

—Rights, duties, and liabilities.

The assignee in bankruptcy of an insurance company has no power to waive the performance of conditions by the insured 72

Where no question of disputable right exists, assignees cannot obtain the instruction of the court whether to do a proposed act, which, if proper on their part, would he within their own discretion and power on the administration of their trust 715

An assignee, jointly interested with others in certain judgments for a lien upon a building, is allowed to compromise his claim upon receiving a pro rata share, and not otherwise 1007

The assignee of one partner becomes a tenant in common with the other partner, and his equities depend on the title of his assignor 464

Property of bankrupt—What constitutes.

A permit to occupy a public market stand *held* property of the bankrupt, and he was compelled to execute a transfer 1082

Where a devise has been made to a bankrupt, and accepted by him, it is a fraud up, on his creditors for him to disclaim, or renounce it, and the court will compel him to do all acts necessary to perfect his title to the devised estate 976

A note given in payment of a book account after the petition filed, but before the adjudication, *held* properly paid to the holder 1140

—Exemptions.

Where no property is claimed under the specific exemptions of the bankrupt act, the claim for an allowance must stand upon the exemption granted by the state laws.— 821

Under the law of Georgia which exempts personal property of the value of \$1,000 in specie, the bankrupt is not entitled to money the proceeds of articles sold by the assignee 821

Where the assignee ignored the specific exemption clause, and sold the property, *held*, that the bankrupt was only entitled to the proceeds of sale, and not to \$1,000 821

Unauthorized exemptions of real estate are void, but, in the case of personalty, exception must be made to the allowance within the requisite time, under general order 19 1065

—Liens.

The assignee takes the property and rights of the bankrupt, subject to all the liabilities, and with all the rights, that would attach to them in the hands of the bankrupt, except in case of fraud 266

The assignee must recognize any valid lien as a preferred claim, though for costs of attachment, if made a lien by the state law 1165

| | |
|--|-----|
| The proviso in section 2, Act 1841. embraces all liens, equitable and legal, which are valid by the <i>lex loci contractus</i> ; and is not restricted to such as can be enforced by state laws | 266 |
| Persons paying drafts drawn for the price of goods shipped to the drawer, under an agreement that the goods should be pledged as security therefor, have a lien as against the assignee in bankruptcy of the purchaser | 266 |
| A chattel mortgage authorizing the mortgagor to sell the property mortgaged is void as against the assignee | 394 |
| A delay on the part of the mortgagee in a chattel mortgage in taking possession after maturity is fatal to his rights, as against an assignee in bankruptcy | 394 |
| An attachment on mesne process, where a judgment is not obtained prior to the commencement of proceedings under the act of 1841, gives no lien enforceable in bankruptcy | 508 |
| The rent of mortgaged premises received by the assignee must be distributed to the general creditors. The mortgagee cannot have the rent applied to his lien unless he shows the insufficiency of his security, and actually intercepts it | 572 |
| The right to intercept the rent ceases with the completion of the foreclosure | 572 |
| Junior mortgagee, purchasing at a foreclosure sale, <i>held</i> not entitled to the rents collected by the assignee pending the foreclosure, or to reimbursement of the amount paid for taxes | 523 |
| A petition for leave to foreclose a mortgage will be dismissed where it is not shown that the assignee was given notice, and the debt has not been proved —Sale. | 965 |
| The court may order the assignee to expend money in finishing goods for sale, where beneficial to the estate | 527 |
| The bankruptcy court may order that mortgaged chattels in the possession of the assignee be sold free of incumbrance, and the mortgagee's lien is then transferred to the proceeds of sale | 527 |
| This power may be exercised, notwithstanding the mortgagee has by his contract, a right of immediate possession, which he desires to enforce | 527 |
| Such order will not be made where the mortgagee's rights will be injuriously affected, as where the goods have no market value, or not more than the amount of the mortgage | 527 |
| A special order for leave to execute assignments of certain mortgages sold under order of court granted, though considered unnecessary | 718 |
| Proof of debts. | |
| A note which is subject to an offset for a larger amount is not a provable debt | 425 |

YesWeScan: The FEDERAL CASES

| | |
|--|-----|
| A tax collector will not be allowed to prove, against the bankrupt's estate, taxes which have been deducted from the value of property taken by creditors under attachments valid, as against the assignee, at the time of appraisal | 554 |
| The costs of an attachment, laid by the wife of the bankrupt in a libel for divorce, are not provable, and are not an equitable charge against the assets | 649 |
| A note given by the bankrupt firm to a member for his contribution to the capital stock, and by him turned over to his wife, who furnished the money, <i>held</i> evidence only of the individual debt of such member, and not provable against the firm | 967 |
| The mortgagee in a chattel mortgage of a stock of goods cannot prove his claim against a partnership formed after the making of a mortgage, and before its maturity | 394 |
| A clause in an insurance policy, limiting the right of action to one year from the loss, is valid, and binding even after bankruptcy of the company: but proof of the debt in bankruptcy is equivalent to the commencement of a suit | 72 |
| An adjustment of the loss before the filing of the petition in bankruptcy is a settlement and a waiver of the limitation clause | 72 |
| Where the proof was not submitted until after petition filed, the assignee cannot make an adjustment or agreement upon which an action can be maintained | 72 |
| A waiver of conditions, made in good faith by the company while solvent, is binding upon its assignee in bankruptcy | 72 |
| The creditor and the bankrupt cannot submit to arbitration the question of the amount due from the bankrupt's estate | 425 |
| The submission of a claim by stipulation to the register to hear and determine does not make his decision final, as a reference under the New York Code | 425 |

| | |
|---|------|
| The holder and owner of a claim can alone make the proof | 425 |
| On a sale by several creditors to one person of debts proved, the actual owner can alone act, and can cast but one vote | 704 |
| Though proof of a debt has been regularly filed and accepted as satisfactory, the register may receive proof of fraud in relation thereto before election of assignee | 704 |
| On motion to expunge a proof of debt and to establish a set-off, personal judgment cannot be rendered against the creditor for money in his hands | 394 |
| A note given in the firm name in an individual transaction of one member in no manner for the benefit of the firm is not provable against the joint estate | 465 |
| Copartnership debts may be proved in proceedings instituted by a single partner, on an individual petition, whether there are any assets of the copartnership or not | 738 |
| Payment of debts: Priority: Dividends. | |
| The costs and charges against a bankrupt for caring for his property prior to filing the petition, however incurred, are not a preferred claim | 1165 |
| Examination of bankrupt, etc. | |
| The bankrupt cannot require the register to have his testimony taken down in long-hand when the assignee furnishes a stenographer | 812 |
| After ample opportunity for an examination is afforded, and it is apparently full, further examination will be refused unless a specific defect or collusion is shown | 961 |
| A witness may be examined prior to the examination of the bankrupt, and though there be no question in controversy to be settled by testimony | 740 |
| The only parties to bankrupt proceedings are the bankrupt and the creditors | 740 |
| A witness cannot take the opinion of the judge., on a certificate by a register, or be represented by counsel, except in a proceeding against him for contempt | 740 |
| Costs: Fees: Disbursements. | |
| Where a suit has been commenced bona fide, and the defendant becomes a bankrupt, the actual costs are to be paid out of the estate, but no subsequent costs | 508 |
| The assignee is liable for proper charges for the care and custody of the bankrupt's property from the commencement of the proceedings | 1165 |
| Costs incurred by a sheriff for insurance, packing, etc., of goods on an attachment which has been dissolved by the proceedings in bankruptcy, where beneficial to the estate, will be ordered to be paid by the assignee | 500 |
| If the assignee has taken possession of packing-boxes, policies of insurance. &c, procured by the sheriff, he must pay for the cost of them | 580 |
| Where the assignee continues to occupy real estate leased by the bankrupt for manufacturing purposes, the landlord is entitled to compensation to the extent of the benefit conferred on the estate | 613 |
| Discharge—Proceedings to obtain. | |

| | |
|---|------|
| A creditor, after a year, may require the bankrupt to have the question of his discharge determined | 615 |
| A creditor cannot be prejudiced by the loss from the files of his proof of debt. He is still entitled to notice of application for a discharge | 817 |
| The right to a discharge becomes fixed upon application, due notice given, and failure to object, though an order granting the discharge was not procured | 615 |
| —Opposition: Acts barring. | |
| The proceeds of the bankrupt's property in the hands of the assignee, and subject to be divided among his creditors, must be equal to 50 per cent of claims. Act 1867, § 33 | 769 |
| The debtor cannot have his assets appraised and determined as being in excess of 50 per cent of provable claims, before debts are proved, or an assignee appointed | 769 |
| Section 9 of Act June 22, 1874, applies to cases of involuntary bankruptcy commenced before its passage. Reversing p. 697 | 696 |
| A creditor who obtains judgment after the adjudication in bankruptcy, and takes out execution against the bankrupt, cannot prove his debt, and is not affected by the discharge, and cannot oppose it | 1109 |
| The court allowed such creditor, who had proved his debt, to be heard in opposition on stipulating to cancel his judgment if the discharge should be granted | 1109 |
| The fact that a suit is prosecuted against the bankrupt merely to ascertain the amount due should appear of record, and the judgment should be modified accordingly | 1109 |
| Charges, in general terms, of the destruction and removal of books and papers to defraud creditors, and of procurement of certain creditor's assent by pecuniary consideration, <i>held</i> too vague | 750 |
| After filing of specifications in opposition, there cannot be any examination of the bankrupt by the creditors before a register, on the application by the bankrupt for a discharge | 964 |
| Where proofs of debts have been lost, they must be supplied under Rev. St. §§ 899, 900, before the bankrupt can be legally discharged | 817 |
| The failure to keep proper books of account in a business which has been entirely closed out, there being no debts or assets arising out of such business, will not prevent a discharge | 815 |
| Nor will a discharge be prevented by the failure to keep proper books of account prior to the passage of the bankrupt act | 815 |
| A failure to insert in the schedule property fraudulently conveyed is not a false swearing where a receiver of all the bankrupt's property has been appointed by the state court | 750 |

| | |
|---|-----|
| An assignment of a claim to secure a pre-existing indebtedness, made when insolvent, and forming no part of the transaction in which the indebtedness was created, is a fraudulent preference, barring a discharge | 520 |
| A discharge was refused in the case of a fraudulent preference, though the bankrupt had acted under advice of counsel, and the transferee had surrendered the goods without suit, it not appearing that the bankrupt had acted in good faith, believing he had a right to do what he did, | 72 |
| A fraudulent conveyance, within section 29, Act 1867, must be a conveyance made as required by section 35, within four or six months before the filing of the petition by or against the debtor | 750 |
| —Scope and effect: Annulling. | |
| A discharge obtained before judgment rendered in a suit in which property was attached before the bankruptcy proceedings were instituted may be pleaded as a bar to such suit | 508 |
| Where a creditor, who neglected to file objections in due time, subsequently discovered fraud, he may require the bankrupt to take his discharge and then apply to annul it | 615 |
| The knowledge of fraud which will bar a right to annul the discharge must have been such as to have been available before the return day of the order to show cause | 615 |

| | |
|--|------|
| Prohibited or fraudulent transfers. | |
| An insolvent may borrow money, and give a valid security therefor on his property, if no fraud in fact be intended, and no fraud on the bankrupt act be effected | 1026 |
| A deposit of bonds in New York by a bankrupt residing in North Carolina, <i>held</i> a device to defraud creditors, where they were delivered up shortly after the petition was filed | 991 |
| A deposit of securities by a customer of a bank, who had overdrawn his account, for the purpose of a loan from the bank to keep the account good, <i>held</i> not in violation of the act | 787 |
| A mortgage will not be considered for future advances because the notes secured by it are delivered to the mortgagee to prove in a partnership accounting | 812 |
| A security otherwise valid is not avoided because taken in the form of an absolute deed instead of a mortgage | 1026 |
| A judgment entered after the adjudication, on a default entered before petition filed, without surprise, mistake, or fraud, where the bankrupt had no defense, will not be set aside. Act 1841 | 169 |
| A judgment by default, and execution upon a note given when the creditor had cause to believe the debtor insolvent, are preferences | 180 |
| Taking judgment on a cognovit, and levying execution on the bankrupt's property, by his suffrance or permission, before the institution of proceedings in bankruptcy, is a fraud upon the act, although the cognovit is dated more than six months before the filing of the petition | 426 |
| A judgment taken contrary to the bankrupt act is not void unless a petition in bankruptcy is filed by or against the debtor within six months from its entry | 978 |
| The payment of a joint debt by joint property is not a voidable preference unless both debtors become bankrupt within the time limited by the statute. This rule applies to partnership transactions | 464 |
| A creditor who receives money and goods from his debtor, knowing him to be insolvent, is guilty of obtaining a fraudulent preference, and, if he contests the right of the assignee, he cannot prove his claim | 465 |
| An execution creditor, knowing that his debtor is unable to pay his debts at maturity, is chargeable with knowledge of his insolvency | 465 |
| A debtor suffers his property to be taken on legal process when he allows it to be seized in execution on a judgment obtained by default | 465 |
| A sale by a debtor of all his real and personal property to a creditor, with knowledge of the debtor's insolvency, is in fraud of the act, and trover will lie by the assignee to recover the value of the personal property | 545 |

| | |
|---|------|
| The taking possession of a stock of goods by the seller under a reservation of such right in the bill of sale for nonpayment of the purchase money before petition in bankruptcy filed against the purchaser <i>held</i> valid as against the assignee. | 9 |
| A conveyance by a debtor, when in embarrassed circumstances, in trust for his wife, in alleged consideration of indebtedness for lands and personal property belonging to her, <i>held</i> fraudulent, where sole power was reserved to the debtor to sell the land | 132 |
| Suits in relation to the estate. | |
| The circuit and district courts of the United States have jurisdiction of a bill by an assignee in bankruptcy to redeem a mortgage made in Massachusetts | 527 |
| A creditor has a right to sue to set aside a fraudulent conveyance by the bankrupt only where the assignee refuses to do so | 748 |
| A petition will not lie in bankruptcy by creditors of a firm not in bankruptcy, on the bankruptcy of a member, to recover a fund from the estate of a deceased partner not in bankruptcy | 735 |
| The United States circuit court has jurisdiction of a bill by an assignee to recover money or property of the bankrupt preferentially or fraudulently conveyed | 242 |
| Any suit to set aside a fraudulent conveyance by the bankrupt is within the limitation of two years | 748 |
| The statute does not begin to run against the assignee in the case of property concealed until the fraud is discovered | 991 |
| Where a suit to set aside a fraudulent conveyance is for the benefit of the secured creditors mainly, they should defray the expenses thereof | 748 |
| The assignee may be required to furnish security for costs when he is prosecuting an expensive litigation, and is without funds belonging to the estate | 450 |
| Review. | |
| An appeal will lie to the supreme court from a decision of the circuit court in the exercise of its supervisory jurisdiction under the bankrupt law | *623 |

BANKS AND BANKING.

| | |
|--|-----|
| Power to receive special deposits is not conferred by a charter "to carry on the business of receiving money on deposit, and to allow interest thereon, giving to the person depositing credit therefor" | 86 |
| A note was deposited with a bank with the understanding that, in certain contingencies, it was to be handed back to the maker, otherwise to be delivered to the payee. <i>Held</i> a special deposit, and that the transaction was ultra vires | 86 |
| A bank, acting as collecting agent of another bank, is liable for a loss caused by its failure to use reasonable diligence and care | 100 |

YesWeScan: The FEDERAL CASES

| | |
|--|--------|
| A bank receiving a draft from another bank for collection <i>held</i> liable for the amount thereof, where it transmitted the same directly to the drawee, its correspondent, and made no inquiry in regard thereto for one month, the drawee having failed in the meantime, and the draft having miscarried | 100 |
| Banks holding collateral security for the payment of loans must take the same care that good business men or persons or corporations of their class ordinarily take of such bonds | 264 |
| A bank holding bonds as collateral security <i>held</i> not liable for a loss by robbers after the watchman had left, as was usual, at four o'clock in the morning | 264 |
| A national bank has authority, under Bev. St. § 5136, to take and hold interest coupons not under seal, attached to railway aid bonds under seal, where each coupon contains an express promise to pay to bearer, and is signed by the proper officer | 97 |
| A national bank is entitled to the same privileges in regard to charging interest as is extended to state banks of issue in the state in which it is located | 91, 93 |
| National banks cannot be compelled by the auditor or probate judge to present for inspection the deposit books of the bank in order to reach such deposits for purposes of taxation | 103 |

BILLS, NOTES, AND CHECKS.

Validity.

| | |
|--|-----|
| A written promise absolutely to pay the note of a third person, written at the foot of such note, is an original undertaking, and need not express the consideration | 620 |
|--|-----|

| | |
|---|------|
| Negotiability. | |
| A note for a certain sum payable in "current bank notes" is not negotiable | 971 |
| Acceptance. | |
| An acceptance for the honor of the payee, after protest, is not binding | 758 |
| Indorsement and transfer. | |
| The indorsement of a note placed in the hands of a third person for the benefit of a creditor of the indorser <i>held</i> to take effect from the date of the indorsement, and not from the date of its delivery to the creditor | 506 |
| Want of consideration for a promissory note is no defense, as against one taking it before maturity, without notice, as collateral security for an existing debt | 334 |
| The accommodation indorser of a renewal note given to a bank may show, in defense to a suit thereon by the bank, that the cashier promised, as consideration for his indorsement, that the bank would set off accruing claims for services rendered by the maker, so that he would not be held liable | 85 |
| In the case of a raised check, passing through several banks before it was finally paid by the drawee, the loss must fall upon the one who first gave it credit by indorsement | 86 |
| Demand: Notice: Protest. | |
| A creditor holding a note whose proceeds are to be collected and applied to discharge the debt is bound to use due diligence to collect the note, and give notice of nonpayment | 360 |
| Where there are two joint indorsers notice must be given to both | 1145 |
| If one of the joint indorsers pay the note, he cannot recover a moiety from the other indorser, to whom notice of dishonor was not given | 1145 |
| Notice of demand and nonpayment is necessary to charge the guarantor of a note or bill, whether his name be upon the paper or not; but in the latter case reasonable notice is sufficient | 360 |
| Notice to an indorser by mail must be directed to the post office nearest his place of residence | 620 |
| Payment. | |
| The taking of stock and cash in satisfaction of a debt on surrendering a note <i>held</i> to amount to a payment of such note | 425 |
| A guarantor may take up the paper guaranteed, and transfer his claim as guarantor to the persons from whom he obtained the means with which to take up the paper | 605 |
| Actions on. | |
| A bill of exchange is evidence under the general counts as between the holder and the acceptor, or a remote indorser | 731 |

A judgment against an accommodation indorser who is considered as a surety, and, also, the drawer, merges the relation of principal and surety 62

Bills of Lading.

See "Affreightment"; "Carriers": "Charter Parties"; "Shipping."

BONDS.

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

Assumpsit will lie on interest coupons, not under seal, attached to railway aid bonds under seal, where each coupon contains an express promise to pay to bearer, and is signed by the proper officer 97

BOTTOMRY AND RESPONDENTIA.

See, also, "Maritime Liens."

Conditions preceding the authority of a master to hypothecate his vessel in a foreign port by bottomry 1013

The true grounds of a maritime hypothecation are the necessities of the case, and the want of personal credit 406

Bottomry bonds may be given for security of mercantile or other debts, either in places where the owners dwell, or in foreign places by their order 406

The master cannot make a loan on bottomry to pay purchasers of claims for repairs in a foreign port; contracted' five months prior thereto under no expectation of bottomry security 1202

Where the master has not suitable funds, or cannot obtain money on the personal credit of the owner, for reasonably fit and proper supplies and repairs in a foreign port, he may take it upon bottomry 479

As against the lender, it is sufficient if there is an apparent necessity, so far as he is able, upon due inquiry and due diligence, to ascertain the fact 479

Where there is an apparent necessity, the lender is under no obligation to ascertain the cause of the injury, or to inquire as to the manner of making the repairs 479

A regular survey, by competent and skillful persons, and repairs made in pursuance of their recommendation, is prima facie evidence of the propriety of making the repairs, to justify the master and lender on bottomry 479

The lender is prima facie presumed to have made inquiries as to the apparent necessity, and to have acted upon the facts and circumstances, as made known by the survey 479

The onus probandi, that the master has other funds, or that the owner has a personal credit in that port, is on the owner, who resists the bottomry bond 479

A bottomry covering items of advance not entitled to a bottomry lien is invalid only in part 1013

| | |
|--|------|
| The court will order a referee to ascertain and report the actual constituents of a bottomry lien, the validity of which is contested | 1013 |
| Where the owners, with all the facts before them under which a bottomry bond was given by the master in a foreign port, claim and receive their share of the general average from the underwriters, it amounts to a ratification of the making of the bond | 1202 |
| A voyage to a foreign port, there to discharge cargo; thence to another foreign port, there to take cargo; thence to a domestic port,—is continuous with respect to liability of freight moneys to satisfy a bottomry bond given for repairs in the first part of the voyage | 109 |
| An agreement in a respondentia bond to have on board the amount lent, in goods, <i>held</i> not a condition precedent, but the lender could recover the deficiency on a loss | 712 |
| A collateral agreement to indorse bills of lading as further security <i>held</i> not a condition precedent | 712 |
| Questions as to the validity of bottomry claims will not be entertained on motion and notice | 798 |
| Creditors having obtained decrees against the proceeds of a vessel, where bottomry creditors come in and arrest the fund, may make themselves parties and contest the bottomry claims | 798 |
| A mortgagee of a vessel can intervene in a suit by a bottomry holder against the vessel, and contest the validity of the bottomry or its priority of lien, as against his mortgage | 1013 |

BOUNDARIES.

The purchaser of land bordering upon a nonnavigable stream or lake takes to the center of the stream or lake 471

Where land is purchased bordering upon a nonnavigable stream or lake, and the line is meandered upon the stream for the purpose of quantity, and the stream is intended as the boundary, the grant includes any land between the meandered line and the water 471

CARRIERS.

See also, "Affreightment"; "Charter Parties"; "Railroad Companies."

The duties of steamboats carrying passengers to guard them against violence or negligence of other passengers stated in a charge to a jury 277

The carrier is not liable for baggage in excess of that usually carried by passengers of like station, pursuing like journeys 654

The question whether a passenger has carried an excess of baggage, considering his position in life, and the journey, is one of fact for the jury 654

Valuable laces *held* reasonable apparel and baggage, reference being had to the social position and wealth of the plaintiff, the state of her health, and the object of her journey to this country from abroad 652, 654

CHAMPERTY AND MAINTENANCE.

An action will lie for maintenance in this country 266

The pendency of the suit, the court and time, place, and circumstances must be alleged, so as to show the maintenance 266

CHARTER PARTIES.

See, also. "Affreightment"; "Carriers"; "Demurrage"; "Shipping."

Vessel all ready for voyage *held* to have "sailed" when she was towed from her moorings, though she was detained in the harbor several days by head winds 660

The vessel being seaworthy when she sailed, *held*, that owners were not liable for the spoiling of cargo of beef where the vessel put back on her return voyage to repair boiler tubes 692

Circus horses are to be regarded as cargo to which a maritime lien will attach for freight under a charter for a voyage out and return to carry a circus outfit. 602

Where the charter expressly pledges both vessel and cargo for its performance, the lien for freight will not be held to be waived by making it payable in monthly installments 602

The owner is not bound to wait until the cargo is discharged to enforce his lien for freight, where there is a breach of the agreement to pay the charter money in monthly installments 602

Chattel Mortgages.

See "Bankruptcy"; "Fraudulent Conveyances."

COLLISION.

Nature of liability—Contributive fault.

An error committed under impending danger, or in extremis, produced or brought about by another vessel, cannot be alleged as a fault 1020

A change of course made by a sail vessel in response to a hail from an approaching steamer will not be considered a fault 448

Inability of the officer in charge of a steamer to give instant orders to the engineer when a collision is impending is negligence 448

Rules of navigation.

A failure to keep to the middle of the East river, as required by law will not be considered a fault where the approaching vessel was seen in time to take the necessary steps to clear 741

Sail vessels meeting.

A collision in open sea, in broad daylight, between vessels on crossing tacks, cannot be attributed to unavoidable accident 1020

In the case of vessels close-hauled on opposite tacks, the vessel on the starboard tack must keep her course 1020

Steam vessel meeting sail vessel.

A steamer should stop promptly upon discovering in her course an indistinct object, which may be a sail 265

Where there is plenty of sea room, the steamer need not slacken her speed so long as the sail vessel is apparently keeping her course, and no danger is apparent 762

A steamer *held* in fault in starboarding blindly, in ignorance of course of sail vessel in a fog 702

Steam vessels meeting.

A steamer has the right to rely to the last moment upon the power of an approaching steamer to pass in accordance with a single blast given by her 741

The obligation to slacken speed under article 16 of the collision act was not intended to be contemporaneous with the duty of porting under article 13 762

Steamer having another on her starboard, and failing to give sufficient room to cross, considering the tide, *held* in fault 722

Vessels moored, etc.

Negligence in lying in the track of a vessel gives rise to the same degree of liability for collision as any other fault 107

A vessel which breaks from her moorings, and comes into collision with another at anchor, has the burden of showing vis major, or inevitable accident 771

Vessel at anchor *held* not at fault for omitting to set an anchor watch 771

YesWeScan: The FEDERAL CASES

| | |
|---|-----|
| River and harbor navigation. | |
| Steamboat passing tow in narrow channel on the Hudson river at night <i>held</i> in fault for failure to slow down, and observe position of tow | 192 |
| Speed: Fogs. | |
| A speed of nine miles an hour, in the East river, in a crowd of vessels, is an unreasonable speed | 322 |
| Speed of from seven to eight knots an hour in dense fog off Point Judith <i>held</i> excessive | 702 |
| The cases upon the subject of speed reviewed and criticised | 762 |
| Lights; signals, etc. | |
| Failure to carry a light does not put a vessel at fault unless the discovery of her position to the colliding vessel was thereby delayed | 265 |
| A light, without reflectors, on a sail vessel navigating the lakes at night, is insufficient, under Act March 3, 1849. § 5 | 560 |
| A vessel carrying the wrong light at the time of the collision has the burden of showing that it did not contribute to the loss | 560 |

| | |
|--|------|
| It cannot be said that a loss resulted entirely from the neglect of a vessel to carry a proper light, where the other vessel had not a competent lookout, and should have kept away | 560 |
| Particular instances of collision. | |
| Between vessels close hauled, beating up a narrow channel, where the overtaking vessel, being on the port tack, failed to keep away, and the other made no effort to avoid the collision, and both were <i>held</i> in fault | 802 |
| Between a propeller aground on St. Clair flats, not exhibiting a proper light, and a tow whose tug failed to stop, where the tow only was <i>held</i> blameless | 718 |
| Between tows in East river, where tug attempted to pass between a drilling scow and piers, and failed to keep her tow on a parallel course | 741 |
| Between steamer and tow in Hell Gate near Pot Rock, where the former was <i>held</i> in fault in not keeping to the northerly edge of the tide | 1070 |
| Procedure. | |
| A suit is not barred within the time prescribed by the statute of limitations where there has been no change of ownership | 718 |
| The rule giving greater weight to the testimony of persons on board a vessel, as to her movements, does not apply to the exhibition of a light | 718 |
| The running of a steamer in a thoroughfare of vessels, at night, with no more precaution than is usual in the daytime, raises an inference that she could have discovered an approaching vessel in time to avoid collision | 107 |
| Rule of damages. | |
| Claimants are entitled to a deduction for the value of cargo raised by libellant's agent from the sunken vessel, and appropriated by him | 1073 |
| The use of such nautical skill as owners of vessels usually employ in such emergencies sufficiently shows reasonable exertions to save a sunken cargo | 1073 |
| Where it does not appear how the commissioner arrived at the sum allowed for freight pending, an exception to the report, as not showing the principle on which it is calculated, is the only way to bring up the question of the amount | 1073 |
| Division of damages. | |
| Where both vessels are <i>held</i> in fault, the loss will be divided equally between them | 560 |
| Appeal. | |
| On an appeal in a collision case, where the question, on the proofs, is a close one as to which vessel was in fault, the decree will not be reversed | 322 |

CONSTITUTIONAL LAW.

A state statute passed before the fourteenth amendment, prohibiting a white person from marrying a negro, and inflicting a penalty upon the former alone for its violation, is not rendered nugatory by the fourteenth amendment 699

The provision of the Georgia constitution of 1868 (article 5, § 17), that the courts shall have no jurisdiction to enforce a debt, the consideration of which was a slave or slaves, or the hire thereof, is void, as impairing the obligation of contracts, so far as it relates to contracts made before the emancipation proclamation 798

CONTINUANCE.

Plaintiff *held* entitled to a continuance at any time before the fifth term after the appearance term, to obtain the testimony of persons beyond sea, although a day had been set for trial 610

CONTRACTS.

A bond to pay an annuity in equal shares to a daughter and her husband if they should become reunited, and live together, and, in case of their separation, a certain sum to the husband, *held* void as to the latter provision, as against public policy 969

A wager may be recovered at common law, although the parties have no other interest in the subject of the wager, than that which is created by the wager itself 262

The act of a party to a contract, and not his intention, is to be considered in construing the contract 812

Where fraud is imputed in the making of a contract, the injured party cannot adopt it in part, and reject it as to the rest but must rescind the entire contract, where he seeks a remedy 427

Persons undertaking to pack pork are bound to exercise all the skill and care which the business requires 451

The damages sustained for unsoundness in pork, due to the manner in which it was put up, are ascertained by comparing the sales of the unsound article with the market price of the good article at the place where it was sold 451

An agreement in a contract to submit disputes arising thereunder to private arbitration will bar an action thereon in which plaintiff does not aver and prove either an arbitration and award, or facts excusing it 627

Any forcible indentation on a parchment, though it be not wax, wafer, or a scrawl, may be a seal, if so intended 341

CONVERSION, EQUITABLE.

On a voluntary sale of real estate by persons having independent interests therein, the proceeds of sale do not retain the character of real estate; otherwise, where equity interferes in adversum 549

COPYRIGHT.

| | |
|--|-----|
| A mechanical contrivance used in the production of a play, being patentable, <i>held</i> not protected by the copyright of the play | 770 |
| To constitute a piracy it is not necessary that the whole or the larger part of the work should be taken, but only so much as sensibly to diminish the value of the original work, or substantially to appropriate the labors of the author | 342 |
| An abridgment, in which there is a substantial condensation of the materials of the original work, and which requires intellectual labor and judgment, does not constitute piracy; but an abridgement consisting of extracts of the essential or most valuable portions of the original work is a piracy | 342 |
| A preliminary injunction refused where the answer denied the equities of the bill for infringement of a copyright of complainant's edition of the Bible, where there was nothing to indentify the parts copyrighted | 276 |
| A work of 866 pages, of which 353 were copies of official and private letters taken from a copyrighted work, which had published them under contract with the owners, <i>held</i> a piracy | 342 |

CORPORATIONS.

| | |
|---|-----|
| A bona fide purchaser of stock illegally issued by directors at less than the charter price may rescind his contract, and recover from his vendor, who participated in the illegal issue of the stock, the money paid | 501 |
|---|-----|

YesWeScan: The FEDERAL CASES

| | |
|--|-----|
| Shares issued to the director of a mining company, as paid-up stock, in payment of land greatly overvalued, are to be considered as paid-up shares in the hands of an innocent purchaser in the open market | 427 |
| The mere fact that a person has become a shareholder as a party to a scheme which is ultra vires will not relieve him from liability as a contributory, if the shares can be considered as legally existing | 427 |
| Every person connected with a company which issues certificates for paid-up stock, when the money or value has not been paid, is liable therefor | 427 |
| Stockholders may sue at law or in equity for the protection of their rights as such, and to preserve the corporate property from unlawful diversion by its officers | 408 |
| Stockholders may come in to take the benefit of the proceedings and decree in a suit by another stockholder against the company to preserve its property, but not to oppose and nullify them | 408 |
| In a suit by stockholders against the company to preserve its property, which is being sacrificed by the fraud of its officers, other persons cannot intervene unless they show an interest as stockholders, or fraud and collusion between complainants and defendant | 408 |
| One stockholder in a corporation can maintain a suit, for the benefit of all, to enjoin the collection of illegal taxes, when the board of trustees refuse to do so | 401 |
| The stockholder has no adequate remedy at law in such a case | 401 |
| It is unnecessary, in such a suit, to make all the stockholders, or even the directors, parties | 401 |
| On a bill filed against the state auditor and a trust company by a stockholder, a citizen of another state, an injunction was granted against the collection from the trust company of an alleged unconstitutional tax | 366 |
| Proceedings for the voluntary dissolution of a corporation under 2 Rev. St. N. Y. pp. 467, 468, are invalid without the entry of the order to show cause | 760 |
| A state may require that a foreign corporation, as a condition of doing business in the state, shall designate an agent therein to receive service of process in suits founded upon its contracts | 788 |

COSTS.

| | |
|---|-----|
| On the removal from a state court of a suit against a Collector to recover back an excess of duty paid, plaintiff is entitled to costs, though he recover less than \$500. if he would have been entitled to costs in the state court | 23 |
| No fees or costs are taxable, in a suit to recover back an excess of duties, on a reference to the collector to adjust the amount of the recovery | 23 |
| Proper costs in admiralty for taking depositions and for marshal's expenses for keeping the vessel | 327 |

| | |
|---|------|
| Clerk's fees in admiralty for filing and entering claim, answer, appearance, and consent, for jurats, for attendance on the justification of sureties, and making up costs on the bonding of the vessel | 327 |
| An item of \$50 paid to a notary public for taking depositions <i>held</i> correctly allowed, although he was a clerk of the proctor of the claimant | 327 |
| The fees of a magistrate in another state for taking a deposition under Act 1789, may be taxed in the bill of costs, in Virginia | 971 |
| After rule obtained to give security for costs, nonresidence of plaintiff will be presumed at a subsequent term | 1010 |

Coupons.

See "Bonds"; "Railroad Companies."

COURTS.

| | |
|---|----------|
| Comparative authority of federal and state courts: Process. | |
| Where the state supreme court has taken judicial control of the property and franchises of a corporation, and ordered their sale, they cannot be taken in execution by process of a federal court | 628 |
| A federal court or judge cannot discharge a person in custody under process for contempt issued by a state court in a suit pending therein, though, under the acts of congress, the state court has no jurisdiction of the subject-matter | 392 |
| The circuit court will not stay proceedings in a state court which are null and void; and it is forbidden by Act March 2, 1793, § 5, to stay valid proceedings in a state court | 149 |
| Federal courts—Jurisdiction in general. | |
| A federal court has no jurisdiction of a probate matter | 729 |
| The circuit courts have not jurisdiction of suits brought by a state, against a citizen of the same or of another state | 1077 |
| —Grounds of jurisdiction. | |
| National banks may, by reason of their character as such, sue in the federal courts. | 100 |
| The test of jurisdiction is not citizenship at the time a contract is made or broken, but at the time the action is commenced | 706 |
| The declaration in an action by the assignee of a promissory note must show that the assignor had a right to sue in the federal court | 274, 971 |
| The rules of law as to removal from one state to another, as affecting citizenship and the jurisdiction of the federal courts, stated in a charge to a jury | 1196 |
| To give jurisdiction, the citizenship of all of defendants must be stated, as well as that of complainants | 62 |
| Jurisdiction of corporations attaches from the place where their business is done | 788 |

YesWeScan: The FEDERAL CASES

| | |
|--|-----|
| A general appearance by a foreign corporation sued in a federal court of another state is a waiver of objection to the service of process | 244 |
| Under a resolution of a foreign corporation, filed pursuant to the state statute, authorizing service of process upon its agents within the state, the federal court may obtain jurisdiction over such corporation by service upon its agent within the district | 353 |
| —Circuit courts. | |
| The circuit court for the district of Connecticut has jurisdiction of an action for the damage caused by a diversion of a stream in Connecticut, so that it ceased to flow to plaintiff's mill in Massachusetts | 358 |
| —Administration of state laws and decisions. | |
| State statute prescribing rules of evidence in civil cases in trials at common law are rules of decision in similar cases in the federal courts, under the judiciary act of 1789, § 34, whether enacted before or after such act | 619 |
| The new form of ejectment provided by state statute must be pursued in the federal court | 725 |
| A federal court, when determining the rights of parties under a state law will never, in a doubtful case, adjudge the statute to be in conflict with the state constitution, unless sustained by some distinct adjudication of the highest court of the state | 108 |

| | |
|--|--------|
| The federal courts are not concluded in a matter of general equity jurisdiction by a decision of the state court | 202 |
| State court decisions upon questions of general law are not binding upon the federal court | 1126 |
| In an action on railroad aid bonds, the federal court will follow the decision of the highest court of the state construing the statute under which they were issued | 95, 97 |
| A decision of the state court construing a state statute where the case is pending on appeal in the supreme court of the United States will not be considered as one of authority | 366 |
| The circuit court of the United States must follow the decision of the supreme court declaring a state statute constitutional, rather than a later decision of the supreme court of the state declaring the statute unconstitutional | 364 |
| —Procedure. | |
| Defect of jurisdiction not patent on the record is available only by plea | 772 |
| The court will enjoin further Proceedings pending determination of the plea to the jurisdiction, where the bill avers the jurisdictional requisites | 772 |
| Where a federal court has no jurisdiction of a case, it has no power to make any order in it except to dismiss it for want of jurisdiction | 149 |

COVENANTS.

| | |
|--|----|
| The assignee of a covenant for title may enforce performance against the heir of the covenantor, to the extent of the interest inherited, although such covenant was the joint covenant of the ancestor and another, and such heir is not named therein | 29 |
| A covenant which runs with the land is divisible, and the grantee of any part or interest in the land may, as to the same, maintain suit upon the covenant against the original covenantor, or his legal representatives | 29 |
| A covenant to convey a particular title if after acquired by the covenantor may be enforced in equity, if such covenantor neglect to perform the same, without a prior demand and refusal | 29 |
| The interest acquired by the husband and children on the death of the wife of a settler under the donation act of 1850 <i>held</i> to be within a covenant to convey the title of the United States, if the covenantors obtained the same, in a deed by them made before the passage of the act. | 29 |

CRIMINAL LAW.

| | |
|--|-----|
| Where nearly the whole county is in a state of insurrection, and is occupied by a military force, a trial for treason may be held in another county | 826 |
| The court's decision that "great inconvenience" prevented the trial being held in the county where the crime was committed is conclusive after verdict | 826 |

| | |
|---|-------------|
| A prior conviction and nol pros upon a sufficient indictment at common law though insufficient under the statute, is a bar to a subsequent prosecution on a new indictment sufficient under the statute, for the same offense | 274, 275 |
| The court has power in criminal, as in civil cases, to grant a new trial; but the new trial can only be granted in favor of the prisoner, and not to his prejudice | 826 |
| A new trial should be granted where it appears that one of the jurors, before the trial, had used expressions to the effect that the prisoners ought to be hung, and that the community would not be safe unless they were hung | 826 |

CUSTOMS DUTIES.

Customs laws.

| | |
|---|-------------|
| Section 20 of Act Aug. 30, 1842, in regard to the rate of duty on nonenumerated articles, was not repealed by Act July 30, 1846, or Act March 3, 1857 | 24, 1140 |
|---|-------------|

Rates of duty.

| | |
|---|----|
| Goats' hair, uncleaned and unmanufactured, <i>Held</i> entitled to entry duty free, under Act March 2, 1861, § 23 | 44 |
|---|----|

| | |
|--|------|
| Silk neckties <i>held</i> dutiable as "wearing apparel," under the acts of 1861 and 1862 | *172 |
|--|------|

| | |
|---|-----|
| The rate on washed wool is computed by doubling the specific and ad valorem rates for unwashed wool. (Rev. St. § 2504, Sched. L.) | 573 |
|---|-----|

| | |
|--|------|
| The question of similitude is one of fact for the jury | 1140 |
|--|------|

Invoice: Appraisal.

| | |
|--|-----|
| The collector is not bound to take the invoice valuation of goods, supported by the owner's oath on the entry, as their dutiable value | 329 |
|--|-----|

| | |
|---|-----|
| The place of shipment, as stated in the entry invoice, and the date of the invoice, may be assumed to be the place and time of purchase, in the absence of a written notice of a different state of facts | 329 |
|---|-----|

| | |
|--|-----|
| All goods subject to an ad valorem duty, though obtained otherwise than by purchase, are to be appraised at the period of exportation under Act March 3, 1851. | 452 |
|--|-----|

| | |
|---|-----|
| In the case of iron purchased at Wales, and transshipped at Liverpool, <i>held</i> , that the "period of exportation" was the time when the iron left Liverpool | 452 |
|---|-----|

| | |
|--|-----|
| The cost of transportation from Wales to Liverpool is not a dutiable charge which can be added to the market price | 452 |
|--|-----|

| | |
|--|------|
| Where merchandise is shipped from Smyrna, and transshipped at Liverpool, the estimated freight between such places cannot be added to the market value and charges at Smyrna to make up the dutiable value | 1143 |
|--|------|

| | |
|--|----|
| The appraisalment by the official appraiser will be <i>held</i> conclusive, notwithstanding a protest, where the importer asserted that he did not desire a reappraisalment, and did not offer the fees therefor | 27 |
|--|----|

Payment: Protest: Appeal.

| | |
|---|------|
| The time for filing a protest in the case of goods imported for warehousing is computed from the date of the original liquidation, which is made at the same time and in the same manner as when the entry is for immediate consumption | 573 |
| A protest <i>held</i> not sufficiently signed, where the importer's signature was on a distinct paper annexed by a wafer, not referring to the protest, nor in any manner made a part thereof | 323 |
| Prospective protests may be sufficient | 620 |
| Actions for duties paid. | |
| A protest must point out specifically the particular omission or irregularity complained of, to be available in an action to recover back the duties | 329 |
| Grounds of objection not specifically stated in the protest cannot be raised in an action to recover back the duties | 27 |
| Plaintiff must satisfy the jury that he has fully complied with all the requirements of the statute both as to form and substance | 1140 |
| Interest may be allowed from the time of rendering the verdict until the judgment | 620 |
| Bonded warehouses. | |
| The owner of property seized as smuggled is not entitled to have the same bonded under Act March 2, 1799, § 89; but a delivery on bail is discretionary with the court | 43 |

Goods entered for warehouse, libeled as forfeited and attached while in warehouse, may be bonded to the amount of their value, less the duties, under Act March 2, 1799. § 89 585

DAMAGES.

In an action against a carrier for the loss of laces, an heirloom, their value must be ascertained by a money standard, based on evidence 652

In an action for personal injuries, prospective damages may be given when they do not form the basis of a new action 475

DEBT, ACTION OF.

Debt will lie against the maker of a promissory note 1191

Covenant, and not debt, is the proper action on a bond payable by installments until all become due; but debt may be brought if payment be secured by a penalty 355

DECEIT.

See, also, "Fraud."

Where part payment for property is made by a note of a third person, taken by the seller under the false and fraudulent representation of the purchaser that the maker was responsible, the seller may recover the amount thereof from the purchaser 579

An expression of belief by the seller of a note, that the maker is responsible, is equivalent to an assertion of the fact, if meant to be so understood, and if made with knowledge that he is not responsible 579

DEED.

A quitclaim deed is effectual to pass such title as the grantor has at the time of its execution, although he is not in possession 12

Delivery may be inferred from circumstances, and need not be proved by positive testimony 1162

A presumption of due delivery arises from the possession of the deed by the grantee 202

Deeds, however apparently formal, must be interpreted upon a view of the whole paper and in subservience to what appears to be their scope 774

In construing a deed involving questions of science, the court may refer to the state of public knowledge and learning, and inquire into the actual knowledge of the parties 774

The designation of quantity will not control boundaries clearly indicated; but, where the true description is in doubt, the designation of quantity may be considered 12

DEMURRAGE.

Damages in the nature of demurrage are recoverable from consignee without stipulation in bill of lading 993

| | |
|---|------|
| A consignee is bound to give only such dispatch as is reasonable under the circumstances | 993 |
| Consignees must provide such reasonable dock room as their business ordinarily requires | 993 |
| A vessel required to load or discharge her cargo at a particular dock, and there detained by reason of its crowded condition, is entitled to demurrage | 1017 |
| Where the consignee has provided ample dock room for vessels as they are reasonably expected to arrive, vessels arriving out of time must wait their turn. He is not obliged to procure other docks | 993 |
| The custom of the port of Chicago to allow one day to provide a dock, when not rendered unreasonable by controlling circumstances, will be considered a law | 993 |
| A usage by which vessels allow a few days after reporting for a sale of the cargo will not deprive a vessel of the right to demurrage where her cargo is sold before arrival | 464 |
| A ship to "be discharged as fast as the custom of the port will admit." demurrage to be charged after the expiration of 10 days, <i>held</i> entitled to demurrage, notwithstanding pre-occupancy of the wharf by other vessels | 1017 |

DEPOSITION.

| | |
|--|-----|
| In common-law actions in the federal courts, depositions may be taken pursuant to the state law or the act of congress, as parties may elect | 276 |
| A deposition cannot be taken under the act of congress before a judge of a municipal court | 443 |
| Time of issue of commission to take deposition in a foreign country and the filing of interrogatories and cross-interrogatories, and notice | 811 |

DESCENT AND DISTRIBUTION.

| | |
|---|------|
| Under the statute of descents of Rhode Island of 1822, brothers and sisters of the half blood inherit equally with those of the whole blood | 1162 |
|---|------|

DISCOVERY.

| | |
|--|------|
| If evidence of defendant's title furnishes evidence of the complainant's, the latter may compel a discovery of it | 1049 |
| The fact that in Louisiana titles are registered in a public office does not affect complainant's right to call for such discovery | 1049 |
| A bill of discovery will not be allowed in any case where the discovery will subject the defendant to a penalty, unless the bill relinquishes all claim to the penalty | 54 |

DISTRICT ATTORNEYS.

| | |
|--|----|
| The district attorney is not so far an officer of the court that the court can compel him to enter the appearance of the United States | 43 |
|--|----|

DIVORCE.

YesWeScan: The FEDERAL CASES

The court has no authority under Act Or. Jan. 17, 1854, to give the property of either parent to the children, except during their minority and as a means of providing for their nurture and education during such minority 172

Domicile.

See "Courts."

EJECTMENT.

An action of disseisin is authorized and regulated by the statute of Indiana 341

The statute of 21 Jac. I. as to 20 years' possession, was not adopted in New Jersey by force of the act of 1727; the action of ejectment having been always considered on the same footing as the writ of right 1196

Where a new trial is granted as of course in a state court under the state statute, the party cannot abandon the special remedy, and proceed in the federal court 725

| | |
|--|------|
| Ejectment <i>held</i> barred by 60 years' possession under Act N. J. June 5, 1787 | 1196 |
| Defendant cannot avail himself of an outstanding title in a third person, under whom he does not claim, where such title is barred by the statute of limitations, or by a descent cast | 555 |
| A conveyance by plaintiff <i>pendente lite</i> Cannot be set up to defeat the recovery. The suit proceeds in the name of the original party | 778 |
| The declaration cannot be amended by stating a demise under a new title | 1077 |
| A landlord has no right to apply to be made defendant in place of the tenant until the latter files his answer admitting his tenancy. Code Or. § 226 | 172 |
| Defendant should state in his answer the nature and duration of the estate he claims in the premises, if any, but not the evidence of it. Code Or 226, 227 | 172 |
| The judgment in ejectment is not a bar to another action where the verdict for defendant only states that he is entitled to the possession. Code Or 227 | 172 |

EMBARGO AND NONINTERCOURSE.

| | |
|--|------|
| The power to remit fines (Act Jan. 2, 1813) extends to cases of joint ownership between citizens of the United States and citizens of Great Britain, so far as the former were concerned | 1105 |
| The power is lodged entirely with the secretary of the treasury. The court "has no revisory power | 1105 |

EQUITY.

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

Jurisdiction.

| | |
|---|------|
| A party claiming rights under a contract must act at his peril. He cannot come into equity for its interpretation to save himself the consequences of a misconstruction | 302 |
| The rights of parties to an agreement for a license under letters patent, with a proviso for a corresponding reduction in the fee on a license to others at a lower rate, <i>held</i> to be purely legal, giving no right to the interposition of equity for the interpretation of the contract | 302 |
| Apprehension of a denial of the rights of a licensee to use a licensed invention, or a revocation of the license, will not justify application to a court of equity for an injunction | 302 |
| An averment of fraud in the sale of a promissory note, and a request for a discovery of facts accompanying the sale, furnish sufficient ground for jurisdiction. | 579 |
| If fraud is charged against executors in proving a will, and acting under it, and notice of such fraud before their purchase of the property is alleged against the other defendants, a suit at law could not give adequate relief | 1049 |
| A deed will not be rescinded for fraudulent misrepresentations by a stranger; but they may afford ground for relief on account of mistake | 109 |

| | |
|--|--------|
| Payment will not be permitted in equity to operate as an extinguishment, as against those equitably entitled to substitution in place of the party receiving payment | 355 |
| A creditor with a right to two funds may be restrained to the use of one, if sufficient, in favor of a creditor of the other; or, where the former obtains satisfaction out of the common fund, equity will give the latter a lien on the fund not exhausted | 62,355 |
| Equity may enjoin an action at law, on promissory notes, where complainant shows a prima facie title, although he is not a party to the action at law | 134 |
| A claim by the owners of a bill of exchange for damages for failure of one to whom it was sent for collection to give notice of dishonor to the indorser is ground of equitable relief against such person | 1088 |
| Jurisprudence. | |
| The equity jurisdiction and jurisprudence administered in the federal courts are not regulated by the local jurisprudence | 266 |
| A verdict and judgment at law is not a bar to relief in equity if an equitable ground of relief be laid | 1088 |
| A bill to rescind a deed, when filed after considerable lapse of time, must state sufficient reasons for the delay, where there has been a material change in the character or value of the property | 109 |
| Though lapse of time be not pleaded as a bar, the judgment of the court will be influenced by unexcused delay | 109 |
| Lying by, and acquiescence, may be sufficient to induce the court to refuse to rescind a deed, though not pleaded as a bar | 109 |
| A bill of discovery by an assignee in bankruptcy to recover property fraudulently concealed 10 years prior thereto, alleging that the facts only came to complainant's knowledge "within the past year," held sufficient | 415 |
| The objection that the remedy at law is adequate may be taken on demurrer when it appears on the face of the bill, but it is not too late at the hearing if, after an answer, no disclosure is obtained | 579 |
| Unless the inadequacy of consideration be so gross as to strike every person with a presumption of fraud, it is not evidence of unfairness | 341 |
| Fraud charged as the ground of relief must be proved. Proof of other facts, sufficient to constitute a claim of relief under another head of equity, will not prevent a dismissal of the bill | 109 |

ESCROW.

| | |
|---|-----|
| A deed can never be delivered as an escrow to the grantee himself | 202 |
|---|-----|

ESTATES.

| | |
|---|-----|
| A conveyance “to J. M. and his generation, to endure as long as the waters of the Delaware should run,” passes no more than a life estate | 555 |
| The purchase money, on a sale made jointly by persons having independent interests, will be divided according to their respective interests, in the absence of other countervailing circumstances | 549 |
| A tenant for life and a remainder-man in fee contribute to discharge a mortgage according to the relative value of their respective interests; the value of the estate of the tenant for life being calculated by the common tables | 549 |
| The same principle applies where a mortgagee devises the mortgaged estate to one for life, remainder over in fee | 549 |
| On a sale by a tenant for life with the consent of the guardian of minor remaindermen in fee, <i>held</i> , that the value of the estate of the former was to be ascertained by the common tables at the time of the sale, and was unaffected by the fact of his death shortly after the sale | 549 |

ESTOPPEL.

See, also, “Judgment.”

| | |
|--|------|
| A person receiving a deed in fee from a tenant in tail is not estopped in ejectment, by the issue in tail to deny the validity of plaintiff’s title, as the alleged estoppel is not mutual | 1196 |
|--|------|

Declarations and conduct of party *held* insufficient to create an estoppel in pais 29

EVIDENCE.

The court will take judicial notice of the subdivision of the state into counties and the county seats 1031

Oral evidence is not admissible to vary an agreement in writing 62

A will proved in another state, according to the laws of Tennessee, if recorded in that state, is evidence. The record may be made any time before the will is offered in evidence 257

The record of a court in Virginia, must be certified by the presiding magistrate 1191

Entries made in the regular course of business by a person since deceased are evidence, but the original book must be produced, and the entries must upon their face appear fair 1078

On the question of a boundary, hearsay evidence that a particular object (such as a spring) was on the land of one of the parties is inadmissible 723

In an action against a steamboat company for an injury to a passenger accidentally caused in a disturbance among soldiers on board the boat, evidence of a conversation between military officers, at about the time of the disturbance, *held* admissible as part of the *res gestae* 280

Person acquainted with parchment patents may be examined, as to the traces of a seal, on the question whether such a writing had been originally sealed 341

The person who took the acknowledgment was permitted to state, from his uniform practice in taking acknowledgments, he could not have taken it, in the case under consideration, had no seal been attached to the instrument 341

Acts and monuments, and judicial and professional tradition, in the absence of more direct testimony, will be regarded as an authoritative means of ascertaining ancient opinion of fact 115

Testimony of persons who have witnessed dawn and sunset at the place and season involved in the issue, together with that of eyewitnesses to the facts in dispute, outweighs the received opinions of geographers and navigators as to the time of such phenomena and the duration of twilight 265

EXCEPTIONS, BILL OF.

Order for leave to make a bill of exceptions was granted two years after the trial, where plaintiff had made a case by direction of the trial judge 383

EXECUTION.

See, also, "Judicial Sales."

The preliminaries required by Act Pa. 1836, § 75, for a levy on corporate property, are still essential to the validity of a levy under Act Pa. 1870 628

| | |
|--|-------|
| Under the California practice act, an execution may be issued and executed as soon as the judgment is entered, and before the judgment roll is actually made up | *1113 |
| A judgment assigned to one of the debtors after execution has been returned unsatisfied will not support a second execution against the codebtor's property | 781 |
| When the judgment is for a penalty to be released on the payment of a smaller sum, that sum must be ascertained before the execution can be issued | 192 |
| Execution in the District of Columbia, on a judgment rendered in Maryland before February 27, 1801 | 192 |
| The interest of persons to whom land was conveyed as trustees of an unincorporated association will pass, on execution sale, under a judgment for a debt of the association, recovered in an action against all the members, including such trustees | 781 |

EXECUTORS AND ADMINISTRATORS.

| | |
|---|------|
| An executor under a domestic will is not liable for legacies which came to the hand of another as executor and guardian under a will made abroad | 1054 |
| Proceedings for the sale of realty to pay debts to which nonresident heirs were made parties by publication under order of the court, as provided by statute, cannot be collaterally attacked | 473 |
| A stranger cannot object to the irregularity of proceedings for the sale of realty to pay debts, where the heirs make no objection | 473 |
| All the executors need not join in an action on a sealed note given to one | 373 |
| In a declaration by an administrator upon a bond to his intestate he must aver himself to be administrator, and make profert of his letters of administration | 975 |
| An executor may be ruled to plead before the expiration of the year after letters granted | 737 |

Exemptions.

See "Bankruptcy."

FACTORS AND BROKERS.

| | |
|---|-----|
| The receipt and retention of an invoice of goods by the consignee, without objection, is evidence that the goods enumerated therein were received by him. | 23 |
| If a consignee has rendered no account of sales of merchandise for many years, and at the trial offers no evidence to prove what part was sold, and at what prices, it will be presumed that the goods were sold at the invoice prices | 23 |
| Where the consignee gives acceptances for the value of the goods, and agrees to account for the whole price, guarantying the sales, and to receive a commission, the transaction is a consignment on sale, as distinguished from a consignment on del credere guarantee | 247 |

YesWeScan: The FEDERAL CASES

| | |
|--|-----|
| On a consignment on sale, the consignor cannot, without special agreement, reserve a special property, in notes and accounts which the consignee may take from purchasers, as against other creditors of the consignee in bankruptcy | 247 |
| A supercargo is not bound to observe the exact terms of his instructions, if thereby the interests of the owner would be sacrificed, or his objects frustrated | 459 |
| In cases of necessity or great urgency, it is only necessary that the supercargo should act bona fide, and with reasonable discretion, to bind the owner | 459 |
| All sales by a supercargo except those by del credere commission are at the risk of the shipper | 459 |
| The owner ratifies a sale by the supercargo by receiving the proceeds without objecting | 459 |
| In the absence of a special contract, a credit sale is at the risk of the shipper, where the usage of trade allows discretionary sales on cash or credit | 459 |
| The validity of a sale on credit depends upon the usage of trade in the place where the sale is made, and such usage is a question of fact for the jury | 459 |

In the case of a sale on credit, the factor is bound to exercise due discretion in enforcing payment, and must not sue or put the owner to expense unless there is reasonable ground to believe that he will be benefited 459

A failure to give notice of the insolvency of the purchaser will render the factor liable for all damages suffered in consequence of such failure 459

Under a written contract to pay a factor one-tenth of the net profits, after deducting expenses "that may appertain to the goods themselves," the expenses of clerk hire, advertising, and taxes are properly deducted 534

Construction of contract with a factor for a share of the net profits arising out of a general foreign trading and shipping business, and the computation of profits at the end of the period 534

Under a contract to pay a factor a certain per cent, of the net profits of the business, the owner is liable for the factor's proportion of an amount offered in settlement of a claim barred by statute, which the owner refused to receive 534

FRAUD.

See, also, "Deceit" "Equity."

Notwithstanding fraud committed by One party to a contract upon the other, the contract remains operative until disapproved by the injured party 427

FRAUDS. STATUTE OF.

A trust, created by a parol contract, will be enforced in equity against a party, who does not insist upon the defense of the statute of frauds 202

A deed from an equitable mortgagee, and an assignment of a bond to reconvey to persons who had agreed to purchase on joint account, *held* to create a fiduciary relation between them, grounded on privity of title or estate, under which the purchase of an outstanding incumbrance or adverse title by one would be a trust for the benefit of both, taking the agreement out of the statute of frauds 202

Fraudulent Conveyances.

See "Bankruptcy."

GARNISHMENT.

See, also, "Attachment"

A judgment debtor is not liable to be attached as a garnishee under the foreign attachment act of Rhode Island 711

A bank is not liable on trustee process against a depositor for moneys paid out on his check on the day of, but before, the service of the writ on it though the entry was not made on its books until some days later 583

Judgment against the garnishee is no defense in a suit for the debt if the plaintiff in the original trustee process has, by his neglect to comply with the local laws, put 323

his judgment in a state of suspension, so that execution can no longer issue upon it, and it cannot be revived by a scire facias

GRANT.

See, also, "Deeds"; "Public Lands."

The sovereign may, although an individual cannot, render valid a void act 818

The name of a grantee is not essential to the validity of a deed. A grant may be made to classes of persons, if sufficiently designated by descriptio personarum 818

Where a grant made by government refers in general terms to a certainty, it is the same as if the certainty had been expressed in the grant, though it be not matter of record 818

The grant to certain settlers in the village of Peoria, Ill., whose buildings had been destroyed by a military company, *held* to be for a consideration, and the heirs of a settler who died before it was made are entitled to the patent 473

To show a title out of the proprietaries, a grant, warrant, and survey under the proprietors, or length of possession against them, may be shown 1196

GUARDIAN AND WARD.

See, also, "Wills."

A general guardian cannot voluntarily appear for minor defendants, but they must be served with process, and a guardian ad litem appointed for them, when brought into court 172

A petition by a guardian for the sale of his ward's lands is in the nature of a proceeding in rem, and is not adverse to the next of kin, to whom notice is required to be given 1031

The county court acquires jurisdiction on the filing of the petition for the sale of the ward's lands (Laws Or. p. 738), and its judgment cannot be collaterally questioned for errors in the proceedings, except as provided by statute 1031

The defect in the title of U person purchasing at a guardian's sale can be taken advantage of only by the cestuis que trust 202

A guardian's sale was *held* to have been made upon the original notice, though, upon the day named, it was adjourned for four weeks, where the statute forbade an adjournment for more than one week at a time 1031

HABEAS CORPUS.

An order from a subordinate in the war department, directing a marshal not to produce a person in his custody on habeas corpus, *held* no justification for his disobedience 1

A jailer who acted as mere servant of the marshal in disobeying the writ *held* not punishable 1

HOMESTEAD.

See, also, "Bankruptcy."

Homestead exemption must exist and be claimed at the time the writ comes to the officer's hands 759

HUSBAND AND WIFE.

So long as a legacy to the wife continues a chose in action, it is her property. The marital right of the husband does not attach until it is reduced into possession 1102

The husband may, as against his creditors, relinquish his marital right in a legacy bequeathed to his wife 1102

A court of equity will sustain the bill of a married woman, suing by her next friend, to recover a legacy bequeathed to her, where the husband has transferred all his marital rights in the legacy to his wife 1102

A husband who has borrowed his wife's funds may secure her by payment pledge, or in any other proper way 815

In Wisconsin a married woman, by simply indorsing a note, does not create a liability which can be enforced against her separate estate, nor one upon which a personal judgment will be rendered against her 242

A husband, who has conveyed all his estate to a trustee for the sole and separate use of his wife, may join with her in an action of trespass quare clausum fregit, and in law would be entitled to the damages recovered 723

INDIANS.

A state court has no jurisdiction over a partition suit in relation to lands of the Shawnee Indians, which have never been conveyed with the approval of the secretary of the interior 392

INFORMERS.

The person who telegraphs the collector of customs that a certain vessel within his district has goods on board liable to forfeiture, and not the deputy collector, who receives and forwards it, and verifies some of its statements, is the informer 44

An inspector of internal revenue, who acted in co-operation with, and under the direction of, other revenue officers and whose researches were within his duties, and resulted in forfeitures, *held* not entitled to share as informer 589

INJUNCTION.

A corporation defendant in a suit in a federal court may be enjoined, pending the suit, from taking proceedings for a dissolution, or for the appointment of a receiver, or for the distribution of its assets. Act Sept. 24, 1789, § 14 167

Act March 2, 1793. § 5, providing that an injunction shall not be granted to stay proceedings in any court of a state, applies only to proceedings commenced in a state court before proceedings are commenced in the federal court 167

In a suit to obtain a reduction of a license fee, an injunction was granted restraining defendant from terminating the license upon condition of plaintiff's depositing in court the amount of the fees in dispute. The bill was dismissed for want of equity and proper parties. *Held*, that the fund would be retained until the final determination of the controversy by a proper tribunal 310

INSOLVENCY.

See, also, "Bankruptcy."

An insolvent debtor, arrested for a debt due before his discharge, can only be relieved by the court, or a judge, before whom the process is returnable 805

INSURANCE.

See, also, "Marine Insurance."

Policy *held* to take effect from its delivery, though premium was not paid, notwithstanding its condition to the contrary, where the agent was personally liable to the company 706

A provision that "if the insured shall cause the property to be insured for more than its value, the policy shall be void," only avoids the policy in case of intentional overvaluation or fraudulent concealment 16

| | |
|--|------|
| The burden is upon the company to show that the over-valuation was intentional | 16 |
| A policy cannot be avoided under its terms because the exact interest of the insured in the property is not shown, where the company's agent knew the actual condition of the title, and neglected to make the proper note in the policy | 16 |
| Where the ownership of property lies between the husband and wife, and the husband is estopped from claiming it, the wife has a sufficient title to support an action on a policy under which it was insured as belonging to her | 16 |
| A married sister, in no way dependent upon her brother for support, and not his creditor, has an insurable interest in his life | 657 |
| In the case of a negative answer to the question whether the applicant ever had a rupture, it is for the jury to say whether a rupture, considered as cured, was material to his soundness of health | *657 |
| Statement of age <i>held</i> not to import absolute accuracy | 657 |
| The company <i>held</i> estopped to deny liability as against one who purchased policy after death of insured, relying upon the representations of its agent | 657 |
| Prompt payment of premiums on the date when due is waived by a previous course of dealing in respect to the particular policy, and to other policies generally, by which 30 days time has been habitually allowed | 1146 |
| Failure to disclose the fact that the insured is dangerously ill will avoid a renewal certificate, issued on payment of a premium 11 days after it is due, where prompt payment has not been waived | 1146 |
| Breach of a condition as to place of residence is waived when, with knowledge thereof, premiums are accepted, and renewal certificates issued | 1146 |
| If proofs of loss are presented in apt time, and substantially in compliance with the requirements of the policy, it is sufficient, unless the company asks for more specific proof | 16 |
| Proofs of loss will be considered as waived where the company's adjuster, after examining the premises, states that the company is not liable on the ground that the policy is invalid | 16 |
| Objections to proofs of loss, not made when the same were served, but first brought forward at the trial, will be considered as waived | 706 |
| Proof of the claim in bankruptcy is equivalent to the commencement of a suit against a bankrupt insurance company, under a clause in the policy limiting the right of action to one year | 72 |
| An insurance company has no right to divide its risks and capital into classes, and restrict the liability upon stock notes to the class in which they are placed | 199 |
| The fund deposited by a foreign insurance company as required by the Mississippi statutes is intended for the protection of domestic policy holders, and is to be re- | 75 |

YesWeScan: The FEDERAL CASES

funded on its withdrawal from business, so far as it is not charged with unpaid losses and premiums due such holders

Such company, on withdrawing from business within the state, may assign such fund to a company succeeding to its business 75

Such an assignment, though made within, four months of an adjudication in bankruptcy, *held* not void as to foreign creditors 75

A state treasurer *held* not personally liable for moneys paid out of a fund deposited by the company for the protection of its policy holders, where he acts in good faith under the advice of the law officers of the state that the claims paid are proper charges on the fund 75

Insurrection.

See "Treason."

Interest.

See "Banks and Banking" "Usury."

INTERNAL REVENUE.

The United States cannot impose a tax on the salary of a judge of the superior court of the city of New York, by imposing a tax on such salary as the income of such judged 746

The fact that such salary is fixed by the board of supervisors of the county of New York, or that it is payable out of the treasury of the city of New York, is immaterial 746

Federal collection officers may be enjoined from claiming moneys of citizens, and levying for them as if for taxes 728

Tobacco removed from the manufacturers' factory to their store *held* not subject to increased duties under Act July 1, 1864 1079

The secretary of the treasury has no power to suspend the issue of certificates to importers of distilled spirits, under Act March 2, 1799 568

The collector will not be allowed a per diem for watching seized property, where he fails to turn it over to the district attorney, to have proceedings commenced, for 37 days after the seizure 42

Judgment for defendant was ordered in this case upon the ground that the claim of the plaintiff was barred by the act of July. 1862, as construed by the supreme court 689

Joint Tenancy.

See "Tenancy in Common."

JUDGMENT.

Rendition and entry.

Upon executing a writ of inquiry upon a judgment by default, the jury must find at least one mill in damages 737

Validity.

The judgments of a court not having jurisdiction are void ab initio *129

A judgment of a state court whose jurisdiction was acquired under a state statute, which was virtually repealed by the adoption of a treaty before the judgment was rendered, is void ab initio *129

A stipulation in a judgment that the interest on it shall bear interest if not paid annually is void, and does not make such judgment usurious 978

Judgment by confession under Act Cal. 1850 781

A judgment by confession *held* not void, under the Oregon Code, for want of a sufficient statement of the facts, except as to creditors who have acquired a lien before sale thereunder 978

Decree in consolidated action *held* valid, though the court failed to acquire jurisdiction in one of the actions so consolidated *1113

| | |
|---|-------------|
| Operation and effect. | |
| The title acquired by a stranger through a sale of lands regularly made under a judgment of a court of record, valid upon its face, cannot be defeated by a subsequent reversal of the judgment on appeal | *1113 |
| Under a local law allowing a new trial as to some issues, without disturbing the findings upon others, a judgment supported by findings not vacated is not an estoppel as to matter embraced in a vacated finding | 592 |
| Notwithstanding the judgment might have been rested upon an issue upon matter of abatement, the matter upon the merits will be res adjudicata, where both issues are found for defendant, and the judgment is entered generally under a local law allowing all defenses to be set up in the answer | 592 |
| When the findings and judgment in a given case are conclusive on both parties if conclusive on one, the estoppel is mutual, within the meaning of the rule requiring estoppels to be mutual | 592 |
| A judgment based upon an estoppel by a previous judgment in ejectment <i>held</i> no defense on a new trial after reversal of the first judgment | 778, 781 |
| Relief against; amendment. | |
| A court of equity has power to reduce the amount of judgments at law rendered on Confederate contracts to the equivalent in legal money | 616 |
| A court of equity may require the abatement of war interest embraced in judgments in Virginia | 616 |
| Of different jurisdictions. | |
| The federal courts are bound to give to the judgments of the state courts only the same faith and credit which the courts of another state are bound to give to them | 1126 |
| Where the state court has jurisdiction, the merits of the controversy involved are not open to examination in the federal court after judgment | 1126 |
| The presumption in favor of judgments of courts of general jurisdiction only extends to matters and persons falling within the scope of such general jurisdiction. When the proceeding is outside of such general scope, the record must show compliance with the special authority | 1126 |
| There can be no personal judgment upon constructive or substituted service by publication against a nonresident, except as a means of reaching property situated at the time within the state, or of affecting some interest therein, or determining the status of the plaintiff with respect to the non-resident party | 1126 |
| When constructive or substituted service by publication in a personal action is authorized by statute in place of personal citation, the statute must be strictly pursued | 1126 |

On a collateral attack upon a judgment of a superior court, the court will be conclusively presumed to have acquired jurisdiction, unless the record, on its face, affirmatively shows a want of jurisdiction *1113

If the record is silent as to the proof of a jurisdictional fact, due proof of the fact will be presumed in support of, the judgment *1113

The recital of a jurisdictional fact, there being nothing to the contrary in the record, is conclusive of the determination of the fact upon sufficient evidence, although the evidence does not appear in the record *1113

The determination by the court issuing the summons, that it was duly served by publication, as authorized by law, is conclusive when collaterally brought into question *1113

Actions on judgments.

Facts, in opposition to the record of a judgment obtained in one state, cannot be alleged to contradict the judgment in an action brought upon it in another state 15

In a suit founded upon the record of a judgment, where the court had jurisdiction, no error in the proceeding can be considered, nor can nil debit be pleaded 788

Defendant cannot set up in defense to a suit on a foreign judgment that he was not served with process, and did not appear in the suit in which it was rendered, where the record shows a general appearance by an attorney 15

JUDICIAL SALES.

See, also, "Execution."

A guardian's sale, authorized by the proper court, is a "judicial sale," and cannot be questioned collaterally for error in the adjournment thereof 1031

JURY.

Where a juror is taken ill during the opening address in a civil action, he may be discharged, and another drawn from the panel in his stead 373

JUSTICES OF THE PEACE.

Plaintiff can only recover upon the cause of action stated in the warrant 649

A judgment of a justice of the peace, being in part for a matter not within his jurisdiction, is void in toto 649

A justice of the peace is not liable in damages for judicial acts, and for ministerial acts only in case of intentional or gross negligence 1142

The justice is not liable for taking a supersedeas on Sunday, and from a minor 1142

LIBEL AND SLANDER.

It is actionable per se to charge a director of the bank with being a swindler 456

A breach of trust, accompanied by falsehood, does not amount to swindling unless there was an intent to defraud 456

Official communications between government officials are privileged, and neither the sending such communication nor retaining a copy amounts to a publication 1158

All the facts stated in a plea of justification must be substantially proved 456

A verdict for one cent damages carries full costs 456

LIENS.

See, also, "Bankruptcy"; "Mechanics' Liens"; "Maritime Liens"; "Pledge."

By the common law, liens exist only where the party has actual or constructive possession of the goods; but in the maritime law, and in equity, Hens exist independently of possession 508

A lien in equity is not a property in the thing nor does it constitute a right of action for the thing; but is a charge upon the thing 508

An equitable lien is valid (in Massachusetts), although no remedy for its enforcement is provided by the state jurisprudence 266

Where a lien, or equitable claim, constituting a charge in rem. is a matter of agreement, it will be enforced in equity against the party himself, or his personal representatives, or persons claiming under him, or assignees in bankruptcy 266

LIMITATION OF ACTIONS.

Parties cannot, by a contract, agree upon a limitation different from the statute, within which suit shall be brought, or the right to sue be barred 788

Civ. Code La. art. 3540, limiting the time to sue to annul a will, is not applicable to a suit in which the will is relied upon as a muniment of title by a party out of possession 1042

Non assumpsit within five years, &c, is not a good plea to an action of assumpsit upon a promise to collect money and account for it, as the cause of action does not arise until the money has been received by defendant and demanded by plaintiff 1196
 The act of limitations cannot be given in evidence upon the plea of nil debet 1191

LIS PENDENS.

Lis pendens is created in equity by filing a bill and actual service of subpoena. At law, suing out the writ without service of the same is sufficient 616

LITERARY PROPERTY.

The author of letters, of whatever character, has a property therein; and no person has a right to publish them without his consent, unless such publication be required to establish a personal right or claim, or to vindicate character 342
 No private person has the right to publish official letters, addressed to the government, without its sanction 342

Maintenance.

See "Champerty and Maintenance."

MARINE INSURANCE.

See, also, "Average."

The applicant is not bound to communicate intelligence known to the insurer, nor the expectations, opinions or speculations of such party, based upon facts known to the insurer 349

A policy insuring a vessel from a past date will cover a loss already accrued, of which neither party knew when the policy was issued, though it does not contain the words "lost or not lost" 349

The omission of the master to telegraph the loss of a vessel *held* not to vitiate the policy 349

Construction of valued policy as to place where goods were to be taken on board 1165

An offer to abandon made as soon as the assured obtains the preliminary proofs of loss, to be laid before the underwriters, is not too late 1165

The defense of concealment of material facts must be made out affirmatively by the insurer 349

In an action upon a valued policy on a cargo, defendants will not be permitted to give evidence of its actual cost, except in support of an allegation of fraud 1165

In the absence of any claim of fraud or misrepresentation, *held*, that the application for insurance, when merged in the policy, was properly excluded from evidence when unaccompanied by any offer of evidence of misrepresentation 352

MARITIME LIENS.

Nature and grounds.

YesWeScan: The FEDERAL CASES

| | |
|---|------|
| A lien arises for repairs in a foreign port, where apparently reasonable and proper, although not absolutely necessary. All that is required on the part of material-men is good faith and reasonable ground for action | 479 |
| There is no lien where the materials were furnished to a vessel upon the credit of the owner | 1196 |
| The sums advanced by a master during a voyage for necessaries supplied to a vessel, for claims of material-men, or for pilotage are liens upon the fund before a court of admiralty | 1192 |
| The contracts of the master and physician of a vessel are purely personal, and their wages are not liens upon the fund | 1192 |
| A court of admiralty will not favor an indirect lien upon the fund in hand by those claimants who cannot sue originally in such court, especially where there are adverse interests | 1192 |
| Priority and enforcement. | |
| Seamen's wages are entitled to priority of payment out of the proceeds of the vessel, over a bottomry lien | 1013 |
| The time of bringing suit determines the priority of payment of claims which are of like character, without extrinsic priority: otherwise, as to claims of seamen, pilots, and bottomry lenders | 798 |

To impound a fund in admiralty until a decision can be had upon the validity of a contested claim, the creditor must have sued out attachment or pleaded his lien to an antecedent action 798

A surplus fund in a court of admiralty arising from the sale of a vessel is subject to the same trusts and liens as the vessel itself was subject to 1192

Waiver: Discharge: Extinguishment.

The lien of a material man is not waived by taking the negotiable paper of the owner or master of the vessel 190

The departure of a vessel from port on Sunday on a trial trip; and again secretly Sunday night, will not discharge the lien 743

A sheriff's sale of a vessel on execution against the owners discharges the lien for wages of a seaman who is a part owner. Reversing page 569 1100

A mortgagee is a bona fide purchaser where a present valuable consideration is given, or money subsequently advanced or liability incurred on the faith thereof 190

Liens under state laws.

A state statute, giving a preferential lien for materials or supplies furnished in the construction or repair of a vessel, *held* valid and operative as to surplus proceeds in the registry after satisfaction of maritime liens 678

The successive decisions of the supreme court abrogating the practice of enforcing such liens by proceedings in rem, reviewed and explained 678

Person furnishing supplies in home port on a credit *held* to have a lien where satisfactory paper was not given as agreed 743

MARSHAL.

The marshal is entitled only to his actual necessary expenses for ship-keeping, which must be established by vouchers or otherwise to the satisfaction of the court 769

MARTIAL LAW.

The president had authority to issue his proclamation of September 24, 1862, proclaiming martial law and the suspension of the writ of habeas corpus in the case of military arrests 1

The two orders issued by the war department August 8, 1862, one "to prevent the evasion of military duty, and for the suppression of disloyal practices," and the other "authorizing the arrest of persons discouraging enlistments," *held* unconstitutional 1

MASTER AND SERVANT.

The rule which exempts the employer from liability for the negligence of a fellow servant is not applicable to the case of a minor servant ordered to a dangerous service wholly outside the contract of employment 475

MINES.

YesWeScan: The FEDERAL CASES

Under the act of 1866, the right to purchase a mining claim to a silver or gold bearing lode is in the nature of a pre-emption right, and was granted to the one who, under the local laws and regulations, was recognized as entitled to the possession
The state statute of limitations relating to mining claims constitutes a part of the local laws by which the rights of parties are to be determined

MORTGAGES.

See, also, "Bankruptcy."

The question, whether a conveyance amounts to a mortgage, does not turn on the question whether there be a defeasance

Courts of equity are not governed by the same rules as courts of law in declaring whether there be a mortgage

Where a transaction resolves itself into a security, it will be treated in equity as a mortgage, regardless of its form, and the parties cannot, by agreement, limit the rights of the mortgagor, or cut off his equity of redemption

A quitclaim deed and a bond to reconvey on the payment of a certain sum *held* to constitute an equitable mortgage, and not a conditional purchase, giving the grantor an equity of redemption subject to conveyance

Quaere if a bond given by a grantee to one of several grantors, in order to defeat and make void the conveyance, if executed at the same time with the conveyance, will amount to a technical defeasance

A mortgage is governed by the law of the state where the land is situated when executed and sought to be enforced there, though payable in another state

The remedy by a sale of the mortgaged property to pay overdue installments given in the mortgage *held* to be merely cumulative, not preventing foreclosure

A provision that the mortgage shall become security for the performance of a certain agreement at the election of the mortgagor becomes of binding force after election and notice

The right of the mortgagee to foreclosure or possession is barred, in, Connecticut, where the mortgagor has been permitted to remain in possession for 15 years without payment on the debt, or recognition of the mortgage

A junior mortgagee, out of possession, may, in such case, sue to have the first mortgage canceled, as barred by the statute

MUNICIPAL CORPORATIONS.

Construction of the Virginia laws of 1779 and 1796, in relation to corporations

Powers, duties, and liabilities of the corporation of Alexandria, Va

A corporation aggregate, having, or supposed to have, a common fund, is liable in an action at common law for negligence in its duty

Municipal corporation (Washington, D. C.) *held* to have power to fix a prohibitory license tax on the lottery business 660

Failure of mayor or register of Washington, D. C., to publish monthly notice of price of flour, *held* a good defense to suit for penalty for selling short weight bread 822

NEUTRALITY LAWS.

The landing of a cargo contraband of war on the shore of the country of one belligerent at a point not blockaded, is not an act of hostility against the other belligerent 321

NEW TRIAL.

It must appear that the newly-discovered evidence was unknown to the party at the time of the trial, as well as his counsel 50

An objection to testimony as a whole will not raise the point that part of it was incompetent 280

NUISANCE.

A livery stable in the residence portion of a city is not, as a matter of law, necessarily to be considered as a nuisance to the improved property adjoining or near it 286

Where the facts stated in the bill showing that the erection and use of a livery stable would be a nuisance to the adjoining property were denied by the answer, a preliminary injunction will be refused 286

OATH.

A commissioner of the United States may, as an officer under the state law, take the verification of all necessary papers in order to procure the arrest of defendant 995

PARDON.

A proclamation by the president ordering people in insurrection to disperse to their homes does not operate, even when it is obeyed, as a pardon of offenses already committed 826

An alleged pardon for treason in raising an insurrection by the operation of the president's proclamation ordering the people to disperse, to be available, must be pleaded 826

PARTIES.

In a suit to obtain the reduction of a license fee. *held*, that all of the joint owners of the patent and grantors of the license were necessary parties defendant, and no decree can be made without bringing them in 302

An objection for want of proper parties defendant, not made by demurrer, plea, or answer, will be *held* too late, where a decree can be made granting the relief sought without affecting the rights of absent parties: otherwise not, though they are beyond the jurisdiction of the court 302

PARTITION.

A parol partition executed by taking actual exclusive possession of the portions respectively assigned is valid, and the parties cease to be tenants in common 592

PARTNERSHIP.

See, also, "Bankruptcy."

Participation in profits is prima facie proof of partnership, rebuttable by showing that they were received as wages or interest for money loaned 664

A partnership *held* to exist where the transaction was intentionally, and for collateral reasons, disguised under the cloak of a pretended loan and employment as bookkeeper 664

A note signed with a firm name after dissolution will not support assumpsit against the partners 726

PATENTS.

Patentable inventions.

An art is entitled to protection, as well as the machinery or processes which the art teaches, employs, and makes useful 790

| | |
|---|------|
| A combination of known elements in new proportions, where a product possessing distinct properties and new uses results, is patentable | 685 |
| A combination which, by the addition of a new part, produces a new result with greater rapidity and economy than before produced, is patentable | 1093 |
| A new effect, produced by a change of proportion, may involve patentable invention | 998 |
| To make a valid claim for a combination, it is not necessary that the several elementary parts of the combination should act simultaneously | 423 |
| Nor need all parts of the machine which are necessary to its action be included in the claim, save as they may be understood as entering into the mode of combining and arranging the elements of the combination | 423 |
| A new and useful combination of known elements is patentable, though two out of three of them have been combined in a prior machine | 423 |
| Decisive evidence that a new mode of operation has been introduced is shown where the practical effect of a new combination is either a new effect, or a materially better effect, or as good an effect, more economically attained | 423 |
| In such case, the amount of thought, time, expense, or experiment required to make the change is not material | 423 |
| The inventor has a right to use any means, old or new, in the application of the new property to produce the new and useful result, to the exclusion of all other means | 385 |
| Increasing the curve of a wagon reach, and diminishing the diameter of the wheel, so as to allow it to pass completely underneath, where before it only passed partly under, <i>held</i> not a patentable invention | 289 |
| The application of the principle of the expansion and contraction of a metallic rod by different degrees of heat, to the regulation of the heat of a stove, is the subject of a patent | 373 |
| The previous application of the principle to the regulation of heat, and a suggestion of its use in stoves, will not invalidate the patent to one who first practically applied it | 373 |
| A machine never brought into effective operation, and taken apart without intention to reconstruct it, <i>held</i> an abandoned experiment | 1093 |
| Who may obtain patent. | |
| The commissioner of patents is not disqualified from obtaining a patent after expiration of his term of office, for an invention made during such term | 362 |
| Foreign invention: Printed description. | |

YesWeScan: The FEDERAL CASES

| | |
|--|-----|
| Defendant may show prior invention in a foreign country, and knowledge thereof by the patentee, though such foreign invention has not previously been patented or described in a printed publication | 423 |
| Evidence of mere use in a foreign country prior to plaintiff's application is not alone sufficient to justify refusal of a patent. Act 1836, § 15 | 972 |
| Application and issue: Interference. | |
| The jurat to an application for a patent need not be dated | 790 |
| The drawings are a part of the description, and are to be considered with the specification | 503 |
| The duplicate drawings, required by Act 1837, § 6, are unnecessary until the patent issues, and need not accompany the application | 790 |
| The invention need only be described in terms which will enable persons skilled in the art to produce the invention | 395 |
| Where the application here is made before the issue of a foreign patent, it does not bear the date of the foreign patent, though the latter is first issued | 790 |
| Appeal from commissioners' decisions. | |
| Appellant may assign, as a reason of appeal, the refusal to hear certain evidence offered, and the court may order such evidence to be taken to determine its relevancy and materiality | 998 |
| The unopposed oath of the inventor, though not of itself sufficient, is some evidence of the novelty, invention, and usefulness of the improvement | 998 |

| | |
|--|-------------|
| But slight evidence of invention is required when it is shown in what the invention consists, and where proof is given of practical utility | 998 |
| Extent of claim. | |
| Rules for construing patents | 685 |
| The patentee must be limited within the claims of the patent, and the description of the particular mechanism, and the application he has made, by which the result is produced | 987 |
| The patent is not limited in its scope to the patentee's theory of his invention | 503 |
| A claim for an entire machine does not deprive the patentee of his right to claim the parts also | 503 |
| Where only approximate proportions are named in the specification for the several elements of a given composition of matter, the right to vary these proportions is not unlimited | 685 |
| Reissue: Disclaimer. | |
| If a reissue is invalid for want of authority to make it, the surrender is ineffective | 790 |
| There may be more than one reissue of the same patent. Reissues are favored where the patentee is more specific or more modest in his claims | 790 |
| A patentee, whose devices are new, is at liberty to claim each, by way of reissue, although he may have represented and claimed them originally as acting conjointly | 1093 |
| The patentee need not describe and claim, in the specification of a reissue, either in words or idea, just what he described and claimed in his original | 790 |
| But the specification must describe the same invention, and the claim cannot embrace a different subject-matter than that which he sought to patent originally | 790 |
| The sufficiency of a disclaimer, as to whether or not the patentee stated in it "the extent of his interest" in the patent, as required by Act March 3, 1837, § 7, considered | 373 |
| The action of the commissioner in granting a reissue has more than prima facie influence in finally deciding the question of identity of invention | 790 |
| A pending application for a reissue does not supersede the original letters | 395 |
| A surrender and an application for a reissue may be withdrawn, by leave of the commissioner, for good cause shown, at any time before the proceedings are fully completed and duly recorded | 395 |
| A presumption as to the regularity of the surrender and reissue of the patent will prevail, in the absence of controlling evidence to the contrary | 395 |
| Interfering patents. | |
| In a suit under Rev. St. § 4918, concerning interfering patents, the court may declare either one or both of the patents void on any ground which, in a suit for infringement, would invalidate it | 556, 558 |

| | |
|--|------|
| The answer in such a suit may allege a want of novelty in complainant's invention | 556 |
| Where the court holds that either one of the patents is void, a decree should be entered annulling it | 558 |
| Infringement—What constitutes. | |
| A patent for a combination of several distinct parts is not infringed by a machine which does not embrace all of such parts | 122 |
| A patent for a machine composed of new parts is infringed by the use of any one of such new parts | 503 |
| A change which constitutes a mechanical equivalent, though accomplishing something useful beyond the effect accomplished by the patentee, is nevertheless an infringement, as respects what is covered by the patent | 503 |
| The mere substitution of one known device for another, though complex, is an infringement | 563 |
| The fact that a machine is an improvement on a patented machine will not prevent its being an infringement if it is substantially the same | 395 |
| What is technically a combination, and how it may be infringed, though improved | 563 |
| A knuckle metallic joint in a hydraulic mining apparatus <i>held</i> to be a known mechanical substitute for one made of India rubber, or other flexible material | 122 |
| —Who liable. | |
| Damages may be recovered for the use, without license, of plaintiffs patented improvement, by an American citizen on an American vessel on the high seas | 1157 |
| —Preliminary injunction. | |
| The application may be granted or refused unconditionally, or terms may be imposed on either of the parties, as conditions | 422 |
| The state of the litigation, where the plaintiff's title is denied, the nature of the improvement, the character and extent of the infringement, and the comparative inconvenience which will be occasioned to the respective parties, by allowing or denying the injunction, must all be considered | 422 |
| The exclusive possession for eight years under a patent for a useful machine, affecting an extensive business, <i>held</i> sufficient prima facie evidence to entitle a patentee to an injunction | 563 |
| —Procedure. | |
| Nonjoinder of licensees in a bill for an infringement of a patent constitutes no defense after the cause has been set down for final hearing | 395 |
| A surrender and reissue puts an end to a suit pending on the original patent, and plaintiff must proceed by a new bill. He cannot file a supplemental bill | 970 |
| A feigned issue will be awarded in a suit for an injunction founded on a verdict, in an action at law, on newly-discovered evidence tending to show a want of nov- | 384 |

| | |
|---|-----|
| elty, and defendants will be allowed to amend their answer on payment of costs by inserting the new matter | |
| When the effect and operation of mechanical contrivances enter into the question of the extent of a patented combination, it is a mixed question of law and fact, and, therefore, a proper one for the jury | 373 |
| Prior knowledge and use is a question of fact, and the burden is upon defendant to show the same by satisfactory proof | 148 |
| On a reference to take an account, defendant cannot be examined as a witness in his own favor, if objection be made by plaintiff, though he was first called and examined as a party by plaintiff | 391 |
| Although the broad claim of plaintiff's reissue covers defendant's device, the court will look into the body of the specification of both the original and reissued patents, to ascertain whether there is any invention to support the claim | 468 |
| A juror will not be withdrawn on defendant's motion, on the ground of surprise, arising out of the exclusion by the court of evidence offered under a defective notice of special matter | 373 |
| On a reference to a master to ascertain damages and profits, where the bill is taken pro confesso, the master can report only nominal damages where complainants fail to make satisfactory proof | 168 |
| Where, in such case, complainant's exceptions to the master's report are overruled defendant will be allowed costs subsequent to the interlocutory decree, to be set off against complainant's costs up to such time | 168 |

—Evidence.

| | |
|---|---------------------|
| A disclaimer must be properly proved, before it can be admitted in evidence, either as an original paper or by a certified copy | 373 |
| The indorsement on a patent of a disclaimer <i>held</i> inadmissible for defendant, without proof that it was made by the patentee | 373 |
| A reference to a dictionary, without specifying the place, <i>held</i> not sufficient notice of special matter | 373 |
| Nor is the book admissible under a notice stating that the patentee's invention was previously known to the author | 373 |
| In such case, it is not competent to prove by experts that they could easily find in such dictionary the parts relating to the subject-matter, without specific reference | 373 |
| A notice in a special plea, stricken out before the trial, is not sufficient to admit a public work in evidence to show want of novelty | 373 |
| A decree will be entered for complainant where the facts averred, showing the validity and infringement of the patent, are admitted by defendant, who also admits the want of any valid defense | 721 |
| Review. | |
| A judge of the circuit court, sitting at chambers, has power to allow a writ of error under Act July 4, 1836, § 17 | 383 |
| Various particular inventions and patents. | |
| Bag ties. No. 135,899, for improvement in ties for grain bags, <i>held</i> valid and infringed | 362 |
| Chair seats. Reissue No. 7,203, for improvements in chair seats, <i>held</i> invalid | 1186 |
| Coffins. Patent to Fish for a metal airtight coffin, <i>held</i> valid and infringed | 395 |
| Corset skirt-supporters. Nos. 22,532, 39,910, 39,920, 45,296 (reissued No. 4,831), 54,323, and reissue No. 2,654, for improvements, <i>held</i> valid and infringed | 647, 648, 648 |
| Furnaces. No. 92,822 (reissued No. 7,254), for an improvement in hot-air furnaces, <i>held</i> valid, and infringed | 284 |
| Glove-fastenings. No. 155,077, for improvement, construed, and <i>held</i> not infringed | 14 |
| Hand mirror. No. 92,942, for improvement, <i>held</i> not infringed | 297 |
| Hydraulic mining. No. 110,222 (reissued. No. 5,193, for an improvement in hydraulic mining apparatus, <i>held</i> valid and infringed | 122 |
| Inking rollers. Reissues Nos. 1,771, 1,772, for composition for printer's inking rollers, <i>held</i> valid, but not infringed | 685 |
| Knitting machines. No. 99,426 and reissue No. 7,368, for improvements, <i>held</i> valid. | 721 |
| Mouldings. No. 74,068, for an improvement in machine for forming sheet metal mouldings, <i>held</i> valid and infringed | 103 |

| | |
|--|------|
| Pegging machine. Nos. 9,947, 23,361, and 36,292, and reissues Nos. 3,533 and 3,517, for improved machine for pegging boots and shoes, construed, and <i>held</i> valid and infringed | 1093 |
| Ploughs. Reissue No. 6,824, for improvement in attachments, construed, and <i>held</i> infringed | 1081 |
| Reflectors. Reissues Nos. 3,826 and 3,827, for improved reflectors for gas lights, construed, and <i>held</i> valid and infringed | 949 |
| Sewing machines. Nos. 28,633, and 40,084 (reissued, No. 3,218), for improved tucker, construed, and <i>held</i> not infringed | 987 |
| Sizing machine. No. 41,214, for machine for surface sizing fibrous materials, construed, and <i>held</i> not infringed | 1018 |
| Stamps. No. 91,108, for an improved government revenue stamp, <i>held</i> valid, but not infringed | 272 |
| Stoves. No. 2,636, for an improvement in regulating the draft of stoves, construed in a charge to a jury | 385 |
| Suspenders. Patent to Flagg. Septem 14, 1869, for an improvement in suspender ends, <i>held</i> valid and infringed | 148 |
| Wagon reach. No. 69,789, for improvement, <i>held</i> invalid for want of novelty | 289 |
| Wringer roll. No. 101,994 (reissued No. 5,081), for an improvement in rubber rolls for wringers, <i>held</i> valid, but not infringed | 468 |

PAYMENT.

| | |
|---|------|
| The taking of new notes in place of others temporarily delivered up, and their renewal, <i>held</i> not a payment or discharge of a mortgage given as security for the original notes | 812 |
| A bill of exchange is not payment of a pre-existing debt unless paid or accepted as such, or the debtor sustain injury by the laches of the creditor receiving it | 1089 |
| If the holder of a bill remitted as payment of a pre-existing debt does all in his power to notify the one remitting it of its dishonor, he is not liable | 1089 |
| A decree for freight payable in sterling money will be for the amount of such money in gold and silver coin of the United States | 415 |

PERSONAL PROPERTY.

| | |
|---|-----|
| Liens and mortgages are good as between the parties and against creditors, although the possession is not changed, if there be no fraudulent intent | 266 |
|---|-----|

PILOTS.

| | |
|---|-----|
| A vessel that is within pilotage ground, but disabled so that she cannot get into port without steam, is not bound to accept the offer of a pilot, or pay his fee | 246 |
| A pilot is not bound to take charge of a disabled vessel for the usual pilot's fee | 246 |

PLEADING AT LAW.

YesWeScan: The FEDERAL CASES

| | |
|--|------|
| Mistake in plaintiffs name in declaration drawn by the clerk must be regarded as the mistake of the attorney, and amendment allowed only on defendant being permitted to plead de novo | 1010 |
| A plea of estoppel which does not show that the defendant was misled by the plaintiff, or those under whom he claims, is frivolous | 1031 |
| Defendant has the burden of sustaining, by record evidence, his plea of another action pending | 616 |
| Matters of abatement alleged as special causes for demurring will be disregarded, and the demurrer will be considered independently of them | 1010 |
| On a general demurrer, unless for misjoinder of actions, judgment must be given for the plaintiff, if there is one good count in the declaration | 801 |
| In Virginia defendant may demur and plead to issue to the whole declaration | 606 |
| Where, in Virginia, defendant pleads the general issue, and demurs, and plaintiff joins issue only on the plea, he will be nonsuited | 1010 |
| Denial of citizenship of the plaintiff pleaded with matter to the merits becomes frivolous | 1031 |
| Ambiguity or uncertainty is not a ground of motion to strike out | 1031 |
| After receiving and replying to a pleading the party cannot treat it, upon any ground of defect afterwards discovered, as a nullity, and proceed as if none had been served | 1060 |
| An exhibit is no part of a pleading in an action at law; a record or instrument should be stated in a pleading either according to its tenor or legal effect | 172 |

PLEADING IN ADMIRALTY.

- Exceptions, dilatory or declinatory, should be interposed on the return day of process, or at the day appointed for answering the libel 1013
- An exception that the suit was commenced before the cause of action was matured, not taken until after its maturity, will be considered waived 1013
- In causes on the instance side, the answer of the claimant should be verified by oath 1142
- Where, in the case of a joint tort, separate answers are put in, each respondent must rely for his defense upon his own answer and the proofs 1159

PLEADING IN EQUITY.

- A bill is not multifarious because it joins defendants holding distinct tracts of land, under distinct conveyances, if the main ground of defense is common to all 1049
- If the bill contain no ground for relief, defendant ought to demur 1088
- A corporation must answer under its common seal, and not on oath 786
- The corporation is not required to answer interrogatories, where the bill requires its president, cashier, and agent to answer 786
- Where the officers of a corporation are not parties to a suit against it, they cannot be compelled to answer the interrogatories, but the bill may be amended to obtain a discovery from them 786
- An allegation in an answer, which is not responsive to the bill, is not evidence; and the onus probandi is on the defendant to establish it 202
- Defendant may, under equity rule 39, set up a bar in his answer to excuse him from answering further 1036
- Where the bar set up is insufficient for any reason, complainant may except, and set the cause down on bill and answer only, or may file a replication, and proceed to proofs 1036
- In the former case, the answer is taken as true, and the bar therein as proved; and, though insufficient as a defense, complainant cannot have a decree, unless the answer admits the allegations of the bill on which the prayer for relief is founded 1036
- If the bar set up is a sufficient defense to the whole relief sought, it is immaterial whether the defendant answer the allegations of the bill or not 1036
- A plea containing matter proper for a demurrer, for a plea in bar, for a plea in abatement, and for an answer, is bad for duplicity 1049
- A plea set down for argument by complainant, without replying, must be considered as true 1088
- Plaintiff, suing to enjoin infringement of a trade-mark belonging to a firm of which he alleged that he was the sole member, allowed to amend to bring in another, whom the proof showed was also a member 806

YesWeScan: The FEDERAL CASES

An amendment will be allowed when its refusal will put plaintiff out of court, and defendant can avail himself, on appeal, of the matter on which he objects 138

The staleness of the demand, or the want of proper parties, is no objection to amending the bill 138

The averment of citizenship may be added at any stage if the amendment be moved for in a reasonable time after the defect is suggested 138

Where a plea of the statute of limitations is overruled, it cannot be again put in by the same parties or their privies 138

It cannot be objected at the hearing that there was no replication to the answer, where proofs in support of the answer, and proofs in contradiction thereof, and in rebuttal, have been put in without objection 103

PLEADING UNDER STATE CODES.

Matters arising since the complaint, which increase plaintiff's damages, but do not change the cause of action, may be alleged by supplemental complaint 805

Code Civ. Proc. N. Y. does not authorize a demurrer unless it is to the whole complaint or to a separate cause of action alleged therein 805

PLEDGE.

A bill of sale intended for security operates (in Massachusetts) as a pledge and not as a mortgage, and does not require, or admit of, registration 185

Delivery to the pledgee may be either actual or constructive 185

Possession may be kept by an agent, and that agent may be the pledgor 185

Railroad coupons held by a creditor as security were converted into land, the unrecorded deeds for which were deposited with the creditor in place of the coupons. *Held*, that such creditor had an equity in the land superior to the lien of a general judgment creditor 81

PRACTICE AT LAW.

A mistake in entitling a referee's report in the district court, where it was duly filed in the circuit court, and no one was misled, will be disregarded, or the report amended nunc pro tunc 604

Plaintiff is entitled to judgment by default where defendant does not plead by the rule day, though the term continues beyond such day 610

On a trial before a jury the court has no power to grant a nonsuit against plaintiff's will 373

The courts of the United States, in actions at law, can require the production of books and papers in the hands of the adverse party only where the relief might have been had by a bill of discovery, and as a substitute therefor. Act 1789, § 15 54

An action, discontinued at a preceding term for want of appearance of defendant, will not be reinstated unless the omission was by neglect of the clerk 802

PRACTICE IN ADMIRALTY.

See, also, "Admiralty"; "Maritime Liens."

A vessel under arrest by attachment from a state court is entirely withdrawn from the cognizance of the federal courts, whether sitting in the same or a different state 136

A creditor cannot proceed against a vessel both in the state and federal courts on the same claim 136

A respondent arrested must remain in custody until he gives, bond or stipulation to satisfy the decree made against him. Rule 3 1188

After pertinent evidence offered involving the merits, plaintiff cannot become nonsuit, so as not to be barred, except by consent of the opposite party, or on leave given by the court for sufficient reason 335

On an appeal in admiralty, after the case is entered, plaintiff, who is appellant, and recovered judgment below for less than he asked, cannot become nonsuit without prejudice, on payment of costs, if defendant object 335

YesWeScan: The FEDERAL CASES

A new trial is not ordered in an admiralty suit, on the mere ground of oversight in not putting in evidence which might have been put in 692

An application will not lie to set aside a sale by default in admiralty, where it is not entitled in the same cause, and it does not appear that the promovents were parties or privies to that action 753

Irregularities in entering default are waived by the voluntary appearance of respondent before the commissioner without objection, but such default will be set aside to permit a real defense 1060

Objections to an action merely formal in their character, cannot be taken on final hearing 1013

After the respondent has given a bond to the marshal, as provided by the rules, libelant cannot exact any additional stipulation 1060

Libelant is not entitled to ground any proceedings on the omission of respondent to give security for costs 1060

No notice need be given the opposite party of a final decree before proceedings to enforce it 1062

Execution issues against stipulators sum marily upon the decree rendered against the principal 1062

In a suit for seamen's wages, libelant may compel the adverse party to answer special interrogatories 1142

PRACTICE IN EQUITY.

A motion or petition in the suit is the proper method to stay proceedings, where it is not properly prosecuted in the federal court. A formal bill is not necessary 973

A question of fact, essential to the decision, may be referred to a jury upon an issue framed 202

Where defendant fails to pay the examiner's fees, plaintiff cannot compel defendant's proofs to be filed without paying such fees 809

When a witness has been cross-examined by a party, with a full knowledge of an objection to his competency, he will not be allowed to raise the objection at the hearing 202

Exceptions to a master's report, not made before the master, will not be heard by the court, in the absence of special circumstances 1051

Unless a particular error is pointed out, or an erroneous principle is shown to have been adopted, the master's report will not be disturbed 1051

A complainant, residing in another state, but in the same circuit, cannot be required to furnish security for costs, except at the first term 579

PRACTICE UNDER STATE CODES.

Supplemental answers are in the nature of pleas puis darrein continuance under the former practice, and like such pleas, should be interposed at the first opportunity after coming to the knowledge of the parties 778

Leave to file supplemental answer, setting up good technical, though inequitable, defense, refused where there was unreasonable delay 778

PRINCIPAL AND AGENT.

See, also, "Factors and Brokers."

A contract made by an agent in excess of his power, by means of false and fraudulent assertions, is void, and may be rescinded, or, where the principal receives the benefit and proceeds, he is liable in damages 579

PRINCIPAL AND SURETY.

Equity will not hold a surety liable, when he is discharged at law 26

On the death of the surety in the case of an obligation joint, and not joint and several, the remedy at law is gone, as against his legal representatives 26

No state statute, enacted after the making of such an obligation, can change the contract of the surety to his prejudice 26

A debtor has a right, without the assent of his surety, to convey his property, fairly, in payment of his debts 62

PRIZE.

See, also, "War."

A naturalized citizen of the United States, domiciled in the enemy country at the breaking out of war, is deemed an enemy, and his property is confiscable as such 673

If a party so domiciled puts himself in itinere, to resume his acquired country, he is deemed to have returned to its domicile 673

In war, property cannot change its hostile character in transitu 670

A shipment made by an enemy shipper to his correspondent in America, to belong to the latter at his election, in 24 hours after arrival, is liable to condemnation as hostile property 670

All goods found on board an enemy's ship, are presumed to be enemy property unless a distinct neutral character is impressed upon, and accompanies, them 326

If the shippers in a hostile ship neglect to put on board any documentary evidence of its neutral character, they will not be allowed the benefit of further proof 326

Cotton purchased during the Civil War with the proceeds of debts collected by a citizen of a loyal state, who went south before the war to collect such debts, captured while water borne in Texas, *held* not enemy's property. (Reversing) 49

In the case of a joint shipment from enemy country, the share of the partner domiciled in the enemy country was condemned. 674

In the absence of notice of a blockade, an inquiry at a blockaded port excused 446

YesWeScan: The FEDERAL CASES

| | |
|--|-----|
| An entry into a blockaded port to obtain necessary supplies excused | 446 |
| A prize court of the United States has no jurisdiction on the capture of a British vessel by a French privateer, within the territorial jurisdiction of the United States | 57 |
| Vessel condemned for attempting to violate a blockade where, having been chased at sea, she was beached, and set on fire | 256 |
| Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade of Little River inlet | 321 |
| Vessel sailing under neutral flag, whose open papers show neutral ownership, was condemned upon other papers found, artfully concealed, tending to show enemy ownership | 494 |
| A part of the vessel condemned as enemy property; the rest of the vessel restored | 446 |
| The vessel will not be condemned to the United States for failure of the captors to bring in the master of the captured vessel, where he was released from motives of compassion | 326 |
| Cargo restored, being neutral property, and there having been no attempt to violate the blockade, but no costs or damages awarded, as the vessel was confiscable in part | 446 |
| As to costs to be taxed on several claims in one information, upon a remission of the forfeiture | 672 |

PUBLIC LANDS.

| | |
|--|------|
| The donation act of 1850 does not include settlers upon the public lands in Oregon, who died before its passage | 29 |
| A grant to a settler under such act does not take effect prior to its passage, although made in consideration, or on account, of prior residence and cultivation thereon | 29 |
| Though a married man limits his settlement under the donation act to the quantity of land granted to a single man, one-half thereof inures to the benefit of the wife, and she takes the same in her own right as the direct donee of the United States, and not subject to any of the previous acts or contracts of the husband | 29 |
| On the death of the wife of a settler under such act, her interest passes directly to her husband and children in equal parts, as donees of the United States, and not as her heirs | 29 |
| A quitclaim deed by the occupants of land in Oregon before the passage of the donation act, containing a covenant of warranty against all claims except that of the United States, and a covenant to convey the title of the United States, if obtained by the covenantors, will transfer only the possession | 29 |
| The possession delivered with the deed is a sufficient estate to carry the covenants therein to the assignee thereof | 29 |
| The prohibition contained in the proviso to section 4 of the act does not include covenants or contracts made prior to the passage of such act | 29 |
| The rights of vendees of a married settler under the act, on a partition of the wife's share after her death, determined | 29 |
| The notice of settlement given to the proper officer under such act relates back to the commencement of the application, unless the same was prior to the passage of the act | 193 |
| The donation act was a present grant to the settler thereunder, but the completion of "a settlement" was a condition precedent to the vesting of any estate or interest in the land, in such settler | 193 |
| A wife divorced before notice and proof of a claim is not entitled to share in the settlement, although the land was occupied before the divorce was obtained | 193 |
| Intermediate the treaty of Guadalupe Hidalgo and the admission of California into the Union, no military officer of the United States could make any alienation of the public land | 818 |
| A mere permission to search for and take possession of land did not bind the Mexican government to make a title, and the United States are not required under the treaty to recognize such claim | 1147 |
| History of the settlement on islands in the rivers of Pennsylvania | 115 |

QUIETING TITLE.

A title acquired under a statute of limitations will be quieted in the adverse holder on bill filed for that purpose, even against the holder of the paper title barred 592

RAILROAD COMPANIES.

Construction of Act Mo. March 24, 1868, amending the charter of the Louisiana & Missouri River Railroad Company, in relation to municipal subscription for stock 530

The provisions of the Missouri constitution as to aid to railways, amendatory acts, and titles to acts, discussed 530

A railroad company, or its assignee with notice, cannot enforce bonds issued to pay a subscription to stock, where a condition under which the city was authorized by statute to issue them has not been complied with 368

A purchaser under a decree of foreclosure of a railway mortgage *held* not a bona fide purchaser as to municipal aid bonds, given on a subscription to stock under a condition with which the company has not complied 368

A railroad contractor, taking aid bonds from the company in good faith in payment for work, is a purchaser for value 363

The purchaser of railroad aid bonds need not look behind their recitals, where the bonds, on their face, do not put him on inquiry 363

The bona fide purchaser of railroad aid bonds is entitled to rely upon a recital therein that the conditions precedent to their issue have been fulfilled 363

A person who has succeeded to the title of a bona fide purchaser of the bonds, is entitled to stand on such title, though not a bona fide holder of them himself 363

A person can recover on coupons on the bonds, although his sole purpose, in buying them, was to bring suit on them in the federal court 363

In a suit on railroad aid bonds, defendant cannot impeach the order of the county judge reciting the proceedings under which the commissioners to issue the bonds were appointed 363

A provision in a statute under which railroad aid bonds were issued, that they should be registered in the office of the county clerk, *held* directory merely 95

In a suit on railway aid bonds, evidence of declarations made to taxpayers before they assented to the issuing of the bonds, inducing such assent, *held* inadmissible 95

The assent by majority taxpayers to the issuing of railway aid bonds, once duly made under Laws Vt. 1867, No. 1. cannot be withdrawn, though attempted to be made before the assent has been certified 98

Duties and liabilities of the parties in the case of a man walking along a railroad track in front of an approaching train, stated in a charge to a jury 69

REAL PROPERTY.

See also, "Adverse Possession"; "Ejectment"; "Estates."

| | |
|---|------|
| If a man having two titles to land, one defeasible, and the other indefeasible, enters generally, the law adjudges that he entered under his better title | 1196 |
| Distinct actions may be brought in California to recover possession of land, and for damages for withholding its possession | 12 |
| The period prescribed within which actions for mesne profits must be brought in California is three years; but if the statute be not pleaded, mesne profits for a longer period may be recovered | 12 |
| The value of permanent improvements cannot be set off against damages for withholding possession in California unless defendant held the land not only in good faith, but under color of title | 12 |
| Any instrument gives "color of title" which, by apt words of conveyance from grantor to grantee, in form passes what purports to be a good title | 12 |
| A plea of set-off for permanent improvements in an action for mesne profits must allege that the same were made while holding under color of title adversely to the claim of plaintiff, and in good faith. Code Or. 227 | 172 |
| One in possession, claiming under an adverse but defective title, without fraud, cannot be <i>held</i> to be the trustee of the true owner, nor be made to account for the proceeds of a sale by him | 1039 |

| | |
|---|------|
| But where the possession was not in good faith, the possessors are liable for rents and profits, and are not entitled to compensation for improvements | 1039 |
| Possessors in bad faith in Louisiana will not only be charged with what they have received, but with what they might have received, and cannot claim the benefit of the prescription with regard to the rents and profits | 1051 |
| Possessors in bad faith are entitled to compensation for improvements accepted by the owner. The latter may require them to be removed | 1051 |
| Manner of estimating rents and profits on lands, buildings and draining machine in possession and use by the city of New Orleans | 1051 |
| Where a person, having permission by will merely to reside in a house, leased the same, <i>held</i> , that her executors should account for the net income for six years back | 1154 |

REFERENCE.

| | |
|---|-----|
| Following the practice of the state courts, the judgment upon a referee's report may be entered without an application to the court | 604 |
|---|-----|

REMOVAL OF CAUSES.

See, also, "Courts."

Right of removal.

| | |
|--|-----|
| Under Acts Sept. 24, 1789, § 12, July 27, 1866, and March 2, 1867, the right of removal is made to depend upon citizenship or alienage | 149 |
|--|-----|

| | |
|--|-----|
| All those connected with the suit on each side must be citizens of different states from those on the other side | 729 |
|--|-----|

| | |
|--|----|
| A suit to quiet title to real property against several defendants, who claim to be the owners of the same as tenants in common, "is one in which there can be a final determination of the controversy," as to each defendant, without the presence of the other | 20 |
|--|----|

| | |
|---|-----|
| Where there is a separable controversy, each defendant has the right of removal without reference to the status of his code-defendant | 20, |
|---|-----|

| | |
|--|------|
| A suit may be removed under Act March 2, 1867, by a defendant who is a citizen of a different state, although there be other defendants who are citizens of the state in which it is brought | *298 |
|--|------|

| | |
|---|----|
| Act March 2, 1867, only adds another cause for removal, and does not repeal the act of 1866 | 27 |
|---|----|

| | |
|--|----|
| In an action on the mortgage note of a resident corporation, <i>held</i> that a controversy between plaintiff and a nonresident defendant, who was a mortgagee of the company, and had purchased its entire property, was merely incidental to the main controversy, and the cause was not removable | 88 |
|--|----|

| | |
|--|-----|
| Under Acts March 2, 1833, March 3, 1863, and June 27, 1868, the right of removal is made to depend upon the subject-matter | 149 |
|--|-----|

| | |
|---|------|
| Under these acts, the entire suit is removed if any part of it is removed | 149 |
| The act of July 27, 1868, is constitutional | 149 |
| Act July 27, 1868, § 2, construed, as to what suits are removable under it, and at whose instance, and what is the mode of removal | 149 |
| A member of a corporation, sued for a debt or liability of the corporation, may have the suit removed under Act July 27, 1868, § 2 | 1149 |
| But a member sued for alleged misconduct as an officer of the corporation cannot have the suit removed under such section | 1149 |
| The fact, that questions may arise, in the course of the litigation, besides those under the acts of congress, and which depend upon general principles of law, cannot withdraw the cause from the jurisdiction of the federal courts | 164 |
| Nor can the suit be withdrawn from such jurisdiction, by joining defendants who are not within the limitation prescribed by the statute with those who are within such limitation | 164 |
| Rev. St. § 643, providing for removal to the federal court of prosecutions against federal revenue officers, <i>held</i> constitutional | 67 |
| Such section is, applicable to an indictment of such an officer in a state court for an act done under color of the United States revenue law, but charged to be in violation of the criminal law of the state | 67 |
| A colored citizen, when sued by another citizen of the same state, cannot remove the cause because of local influence or prejudice | 621 |
| A written stipulation of submission of a pending cause <i>held</i> a waiver of the right of removal after reversal and return for a new trial | 1026 |
| Time for removal. | |
| After a decree in the probate court, the case cannot be removed to the federal court under Act 1875 | 729 |
| The petition is too late where filed several terms after the cause could have been tried but for the neglect of the rules of the court for the taking of testimony | 996 |
| Proceedings to obtain. | |
| The right of removal under any act of congress is not dependent upon the volition, or action, or nonaction of the state court | 149 |
| The federal court has no jurisdiction to issue a mandamus to compel a state court to allow a removal, as a mandamus is not necessary | 149 |
| When the proper petition is presented with the proper surety, so that the state court acts upon the matter judicially, it loses jurisdiction of the cause <i>eo instanti</i> , unless its refusal is placed upon a valid defect in the petition, or insufficiency in the surety | 149 |

YesWeScan: The FEDERAL CASES

| | |
|--|--------|
| After presentation of the petition, and a compliance with the act, the state court cannot take any proceedings in the suit except to perfect the removal, as other defendants may appear and present their petitions | 164 |
| The application to the state court is ex parte. No notice need be given, and no affidavits can be read in opposition | 164 |
| The averment in the petition, that defendants have a defense arising under the constitution and laws of the United States, must be accepted as true in the federal court, until disposed of on the trial | 149 |
| The affidavit for removal and bond having been filed in term time, but during a temporary recess of the state court, and the record not having been filed in the federal court, <i>held</i> that the state court, on a proper case being shown, had jurisdiction to appoint a receiver | 88 |
| All the defendants need not apply at the same time for the removal | 20,164 |
| Defendants not served or appearing in the state court when the order for removal is made are not affected by it, and as to them the cause is still pending in the state court | 20 |
| The federal court must determine for itself the question of its jurisdiction; the allowance of the petition for removal by the state court cannot confer jurisdiction | 20 |
| Effect of removal: Subsequent proceedings. | |
| A case was removed in the circuit court of the southern district of New York on the allegation that plaintiff was a citizen of New York, and defendant a citizen of Massachusetts. <i>Held</i> , that a motion to remand on the ground that plaintiff is an alien should be granted, the fact not being denied | 1139 |

The averment in a petition that the suit has been brought for a cause of action specified in the act of July 27, 1868, cannot be tried on affidavit on motion to remand 164

When a suit has been removed under the act of 1868, as respects all the parties and all the subject-matter, the court will not make an order staying all proceedings in the state court, as such order is not necessary to the exercise of its jurisdiction 149

After removal, the federal court may entertain a motion to dissolve an attachment or discharge the attached property where such practice is authorized by the state law 1153

The court may hear such motion, though a similar motion was overruled by the state court prior to the removal 1153

A bill filed after the removal, naming as a party defendant a person who was not a party to the suit as brought in the state court, will be stricken from the files on motion 166

A declaration filed in the federal court after removal of a bill in equity, asking relief at law against some only of the defendants, if within the allegations of the complaint filed in the state court, will not be stricken from the files, nor will complainants be compelled to elect whether to proceed at law or in equity 166

A counterclaim which might have been interposed in the state court may be set up after removal 706

REWARD.

To entitle a person to a reward agreed in writing to be paid for recovering certain property, which was subsequently returned by the police, he must show that it was recovered through information furnished by him 709

SALE.

See, also, "Vendor and Purchaser."

A shipment made without or contrary to orders still remains at the risk of the shipper 675

If a shipper have general discretionary orders to ship goods, the shipment will remain at his own risk until he appropriates the shipment to his correspondent 675

The seller has the right of stoppage in transitu as to goods sold for cash to be paid for on receipt of the invoice, where they were warehoused by the master of the canal boat on which they were loaded, on its being stopped by ice 357

SALVAGE.

Right to salvage compensation.

A salvage service is performed when a raft of timber is saved from peril on navigable waters 47

YesWeScan: The FEDERAL CASES

| | |
|---|------|
| A claim for such salvage service may be maintained in a court of admiralty, if there is no local custom making the service gratuitous | 47 |
| If a vessel, though disabled, is manageable, and receives assistance for expedition only, the fact of being disabled will not of itself make the service salvage | 706 |
| Contracts for salvage services. | |
| A contract for salvage services will be enforced where it was deliberately made, and not apparently oppressive | 1027 |
| Forfeiture or reduction of salvage. | |
| Only compensation for work and labor performed in saving cargo allowed, where stranded vessel was bored with augers, and guilt could not be fixed | 688 |
| A share declared forfeited for fraudulent concealment of a part of the cargo will inure to the owners thereof | 275 |
| Amount. | |
| Liberal compensation will be made not only with a view to the value and danger of the thing saved, but for the general interest in promoting exertions in such cases | 141 |
| In a case of derelict, where there are no peculiar circumstances, a moiety is awarded | 1075 |
| A vessel with slaves on board but no white person, considered as derelict, and one-third given as salvage | 275 |
| Towing oil barges east loose from a burning wharf, and still in danger, to a place of safety, <i>held</i> a salvage service, but only entitled to small compensation | 992 |
| Remedies for recovery. | |
| A suit for salvage may be maintained by the master and owner of the salvor vessel without joining its crew | 1027 |
| A suit for salvage in rem, as well as in personam, will lie for salvage services, though performed under a previous agreement for a fixed amount | 1027 |
| The pendency of an action for salvage by the salvor vessel is no bar to a suit by the passengers of the injured vessel for salvage services rendered at the same time | 413 |
| Apportionment. | |
| Rule of distribution between vessel, officers, and crew | 1075 |
| SCIRE FACIAS. | |
| A scire facias to revive a judgment is not a new action | 192 |
| SEAMEN. | |
| The contract of shipment. | |
| A person shipping as cook and steward undertakes that he has experience and skill to enable him to perform the duties of those positions | 417 |
| By the general maritime law, a seaman taken sick during the voyage is entitled to be cured at the expense of the vessel | 443 |

| | |
|---|-----|
| Where the seaman is removed ashore, or where there is no person on board the vessel who can safely administer medicine, the vessel is liable for medical advice and attendance, though she carries a medicine chest, as provided by Act July 20, 1790, c. 56, § 8 | 443 |
| A general averment that a vessel was supplied with a medicine chest according to law is not, of itself, sufficient evidence to discharge a master from his liability for a physician's bill for attendance upon a sick seaman | 754 |
| An express promise by a sick seaman to pay the amount of a physician's bill for attendance is without consideration and void | 754 |
| Where the mates and crew of a vessel discharge ballast into a lighter or barge so carelessly as to load her on one side, and cause her to sink, they are liable to the owner for the loss | 332 |
| Seamen are liable where a loss is caused by their strict obedience to orders which they know are improper, where they fail to remonstrate | 332 |
| When the fault or negligence is not clearly fixed on any particular one connected with the ship, all must contribute in the ratio of wages | 332 |
| Where a vessel sails without the statute quantity of bread, and the crew are put upon on a short allowance of bread, it is no defense to their claim for double wages that flour was furnished as a substitute | 572 |

YesWeScan: The FEDERAL CASES

| | |
|---|------|
| Where double wages are allowed, under the statute, for such short allowance, damages may also be given for a deficiency of other food | 572 |
| The owner is bound by his contract to furnish the seamen suitable subsistence. What is suitable depends upon what is usual in similar voyages | 572 |
| A seaman engaged at a foreign port on the homeward voyage has the same rights as to wages and food allowance as one shipping at the point of original departure | 1192 |
| The navy ration is the measurement of a food allowance on a merchant vessel | 1192 |
| The measure of damages for a wrongful discharge in a foreign port <i>held</i> to be the contract wages and expenses to the time when the seaman might have reached the home port, less what he actually earned, or might have earned, on the passage home | 650 |
| A stipulation, in shipping articles for whaling voyages, that the owners may ship catchings home on freight, is valid | 726 |
| The owners are not liable for their value, as of the time when received, where, in good faith, they held them waiting for a rise in the market | 726 |
| Conduct of master or mate in respect to seamen. | |
| A seaman is, in general, entitled to recover damages for an assault and battery from the officer of a ship where personal violence is inflicted, not excessively, but wantonly and without provocation or cause; where there was provocation or cause, but the punishment was cruel or excessive; or when the punishment is inflicted with a deadly, or dangerous, weapon | 417 |
| The law which governs the deportment of men to each other on shore, cannot be applied to their habits and intercourse on board of a ship | 417 |
| A seaman is punishable corporally for deportment or language not obedient or respectful to the master | 980 |
| The punishment, however, must be not excessive, considering the nature of the offense. A single blow with the hand, producing no wound, is not excessive | 980 |
| A seaman on receiving such a blow for such an offense is not justified in brandishing a knife or an axe, nor in using them to prevent his arrest | 980 |
| If a seaman is attacked by master or mate without provocation or disobedience on his part, he may defend himself | 980 |
| The master and mate may seize deadly weapons to put down mutinous and insubordinate conduct, and to restore order and obedience | 980 |
| In the absence of cruelty or needless severity, the court will not measure the degree of punishment inflicted for insubordination | 1159 |
| A single act of insubordination on the part of a seaman cannot be considered as mutinous, or as justifying an imprisonment | 1159 |

| | |
|---|------|
| The second mate may refuse obedience to an order of the master to slush the masts, or take in light sails, as a punishment, when no offense has been committed that would justify it | 650 |
| The master has no right to imprison him, for such refusal | 650 |
| A person who, shipping as cook, is unwilling or unable to do his duty, and keeps the galley in a filthy condition, may be punished | 417 |
| A blow with a dirty frying-pan, or wiping a dirty knife on the face of the person whose duty it was to keep those articles clean, <i>held</i> not an aggravated or cruel assault | 417 |
| An action against a mate by a seaman, for false imprisonment, will not lie, where the imprisonment was ordered by the master through the advice and request of the mate | 1159 |
| Actions for aggravated assaults upon seamen are in personam only | 980 |
| Wages—Right to. | |
| Seamen absent from a ship without any fault of their own, are nevertheless entitled to full wages | 201 |
| A vessel abandoned to the underwriters on report of surveyors that she be condemned as unseaworthy is “condemned as unfit for service,” under Rev. St. § 4582, relieving the vessel from liability for the three months’ extra wages where seamen are discharged abroad | 1087 |
| Feeding and caring for sailors after their discharge cannot be <i>held</i> to be a revocation of the discharge | 1087 |
| A seaman, having drawn the full wages due under an oral shipment cannot, after leaving the vessel, demand a greater sum | 770 |
| —Remedies for recovery. | |
| A seaman, though at the time of service a part owner of the vessel, is not there by precluded from libeling for wages | *569 |
| No statute prohibits the filing of any libel within ten days after the discharge of the cargo | 677 |
| Act July 20, 1790, § 6, prohibiting actions for wages within a certain time, does not apply to actions in personam | 754 |
| The right of a seaman to sue in personam for his wages, is perfect as soon as the period of his service is completed | 754 |
| A seaman discharged before the delivery of the cargo may sue in personam at once | 754 |
| Owners of fishing vessel <i>held</i> liable for the wages of the seamen to the extent of the proceeds of the sale of the wreck, though the vessel was hired by the master for the season, and he had undertaken to pay the wages | 237 |

YesWeScan: The FEDERAL CASES

| | |
|--|------|
| A lien for wages is discharged by a sale on execution against the owners, of which the seaman is one. Reversing page 569 | 1100 |
| The fact that a vessel has made several voyages since the contract was terminated will not discharge the lien where the seaman exerted himself to follow the vessel, and commenced suit at the earliest moment | 758 |
| Where there has been no change of ownership in a vessel, forbearance by a seaman to enforce his lien for wages until after 21 months' continuous service does not render his claim stale | 1111 |
| A seaman was refused payment of a portion of the sum claimed unless he would sign a receipt in full against the vessel and owners. <i>Held</i> , that the receipt was only good for the sum actually paid | 1111 |
| Interest is allowed from the time of a demand proved; and if no demand is proved, from the commencement of the suit | 1142 |
| —Deductions: Extinguishment, etc. | |
| A deduction will not be made where, because of illness, the seaman left the vessel after the voyage was ended, but before the cargo was discharged | 677 |
| If any part of the cargo be missing, all the seamen contribute to make it good, unless the guilt can be placed | 741 |
| Forfeiture of wages is not given merely as a compensation to the owner for actual loss suffered by the seaman's misconduct; it is enforced also by way of punishment | 295 |
| The seizure and carrying away of the ship's chronometer by a mate, to force the settlement of his claim for wages, <i>held</i> not an act of misconduct, working a forfeiture | 295 |

| | |
|---|-----|
| Wages are not forfeited by leaving the vessel after the voyage is ended, and before the cargo is unladen | 677 |
| Going ashore to apply to an American consul for redress for alleged cruel treatment on board does not work a forfeiture of wages | 754 |
| The performance of his duty after the forcible return of a deserting seaman is a condonation of the offense, and a remission of the forfeiture, regardless of stipulations in shipping articles | 754 |

SEIZURE.

| | |
|---|------|
| A doubt of law is a proper case for a certificate of probable cause of seizure. In what cases such a certificate ought to be allowed | 825 |
| A motion for a certificate of probable cause of seizure may be made subsequent to the decree, and upon the hearing the court is not limited to the evidence introduced upon the trial | 1067 |
| In determining the question, the court cannot consider the fact that the officer acted in an oppressive manner, and without a warrant | 1067 |
| The fact that the claimant was selling the goods at a low price in an obscure town, declaring them to have been imported, and that duty had been paid upon only a small portion, was held sufficient to justify their seizure | 1067 |

SHIPPING.

| | |
|---|-----|
| See, also, "Admiralty"; "Affreightment"; "Carriers"; "Charter Parties"; "Demurrage"; "Maritime Liens." | |
| Public regulation: Title to vessel. | |
| A bona fide purchaser of the whole interest in a vessel, subsequent to a forfeiture incurred by a sale to an alien (Act Dec. 31, 1792, § 16), is not within the proviso of such section | 316 |
| The forfeiture takes place at the moment of sale or transfer to an alien, and any subsequent judgment of forfeiture relates back to that time | 316 |
| The title of the alien purchaser, if he acquires any, is divested eo instanti by the statute, and he has left in him no interest which can be seized on execution | 316 |
| A levy on the forfeited property, under an execution against the alien, previous to the prosecution of the forfeiture, will not prevent the forfeiture | 316 |
| Such forfeiture does not avoid the lien of seamen and material men, existing at the time of forfeiture | 316 |
| Whether previous possession by a state sheriff, under a fi. fa. issued by a state court, excludes the marshal from arresting a vessel forfeited for a breach of the laws of the United States, quaere | 316 |
| An omission in the registry and enrollment of an American vessel does not make her foreign, but only deprives her of American privileges | 642 |

YesWeScan: The FEDERAL CASES

| | |
|--|-----|
| The forfeiture of a coasting vessel for proceeding on a foreign voyage does not attach until the vessel quits the port with intent to proceed on the foreign voyage. Act Feb. 18, 1793, c. 8, § 8 | 822 |
| The title of a sunken vessel passes to the one who pays the full value of the vessel to the owner, whether after a decree or not | 638 |
| The title will pass to the defendant, in a suit for collision, who pays the full value on a decree against him, as against underwriters to Whom the owner has previously abandoned the vessel | 638 |
| A part owner may sustain a petitory suit against a merely fraudulent possessor, without joining the other part owners, and have a decree for possession on proving his title | 822 |
| A part owner, though his name is omitted from the registry and enrollment procured by the others, <i>held</i> entitled to ask security for the safety of the vessel on a voyage not approved by him | 642 |
| Where the owner of one-eighth disapproved of the proposed voyage, the other part owners were ordered to secure him in double the value of his share | 642 |
| Carriage of merchandise. | |
| Duty of the ship master, where consignee refuses to pay freight, and there is no proper place for storage at the port of destination | 630 |
| A vessel employed generally to carry stone to a certain port <i>held</i> a general freighting vessel as to return cargoes collected by the master under a custom of the business | 630 |
| Liability of vessel or owners, etc. | |
| By the general law maritime, the vessel is bound to the shipper for the performance of a contract of affreightment made with the master, whether by charter-party, by bill of lading, or by parol | 252 |
| A vessel equipped in a manner which renders her competent to encounter the ordinary perils of a voyage is seaworthy | 196 |
| The fact that the mizzen sail of the vessel gave out in the extraordinary storm, and that she had no spare mizzen sail, does not show that she was unseaworthy when she sailed | 196 |
| A vessel is not responsible in rem for cargo lost from the pier through negligence of her officers, but after delivery to the consignee | 20 |
| A scow will be <i>held</i> liable for the conversion by its master of a lighter used, without authority, in carrying wood from the shores of Lake St. Clair to the scow | 294 |
| The vessel owners are not liable for supplies furnished to a vessel while frozen in, and in charge of the mate as ship keeper, except for implements for necessary and permanent use on board the vessel | 630 |
| The master. | |

| | |
|--|-----|
| A master in possession of a vessel absent from her home port will be deemed to have been master until his actual displacement after return of the vessel, notwithstanding the vote of a majority owners to discharge him | 630 |
| The master of a vessel, frozen in before the return voyage was commenced, and left in charge of the mate, may contract for cargo for the return voyage after the vessel is released | 630 |
| A master is personally liable on a contract for the transportation of goods in discharge of a debt due from him, part of which does not rest on a maritime contract | 630 |
| The master has authority in a foreign port to procure all supplies and repairs necessary for the safety of the ship and the due performance of the voyage | 479 |
| This authority includes all such supplies and repairs as are reasonably fit and proper, although not indispensably necessary | 479 |
| A master, acting with reasonable diligence, discretion, and skill, upon the advice of competent persons, will be protected, though more skillful persons would have advised a better course | 479 |
| The circumstances enumerated under which the master has the right to sell the vessel in a foreign port | 186 |
| All liens upon a vessel which is lawfully sold by the master in a foreign port from necessity are transferred to the proceeds of sale, the purchaser taking a title free therefrom | 186 |

Slander.

See "Libel and Slander."

SLAVERY.

A Virginia slave is not entitled to freedom, under Act Md. 1796, c. 67, by being hired to a resident of the county of Washington, D. C., for a limited period 1202
 Importation of slaves into Washington, D. C., effect of 579

STATES.

A written stipulation of submission of a pending cause to the state supreme court after the admission of Colorado *held* a waiver of the right to remove the cause to the federal court. Act June 26, 1876 1026

A compact entered into between two states, with the assent of congress, is binding on those states and the citizens of each 257

Grants made by North Carolina and Tennessee, beyond their boundaries, as admitted in the compact between the states of Tennessee and Kentucky, are void by such compact 257

SUNDAY.

Sunday is not a day on which a supersedeas can be given 1142

TAXATION.

Ores extracted from mining claims immediately become subject to state taxation, though the legal title to the land is still in the United States 401

Ores extracted from mines within a state, and there reduced, may be taxed by the state, although mined by a corporation of another state, and though the assessment is not made until the end of a quarter after the proceeds are carried out of the state 401

Under the statutes of Nebraska, national bank shares may be taxed, and the tax enforced by distraint against the property of the bank 84

Taxation by state authority of the capital stock of a national bank, invested in United States securities, restrained 100

Where no remedy exists to recover back illegal state taxes when paid into the treasury, equity will restrain their collection, and, having jurisdiction in such a case, will determine the validity of county as well as state taxes, embraced in the same collection warrant and levy 100

The owner may rely upon the truth of the record made by the sheriff's return showing a tax sale to be void 781

An ex-sheriff cannot, under order of court years after the time to redeem has expired, amend his return of a tax sale so as to show that the sale was valid, when it appeared on the record to be void 781

TENANCY IN COMMON.

| | |
|---|-----|
| A purchase made by one of two parties interested together by mutual agreement, made agreeably thereto, will inure to the benefit of the other | 202 |
| Where two persons are in possession of lands by an imperfect or tortious title, as by disseisin, a release to one of them will inure to the benefit of both | 202 |
| The holder of an undivided interest in land under the laws of California may recover the entire land, as against all parties, except his cotenants | 781 |
| Under a joint demise, by the statute of Tennessee, a tenancy in common may be proved | 257 |
| The statute of limitations is set in motion by an ouster of a cotenant, and an adverse claim | 592 |

Torts.

See "Admiralty."

TOWAGE.

| | |
|---|-----|
| The steamer must arrange her tow with reference to her capacity and the nature of the voyage and the waters to be navigated | 251 |
| Steamboat <i>held</i> in fault for unwieldy arrangement of tow on the Schuylkill river | 251 |
| A hawser, lengthened by a piece of stern line, parted when another tug took hold to help in the increasing wind, and the tows were seriously injured by pounding together, and afterwards sank. <i>Held</i> , that the tug was liable | 690 |
| The master may recover damages for injuries to cargo on board of his vessel as a common carrier | 691 |
| Item of cost of raising cargo of sunken tow will be stricken from a decree against the tug where libellant is shown to have been released from claim of the cargo owner | 691 |

TRADE-MARKS AND TRADE NAMES.

| | |
|---|------|
| The name "Dr. J. Blackman's Genuine Healing Balsam," given to a medicine by its inventor, <i>held</i> a valid trade-mark, the exclusive right to use which would pass on an assignment of the exclusive right to make and sell it | 50 |
| The words "J. C. Frese & Co., Hopfensack, 6, Hamburg," in an oval, <i>held</i> a valid trade-mark for a medical preparation known as "Hamburg Tea" | 805 |
| A trade-mark for seamless bags, consisting of the word "Stark" over a semicircular arch with the letter A below, is infringed by a like device, except that the word "Star" is substituted for "Stark" | 1159 |
| Under an assignment of the exclusive right to use the name of the inventor in the manufacture and sale of certain medicine for a term of 10 years, with the condition that, on the performance of the covenant for such time, the assignee shall have "all of the rights and privileges" to use the inventor's name, without reward, for 50 | 50 |

YesWeScan: The FEDERAL CASES

| | |
|--|-----|
| years, the assignee acquires, after the 10 years, the same exclusive rights which he had during such years | |
| When a partnership is formed to make an article to which a given trade-mark is properly applied, such trade-mark, if belonging to one partner, becomes, in the absence of special regulations, part of the partnership property | 50 |
| In a contest between manufacturers of "quack medicines," a court of equity will not interfere to protect the use of trade-marks by injunction | 611 |
| A preliminary injunction will be granted to restrain the use of a trade-mark where plaintiff has been in exclusive possession of the same for a number of years, and defendant has just commenced to manufacture under such name | 50 |
| Imitation of package of medicine, as to form, color, and style, enjoined, though defendants substituted their own names in the various places where plaintiffs used theirs 805, | 806 |
| Defendants manufactured and sold stoves, containing plaintiff's patented improvement, under the name "Charter Oak," originated by plaintiff, for the entire term of the patent. <i>Held</i> , that plaintiff could not enjoin such use by defendants after expiration of the patents | 53 |

TREASON.

Congress has no power to change, in any way, the crime of treason, as defined by Const, art. 3, § 2, and acts of congress cannot be considered as legislative definitions of the crime 826

Opposing by force of arms, an act of congress, with a view of defeating its efficacy, and thus defying the authority of the government, is levying war against the United States, and constitutes treason 826

Treason in the assembling of bodies of men, armed or arrayed in a warlike manner, is determined by the intent. If the purpose be of a private nature, it is not treason, regardless of the acts actually committed; otherwise, where the intent is to effect some object of general public nature 924

An insurrection to resist by force the execution of a federal tax law, or the militia called out to enforce it, on any ground whatever, is a levying of war against the United States 924

A conspiracy to raise an insurrection to resist the execution of a federal statute by force is only a misdemeanor. Treason is not committed until the persons proceed to carry the intention into execution by force 924

There are no accessories to the crime of treason; but all the particeps criminis are principals. All persons present, aiding, assisting, or abetting any treasonable act, or who are present, countenancing, and are ready to afford assistance, if necessary, to those committing a treasonable act, are principals 924

If a man joins and acts with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law judges of the intent by the fact 924

Where the overt act has been proved by two witnesses, evidence is admissible to show the course of the prisoner's conduct at other places, and the purpose with which he went to the place where the treason is laid; and, if he went with a treasonable design, then the proof of treason is complete 826

A voluntary confession made by the prisoner on his preliminary examination may be received in corroboration of matters already testified to by two witnesses; but, as to matters not thus testified to, it must be disregarded 820

TREATIES.

The adoption of a treaty, with the stipulations of which the provisions of a state law are inconsistent, is equivalent to a repeal of such law *129

TRESPASS.

There must be actual possession by the plaintiff, of the locus in quo, at the time of the supposed trespass 723

None can recover where all the plaintiffs have not a right to recover 723

Plaintiff must prove every abuttal set forth in his declaration 723

TRIAL.

Where there is doubt whether an instrument has been sealed, the fact is properly referable to the jury 341

The court need not give an opinion upon a point of law not raised by the evidence 1162

The court is not bound to instruct the jury after they have retired, unless the jurors request it 456

Where a jury trial is waived, the court is not required to make a special finding upon the facts 352

After verdict it is too late to object the want of profert of letters of administration—or that the action is in the debet and detinet 1191

TROVER AND CONVERSION.

A person who tortiously sells the property of another, without his consent, is liable for its full value at the time of the sale, though he does not receive any of the purchase money 231

TRUSTS.

See, also, “Frauds, Statute of.”

The presumption of a reconveyance of lands conveyed in trust, after it becomes impossible to execute the trust, *held* to be conclusive 781

A written agreement to purchase lands on joint account creates a fiduciary relation, and a purchase by one, on his sole account, will be treated as in trust for the joint account 202

When money or other assets of one person are used by another to purchase property in his own name, a resulting trust arises in favor of the former 815

A creditor, in Mississippi, cannot enforce payment out of property purchased by a debtor in his own name, but with his wife’s funds, unless he show that credit was given in specific reliance upon such property 815

One party to an agreement to purchase lands on joint account, who takes title from a guardian, cannot set up the adverse title of the cestuis que trust to defeat the equitable rights of the other party to the agreement 202

It is not a breach of trust for a person who has agreed to purchase outstanding titles on joint account to take the title in his own name 202

A secret trust *held* to be executed by a deed from the trustee and the cestuis que trust to a third person 202

A conveyance from a cestui que trust, confirmed by the trustee, will entitle the purchaser to protection against a secret trust unknown to him 202

Commissions are not allowed to a trustee, who makes a sale in violation of his trust 231

UNITED STATES.

The United States can be brought into court by the entry of an order that it shall
plead, etc., within a given time, and the service of a copy of such order upon the
proper representatives of the government 43

USURY.

See "Banks and Banking."

A bill drawn, accepted, and indorsed to raise money for the use of the payee is
void for usury where discounted by a broker at a usurious rate 1066

VENDOR AND PURCHASER.

See, also, "Frauds, Statute of."

Where a rightful estate is claimed by each of two purchasers, whose titles in other
respects are equal, the maxim prevails, vails, "Qui prior est in tempore potior est
in jure" 202

YesWeScan: The FEDERAL CASES

| | |
|--|-----|
| The grantee under a quitclaim deed from one who purchased land on joint account <i>held</i> entitled to protection as a bona fide purchaser without notice to the extent of the purchase money paid before notice of the title of the other party to the agreement | 202 |
| The other party to the agreement <i>held</i> entitled to a lien to the extent of the purchase money unpaid at the time of notice to the grantee, for the payment of his moiety of the purchase money | 202 |
| Possession by a tenant is constructive notice to the purchaser of the tenant's title, though not of the title of the lessor, or of the party under whom the tenant claims | 202 |
| Vague reports and rumors from strangers, and suspicion of notice, are not sufficient to charge a purchaser with notice of title in a third person | 202 |
| A judgment creditor is not a bona fide purchaser who as such is protected against a resulting trust | 244 |
| A plea of a purchase for a valuable consideration, without notice of the plaintiff's title, must aver that the person who conveyed was seised, or pretended to be seised, at the time when he executed the purchase deeds | 202 |
| The question of a defeasance and its effect considered on a deed of land | 202 |

WAR.

| | |
|--|------|
| See, also, "Prize." | |
| Construction of the New York statute limiting the period of bringing claims and prosecutions against forfeited estate | 129 |
| Proceedings for the confiscation of enemy's property under a state law <i>held</i> coram non judice on the adoption of a treaty of peace stipulating against subsequent condemnation | *129 |
| A judgment of a state court of Georgia, rendered in a civil suit between citizens of the state during the war of the Rebellion, is valid as between the parties | 798 |

WHARVES.

| | |
|--|-----|
| The wharfinger under Act N. Y. 1875, is entitled to full rates for the use of a stage berth | 662 |
| The presentation of a bill made out in English to the mate, a foreigner who cannot read it, the wharfinger agreeing to refer it the master, is not such a demand of payment as Act N. Y. 1875, requires to entitle to double rates | 662 |
| The mere fact of insufficiency of water in a berth does not show fault on the part of the wharfinger that renders him liable to the vessel for damage or delay | 662 |
| Vessel not allowed to set off, against wharfage, damages for delay in loading by the wharfinger | 662 |

WILLS.

| | |
|--|------|
| The month alone is sufficient to show the dating of an olographic will, under Civ. Code La., requiring that such a will shall be written, dated, and signed by the testator | 1042 |
| Evidence as to the execution and destruction by Daniel Clark of a will making his daughter, Myra Clark, his universal legatee, reviewed | 1042 |
| Code Prac. La. arts. 942, 943, relating to proving wills, do not apply to lost wills | 1042 |
| Rev. St. Me. c. 62, § 25, in relation to the probate of wills, is merely affirmative of the law, as it antecedently stood | 976 |
| The probate of a will, in Louisiana, is not conclusive against parties in possession of property which is sought to be recovered from them by virtue of it, unless they were parties litigant in the probate proceedings | 973 |
| When the validity of a will is brought in question incidentally on question of title to property, it is open for investigation in any court in which the title may be litigated | 973 |
| Parties to a suit in equity in the federal court, who are not barred by prescription, waiver, estoppel, or some other supervening cause, may contest the validity of a will involving the question of title to property by answer, or by proceedings for revocation in the probate court | 973 |
| Parol evidence is not admissible to affect the construction of a will, but it is admissible where its introduction is required by considerations extrinsic of the will, and which, necessarily, depend upon such evidence | 1102 |
| Bags, bottles, and casks, containing coffee, wine, and brandy for current use, do not pass under a bequest of all "furniture and other household effects," but go with their contents, as incidents thereto | 645 |
| A bequest of the use of testator's "property" in a certain banking business <i>held</i> to include the use of slaves employed therein | 645 |
| An advancement by the testator to a husband, whose wife was an heir, with direction, that it be deducted "from the share coming to the family," <i>held</i> should not be deducted from a legacy to the wife | 1102 |
| A devise of two houses to a daughter, the mother to be permitted to "occupy and dwell" in the better one during her life, <i>held</i> not a grant to the mother of a beneficial interest, but a mere permission to reside in one house | 1154 |
| Under a devise to a son in fee of two third parts of a certain farm, "he paying all my just debts out of said estate," <i>held</i> , that the land was charged, but a bona fide purchaser was not bound to look to the application of the purchase money | 1167 |
| If the purchase money is unpaid, it may be followed into the hands of the purchaser, and he is liable in equity for its misapplication after notice | 1167 |

YesWeScan: The FEDERAL CASES

The appointment of a guardian by will cannot be predicated upon words of implication which do not convey the powers essential to the office 1054

The recognition, in a will made abroad, of the executors under a will made here, as guardians, will not amount to an appointment of them by implication, where it does not appear that testator had the domestic will before him when he executed the foreign will 1054

The title passes to the devisee of real estate at the death of the testator, and the probate of the will relates back to that time 976

In the absence of an unequivocal act of disclaimer or renunciation, the consent of the devisee will be presumed where the devise is plainly for his benefit 976

WITNESS.

The master of a vessel who hypothecated her on bottomry, is a competent witness in favor of the holder of the bottomry 1013

One defendant in a joint action upon a promissory note, who suffers judgment by default, is not a competent witness for the other defendant 711

The maker of a note, released from costs, is competent in a suit against indorsers to impeach the note by facts subsequent to its execution, and negotiation by him 731

In an action by the indorsee against the acceptor of an inland bill of exchange, the indorser is a competent witness for defendant to prove usury in plaintiff's discounting of the bill 1066

In New York, defendant in a federal court in a civil case in a trial at common law may be required to appear and be examined as a witness for plaintiff 619

WRITS AND NOTICE OF SUITS.

See, also, "Judgment."

If a defendant appear to a sci. fa., it is not material by whom the writ was served 1025

Classification of suits in rem, and service of process upon infants of tender years, considered 1126

Mistake in name of plaintiff in writ made by the clerk may be corrected by the memorandum filed by counsel 1010