ABATEMENT AND REVIVAL.

An action of ejectment is one in which the cause of action survives in Vermont

Where plaintiff dies before judgment, his personal representative may become a party to the suit, and prosecute it to final judgment (Act 1789, § 31), where the cause of action survives by the local law.

The fact that the administrator of the deceased plaintiff is a citizen of the same state with defendant will not oust the court of jurisdiction.

Accord and Satisfaction.

See “Payment”

ADmiralty.


Jurisdiction—in general.

Admiralty jurisdiction attaches where there is no other question than that of title to a ship, and no pretense of a maritime contract or a marine tort. Admiralty has no jurisdiction, under a state statute or otherwise, to enforce a lien against a vessel for a demand which is not distinctively for maritime supplies. A claim for half pilotage, given by a state law for services offered and refused, cannot be enforced in admiralty.

—Waters and places.

A contract for pilotage, to be performed wholly within a state, cannot be enforced in admiralty. The maritime law does not apply to a steam ferryboat running between Washington and Alexandria, D. C. Services by seaman upon a vessel sailing between Philadelphia and ports on the Chesapeake Bay, employed as laborers to jbtain a cargo of oysters for purposes of transplanting, held maritime.

—Persons and property.
The district court in admiralty may exercise jurisdiction against a British vessel, in favor of a British subject residing in the British dominions, but is not bound to do so.

The court will not ordinarily interfere in a dispute between the master and seaman of a foreign vessel, before the voyage is ended, without the concurrence of the consul.

The admiralty court will not proceed against a foreign vessel without the consent of the commercial representative of the foreign government, in the absence of strong circumstances.

A steamboat, dismantled and stripped of her motive power, and fitted and used as a saloon and hotel, held not liable in rem for services to her in the nature of salvage, where she went ashore while being towed to another place.

A barge without any propelling power or rudder, used as a transport in New York harbor, is a vessel engaged in maritime service upon navigable waters.

—Rights and controversies.

Admiralty has jurisdiction over policies of marine insurance.

Admiralty has jurisdiction of an action by a passenger against a steamship for breach of a contract of passage as to the accommodations afforded.

Admiralty has jurisdiction of a contract by a steamboat, made in connection with the contract to transport goods, to collect the price, freight, etc., from the consignee, and return the balance to the consignor.

A person employed to visit a vessel at anchor, from time to time, to see to her safety, ventilate her, try her pumps, and the like, cannot maintain a suit in admiralty to recover his compensation for such services.

Admiralty has no jurisdiction of a suit by equity co-owners of a vessel against the other co-owners for supplies furnished.

A libel by the master and co-owner of a whaling vessel, to recover his lay disbursements and commissions on sales, will be sustained only so far as the lay is concerned.

Procedure.

The admiralty court is not bound by the local statute of limitations, but is inclined to follow its analogies.

A libel for compensation for services in the nature of salvage rendered a hulk which was not at the time engaged in commerce and navigation must be dismissed without costs.

ADVERSE POSSESSION.

See, also, “Ejectment”; “Limitation of Actions.”
The possession of the disseisor and of his grantee, who immediately succeeds thereto in pursuance of the conveyance, constitutes one entire and continuous possession.

**AFFREIGHTMENT.**

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

Shipowners are bound to send the goods by the vessel on which they are laden, and which has an advertised time of leaving when the bill of lading is delivered.

The opportunity of shipping by another vessel without additional cost or risk cannot be used as a bar or in mitigation of damages for breach of the contract.

The damage is the difference in value between the goods at the port of shipment.
and their selling price at the port of destination, if the contract had been performed
The ship must put casks containing cement in proper landing order before discharging them, and recooper them in the hold, if necessary to save their contents
The master has no authority to sell the cargo in order to make repairs, unless he be clearly unable to procure funds on the credit of the ship, or to hypothecate the cargo
Where a vessel has been captured and condemned at an intermediate port, and part of the cargo has been restored and sold there, no freight is due therefor
The vessel is liable for the loss of goods seized by customs officers, and forfeited for the neglect of the master to enter them on the manifest
The measure of damages, where cargo has been unlawfully disposed of at an intermediate port, is its first cost, with interest and charges of shipment and transportation
Construction of Act March 3, 1851, § 2, requiring a note in writing of the true character and value of precious metals on their delivery for shipment

Agency.

See “Principal and Agent.”

ALTERS.

By the Mexican law in force in Texas from March 17, 1836, to January 20, 1840, aliens were prohibited from holding lands except by titles issuing directly from the government
 But a title under a deed not emanating from the government is good against all persons until declared void in some proceeding analogous to office found
A deed upon a secret trust for an alien, of which the grantee has no knowledge, is not invalid where the alien is incapacitated from acquiring or holding realty, the trust, only, being void

APPEAL AND ERROR.

No appeal lies from the decision of the circuit court on a habeas corpus in an extradition case
An appeal to the circuit court in admiralty is not regular unless appellant gives security for costs
An appeal to the circuit court in admiralty carries with it all the funds belonging to the case, which funds still remain in the circuit court on a further appeal to the supreme court
A writ of error to a decree dissolving an injunction restraining enforcement of a judgment at law *held* not a supersedeas.  
The 10 days within which a writ of error must be sued out to operate as a supersedeas, where a motion for a new trial is denied, commences to run from the entry of the rule for judgment in the clerk's office.  
Where the judgment is for a large amount, the court may approve an appeal bond whose penalty is not double such amount  
The usual affidavit of the ability of the sureties accompanying the bond when approved, *held* sufficient justification  
Where the amount due for supplies to a vessel is determined by report of commissioner before libellant's right to recover is established, no objection to allowances can be made on appeal which were not raised in the court below  
The effect of a remitter of the cause on reversal by the supreme court.  
On affirmance by the circuit court of a decree for libellant in admiralty, no execution can issue until the entry of a formal decree awarding a recovery to libellant.  

**Appearance.**
See “Courts”; “Removal of Causes.”

**APPRENTICE.**
An infant cannot bind himself as an apprentice, nor can a master assign the indenture of his apprentice.  
An apprentice bound in Maryland, and brought into the District of Columbia, may be discharged by the court, who will order him to be bound again, by two justices of the peace, to a new master.  
A stranger to the indenture of apprenticeship cannot take advantage of the omission to insert the age of the apprentice.  

**ARMY AND NAVY.**
The enlistment, in the naval service, of a minor, without consent of his parents, is invalid, and he will be discharged on habeas corpus.  
A mere contractor to furnish supplies to the government for the use of the military service cannot be punished by court-martial under Act March 2, 1863  
Act July 17, 1862, § 16, is unconstitutional in so far as it operates to subject a contractor to trial by court-martial.  
If not unconstitutional, such act only makes contractors subject to trial by court-martial for fraud or willful neglect of duty in connection with their contracts, and not for offenses unconnected therewith.
A charge that defendant was engaged in furnishing supplies “for the military service” is indefinite, in failing to show that the supplies were furnished for the regular army and navy.

In a trial by court-martial the charges cannot be so amended after arraignment as to entirely obliterate the original specifications, and insert new ones, describing wholly different offenses.

**ARREST.**

See, also, “Bail”; “Escape”; “Execution”; “Extradition.”

An agent is not liable to arrest in New York in an action for money collected by him under an agreement to account for and pay over the proceeds monthly to his principal.

**ASSIGNMENT FOR BENEFIT OF CREDITORS.**

See, also, “Bankruptcy”; “Garnishment.”

On the general validity of assignments made by a failing debtor for the benefit of creditors, with various stipulations and conditions. (Per Story, J.)

A general assignment is valid for future liabilities, as well as for debts due, if the parties so intend.

One partner may sign and seal such an assignment for the firm, and it will bind the partnership, as a release of the debt.

Quaere, whether an assignment stipulating for a release of the debtor is fraudulent.

An assignment for the benefit of all creditors is good against subsequent attachments, although all the creditors are not parties to the deed before the attachments.

It is not a fraud upon any attaching creditor to provide for the payment of all the
creditors in preference to one who means to attach by process the property conveyed.
If the terms of a covenant by creditors to indemnify the debtor against claims under them are general, it will be construed a several covenant by each creditor, and not a joint one by all.
The assent of creditors to an assignment, not stipulating for a release, may be presumed; aliter if release stipulated for.
If the terms of release are general, the operation will be restrained to a release of debts.
The assignee who is put upon inquiry as to facts rendering the assignment voidable by creditors has no lien, as against attaching creditors, upon the proceeds of the property for services or counsel fees.

ASSUMPSIT.
See, also, “Contracts.”
Assumpsit lies for work done under a sealed contract, without previous demand for stock agreed to be received in payment.

ATTACHMENT.
See, also, “Bankruptcy”; “Execution”; “Garnishment”
A chancery attachment will not lie against the effects of a deceased person.
In attachments in chancery in Virginia, the attaching creditors have priority according to the time of service of their respective attachments.

ATTORNEY AND CLIENT.
Name of proctor stricken from the rolls for contempt in filing a notice of motion to set aside a decree on the ground that the same was rendered without any consideration or deliberation, and was the result “of either prejudice or corruption,” and in “willful violation of a known duty.”

AVERAGE.
Where the voyage has been abandoned from necessity, the expenses and charges of going to a port of necessity are not the subject of general average.

BAIL.
See, also, “Arrest”; “Execution”; “Principal and Surety.”
Bail cannot be required of a feme covert in a civil action.
The writ in the original suit cannot be set aside after judgment on motion in an action on the bail bond.
Bailment.
See “Carriers”; “Pledge”; “Warehousemen.”

BANKRUPTCY.
See, also, “Assignment for Benefit of Creditors”; “Compositions”; “Insolvency.”

Operation and effect of bankruptcy laws, and of proceedings thereunder.
A suit by a partner, in the state court, against his copartners, for an accounting, in which he was appointed receiver, will not prevent jurisdiction in bankruptcy, on petition of defendant partners. 822
The bankrupt court may enjoin such receiver from disposing of partnership assets, or from any interference with them, until the question whether or not the firm is bankrupt can be tried. 822
The freedom from arrest granted to bankrupts “during the pendency of the proceedings” does not relieve them from arrests existing at their commencement. 942
A charging in execution held to relate back to a prior surrender in exoneration of bail on arrest on mesne process. 942
It is not necessary to obtain leave of the bankruptcy court to continue to judgment a suit for assault and battery commenced before the petition in bankruptcy was filed. 1136

Jurisdiction of courts.
Proceedings under the act of 1841 may be instituted in the district either of the debtor's residence or place of business. 196
In case of partnerships, either partner may be declared a bankrupt in the district where he resides, or where the partnership is established. But the court first acquiring jurisdiction has exclusive jurisdiction over all the partners and all their property, joint and several. 196
Where an adjudication is had, and an assignee regularly appointed, the proceedings will not be set aside on the application of a creditor showing a, prior filing of the petition against the bankrupt in another district. 610

Commencement of proceedings-Voluntary bankruptcy.
Parties cannot apply jointly for a decree in bankruptcy after a dissolution of their partnership. (Act 1841.) 722
A decree cannot be rendered against a firm on a voluntary application therefor, unless the whole of all partners unite therein. (Act 1841.) 722
After a sale by a partner of all his interests as copartner to a third person, who is taken into the firm, neither the old firm nor the retiring partner can be adjudged bankrupts on the petition of the continuing partner. 707
The fraud of a member of a firm, in effecting a composition with creditors, cannot be alleged by him as ground of proceedings in bankruptcy after the firm is dissolved. The court will dismiss proceedings on petition filed by one member of a firm solely for the purpose of vexing and harassing the other partner. A creditor cannot compel partners, willing or unwilling, to petition for the adjudication of other persons, who are alleged to be their fellow-partners. A petitioner cannot be decreed a bankrupt when, in his petition and schedule, he does not include all his creditors, and the debts due to them. The petitioner cannot be decreed a bankrupt while he owes debts which were created while he was acting in a fiduciary character. The arrest of a bankrupt in a voluntary proceeding is not authorized by the act of 1867. The petitioner cannot withdraw his petition before adjudication, without showing good cause, if opposed by any creditor.

**Involuntary bankruptcy.** Livery stable keepers are not merchants or traders, under the act of 1841. The owner of timber lands, who manufactures lumber therefrom as a means of deriving profit from the real estate, is not a merchant or trader (Act 1841), unless he carries on such business on a large scale.
A creditor fully secured by attachment cannot, while holding on to his attachment, sustain, on the same debt, a petition in bankruptcy.

In computing the number of creditors who must join in the petition, creditors whose debts do not exceed $250 are not to be reckoned, but, in computing the amount or value, all should be included.

The aggregate of petitioners' debts must be equal to one-third of all the debts, irrespective of the amount, provable against the estate.

In making up the requisite number, petitioners may compute those simply whose debts exceed $250, or proceed upon the hypothesis that they represent one-quarter of of the entire number of creditors, in which case those of less amount than $250 may be reckoned.

The nature of petitioners' debts should be so far stated in the petition that the court may see they are provable against the estate.

Costs of attachment proceedings are not included, in estimating the amount of provable debts.

A claim for money loaned to a debtor to aid him in the commission of an act of bankruptcy cannot be included among his provable debts.

Letters written by the debtor to third persons, admitting payment of a claim, are admissible in determining the amount of provable claims.

An attaching creditor, though not a party, may contest adjudication on the ground that the requisite number and amount of creditors have not joined.

Creditors who, since the amendment of June 22, 1874, have joined in the petition, cannot afterwards be allowed to withdraw.

A charge in the alternative that the debtor was insolvent, or in contemplation of bankruptcy, at the time of the act in question, is insufficient.

The allegations in proof of the act of bankruptcy should be made by separate deposition, and upon personal knowledge, and should make out a prima facie case.

Facts relied upon to justify a warrant of arrest and seizure should not be set forth in the creditors' petition.

Where a preference is alleged, it is not necessary to state that such preference was in fraud of the act, but the name of the person preferred should be set forth.

Suspension of payment of commercial paper held by another than the petitioning creditor may be alleged as an act of bankruptcy.

The depositions in support of the petition must definitely describe the debts, and show that they were unsecured.
The petition need not allege that petitioners' debts are unsecured, when it is alleged that they are provable debts.

Where the affidavits to the petition or the depositions as to indebtedness and acts of bankruptcy are insufficient, the court may allow supplemental affidavits or proofs to be filed.

Where a petition averred that acts were committed by bankrupt in contemplation of bankruptcy and insolvency, and evidence of insolvency only was given, the petition should be amended accordingly.

Where a petition is verified by an attorney, the nonresidence of his principal should be alleged directly, and not by way of recital.

The authority of the agent who verifies a petition for a corporation petitioner must lie set forth in the body of the affidavit, or otherwise established.

The petition cannot be verified before a notary public.

Receipt of money by the bankrupt from his debtor after filing of petition and service of injunction is a contempt, but such contempt is purged where the bankrupt afterwards turns over to the assignee all his assets.

**Acts of bankruptcy.**

An assignment by an insolvent of all his property for the benefit of preferred creditors is an act of bankruptcy.

The fraudulent stoppage of payment of debts is ground of petition under the amendment of June 22, 1874.

A payment by an insolvent debtor of a percentage on claims of a part of his creditors which does not lessen the percentage which his other creditors will receive, is not a preference.

An insolvent who makes no defense to an action by a creditor, and does nothing to prevent his obtaining a preference, suffers is property to be taken under section 39, Act 1867, and the law presumes that he intended to give a preference.

**Schedule.**

A register may allow amendments to the schedules on the ex parte application of the bankrupts, at any time while the cause is pending before him.

**Adjudication.**

If the bankrupt neglects to move for a decree of bankruptcy, so that an assignee may be appointed, the creditors may move the court for that purpose.

On a voluntary petition by a member of a firm, the court has power to determine the question what persons constituted the firm.

The adjudication will not be set aside after six years, on petition filed four years after a different decision in the state court.
Warrant: Notice: Meeting of creditors.

A warrant is beyond the power of the court, in so far as it commands the mar-
shal to take possession of property which has been conveyed by the bankrupt
before the filing of the petition

Provisional warrant granted where the bankrupt remained in possession of his
assets, and disposed of a portion of them, and expressed an intention of going
abroad to adjust his foreign accounts

The proceedings will be set aside for the omission to publish notice of the
first meeting of creditors in one of the papers designated, and for irregularities
in, and false return to, the warrant of the register.

If the petitioner does not appear at the time fixed in the order of reference,
or within a reasonable time thereafter, excusing his delay, the petition may be
dismissed.

Assignee—Appointment and removal.

The choice of an assignee who resides out of the district will not be confirmed.

Where a single creditor appears at the first meeting of creditors, and proves
his debt, he may choose the assignee

The election of an assignee will be disregarded where it was secured by his
agreeing to pay certain creditors their claims in full

A creditor holding a mortgage as security held not entitled to vote on the dif-
ference between its value, as stated by him, and the amount of the debt

An assignee under the bankrupt law of 1800 cannot deny the authority of the
commissioners under whom he received the property of the bankrupt

Certifying questions to court.

Abstract question certified to the court in behalf of a person who is not a
party will be returned without decision

Property of bankrupt—What constitutes.

A check deposited with a bank for collection, against which the depositor is
not allowed
to draw until payment, does not become the property of the bank, where it suspended before payment
An agreement that the seller shall have possession of the property, so that he may apply its rent to the reduction of the purchase money, does not prevent full title vesting in the purchaser's assignee

—Custody and control.
On the adjudication, the register must receive the surrender of the bankrupt's estate, and keep the property safely until it can be turned over to the assignee
One to whom stock is pledged to secure call loans need not obtain leave of court to sell the same, but he acts at his own risk

—Exemptions.
The members of a bankrupt firm in Pennsylvania have no right to any of the partnership assets as exempt property
The same rule obtains in Arkansas
The assignee may designate a sum of money as “necessaries,” under section 14, Act 1867
Property exempt, both by state and bankrupt law, from levy and sale, cannot be sold after the owner has filed his petition in bankruptcy, although then levied on by a United States marshal
The fact that the debtor is insolvent will not prevent a declaration of homestead under the California homestead act. (Reversing 1123.)
The homestead in California is exempt from forced sale, though the insolvent owner has devoted money which equitably belonged to all his creditors to the payment of a debt which was a lien thereon. (Reversing 1123.)
The bankrupt court will not order a reassessment for mere excess of value, where a homestead has duly been laid off and allotted under the local law, and no fraud or irregularity is shown

—Xiiens.
An attachment on mesne process, where judgment was recovered and execution issued after petition filed, but before the decree in bankruptcy, held a valid lien. (Act 1841.)
Execution creditor delayed by an injunction held entitled to a summary hearing after execution of the assignment
Rights of lien creditors to proceeds of sale held superior to the lien for costs, fees, and general expenses in bankruptcy

—Sale.
Application to sell real estate incumbered to its full value refused, with liberty to renew it if a sale was not effected, in a reasonable time, in a suit pending in the state court on a prior lien.

A bankrupt in possession of realty at the time of its sale by the assignee, who thereafter agreed with the purchaser to vacate on a certain day, holds as tenant under the purchaser, and a petition will not lie by the assignee for delivery of possession.

The purchaser of property on a sale by the assignee without order of court is entitled to rents and profits from the day of sale, and not from the date of its confirmation.

On petition by mortgagees in a foreclosure proceeding to set aside an injunction issued by the bankruptcy court, held that the register should be authorized to sell the property free of incumbrances, and receive the proceeds subject to order of court.

Proof of debts.

A debt accruing after the commencement of the proceedings, but before the adjudication, is provable.

Interest accruing after the adjudication is not provable.

But a secured creditor may apply the proceeds of his security to the principal and interest of the debt until paid, when so stipulated in his contract.

Solicitors of a voluntary bankrupt, who advance expenses to enable him to obtain his discharge, are not entitled to relief, for such expenses or their services, against his assets.

A debt, barred by the statute of limitations in the state where the bankrupt resides, is not provable in bankruptcy against his estate by a creditor resident in another state, even though not barred by the statutes of that state.

Nor is such debt revived by the entering of it on the schedule of the bankrupt's liabilities.

The holder of a note, who receives payment from the maker before submitting proof against the estate of the indorser, can only prove for the balance; otherwise where he receives payment after the affidavit is filed.

Debts due to creditors residing within the district where the proceedings are pending must be proved before a register of the district. A commissioner of the circuit court cannot take such proof.

A deposition in support of a claim is not properly a proof of a debt.

A secured creditor allowed to withdraw his proof of debt on petition setting forth his prior ignorance of its effect.
After leave granted to amend proofs of debt, *held* that they could not be withdrawn

**Payment of debts: Priority: Dividends.**

Interest on claims proved allowed from the filing of the petition to the date of payment, where the estate was sufficient

A single creditor proving his debt is entitled to be paid in full; the surplus, if any, being distributed among creditors admitted by the bankrupt, but who have failed to prove their debts

Rights of holders of bills drawn against factor on consignment of goods, where both principal and factor became bankrupt. 606 The United States have priority over all other claimants

An agent of the United States in England cannot, by conforming to the bankrupt laws there, lessen the priority established in favor of the United States here

The claim of a father for the services of his minor son, *held* entitled to a preference under § 28, Act 1867

Attorney’s claim for services in defending a suit prior to the bankruptcy is not entitled to priority

Attorney’s claim for services in preparing the petition and schedules, and filing the same, is not entitled to priority

Security for the payment of a note, by way of a deed of trust, given on the property of the wife, by the husband and wife jointly, *held* security, within the meaning of the act

Attaching creditors *held* entitled to only a ratable part of their debt with the other creditors, under Act 1800, § 31

**Examination of bankrupt, etc.**

The granting of a discharge is not a good objection against an examination under § 26, Act 1867

The wife of a bankrupt, attending under an order, and being examined as a witness, is entitled to witness and travel fees, calculated according to Act Feb. 26, 1853, § 3.

Witnesses are entitled to attendance fees for adjourned days, or to travel fees for going to and from home during adjournments
Costs: Fees: Disbursements.

Costs are not allowed to either party where, on new evidence, on appeal to the circuit court on a trial of objections to a discharge, the verdict is changed in favor of the bankrupt.

Register entitled, under general order No. 30, to $5 for each day's service under order of court.

The bankrupt is liable for the costs of the register on an examination by contesting creditors on his proposal of a composition.

The fee and mileage for serving the order to show cause, and the copy of the petition in involuntary bankruptcy, cannot be charged for each.

Proper charges for caring for and inventorying the bankrupt's property.

Register's decision disallowing a charge for a watchman, on the ground that no watchman was necessary, reversed.

Additional allowances should not be made to the marshal, under § 47, Act 1867, unless it appear that he performed something beyond his ordinary duties.

Assignee held not entitled to allowance for fees of counsel employed by the bankrupt for services, beneficial to the estate, rendered before his appointment.

The landlord is entitled to reasonable compensation for the time leased premises are occupied by the officers of the court.

Discharge-Proceedings to obtain.

A discharge cannot be granted on the death of the bankrupt pending the proceedings, where he has not taken the oath required by § 29, Act 1867.

Section 9 of Act June 22, 1874, dispensing with consent of creditors, applies to pending cases.

—Opposition: Acts barring.

Discharge refused on specification of objections showing a transfer made in contemplation of bankruptcy more than 16 months before petition filed.

An allegation of a consignment to one out of the district, in contemplation of bankruptcy, and with intent to keep the property from the assignee, held, a sufficient charge of a removal of the goods from the district with intent to defraud creditors.

Yague and general specifications reciting fraud, etc., will not be allowed.

When the specifications are not sustained by the proofs, a discharge will be granted whenever the register shall certify that the bankrupt has conformed to the requirements of the bankrupt law.
The fraudulent preference or transfer which will bar a discharge must be such as is denominated a fraud by the terms of the law, and particularly described in section 35, Act 1867.

It is a concealment, within section 29, Act 1867, for the bankrupt, having knowledge of the existence of his books, and of their place of deposit, to refuse to give them to his assignee, and to deny their existence.

Failure of the bankrupts to enter on their books several transfers of property, made about the time their affairs became embarrassed, will, in the absence of a sufficient excuse, prevent a discharge.

The absence of a cash book, is no ground of refusing a discharge where the cash receipts and payments may be shown from other books.

An omission to write up books for a reasonable time while they are wanted in court, the accounts being kept on slips of paper ready to be inserted in their proper places, is not a failure to keep the books.

Otherwise, of an omission without excuse, or for an unreasonable time, or a failure to procure new books if the old books are lost.

It is no excuse for failure to keep proner books of account that the fault was wholly with the debtor's bookkeeper.

---Scope and effect.

Money collected by an agent under an agreement to account and pay over the proceeds monthly to his principal is not a debt created in a "fiduciary character."

Prohibited or fraudulent transfers.

If an insolvent give a mortgage to a creditor who has reasonable cause to believe him insolvent, the fraud upon the bankrupt act is complete as to both.

Insolvency which renders the transfer void under section 35 is a condition of fact, not of belief.

The question as to the creditor is whether he “had reasonable cause to believe” the debtor insolvent, not what he did believe.

The word “knowledge” in section 35, as amended June 24, 1874, means actual knowledge, as contradistinguished from constructive knowledge.

A person having notice of such a state of facts in regard to the financial affairs of the bankrupt as in law constitute insolvency must be presumed to have actual knowledge that a transfer, etc., is a fraud upon the bankrupt act.

A person, being a merchant or trader, is insolvent when unable to pay his debts as they mature in the ordinary course of business.

A person will be held insolvent only when he fails to meet his debts according to the general custom of the place of his business.
Question of insolvency of a Virginia society which was a bank of discount, deposit, and circulation, and had suspended during the Civil War, and there-after undertook no other business than the liquidation of its affairs, should not be considered as if the society had been a trader, merchant, or bank

Papers in the form of checks on such bank, bought and sold in the public market, and used for the purpose of set-off, held not checks in the commercial sense

Persons who sell such papers are not responsible to the assignee of the society for the amounts stated in dollars on their face

The fact that the debtor had sold his stock of goods, had been refused extensions of credit, and was being pressed by his creditors, held to constitute reasonable cause of belief of insolvency

Transfers of property are not void under Rev. St. § 5128, where it is proved affirmatively that the persons who effected them with the debtor had no intention of obtaining a preference, or the debtor of giving it.

When a secured creditor takes goods in fair exchange for the security, the transaction is not in fraud of the act

Shipments of cotton, after the insolvency of the shipper, to commission merchants who made advances thereon, held not a preference

A mortgage executed more than four months before the filing of the petition cannot be set aside as a preference

A judgment taken with an intention to receive the entire estate for an equal distribution among the creditors, by a creditor who held overdue paper of the debtor, and was informed that they were hard pressed, held a fraudulent preference

A bill of sale with a lease back to the seller, containing an agreement by him to buy back the property at a fixed price, being unrecorded, held fraudulent as to creditors

The sale by the bankrupt of 6 out of 20 specific bonds, of like character and value, in the hands of a bailee, held valid as against his assignee
The giving of a note payable one day after date, with cognovit to confess judgment, to a creditor, with knowledge of insolvency, held a fraudulent preference, and the judgment and all proceedings thereunder were nullities
A chattel mortgage invalid as against creditors, under the state law, under which the mortgagee took possession at a time when he had reasonable cause to believe the debtor insolvent, held invalid as against the assignee
A seizure of an insolvent debtor's property on execution within four months of his bankruptcy proceedings, by a creditor having reasonable cause to believe the debtor insolvent, held a fraudulent preference

Suits and proceedings in relation to the estate.

The circuit courts have concurrent jurisdiction with the district courts of all actions by an assignee against persons claiming an adverse interest in the estate of a bankrupt
No suit by an assignee for a sum exceeding 8500 can be prosecuted in a state court. (Act June 22, 1874, § 2.)
The objection that there was no direction from the bankrupt court to bring the suit cannot be first raised in the appellate court
The assignee represents both the bankrupt and his creditors, and he can contest claims and rights of property which the bankrupt cannot contest
Where the petition in bankruptcy was filed before the amendment of June 22, 1874, a bill to set aside a fraudulent transfer must allege that the transfer was made with knowledge of defendant that it was fraudulent
The amendment of June 22, 1874, does not affect cases commenced before December 1, 1873, nor does the repealing clause affect suits by assignees then pending
Congress did not intend to validate contracts void under the original act, or to affect contracts theretofore made, or the substantial rights of parties acquired under the original law
A preference to a creditor cannot be set aside unless an adjudication in bankruptcy is had within the time limited by the act.
The rule of the local statute that the limitation does not begin to run till the fraud is discovered has no application to such case
The four-months limitation, in the case of a secret deed of trust intended as a preference, does not begin to run until the deed is recorded
In the case of a transfer of property to hold in trust for certain uses, and to become absolute under certain conditions, held, that limitation did not commence to run until the title became absolute
The assignee in bankruptcy may maintain a suit to set aside a general assignment by the bankrupt for his creditors, made within three months of the filing of the petition in bankruptcy.

The bankrupt is not a necessary party to such suit.

On a bill to impeach a transaction as void under Rev. St § 5128, the court is not concluded by the order of adjudication declaring the transaction to have been an act of bankruptcy.

A creditor who has proved his claim in bankruptcy may withdraw the same, and plead it as an offset, in a suit brought by the assignee against him. (Rev. St. §§ 5073, 5105.)

Certificates of indebtedness held against the bankrupt payee of a note held subject to offset at their market value at the maturity of the note.

The declaration in an action by the assignee to set aside a transfer as in violation of the act must set out the facts to show its illegality.

In an action by the assignee to recover properly fraudulently transferred, the value of such portion as is exempt from execution must be deducted before judgment.

Review.

Appeals from the district to the circuit court are regulated by § 8, Act 1867, and general order 26.

An order vacating an adjudication of bankruptcy made at the former term cannot be revised on appeal.

Arrangement with creditors.

Act June 22, 1874, does not require a written proposition from the bankrupt preceding the notice to creditors, to lay the foundation for their acceptance or rejection of a composition.

A debtor can make a composition under Act June 22, 1874, § 17, though, by reason of preference or otherwise, he would not be able to obtain his discharge.

Creditors receiving their respective shares of a composition are not bound to see that other creditors receive their shares.

Refusal or neglect to sign a petition for a composition by one of the partners, unless fraudulent, will not render the proceeding invalid as against the other partners.

Resolution of composition passed by the requisite number of creditors, but opposed by two creditors who, prior thereto, successfully opposed a discharge, held, should not be confirmed.
When an application is made to set aside a composition once recorded, and to proceed in bankruptcy, notice should be given to all the creditors, as well as to the debtor.

Irregularities which are the effects of mistake, and not of fraud, are not fatal to the validity of the proceedings.

When a composition, partly carried out, is set aside, all acts which have been regularly done in pursuance of the resolutions are valid, and the assignment to an assignee should contain a proviso to that effect.

**BANKS AND BANKING.**

An attachment of funds of a national bank on deposit in another bank, after one of its circulating notes has been duly protested for nonpayment, will not create a lien, as against a receiver subsequently appointed.

Stockholders held liable, as principals, to redeem dishonored bank bills, under the charter provision that their persons and property shall be at all times bound for such redemption.

**BILLS, NOTES, AND CHECKS.**

See, also, “Guaranty.”

**Validity.**

No matter how illegal or immoral the consideration of a note or bill may be, it is valid in the hands of a bona fide holder for value, unless made absolutely void by statute.

Notes, bills, or other securities issued in aid of the war of the Rebellion are valid in the hands of a bona fide holder for value.

Any instrument issued in violation of an act prohibiting a bank from issuing any bill or note not payable on demand, and without interest, under a penalty, is void.

An acceptance of such a draft, or an agreement to indemnify the person who signed it, is void.

An action will not lie on a note given for the purchase of a ticket in a lottery prohibited by law.
Negotiability.

To be negotiable, a note must be for the payment of money, in a sum certain, subject to no conditions. A note payable in “New York funds, or their equivalent,” is not negotiable.

On a promissory note given in New York, payable at Detroit, with the current rate of exchange on New York, the rate of exchange may be recovered.

Indorsement and transfer.

A due bill payable to order or bearer is as signable, and may be assigned by an agent. A note assigned after its maturity leaves all equities opened between the original parties.

Possession of a note payable to bearer is prima facie evidence of right, and the holder may sue in his own name.

Payment.

The possession by the payee of a time draft, unaccepted and uncanceled, is not prima facie evidence that he has paid it.

The circumstance that a draft does not bear the customary “Paid” stamp of the bank, nor appear on its books to have been paid, may be considered by the jury in determining the question or payment.

Release or discharge of indorser.

A release of a remote indorser by the holder of a note is a discharge of the subsequent indorsers.

Actions on.

A plea setting up fraudulent representations in defense to a note should allege all necessary incidents of time and circumstance, and that the note was given in reliance thereon.

A plea of failure of consideration, in defense to a note, should distinctly allege the actual consideration, and that there was never any other.

The words “without offset,” in common use on the face of negotiable paper, will not prevent an offset, as between the maker and payee.

An order written by the agent of the drawee, on the back of a bill, to another person, to pay it, held evidence of the drawee’s acceptance of the original bill.

The rate of interest and damages which the drawee of a bill is to pay ex mora is governed by the law of the place where the bill is drawn.

Bills of Lading.

See “Admiralty”; “Affreightment”; “Carriers”; “Demurrage”; “Shipping.”

Bonds.

See “Municipal Corporations”; “Principal and Surety”; “Railroad Companies.”

BOUNDARIES.
See, also, “Grants.”

A map which has governed in the sale of lots, and has been treated for many years by the proprietors and purchasers as the original map, is admissible to prove boundaries.

The remarks, however, made on the map by the proprietor, are not evidence.

**Bounties.**

See, “Fisheries.”

**CARRIERS.**

See, also, “Affreightment”; “Average”; “Charter Parties”; “Demurrage”; “Shipping.”

A railroad company is bound to construct platforms for the safety, rather than the convenience, of its passengers, and is bound to the highest degree of care and skill in such construction.

A passenger not rightfully in a certain position cannot complain of the absence of the proper safeguards.

A passenger cannot recover for injuries in an accident caused by the negligence of the carrier's servants, if he was in a position where a prudent man would not have been.

A railroad company carrying passengers on freight trains is under the same obligation to carry them safely as if they were on regular passenger trains.

A passenger who, by concealment, attempts to get valuable articles carried without paying the extra rates charged therefor, cannot recover in case of loss.

If the carrier, with knowledge of the fact, carries such article as extra baggage, on paying the usual charges therefor, it is liable for a loss.

A carrier, in the absence of special contract, may demand and recover a reasonable sum as freight for the transportation of merchandise, and no more.

Evidence of charges for freight two years previous to the charges in controversy, for like freight, held competent upon the question of their reasonableness.

Delivery is completed when there is nothing left to be done to finish the transportation.

Each member of a connecting line of carriers who receives goods for shipment under a through bill of lading is liable for damage, on whatever part of the line received.

Both the carrier and the insurance company are responsible to the owner or consignee, and in case of loss the owner or consignee may elect against which he will proceed.

An insurance company which has paid the loss may recover against the carrier, on showing negligence.
The measure of damages for the refusal to transport goods at an agreed price is the difference in value of the same at the ports of shipment and delivery, less the agreed freight, and other necessary charges of transportation.

The measure of damages for not transporting unmanufactured lumber intended for specific manufacture by the owner is the price that the same would bring at the place of delivery when so manufactured, less its cost, including transportation, with interest from the time of the refusal to so transport the lumber.

**CHARTER PARTIES.**

See, also, "Admiralty"; "Affreightment"; "Average"; "Demurrage"; “Shipping.”

Where the charter contains no stipulation as to time of arrival at port of loading, the shipper takes the risk of detention by any superior force which the vessel could not overcome.

Arrival at the port of loading after the season of shipping had gone by, caused by unusual delay, will not release the charterer, in the absence of fault of the master or owner.

The omission to remain at the port of loading the number of lay days stipulated, where the master was informed that the cargo would not be furnished, will not bar a claim under the charter.

In computing the damages for refusal to furnish a cargo, the court took into consideration the failure of the master to inform the charterer of a delay en route for repairs.
A guaranty of eight feet of water “at the place of loading” held to mean eight feet, or at least a sufficient depth to enable the vessel to perform her voyage, at the place of loading, and thence to the open sea.

An error in judgment on the part of a master not shown to be incompetent in respect to the navigation of the vessel, will not render the owners liable for its consequences.

A deduction from the monthly hire will be made, where the voyage has been protracted by reason of the insufficiency of the sails etc.

The departure of the consignee named in a charter-party from the port of destination constitutes no waiver of the contract.

The master of a vessel chartered to proceed with a cargo to a certain port, and discharge the same as directed by the commander of a fleet of war vessels, learned en route that the fleet had left the port badly shattered. Held, that freight was not recoverable as for a partial performance.

The risk and danger of losing the cargo in attempting to perform the voyage may be shown, in answer to a claim of damages for breach of the contract.

There is no lien upon the vessel for the performance of a contract of affreightment until a lawful contract of affreightment is made, and the property shipped in pursuance thereof.

**CHATTEL MORTGAGES.**

See, also, “Bankruptcy”; “Pledge.”

A bill of sale, with a lease back, containing an agreement of the seller to buy back the property at a fixed price, will be construed as a mortgage.

In Illinois, recording a chattel mortgage in which material changes have been made since its acknowledgment gives it no additional validity.

A clause constituting the mortgagor agent of the mortgagee to sell the goods and account for their proceeds does not render the mortgage fraudulent on its face.

The retention of possession of the property by the mortgagor after condition broken will not affect the validity of the mortgage as between the parties.

The title of the mortgagee becomes absolute after condition broken, and where he takes possession the debt is satisfied to the extent of the value of the property at the time he took possession.

A subsequent agreement to deliver the mortgaged property to the mortgagor on his giving security to sell the same and account for and pay over the proceeds, held a substitute for the mortgage.

**Cloud on Title.**

See “Quieting Title.”
COLLISION.

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

Rules of navigation.

The local rules of navigation established by general usage must be observed.

A Louisiana law adopting regulations as to the navigation of the Mississippi river cannot affect vessels engaged in carrying on commerce between that and other states.

A steamboat carrying the mail is bound by the same laws and rules of navigation that govern other steamers.

Between sail vessels.

The vessel on the privileged tack will not be held in fault for keeping her course, unless it appear that there was time, after the risk was apparent, to avoid the collision, by changing her course; and a failure in extremis will not be held a fault (Keversing 849.)

Between steam and sail.

The sail vessel must keep her course, and the steamer must keep out of her way.

It is the duty of a steamer to avoid getting into such close proximity to a tacking vessel that a change of her tack might cause a possibility of danger.

A steamer will be held in fault for approaching so near a sail vessel as to create a reasonable apprehension of danger of collision by the latter, and involve an erroneous maneuver in the moment of peril.

Between steam vessels.

Where two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her starboard side shall keep out of her way.

The not slackening of speed by the vessel bound to observe such rule, condemned; and the keeping of her course by the other vessel, approved.

Embarrassment by proximity to vessels at anchor is no excuse for not observing the rule requiring the vessel on the port hand, on a crossing course to keep out of the way, where there is no justification for being in such proximity.

Vessels moored, etc.

Injury to a vessel properly moored at the side of a wharf, by collision with another, is prima facie evidence of fault in the latter.

The burden of proof is on the moving vessel to show that the collision was caused without its fault.

Tugs and tows.
A boat towed astern, steered with her own helm, who sheers and comes into
collision with a passing tow, has the burden of showing that the sheer was
cased by some fault of the part of her tug
The owners of a tow which is under the exclusive direction of the master of
the tug are not liable for damages caused by collision occurring through negligence in the navigation of the tug
Both tug and tow are liable where the injury would not have occurred had a
second tug been employed
An agreement by the tow to assume all risk will not relieve the tug from liability to a third party for injury caused by a collision with the tow caused by
inability of lie tug alone to control the tow

River and harbor navigation.
A descending boat on the Mississippi river, when apprehensive of a collision, should stop her engine and float, leaving the ascending boat to choose the best mode of avoiding her

Speed: Fogs.
In a fog a steamer should be under such control that, when apprised by the regular signal of the neighborhood of a sail vessel, she can slow or stop in season to ascertain the position and course of the latter, and take suitable measures to avoid her
The presumption of fault is conclusive against vessels sailing with too much canvas in a fog in fishing waters, and colliding with vessels at anchor, where there is no vis major
A steamer meeting a sail vessel in a fog will be held in fault in changing her course in ignorance of the latter’s position, instead of stopping and reversing
Steamer held in fault in maintaining a speed of eight miles an hour on the river St. Clair, on a very dark night

**Lights, signals, etc.**

A vessel under way, with wind abaft the beam, must show a white light, under the act of 1849, as a vessel “going off large.”

Signal lights hung on either side of the boat, on nails driven into the narsing of the hurricane roof, held not proper lights

**Lookouts, officers, etc.**

The master who went below after hearing the whistle of an approaching steamer held in fault

The fact that a bark has but one man at her wheel in a fog is no proof of negligence or want of seamanship

A steamboat, in the nighttime, navigating the waters of a bay or river, must always have a lookout who, for the time, has no other duty or occupation

The master is not a proper lookout

The man blowing the fog horn on a sail vessel is a proper lookout

The pilot house of a steamer, in the nighttime, is not a proper place for a lookout

The failure of the lookout of a steamer to report a vessel, when discovered, held negligence, though the master and pilot were on the bridge

The lookout of a vessel will be held in fault in leaving his post after reporting the light of another vessel

**Particular instances of collision.**

Between two steamers on the Ohio river, involving mutual fault as to lights, lookouts, etc

Between steamer coming into New York harbor and steam elevator on her starboard hand, where the former's claim that the presence of vessels at anchor prevented her porting was not sustained

Between bark closehauled and steamer at sea in a fog, where the bark's horn was not heard, and the steamer was held liable for excessive speed

Between schooner closehauled and schooner sailing free in Chesapeake Bay, where the latter was held in fault for not keeping away

**Procedure.**

Proof of title to the injured vessel may be given after trial

The testimony of those on board a moving vessel, as to her maneuvers, is more reliable than that of persons aboard the approaching vessel
The testimony of the witnesses on board a sail vessel, as to the direction of
the wind, held more reliable than that of witnesses on board the steamer with
which she came in collision

Rule of damages.

Damages for the loss of a cargo are limited to its prime cost, together with
all charges, premiums for insurance, etc., without any allowance for expected
profits.
The rule of damages for delay while undergoing repairs is the amount the
vessel would have produced for chartering in the business in which she has
usually been employed.
There can be no recovery for delays caused by storms, or by ice or obstruc-
tions in the harbor or river where a vessel may be, after necessary repairs are
made.
Where a decree against two vessels does not apportion the damages, and it
appears that one stands in the relation of surety to the other, libelant will be
required to first issue execution against the latter

Division of damages.

In case of mutual fault, the loss must be divided

COMPOSITIONS.

See, also, “Bankruptcy.”
A composition with creditors, fair upon its face, but in fact fraudulent as to
part of them, can be set aside only by the creditors who are wronged

Compromise.

See “Bankruptcy”; “Composition”; “Payment.”

CONSTITUTIONAL LAW.

See, also, “Statutes.”
The fifth amendment to the constitution is not applicable to state legislation
A state has no power to regulate commerce extending beyond its jurisdiction;
otherwise as to commerce beginning and ending within the state
Interest is not a subject of common-law right, and a state statute allowing an
abatement of interest which accrued during the Civil War does not impair the
obligations of contracts
Persons in office, by lawful appointment or election, before the promulgation
of the fourteenth amendment, were not removed therefrom by the direct and
immediate effect of the prohibition to hold office contained in section 3, and
they could continue to perform their official functions until congress should act

CONTINUANCE.
Want of preparation of the attorney, from attention to other necessary matters, is no ground for continuance.
Failure to give security for costs is no ground for continuance, where it has not been demanded within a reasonable time.

**CONTRACTS.**

See, also, “Assumpsit”; “Sale”; “Vendor and Purchaser.”

All wagers are not void, but all gaming contracts are
Instruments executed abroad, as the foundation of sealed instruments in this country, must be under seal
There is no breach of a contract to build a boat with plank to be delivered by the other party at either of two places, until the plank is delivered
The omission to designate the place of delivery between the points stipulated will not prevent the other party from making delivery at any convenient point he may select between the points stipulated, in discharge of his contract to deliver
A party does not waive his rights, in accepting a proposition which the other party afterwards refuses to carry out
Delay incident to the badness of the roads is within the agreement to transmit money through express

**Conversion.**

See “Trover and Conversion.”

**COPYRIGHT.**

A person who accompanied a government expedition, upon the understanding that all sketches and drawings he might make were to be the exclusive property of the government, where the same, upon his return, were incorporated in his report, and published for distribution, *held* not entitled to a copyright therein
CORPORATIONS.

See, also, “Banks and Banking”; “Insurance”; “Marine Corporations”; “Railroad Companies”; “Receivers.”

There can be no corporate existence by prescription

In Ohio, a corporation cannot be created or authorized except in pursuance of a general statute

In Ohio there can be a corporation de facto, only when a corporation de jure continues in the exercise of its functions after a forfeiture or other extinguishment of its franchises

A certificate of incorporation, in Ohio, filed without seals to the name of the corporators, is a nullity

Subscribers to stock upon which payments are due, made defendants with the company in a suit by a creditor, may set up the defense that the certificate of incorporation is a nullity, for want of seals annexed to the names of the incorporators.

A corporation cannot, in general, transfer its franchise; but, where a mortgage of a franchise by a corporation has been recognized as valid by the legislature, it is good between the parties

Under the Missouri statutes, the remedy of a judgment creditor of an insolvent manufacturing and business corporation to enforce the personal liability of stockholders is by suit, and not by motion

A condition that the creditor shall sue the corporation within one year after the debt becomes due is not fulfilled by the commencement of a suit within such time in the state court, in which the creditor took a nonsuit, followed by a suit in the federal court more than a year after the debt fell due

A special remedy given by statute against stockholders, for the debts of the corporation, held exclusive of all other remedies, legal and equitable

A plea, to a suit against the officers and the corporation for dissolution for malfeasance, that by the statutes of the state a court of equity could dissolve a corporation only under certain specified circumstances, which did not exist in this case, held good.

A bill against a corporation and its officers, alleging malfeasance, etc., and praying dissolution, may be amended, as to the prayer, so as to prevent a continuance of the breach of trust, and to compel an account

When a stockholder will be allowed to file a bill in his own name in behalf of all stockholders, making the corporation a defendant, to compel its officers to account for breach of official duty, or misapplication of corporate fund
Where the bill sets out acts ultra vires, which are frauds on the stockholders, plaintiff need not aver an application to and refusal by the corporation or its officers to bring the suit.

Such request and refusal need not be shown where the corporation is under the control of defendants, who must be sued.

The joinder of a person who is not a stockholder is good ground of demurrer to the whole bill.

A person who has no shares standing in his name on the books is not a stockholder, though he holds certificates which he has purchased from others, in whose name they stand, and the corporation has wrongfully refused to allow a transfer.

It is not necessary that directors against whom no relief is asked should be made parties, although the bill prays for an injunction against the corporation and for a receiver.

A state statute prohibiting nonresident corporations from removing suits into the federal courts having been declared unconstitutional, a provision requiring revocation of a license of a corporation applying for a removal falls with it, and the federal court may restrain a forfeiture thereunder.

**COSTS.**

See, also, “Bankruptcy.”

A mere attempt to negotiate a compromise of a claim at an amount specified, unaccompanied with a tender or direct offer to pay such amount, does not operate as an equitable bar to costs.

The right of the prevailing party to costs is recognized by the rules of the supreme court and acts of congress.

Under Judiciary Act 1789, § 34, the rights of the parties to costs will be settled by the laws of the state, when not specially provided for by congress.

A libelant in admiralty, for services on board a vessel on the Hudson river, cannot recover costs, where less than $50 is in demand, and he had a clear remedy, known to him, in the local courts, the burden of showing which is on claimant.

A third person claiming property seized on execution has the burden of proof, where an interpleader is directed, and he cannot require the plaintiff in execution, though a nonresident, to give security for costs.

A docket fee of 820 to the proctor is taxable under Act Feb. 26, 1853, § 1, on a final disposition by the court of a cause on the calendar.

So held in a case where an appeal in admiralty was dismissed, with costs, for irregularity, without being heard.
Expenses of printing and translating testimony are not taxable by defendant, where the bill is dismissed.

In a suit for the infringement of a patent, copies of plaintiff’s models and papers, which he is not obliged to produce, when obtained by defendant, are proper items of costs.

Act March 1, 1793, allowing parties the same compensation for travel, attendance, and attorney's fees as is given in the state courts, held not now in force.

Witnesses are entitled to travel “from the places of their abode,” though beyond the line of the state, unless otherwise agreed by the parties.

See, also, “Municipal Corporations.”

COURTS.

See, also, “Admiralty”; “Bankruptcy”; “Equity”; “Justices of the Peace”; “Maritime Liens”; “Removal of Causes.”

In general.

Courts of limited jurisdiction can only exercise their powers in the cases and in the mode prescribed by the legislature.

Comparative authority of federal and state courts: Process.

Where two courts have concurrent jurisdiction, the one which first obtains actual jurisdiction of the parties and subject-matter may proceed to final adjudication.

The pendency in the state court of a suit to determine priority between two liens will not prevent the federal court from assuming jurisdiction on a general creditor's bill to determine priorities as between all lien holders.

Federal courts—Jurisdiction in general.

Where there is an actual sale and transfer of the subject-matter of the suit, the
fact that it was made for the purpose of giving jurisdiction is immaterial
The federal courts have jurisdiction in contested elections of state officers only
where the title to office arises out of the denial of the right to vote to citizens
on account of race, color, or previous condition of servitude

—Grounds of jurisdiction.
Where the question of copyright is merely incidental to a dispute about a contract for the original composition of a literary work, a federal court will not entertain jurisdiction
The rule that the holder of a negotiable note may sue thereon, although he has no interest therein, is not applicable when the question of jurisdiction is to be determined.
The assignee of a note payable to “H. or bearer” may sue on the same in the federal court, regardless of the residence of his assignor
Whether action against the maker of a note given to the agent of a foreign corporation for goods sold, and indorsed to the president, may be brought in his name; and pleadings and evidence therein
A creditor's bill for discovery is a continuation of the suit at law, and a change of residence of the complainant does not oust the jurisdiction
The joinder of those parties whose citizenship would oust the jurisdiction will be dispensed with, where it can be done without prejudice to their rights
One defendant cannot object as to jurisdiction over another defendant, who admits that his citizenship is rightfully described to give jurisdiction
The defendant may waive the privilege not to be sued out of the state where he resides, by a voluntary appearance
The limit of jurisdiction as to the amount involved is to be determined by the amount laid in the declaration, and, when it consists of the common counts, by the amount in the bill of particulars

—Circuit courts.
The circuit court can exercise jurisdiction, in a case falling within the constitutional grant of judicial power to the United States, only where an act of congress has expressly conferred jurisdiction
Where jurisdiction is not expressly conferred on the federal courts, the party may resort to the state court
On a bill in the nature of a general creditor's bill, brought against a railroad company lying wholly within the Eastern district of Virginia, held, that the court could obtain jurisdiction of the District of Columbia, as a codefendant claiming a lien.

—District courts.
The district courts of the United States, as courts of admiralty, have jurisdiction over policies of marine insurance

—Administration of state laws and decisions.

The circuit court in Pennsylvania has power to issue writs of foreign attachment under the state laws

The claim law of Georgia, so far as the same applies to real estate, provides for equitable relief, and therefore cannot be administered in the federal courts

The circuit court of the United States has no power to enjoin a nuisance existing under a local law, which does not amount to a national nuisance

A state statute prescribing a limitation as to a suit in equity to affect a title to land (Civ. Code Or. § 378) is not binding upon the federal court. (Rev. St. § 721.)

The construction of a state statute by the highest court of the state is controlling on the federal court, where not in conflict with the constitution of the United States.

The question of the rate of interest and damages on nonpayment of a bill of exchange will not be determined by the local law

State decisions in relation to charges to the jury are not binding on federal courts

Local courts.

An action of debt on a promissory note for $214, reduced by payments to $8.94, will lie in the circuit court for the District of Columbia

If, in a suit in Alexandria, D. C., the debt be reduced below § 50, by offsets, the plaintiff may have judgment for the sum found by the verdict

CREDITORS' BILL.

A creditor’s bill for discovery is a continuation of the suit at law, as it merely seeks to obtain the fruits of the judgment, or to remove obstacles to the remedy at law.

CRIMINAL LAW.

See, also, “Arrest”; “Bail”; “Extradition”; “Habeas Corpus.”

A sentence to a jail in a certain place will authorize the holding of the prisoner by the keeper of that jail at another place, to which the jail has been removed by authority of the state legislature

CUSTOM AND USAGE.

The lien on the ship for wages, given to masters of British vessels by the law of the flag, though not existing under the maritime law, may be enforced in the admiralty courts of the United States

CUSTOMS DUTIES.
Customs laws.
The jury are to be governed in construing the law by the usual and well-known name of the article, and meaning of the words of the law, as understood generally in commerce at the date of the act

**Bates of duty.**

Brussels and Wilton rugs, composed wholly of linen and worsted, *held* not dutiable as carpets or carpeting, or as manufactures of wool. (Act 1832.)

“Gambia” *held* synonymous with “terra iaponica,” and exempt from duty. (Act 1861.)

“Hosiery,” in Act 1832, has a more general meaning than “stockings,” in Act 1816.

Knit shirts and drawers ready to wear, *held* dutiable as “ready-made clothing” (Act 1832), unless known in trade as “hosiery”.

**Invoice: Entry: Appraisal.**

The value in China of goods shipped from China to New York, via London, with charges, commissions, etc., accruing prior to their being put on shipboard in China, constitute their dutiable value.

The freight from China to London cannot be added as part of the dutiable value.

The addition of such freight, even though a proper charge, will not authorize the imposition of the 20 per cent, penalty under Act July 30, 1846, § 8, as it would form no part of the “appraised value.”

The owner, consignee, or agent may make addition in the entry to the invoice cost or value to raise the same to the true market value.

The cost of covering is included in the words “market value,” where wool is baled up before it is purchased.
Where the purchase price included the package or covering, charges therefor are not to be added by the appraiser.

Importers cannot qualify the effect of their act in adding to the invoice value by stating that it was made to prevent a seizure.

Goods imported from the country of their production must be appraised at their market value in that country at the time of their purchase.

Time of shipment abroad will be taken as the time of purchase, unless the collector is notified to the contrary.

The consignee who has sworn to the invoice sent by the owner will not be allowed to amend the entry to avoid a penalty after the collector has directed an appraisement.

Payment: Protest.

The payment of duties under protest on adding to the invoice value, to obtain possession and to avoid a penalty, held not voluntary.

Violations of law: Forfeiture.

The statement that the “master took all precaution in his power to prevent smuggling” held insufficient to prevent enforcement of the penalty against the vessel of the value of goods found concealed in the purser's room and the ship's storeroom.

Vessel forfeited for unlading foreign goods without a permit, etc., although not actually brought by her from a foreign port, but transshipped into her on the homeward voyage. (Act March 2, 1799, c. 128, §50.)

Customs officers.

The only defense admissible, in trespass against a customs officer for seizing goods as imported in violation of the revenue laws, is a judgment of condemnation on proceedings in rem in the district court, or a certificate of reasonable cause.

Having possession of the goods, and exercising acts of ownership over them, the plaintiff may sue for a trespass on them in his own name.

DAMAGES.

See, also, “Contracts”; “Collision”; “Patents, “etc.

Only reasonable actual damages are recoverable for personal injuries caused by the negligence of a carrier.

In determining such damages, the jury may consider the medical and all other expenses resulting from the injury, the time lost by plaintiff, and the value of his services while disabled, and the nature and extent of his injuries.
A recovery for breach of a contract for payment of money in another country will be for a sum equivalent to that to which plaintiff is entitled there, calculated by the real, and not the nominal, par of exchange.

DEATH.

See, also, “Abatement and Revival.”
Presumption of death does not arise from the fact that a person who, 22 years ago, was in bad health, would, if now living, be 80 years old

DEATH BY WRONGFUL ACT.
The widow, although the sole beneficiary, cannot maintain an action in her own name, given by the Illinois statute to the “personal representative” of one whose death is caused by the wrongful act of another

DEED.

See, also, “Boundaries”; “Vendor and Purchaser.”
A deed held to convey a legal title, as against purchasers on a judgment against the grantor, who subsequently obtained a patent from the government

DEMURRAGE.
There can be no recovery of demurrage for delays caused by the fault or negligence of the officers of the vessel, regardless of stipulations in the bill of lading.
Where there is no special agreement as to the time within which a vessel is to be unloaded, the law implies that it is to be done within a reasonable time. In the case of a cargo of ice from Maine to New York, held, that 15 days was not unreasonable, where the vessel waited her turn in the customary way

DEPOSITION.
Where a commission for the examination of witnesses confers the power to execute it upon any one of several commissioners, it may be executed by one of them.
A commission issued to four persons jointly to take depositions in England cannot be validly executed by three of them.
The court may, upon application before trial, allow depositions taken in a suit between the same parties, for the same cause of action, in another court, to be filed as evidence.
The objecting party should show affirmatively that there was mistake, misapprehension, or other good cause why they should not be received

DESCENT AND DISTRIBUTION.
See, also, “Executors and Administrators”; “Limitation of Actions”; “Wills.”
A court of equity has jurisdiction to decree an account and distribution, according to the lex domicilii of the estate of a deceased person domiciled abroad, which has been collected under an administration granted here. But whether it will proceed to decree such account and distribution, or direct such assets to be remitted, to be distributed by a foreign tribunal, depends upon the circumstances of the case.

On a decree of distribution, complainants, residing in France, required to give refunding bonds with security, pursuant to Act Pa. 1794, concerning intestate estates.

The circuit court of the District of Columbia cannot decree the sale of lands of an intestate, where some of the heirs are nonresident infants.

In a suit to charge real estate of an intestate for deficiency of personal assets, the answer of the administrator, and his accounts settled, are prima facie evidence against the other defendants, who are without personal knowledge.

The purchaser from the heir may plead, in the name of the heir, to a sci. fa. for execution against the lands of the deceased, that the executor had assets.

If the heir, in an action against him on the bond of his ancestor, plead nothing by descent or devise, and it be found against him, judgment shall be de bonis propriis.

Discharge.

See “Bankruptcy”; “Insolvency.”
DISCOVERY.
See, also, “Creditors’ Bill.”
The theory and basis of a bill of discovery in equity, in aid of a defense in another suit, is that the court in which such other suit is pending has no means of compelling a discovery from the plaintiff therein of facts material to the defense.

Domicile.
See “Courts”; “Removal of Causes.”

DOWER.
The subsequent assent by the wife to a conveyance by her husband, indorsed thereon under seal, held not a release of dower.

DURESS.
A statutory bond for the liberties of the prison, executed by the debtor under duress, is void both as against him and his sureties.

But if the debtor, with the knowledge and consent of one of his sureties, claims and exercises the right of being on the liberties by virtue of such a bond, they are estopped to allege its invalidity.

EJECTMENT.
See, also, “Abatement and Revival”; “Adverse Possession.”
Evidence after verdict, by witnesses, on affidavits as to the value of the land in dispute, is admissible to fix the jurisdiction of the court.

Where a deed was delivered on condition of a lease for life back to the grantor, the grantee cannot recover in ejectment against the grantor, where such condition has not been fulfilled.

A substituted grantee, having knowledge of the condition, stands in no better position than the original party.

A person setting up a settlement right must prove the same to be prior to an opposing right, and continuing.

Defendant, who sets up an outstanding title in a third person, must show it to be a legal, subsisting title, and better than the plaintiff’s.

An equitable interest or right in defendant is no defense.

A party claiming land under the Illinois limitation laws must deduce a title directly from a specified source, and by a chain of genuine conveyances.

Possession for 15 years, under Act Pa. 1785, to bar ejectment, must have commenced when the law was passed.

Under the Oregon Code, defendant cannot avail himself of an estate in the premises, in himself or another, as a defense, unless the fact is pleaded.
A detailed statement of matters which might be evidence in support of a plea of title in defendant is not a sufficient plea of such title, and will be stricken out, on motion, as redundant

An extract from the books of the surveyor general of the land office, in Pennsylvania, is not evidence

The proceedings of the board of property of Pennsylvania, directing a survey of certain districts, and the survey and plot returned thereon, are not evidence

A connected plot or sundry tracts, made and put together by an officer in the land office, is not evidence

The marshal must execute the writ issued upon a judgment in ejectment even as against third persons in possession having a superior title, but he may require an indemnity bond

A person in possession, asserting an anterior title, must apply to the court, if he would stay the enforcement of the writ

ELECTIONS AND VOTERS.

See, also, “Courts.”

Method adopted for the appointment of supervisors of election under the federal election laws of 1870, 1871, and 1872

EQUITY.

See, also, “Courts”; “Injunction”; “Pleading in Equity”; “Practice in Equity.”

Jurisdiction.

A mistake of facts going to the essence of a contract avoids it

An agreement, coupled with a power of attorney, giving a person a large contingent compensation on the collection of a claim against a foreign government, held, should be canceled for mutual mistake, where, unknown to both parties, the claim, a few days prior thereto, was allowed and liquidated by treaty stipulation

A court of equity has jurisdiction of a suit by heirs to set aside a deed from their ancestor, as obtained by undue influence, or as being taken in trust for his maintenance, and, after his death, for the benefit of the heirs

Such conveyance may be allowed to stand as security for actual advances and charges, and set aside as to all other purposes, on account of imposition

Equity has jurisdiction of a suit by the trustee against the cestuis que trustent, to direct an issue devisavit vel non and to decree possession of the land to the trustee to enable him to execute the trust

A person who, by negligence, has failed to avail himself of a defense at law, cannot have relief in equity
The purchaser of all the property of a railroad under a trust deed junior to judgment liens held by him, *held* entitled to maintain a bill to set aside satisfactions of the judgments entered by him, where the trust deed and his purchase were subsequently declared void.

A bill in equity will not lie to obtain payment of levee bonds by the enforcement of the levy and collection of a tax stipulated for their payment before judgment obtained on the bonds.

**Jurisprudence.**

Courts of equity will not allow a multifarious bill as a remedy for a multiplicity of suits.

In cases of concurrent jurisdiction, equity follows the law as to the statute of limitations; but, in cases of purely equitable rights and titles, equity is not bound by the statute, and only acts in analogy to it.

The commencement of a suit in equity within the limitation, which was subsequently discontinued, will not excuse the delay.

**ESCAPE.**

The escape of a prisoner while insane is no defense to the sheriff.

Such escape is no breach of the condition of a bond for jail limits.

**ESTOPPEL.**

An estoppel in pais arises only when the party against whom it is alleged, by his declarations, acts, or omissions, has misled the
other party to a transaction, to do that which will be turned to his prejudice by allowing the other party to disavow the legitimate consequences of his own acts
A grantee in possession under an unrecorded deed held not estopped, as against a subsequent mortgagee from his grantor, by signing a written appraise-ment on the application for the loan, in ignorance of the fact that his land was included

EVIDENCE.
See, also, “Deposition”; “Trial”; “Witness.”

Best and secondary.
A copy is inadmissible unless the original is lost or destroyed, or beyond the power of the party to produce

Documentary.
A bill of sale is properly admitted in evidence where the subscribing witness swears to his signature, though he has no recollection of the paper
A transcript of the record of a justice of the peace, certified by him to the county court, and certified by the prothonotary and the presiding judge of that court, under the act of congress, held sufficient
A paper purporting to be “a certified extract from the general draft of certain districts as framed by the surveyor genral, remaining in his office, under the seal of the office,” is not evidence

Parol evidence.
Parol evidence to show what time payment was to be made is not objectionable as varying or contradicting a written agreement of sale, silent on such subject

Competency: Materiality: Relevancy.
The declarations of a witness, not under oath, may be given in evidence to discredit his testimony
A book published by a deponent respecting the date, etc., of certain surveys, may be read in evidence, with a view to qualify his deposition
Whether or not declarations post litem motam are evidence in matters of pedigree

EXECUTION.
See, also, “Attachment”; “Bankruptcy”; “Garnishment”; “Judicial Sales.”
The signing of the vend. ex. by the deputy clerk, in his own name, held a mere irregularity, of which advantage could not be taken in a collateral proceeding
The plaintiff has a right to enter the defendant's house with the constable, who has a fi. fa., to show the defendant's property, upon which to levy the execution.

A person whose property is levied upon by a United States marshal, under execution against another, cannot resort to a local law which provides for equitable relief, but must file his bill in equity.

A valid promise not to arrest a debtor on the first execution does not, at law, avoid a bond given by the debtor for the prison liberties, when arrested in violation of such promise, which is collateral merely.

A sheriff's deed cannot be given in evidence, without producing the judgment and execution under which the sale was made.

Act March 2, 1867, adopting the state law concerning "modifications, conditions and restrictions upon imprisonment for debt," does not apply to process in admiralty suits.

A claim for damages for an injury to the person with force is not a claim for a debt, within the meaning of the statute and rules relating to imprisonment for debt.

EXECUTORS AND ADMINISTRATORS.

See, also, "Descent and Distribution"; "Limitation of Actions"; "Wills."

The statute of California for the settlement of the estates of deceased persons has no application to the estates of persons who died previous to the organization of the state government.

A prefect under the Mexican government in California had no jurisdiction over the estates of deceased persons, or authority to appoint an administrator.

A previous demand for the legacy is not necessary under Code La. art. 1626, where the purpose of the bill is merely to establish the validity of the bequest.

A deed executed by administrators under an order of the orphans' court cannot be read in evidence without producing the order of the court.

A creditor may sue to recover his debt any time before distribution, though after the expiration of 12 months.

The pendency of a commission of insolvency is no bar to a sci. fa. against an administrator on a judgment had against him.

An administrator made defendant after verdict against his intestate, and before judgment, may plead no assets or insolvency on sci. fa. against him.

Under Act Md. 1798, c. 101, subc. 8, § 15, the court and not the jury, is to ascertain whether the defendants paid away all the assets before notice of the plaintiff's claim.
Evidence may be given to show that the defendant is executrix in her own wrong, without charging her as such.

Where an executor, who is also a devisee or residuary legatee, enters generally into the possession of the property, he does it as executor, and not as devisee.

The creditor has the burden of showing the amount of assets which came into the administrator's hands, even when he has neglected to return an inventory.

Exemptions.

See “Bankruptcy”; “Homestead.”

**EXTRADITION.**

Rules prescribed for the conduct of proceedings under extradition treaties

The requisition for the extradition of a fugitive criminal under the treaty with Great Britain of 1842, and Act Aug. 12, 1848, is properly made through the executive of the United States.

Sufficiency of warrant to give jurisdiction to arrest and commit a fugitive from justice.

Where the crime is forgery, the complaint on which the warrant is founded may charge more than one forgery.

Documents which are so authenticated that the tribunals of the country where the offense was committed would receive them are admissible in support of the charge.

The proper form of such authentication considered.

The circuit court may, on a writ of habeas corpus, in conjunction with a writ of certiorari, revise the action of a commissioner committing a fugitive from justice for surrender under an extradition treaty with a foreign country.

The court will look into the evidence on which the judgment of the commissioner rested, and will pass upon its weight, as well as upon its competency.

Where the commissioner acts on legal evidence the court will not reverse his judgment except for substantial error in law, or
for such manifest error in fact as would warrant a court in granting a new trial for a verdict against evidence.
Documentary evidence of the prisoner having committed the offense charged held sufficient, both in form and substance, to warrant his commitment for extradition.

**FACTORS AND BROKERS.**
See, also, “Principal and Agent.”
Factor selling bills of his principal, remitted to raise funds, held not liable for taking note of third person covering such bills, with other sums, though it is not indorsed by the purchaser.
Bills transmitted to a factor for sale, and credit on his debt against the principal, held to amount to payment, where the notes received therefor were dealt with as the property of the factor.

**FISHERIES.**
See. also, “Seamen”; “Shipping.”
An enrolled vessel sailing under a fishing license is not liable to forfeiture because her part owner, a citizen of the United States, resides in a foreign country.
Construction of Act 1813, c. 34, and Act 1819, c. 212, relating to bounty upon vessels employed in fisheries.
A vessel is “at sea,” within the intent of such acts, when she is without the limits of any port or harbor on the sea coast.
The forfeiture provided by Act July 29, 1813, for fraudulently obtaining bounty attaches only when there is actual fraud and doceit used in obtaining it.
An almanac with underscored or dotted dates held inadmissible to prove the date of sailing and returning of a vessel engaged in fisheries.

**FIXTURES.**
New fixtures substituted for old ones by the tenant cannot be removed without accounting for the latter.
The right to remove fixtures is not lost by nonpayment of rent and notice to quit, but only by quitting.
A parol renewal of a lease renews whatever rights the tenant had to remove the fixtures.
A negotiable note received on account of rent held no bar to a distress for the whole rent due before its maturity.

**FORFEITURE.**
See, also, “Customs Duties”; “Fisheries”: “Internal Revenue”; “Shipping.”
An amendment will not be allowed, to insert a new, substantive defense, where the statute of limitations has run against it. The fact that a good defense existed against a decree of condemnation, but which was not pleaded before decree, will not avoid the decree.

**Fraudulent Conveyances.**

See “Assignment for Benefit of Creditors”; “Bankruptcy.”

See “Contracts.”

**GARNISHMENT.**

See, also, “Attachment”; “Execution.” Funds in the hands of an assignee for the benefit of creditors are not subject to garnishment under executions issued against the assignor after the date of the assignment. One to whom a note was assigned with knowledge that the maker had been summoned as guaranty in a suit against the payee cannot recover thereon against the maker. The pending attachment may be pleaded in abatement to an action brought against the maker in another state. The garnishee may answer after bill taken for confessed at the rules.

**GIFTS.**

The indorsement of a certificate of deposit, when of such a character as to absolutely prohibit the indorsee from claiming any present title to the money, or any right to demand payment until after the death of the indorser, held not a valid gift causa mortis.

**GRANT.**

See, also, “Boundaries”; “Mines”; “Public Lands.” A legislative grant is equivalent to a patent, and one made to a class of persons is as valid as one made to an individual. A grant to an individual, of franchises, is to be strictly construed, but a grant to a purchaser must be interpreted according to the ordinary meaning of its language. “Adjacent,” as used in a grant, does not mean “adjoining,” but signifies “convenient,” “near to,” or “in the neighborhood.” Objections to confirmation of grant of land in San Joaquin county, Cal., held to have been removed by additional testimony as to performance of conditions. A confirmation of a Mexican land grant under Act March 3, 1851, determined nothing as to the equitable relations between the confirmees and third persons.
A survey returned and accepted is prima facie presumed to have been legally made

A warrant and survey returned into the land office and accepted, in Pennsylvania, vests a legal title

A survey made by a deputy surveyor, out of his district, is void, and the patentee cannot recover in ejectment

Ex parte proceedings by the board of property, ordering a survey to be struck from the records, are not binding on a person claiming thereunder

What is a sufficient survey of a number of tracts adjoining each other, belonging to the same person

A survey in the district appropriated to satisfy depreciation certificates, made without going upon the land and running the lines, held valid where the boundaries can be ascertained with mathematical certainty by the lines of adjoining surveys

A right of settlement and improvement is merged in the title acquired under a survey under a warrant by the owner of the settlement and improvement

The warrant is functus officio after a survey has been once regularly made under it by direction of the warrantee

What laches in a settler will postpone him to a warrant and survey

A call in an entry may be made good by description, though the object called for is not notorious

Where the calls in an entry are indefinite, the survey should be made either in a square or an oblong
GUARANTY.
See, also, “Bills, Notes, and Checks”; “Indemnity”; “Principal and Surety.”
A guaranty of a certain annual dividend on corporate stock, indorsed thereon, held a collateral undertaking; and a demand and notice must be averred and proved, or an excuse alleged, to charge the guarantor
The total insolvency of the principal supersedes the necessity of a demand of the principal, and notice to the guarantor
An averment, in a declaration on a guaranty of a certain annual “dividend or income” on corporate stock, that the company, within the time specified, “neither declared or paid any dividend or income whatever,” held insufficient
The measure of damages for breach of guaranty of the “amount due” on a note is the value of a judgment, if one had been obtained against the makers
Where the makers were solvent, but proved payment, the measure is the full amount due on the note at the time of bringing suit, as stated in the guaranty

GUARDIAN AND WARD.
See, also, “Parent and Child.”
A notice of the appointment of a guardian by reading the order of the court held not sufficient under Act K, I. Dig. 1822, p. 246, § 3

HABEAS CORPUS.
The petitioner must produce a copy of the warrant of commitment, or an affidavit that the jailer refused to give a copy
A prisoner under charges for trial by court-martial will be discharged on habeas corpus, where such charges are found wholly insufficient to show jurisdiction
A convict sentenced in court by a judge de facto, acting under color of office, though not de jure, and detained in custody in pursuance of his sentence, cannot be properly discharged upon habeas corpus
Where the identity of the prisoner arrested as a deserter is established on a traverse to a return that he was a regularly enlisted soldier, he will be remanded
A person brought from another state under a writ of habeas corpus ad testificandum, and discharged on habeas corpus, must be sent back in charge of the marshal of the district

HOMESTEAD.
See, also, “Bankruptcy.”
The cestui que trust under a trust deed to secure present loans and future advances will be protected, as to such advances, against the claims of the bor-
rower, who has declared the land a homestead, and has subsequently obtained such advances, and fraudulently concealed his declaration of homestead

HOMICIDE.
The officers of a steamboat are liable for any act or omission in not properly regulating the fires or amount of steam, or any neglect of duty likely to create danger, or for not taking proper precaution, where loss of life is caused thereby. (Act 1838, § 12.)

HUSBAND AND WIFE.
A feme covert need not acknowledge her deed, to render it valid under Act Ill. 1869 (Pub. Laws, 359)
A married woman is entitled, under Act Ill. 1869, to retain, as her own, commissions earned in making sales for her husband under a contract of agency with him
The provision in the statute that it shall not be construed to give the wife any right to compensation for any labor performed for her husband or minor children, is in applicable to cases where there is a special agreement between the husband and wife

INDEMNITY.
See, also, “Guaranty”; “Principal and Surety.”
A bond executed in Michigan, to indemnify a person for signing a note in another state, which is void under the laws of that state, is also void

Infancy.
See “Guardian and Ward”; “Parent and Child.”

INJUNCTION.
See, also, “Equity”; Patents.”
The answer in chancery of a corporate body, under its common seal, denying the equity of the bill, is sufficient to warrant a denial of an injunction, or to dissolve it if granted
An injunction against a corporation is binding upon an officer upon whom it is served, or to whom it is known to exist
After satisfaction on execution of a judgment at law, on the dissolution of an injunction, plaintiff cannot recover, upon the injunction bond, interest accruing upon the judgment while delayed by the injunction

INSANITY.
See, also, “Wills.”
The law presumes sanity in a grantor, and prior or subsequent lunacy, except where it is habitual, does not change the burden of proof
In determining the ability of an alleged insane person to execute any particular act, the inquiry should first be what degree of mental capacity is essential to the proper execution of the act in question, and then whether the party possessed at the time such capacity

INSOLVENCY.

See, also, “Assignment for Benefit of Creditors”; “Bankruptcy”; “Composition.”

Upon the trial of an issue as to the right to a discharge, the debtor must produce his account books, if called for

Order of discharge rescinded on allegations filed and ex parte evidence in support thereof, where defendant failed to appear

A certificate of discharge in insolvency is not conclusive evidence that the discharge was duly obtained

A discharge of the principal under a state insolvent law must be pleaded, to entitle bail to a release

A discharge under a state insolvent law is invalid against a creditor of another state, who did not voluntarily become a party to the proceedings

Nonresident creditor held not bound by the discharge of his debtor under the insolvent law of the District of Columbia, though he had brought suit on his claim within the District

INSURANCE.

See, also, “Marine Insurance.”

The creditor of the insured has no right of action on a policy of fire insurance payable
to such creditor "as his interest may appear."

The question, "Have the person's parents, uncles, aunts, brothers, or sisters been afflicted with * * * or any other hereditary disease?" held to have been truthfully answered.

The insurance solicitor has no authority, simply from the nature of his business, to bind the company to a waiver of payment of the premium.

Agreement of insurance solicitor to carry the insurance held not a waiver of condition requiring payment of premium to validate renewal.

A policy of insurance by a New York mutual company on the life of a citizen of Alabama is suspended, and not dissolved, during the continuance of the Civil War, and the rights thereunder may be enforced on the return of peace. Such policy is not unlawful, as continuing to insure the life of an alien enemy; it appearing that the insured was a neutral, passive, noncombatant enemy, who remained such in fact.

The refusal of the company when applied to by the insured, on the return of peace, to recognize the policy or receive the premiums, relieves him from the necessity of paying premiums subsequently accruing.

Repudiation of obligation under the policy while it is still legally binding gives the insured a right of an immediate action for damages.

Insured, claiming waiver of terms of policy requiring premium to be paid to validate a renewal, must show special agreement, or one arising by necessary implication from the circumstances.

A person engaged in the insurance business, who has expert Knowledge of the existence of facts affecting the premium, may give such knowledge in evidence on the question of the materiality of such facts represented or concealed by the assured.

Insurance companies created by the laws of other states do not contravene the public policy of Illinois by investing their assets in mortgages upon real estate within that state.

**INTEREST.**

Judgment may be rendered for 10 per cent, interest until paid, where that rate is expressed in the contract.

**INTERNAL REVENUE.**

The owner of a patent, who has the patented machines made for him at a fixed price, and then sells them to others, held to be the manufacturer, and liable for the tax upon the sums realized by their sale. (Act July 13. 1866, §§ 79, 86.)
“Profits used for construction “held not to include money used by a railroad company, to replace a worn-out bridge with a much more costly structure. The tax on a pecuniary legacy accrues on the death of testator, though not payable until the legatee becomes entitled thereto (Act June 30, 1864, §§ 124, 125; Act July 13, 1866, § 9); and a repeal of the statute does not affect the liability of the executor.

When taxes are paid on the demand of an officer having authority to collect them by distraint, there is sufficient duress of the property to make the payment involuntary. Moneys paid for the services of an inspector at plaintiff’s private bonded cellar “held not recoverable. The failure to take an appeal to the commissioner of internal revenue, as provided by Act July 13, 1866, § 19, to be available in an action to recover a tax as illegally assessed, must be pleaded in abatement.

JUDGE.

See, also, “Courts”; “Justices of the Peace.” The acts of a court presided over by a judge disqualified by the fourteenth amendment, but holding office before it was adopted, are valid.

JUDGMENT.

See, also, “Interest.”

Rendition and entry.

Judgment cannot be confessed before the return term of the writ. Where a party dies during term, judgment may be entered as of a day antecedent to his death; otherwise where he dies before the beginning of the term, Under an agreement for judgment for the amount due on a promissory note, plaintiff must settle the amount due on notice to defendant before issuing execution.

Operation and effect.

The lien of the judgment on property is suspended during imprisonment on a ca. sa. in favor of other levying creditors. After reversal on appeal in the state court, and new trial ordered, plaintiff may dismiss his suit, and bring another in the federal court. Plaintiff, in such case, is bound by the ruling of the court on appeal, unless he makes a different case in the new forum. Of the nature and effect of a decree in a court of probate, and as to the parties whom it binds.
A decree of the supreme court of probate reversing that of the inferior court, decreeing distribution, is no bar to a subsequent suit by the parties claiming as heirs or legal representatives.

Where the record fairly presents two points, upon either of which the decision might turn, and the court fully considers and determines both, the decision of neither can be regarded as an obiter dictum.

Relief against: Opening: Vacating.

Judgment by default opened where motion made at the same term, and defendant showed a good defense.

Variance between the capias and declaration cannot be pleaded to set aside an office judgment.

Satisfaction and discharge.

The recovery of a judgment in one court in an action on a judgment of another court is no satisfaction thereof.

Discharge of the debtor from imprisonment without the consent and against the will of the plaintiff, under a state law reserving to the creditors certain rights as to future-acquired property, will not operate as a satisfaction of the judgment.

Satisfaction of a judgment which is the foundation of a judgment obtained in another jurisdiction will not be entered of record where the creditor is entitled to continue the latter in force under the local law.

JUDICIAL SALES.

Where the purchaser neglects to pay the purchase money, and suffers the property to be sold for taxes, the court, upon the petition of the trustee, will order so much of it to be resold as will pay the taxes and redeem the residue.

JURY.

Proper practice in case of a loss by the marshal of a special jury list struck by the parties.
JUSTICES OP THE PEACE.
A justice of the peace in Washington, D. C., has jurisdiction of penalties, under by-laws, not exceeding $50
A justice of the peace may reject a plea of misnomer in abatement

Landlord and Tenant.
See “Fixtures.”

License.
See “Mines”; “Patents.”

Liens.
See “Admiralty”; “Maritime Liens”; “Shipping.”

LIMITATION OF ACTIONS.
See, also. “Adverse Possession”; “Ejectment”; “Equity.”
The principle that the statute will not protect trustees applies only to express, not to constructive, trusts
The California statute applies to both equitable and legal remedies. It is directed to the subject-matter, and not to the form, of the action, or the tribunal before which it is prosecuted
Act N. C. 1789, c. 23, § 4, requiring creditors of decedents to bring their actions within three years, is inapplicable where there is no executor or administrator of the estate
Inability of the creditor to proceed against the real estate of decedent until the personal was exhausted, or a deficiency ascertained, is no bar in equity to the statute of limitations
If the statute begins to run in the lifetime of the intestate, it is not interrupted by his death, and the want of administration
When the statute once begins to run upon a right of action to recover lands, it is not interrupted by the subsequent descent of such right of action to a party laboring under a disability to sue
An offer after commencement of suit, made to plaintiff's agent, to pay the debt, upon terms which he is not authorized to accept, will not take the case out of the statute

LOTTERIES.
A lottery for the sale of lots or lands is within the prohibition of Act Md. 1792

MANDAMUS.
A circuit court of the United States has power, by mandamus, to compel the Union Pacific Railroad Company to operate its road as required by law. (Act March 3, 1873.)
Private persons, who suffer damage and inconvenience from the failure of the company to operate its road as required by law, may institute proceedings under Act March 3, 1873, without the sanction of the attorney general. Cases in which the attorney general must, and in which private citizens may, apply for the writ, considered

**MARINE INSURANCE.**

See, also, “Average.”

**The contract—Generally.**

The charter provisions that “all the conditions of policies issued by the company shall be printed or written on the face thereof,” and that certain officers “shall sign the policies,” made by order of the directors, does not prevent the making of an oral contract, or liability upon an implied contract.

Quaere as to the validity of an insurance by seamen of their shares in the proceeds of an adventure, where the shares are in the nature of wages, though given in lieu thereof.

The insured is entitled to have the policy reformed so as to secure the protection which the correspondence between the parties shows that the insured intended, and the insurer knew to be his understanding.

Correspondence held not to justify reformation of policy.

**—Insurable interest.**

A lien, or an interest in the nature of a lien, though the debtor may be pursued personally, is an insurable interest.

An interest does not cease to be insurable in the progress of the voyage simply because it is subject to contingencies, or has not at the moment anything corporeal or tangible to which it is attached.

The policy attaches as soon as the voyage commences, where the insured has then an inchoate right to freight under a contract, although the cargo is not taken in.

**—Interpretation.**

General rules for the construction of policies laid down by Betts, J.

It is not an ingredient of the contract of insurance that it shall be enforced conformably to the law of the place where it was executed.

The usage of trade must be taken into consideration in the construction of policies.

The usage of vessels engaged in the trade in question is not admissible in the interpretation of a contract of insurance which is not ambiguous.

The terms, “to port in Cuba, and at and thence to port of advice,” do not give the right to go to a second port in Cuba to load.
Evidence of the usage of vessels in the trade in question to discharge at one port, and then to proceed to another for return cargo, *held* inadmissible to establish a usage under the policy

Depositions admitted de bene esse to show that on a voyage of this kind the vessel might, under a usage, go to a second port in Cuba to load

**Representations.**

A statement that the vessel would take her register tonnage of coal *held* not a material misrepresentation, where she in fact carried more than that quantity

The stipulation, “outward cargo of coal not to exceed registered tonnage,” *held* not a material misrepresentation, where the policy provided for indemnity though the cargo exceeded the registered tonnage

The meaning of the representation, “coppered ship,”, in the application, is to be understood according to the ordinary sense and usage of such terms in the place where the insurance is made

A policy is void, as founded on mutual mistake, where the owner and insurer understood certain terms of representation to be used in totally different senses

**The risk.**

A written policy cannot be extended to other risks than those named, by an averment that it was so understood, construed, and intended by the parties; but there may be a new parol contract, covering such different risks
A collision at sea whether the result of accident or negligence, is a peril of the seas, within the meaning of insurance policies. All expenses resulting as a direct and immediate consequence of a peril insured against are covered by the policy. The insurers of a vessel are liable for a sum paid by its owners in compromise of damages sustained by another vessel from a collision caused by the negligence of the insured vessel, as well as the damages to the insured vessel. A loss of a ship, by worms, man ocean where worms ordinarily assail and enter the bottoms of vessels, is not a peril of the sea within the policy. The loss of a false keel at the Gape de Yerd Islands, exposing the vessel to the action of worms, which destroyed her, while in the Pacific Ocean, held not within the policy.

**Deviation.**  
A vessel armed and insured as a letter or marque has no right to cruise at large for prizes, but she may chase and capture hostile vessels coming in sight in the course of her voyage. A vessel, whether armed or not, has the right to attack or chase an enemy ship in self-defense. A vessel capturing a hostile vessel in self-defense may take possession, and man out the prize.

**Abandonment.**  
To make an abandonment effectual, the cause of the loss must be stated in the letter of abandonment, for the benefit of the underwriters. Where the injury exceeds one-half the value of the vessel, the insurer must engage to pay for all necessary repairs, regardless of amount, if it insists upon a continuance of the voyage. After an abandonment accepted, the insurers are owners for the voyage, liable for seamen’s wages, and entitled to freight, from such time. Where vessel and freight are separately insured, and abandoned, the insurers on the freight are entitled only to that earned before the abandonment. The continuance of the voyage by the insurers without objections will be presumed to be on the original terms, as to compensation of master and seamen. Right of master on abandonment, under insurance, of a moiety of freight, which he had contracted to receive in lieu of wages.

**Right of recovery.**  
Interest at the time of the loss held sufficient to entitle the insured to recover, although he had no interest at the commencement of the risk.
Quaere: Where the assured had property in the goods insured at the time of the insurance, whether a subsequent change of interest, before or after loss, would affect his right to recover.

An insurance on outfits in a whaling voyage does not terminate pro tanto with their consumption or distribution, but attaches to the proceeds of the adventure.

Stores shipped for sale to the crew during a sealing voyage, or their proceeds, may be insured under a valued policy.

Where freight is insured in a valued policy, the right to indemnity attaches if any part of the cargo is shipped.

As between the parties, a valued policy is conclusive as to the true value of the subject insured, where the valuation is not shown to be fraudulent or grossly excessive.

The liability, under a valued policy on freight, on jettison of a portion of the cargo, is computed on the basis of the valuation in the policy, and is not limited by the insured's contribution on a general average adjustment.

Suits.

Where a vessel, not having been heard from, is considered as lost, interest is calculated after 12 months and 30 days from the last period when the vessel was heard from.

A policy for a succession of voyages, “on account of whom it may concern,” loss payable to H., is valid and enforceable in a suit by H. in his own right or as trustee.

A declaration on such policy, averring that at the time of the loss H. was interested in her to the amount of the insurance, held sufficient.

A declaration that the insurance was for the use and benefit of H., as trustee for N., need not set forth the nature or extent of the trust.

MARITIME LIENS.

See, also, “Admiralty”; “Affreightment”; “Charter Parties”; “Demurrage”; “Salvage”; “Seamen”; “Shipping.”

The right to a lien.

To impart a maritime character to personal services rendered in or upon a vessel, they must be connected with the reparation or betterment of the vessel, or be rendered in aid of her navigation, directly, by labor on the vessel, or in sustenance and relief of those who conduct her operations at sea.

Under the general maritime law, a lien arises or is implied for the benefit of material men, unless the ship be in her home port, or credit be to the master or owner.
A lien arises for labor and materials furnished in a foreign port in rebuilding a vessel which had been burned to the waters edge
No lien arises under the maritime law for supplies furnished a vessel in the state in which she is owned
There is no lien for wages of a watchman on board a ship in port
A master may hypothecate his vessel for necessaries in a foreign port, unless he has at his command funds or credit of his owner
Supplies furnished at the request of the master create a lien, though they exceed the vessel's actual need, in the absence of mala fides or collusion
The power of the master to contract for necessary supplies for which a lien arises under the maritime law is not controlled by the law of the flag
A ship's broker has a lien on a foreign vessel, in the nature of the lien of a material man, for services in shipping a crew for the vessel, and for advances for their wages
Every person who furnishes supplies or repairs to a foreign vessel is, by the maritime law, considered as contracting with the vessel herself, as a principal debtor, as well as with the master and owners
A lien attaches for casks furnished to a whaler for the receipt of oil
A person who is neither owner nor master cannot contract for work or materials necessary for building, repairing, or supplying a vessel, which will create a lien thereon
The seller of coal, bought, by one holding himself out as master and owner, for a tug lying in a distant port, must ascertain the extent of the purchaser's authority, and the necessity for the purchase
The builder of a vessel, who furnishes materials, and is to be paid in install-
ments, is a vendor, and has no lien, either under the maritime law, or under
Act N. Y. March 29, 1855, giving a lien for work or materials "furnished."
Masts and spars furnished to a vessel while she is being built are not maritime
supplies
Repairs to a vessel while in the hands of a purchaser under a conditional sale
constitute a lien upon her, in the hands of the seller, after possession resumed
for breach of the condition
A chartered vessel is liable for necessary supplies furnished in a port in which
she herself, her charterer, and her owners are all strangers
A vessel in the hands of mortgagees, who were in fact the real owners, held
not a foreign vessel in the port of their residence, as to one advancing money
with knowledge of the facts

**Priority and enforcement.**

The relative priorities and dignities of many claims upon the same vessel, as-
serted by libels and petitions, composed, adjusted, and settled
The lien of a shipper for the performance of the contract of shipment takes
preference over the lien of a prior chattel mortgage
The claimant, in answer to a libel by a material man, need neither admit nor
deny that the articles furnished were necessary

**Waiver: Discharge: Extinguishment.**

The material man's lien is not lost or waived by taking a negotiable note from
the owner or master, unless it is received as payment. But an absolute transfer
of the note will extinguish the lien
The right to proceed against a vessel in rem for supplies is not analogous to
liens at common law or by statute, and is not, like them, affected by mere
transfer of possession
Courts of admiralty are not governed by any absolute rule of limitations, but
they will never do injustice to bona fide purchasers by the enforcement of old
secret liens
Demand held stale, after two years, as against a mortgagee without notice,
where the vessel was most of the time within the jurisdiction, and libelants
were under no disability to sue
A lien given by the maritime law is a right given by the laws of the United
States which cannot be abrogated, displaced, or superseded by state enact-
ments
The seizure and sale of a vessel under a state law do not divest a lien given
by the general maritime law
Liens under state statutes.

A lien of workmen and material men on a vessel, in a port to which she belongs, depends entirely on the provisions of the state law by which it is given. A lien arises for services rendered in taking care of a ship in port under the New York statute, where they amount to $50, enforceable in admiralty. The lien for work done in the construction of a vessel, given by the local law, is lost by a failure to comply with its provision for enforcement. A lien upon a vessel, given by the local law, may be enforced by a proceeding in rem in the admiralty court, under the change of May 6, 1872, of rule 12 in admiralty. Under the New York law, it is not necessary to file a specification of lien, where the vessel has not left the state before seizure. Minder process to enforce it.

MASTER AND SERVANT.

See, also, “Apprentice.”

A shipkeeper, by night or day, is not obliged, without an engagement to that end, to pump the ship, wash her decks, etc.

No abatement of wages will be made for occasional absence from the ship, if no objection is made thereto until the whole period of service has expired. There can be no recovery for an injury arising from incompetency or unskillfulness of a coservant, or from defects of machinery, unless it appear that the master knew of such incompetency, etc., or did not exercise proper care in selection.

Each employe engaged with others in the service of a common master takes upon himself the liability to injury resulting from the negligence of his coemployes.

Master mechanics, foremen of roundhouses, and other persons engaged in the repair of machinery and rolling stock, are fellow servants with engineers, conductors, and other persons engaged in running trains.

MINES.

A grant of a right to dig, take, and carry away all iron ore to be found within a tract of land, on paying so much a ton, held a mere license, under which no property in the ore accrues until the privilege is exercised. The right is without stint, but is not exclusive of the owner of the soil. Such license is indivisible, and an assignee in part cannot support a suit against the owner of the soil.
In the case, of interfering locations, for which patents have lawfully issued up-
on due notice to adverse parties, priority of right is determined by priority of
patent, and not by priority of location
The party having priority of title (even by patent) cannot take all the ore of the
cross vein found within his lines, but is limited to that contained in the space
of intersection. (Rev. St. § 2336.)
In the case of parties owning veins which unite in their downward course the
oldest patent will take the vein below the point of union, including the space
of intersection. (Rev. St. § 2336.)
A preliminary injunction preserving mining property in statu quo will not be
dissolved where there is a strong controversy, in which the right of neither
party clearly appears

MORTGAGES.

See, also, “Chattel Mortgages.”
A stipulation requiring payment without deduction for taxes, charges, or as-
sumptions does not prevent the mortgagor retaining the amount of income tax
on the accrued interest, chargeable against the holder, and, paid by the mort-
gagor
Pending foreclosure, the mortgagor cannot create a mechanic’s lien which will
affect the rights of the mortgagee
A decree of foreclosure in the federal court held not objectionable, in not giv-
ing the time allowed for redemption by the state statute
The mortgagee, after foreclosure, may recover at law, upon the attendant bond
or note, the deficiency of the mortgaged property to pay the debt due, calcu-
ling the value of such property at the time of the actual foreclosure

MUNICIPAL CORPORATIONS.

See, also, “Railroad Companies.”
The corporation of Washington, D. C., has authority to prohibit gaming
A municipal corporation is not liable for the unlawful acts of its officer committed ultra vires, and not colore officii, in the known and willful violation of law

A municipal corporation is not liable to the neglect of its mayor and police officers to protect private property against a known violation of law, though they have sufficient power for that purpose

Negotiable bonds, made under a legislative authority reciting that they are issued “for the purpose of aiding internal improvements in said township,” held valid in the hands of a holder for value, though in fact issued to aid a private enterprise

Negotiable bonds, issued without authority, held invalid in the hands of a bona fide purchaser for value, where the recitals were sufficient to put him on inquiry

An alderman of Washington, D. C., is not competent to try a person for a violation of a by-law of the corporation

**NAVIGABLE WATERS.**

See, also, “Riparian Rights”; “Waters and Water Courses.”

The state has the right to the soil under navigable water within her territorial limits, subservient only to the right of the general government to regulate interstate and foreign commerce

**Navy.**

See “Army and Navy.”

**Negotiable Instruments.**

See “Bills, Notes, and Checks”; “Bills of Lading.”

**NEUTRALITY LAWS.**

The participation by the citizens of a neutral state in an attack by one belligerent power upon another is an offense against the law of nations, and may be punished as such by such neutral state:

The federal judiciary, in the absence of legislation by congress, has jurisdiction of an offense against the law of nations, and may proceed to punish the offender according to the forms of the common law

**NEW TRIAL.**

Letters of one of the defendants being read on the trial is no ground for surprise, for which a new trial can be granted

Misbehavior of jurors is not a ground for a new trial, if it has not affected the verdict
The drinking of liquor by the jury before the verdict is rendered, where it is not affected thereby, is no ground for a new trial, where not furnished by the party in whose favor it was rendered.  
Vacillating conduct of a juryman, in voting in the jury room, add no ground for a new trial  
An error in a charge which might have been corrected by the court, is not available on motion for new trial, where objection was not raised at the time

PARENT AND CHILD.  
See, also, “Guardian and Ward.”  
The mother of minor heirs has no power to authorize an agent to act for them in matters relating to their real estate  

PARTIES.  
It is no cause of demurrer for want of parties that a lunatic is not made a party, but it is a good objection for want of parties  
In a suit in equity to convert the holders of the legal title to land into trustees for the true owners, a previous holder of such legal title, who has parted with all his interest in it, is not a necessary party  

PARTNERSHIP.  
See, also, “Bankruptcy.”  
The actual intention of the parties will alone constitute a partnership, as between themselves  
A mere participation in the profits will not make the parties partners inter sese  
The use of the word “Company” in the title of a firm formed as a special partnership under the New York statute renders all the partners liable as general partners  
A special partner, who has withdrawn any part of his capital from the firm, is liable, at suit of creditors, to pay it back  
One partner cannot sue the other in relation to a partnership matter until the partnership accounts have been finally adjusted, and a balance struck  
The firm is not liable for goods sold to one of the partners with knowledge that they were for his separate use, although he ordered them to be charged to the firm  
A chattel mortgage executed by one partner under seal, in the firm name, for money advanced to it, where the other partner subsequently assents thereto, will bind the firm  
No agreement between the partners on their dissolution can affect the rights of their creditors, unless there is an express or implied agreement by the creditors to accept the continuing partner as the debtor, and to discharge the other
The retiring partner will be held discharged where the creditors, with full knowledge of the continuing partner’s agreement to assume the debts, enter into a totally new contract with him, entirely changing the nature of the debt.

**PATENTS.**

**Patentability: Invention: Novelty: Anticipation**

The application of a known thing to a new purpose, as the use of rivets to fasten parts of shoe instead of sewing, is not patentable.

The principle that cotton spun directly from the gin produces a better and stronger yarn than cotton after it is baled, is not patentable.

A pavement composed of stone blocks, of which the ends lying in the line of travel are smooth, and fit closely together, while the sides lying across the street are rough, so that spaces are left between them, in which the horses' feet may take hold, is patentable.

A new combination of old devices is patentable, if the result produced is new and useful.

A combination of old devices, which produces merely the aggregate of the several results of the devices when used separately, is not patentable.

The rule that the application of an old machine or combination to a new purpose does not involve invention does not hold good in the case of the application of a new combination to an old purpose.

A hotel register with side margin occupied with printed advertisements and the middle left vacant for names of guests, held patentable, and not anticipated by city directories containing marginal advertisements.

An invention made and used in a private way, and abandoned, and not given to the

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635  925  1150  103  162  162  1012  856, 866, 875  768, 900, 1019
public, to which a subsequent inventor had no access, will not invalidate the patent to him
An invention held not anticipated by a prior machine, substantially abandoned, and passing out of the memory of those who used it, until recalled by the patented invention
A pre-existing device, which only when out of order operated like the patented device, and was not accessible to the public, and passed out of existence, and was unknown to the patentee, will not invalidate the patent

**Who may obtain patent.**
The patentee must not only be an original inventor, but the first inventor
The fact that a subsequent inventor had obtained a patent, and put the invention into actual use, will not bar a patent to the first inventor, who was not guilty of laches
“Reduced to practice” does not import bringing the invention into use but rather reducing it to such form as to remove it from the condition of mere theory
The making of a model and drawings from which one skilled in the art would be enabled to carry the invention into actual use is a reducing to practice
A foreign patentee may at any time during the life of the foreign patent obtain a patent in this country, provided the invention shall not have been introduced into public use in this country for more than two years prior to the application

**Prior public use or sale.**
Public use in good faith, for experimental purposes, while perfecting the invention, is not within the meaning of the statute
The date from which the time of prior use or sale is to be reckoned is the date of the earliest application, where the same was rejected improperly
“Public use” means use in a public manner, and not use by the public generally

**Prior description, or foreign invention or patent.**
Prior use in a foreign land does not invalidate the patent, where the patentee supposed himself to be the first inventor, unless the prior invention has been patented or described in some printed public work
The description in the prior printed publication should be sufficient to enable a mechanic skilled in the art to construct the machine

**Abandonment: Laches.**
A delay of three years in making an amendment is no ground of rejection of the amended specification, where the patent office had acted upon the merits of the case
Incompleteness of prior application is no evidence of a change in patentable features, where it appears that the machines are identical.

A withdrawal of the application under a mistake caused by an error of the patent office is no abandonment, though the applicant suffer his invention to go into public use.

The omission to file a caveat while maturing an intention does not impair the rights of the inventor.

**Application and issue: Interference.**

The inventor may make each improvement the subject of a separate patent, or combine them, if he chooses.

Upon the application for a patent, the testimony of practical men as to the utility of the invention is entitled to consideration.

**Extent of claim.**

Both the specification and claim will be looked to, to ascertain, the invention.

The specification and claims are to be liberally construed to carry out the intention of the inventor.

A claim-for-a-result produced substantially in the manner and for the purpose described will be construed to be for the mechanism described, and not for the result itself.

The drawings must be considered in connection with the specifications.

The description of each separate element must be read and construed with reference to the entire combination and its results.

**Appeals from commissioners' decisions.**

Appeals from commissioners' decisions. The commissioner is bound to answer the reasons of appeal in cases of single applications as well as in cases of interference. (Act March 3, 1839, § 11.)

The court cannot consider loose drawings sent up with the papers, which are not signed by the inventor, and attested by two witnesses.

**Reissue: Disclaimer.**

A disclaimer arising from inadvertency, accident, or mistake will not prevent the patentee from embracing the part so disclaimed in a reissue of his patent.

**Duration.**

A domestic patent expires at the same time as the original term of a foreign patent for the same invention. (Rev. St. § 4887)

**Extension: Renewal.**

A purchaser of the exclusive right to make, use, and venal patented parts in a particular combination, without limitation of time, held should be protected, as against an assignee of an extended term of the patent.
Assignment.
The failure to record an assignment does not impair its validity as between parties and against strangers. The recording is only necessary by way of notice to purchasers.

Licenses.
The question of what amounts to a delivery of a license considered A license of the “exclusive right to use and sell” in a certain territory, reserving the “right to manufacture,” construed, and held assignable. Mere licensees have no interest capable of affording the foundation of a suit in their names. One of three instruments executed contemporaneously as part of the same transaction was recorded, though none were required to be recorded by law. held, that they were all valid, as against a bona fide purchaser under the recorded instrument.

Sale of patented machine or product.
The purchaser of a patented machine from the grantee of the exclusive right to make and use, and license others to use, has no right, as against the Patentee or his assigns, to continue the use of the machine after an extension of the patent. The purchaser of a patented machine from the grantee of the exclusive right to make and use, and license others to use, has no right, as against the Patentee or his assigns, to continue the use of the machine after an extension of the patent. The purchaser of a patented machine from the grantee of the exclusive right to make and use, and license others to use, has no right, as against the Patentee or his assigns, to continue the use of the machine after an extension of the patent.

Infringement. What constitutes.
A combination of old devices does not prevent others from using them separately, or in a new combination. A patentee cannot repudiate one of the parts of his machine after another inventor has taught him to dispense with it. A patent claiming invention of an hotel register with alternate leaves of bifiduous paper, for advertisements, held infringed by the use of yellow medium paper for such advertisements. An hotel register with advertisements st the top and bottom of the pages held an infringement of a patent for a register with side margins for printed advertisements.
A wire gauze dipper, substituted for a perforated dipper, for stirring oil, and raising enough for a single operation, held a mere equivalent

—Who liable.

The keeper of an hotel, who keeps an infringing hotel register, is liable as the user of the invention
The manufacturer, the seller, and the user of an infringing article are liable for the infringement
A patent for the application or employment of armor on a vessel is not infringed by one who puts the same on a vessel under contract with the government
Whether the grant of a patent excludes the United States from the right to make and use the invention for themselves, quaere

—Preliminary injunction.

Not granted as against a party who has been in possession of the invention for a long time under color and claim of right
A judgment or decree after a judicial investigation, or an exclusive possession for a long time, is necessary to make out a prima facie case under the patent
The presumption of the validity of the patent is diminished in force where it appears that the judgment was obtained, without resistance, in an action in which several patents were in issue
Four years' use of a pavement laid by the patentee under a contract with the city held insufficient to raise a presumption in favor of the validity of the patent
The alleged public acquiescence in a patent must be attended with circumstances indicating that such acquiescence would not have occurred if any fair doubt had existed as to the validity of the patent
Public acquiescence in a patent will not be construed as acquiescence in a reissue, where both patents do not claim the something
The affidavit of the manufacturer of an article, stating its composition from his personal knowledge, will prevail over the affidavits of dealers, stating their opinions

—Procedure.

A patentee may assign his right to recover for past infringements
In a suit by an assignee to recover damages and profits accruing both before and since the assignment, the assignor need not be made a party
Where an exclusive license has been granted, the licensee and the patentee are both necessary parties to a suit for infringement
The patentee may maintain an action for infringement of his valid claims, though he did not disclaim the invalid claims before bringing the action. (Act March 3, 1837, §§ 7, 9.)

The question whether there has been unreasonable negligence or delay in entering such disclaimer is a question which goes to his right of action. (Act March 3, 1837, § 9.)

A disclaimer is necessary only where the thing claimed without right is a material and substantial part of the thing patented

The want of a disclaimer is no ground for invalidating the patent, where the invalid claim is not an essential part, and was introduced without intent to defraud or mislead

The particulars of the infringement need not be stated in a bill in equity

Bill for infringement of 33 claims, in 4 several patents, held deferrable for multifariousness

Want of novelty, as a defense, must be specially alleged

The defense that the subject of the invention is not of a patentable character is admissible under the general issue

It is a question for the jury whether the production of the article involved inventive genius

A patent not introduced in evidence before the examiner will not be received at the hearing

---Evidence.

Defendant is estopped to deny the utility of the invention

The patent is prima facie evidence that the patentee was the original and first inventor of the thing described

Defendant must give notice of the place where and the parties by whom the thing relied on under the defense of prior use has been used

A reference to a county in which, it is alleged, the prior use took place, is not sufficient

It may be shown that the devices set forth in the foreign patent offered to show anticipation are inoperative, impracticable, and worthless

The proof of prior use or previous knowledge, to defeat a patent for want of novelty, must be such as to establish the fact clearly, and beyond a reasonable doubt. Mere preponderance is not sufficient

Testimony that a machine of great merit was anticipated by an old machine, made years ago, will be examined with great care

Weight and sufficiency of evidence as to the novelty
A patentee who claims several distinct improvements must show himself entitled to each, to sustain the action

—injunction and its violation.

Defendant must take the judgment of the court as to the portions of the enjoined machine which he is entitled to use. Advice of counsel is no justification

—in accounting: damages.

The damages should have reference to the scope of the invention, and the extent to which it enters into the infringing machine

Exemplary or vindictive damages cannot be given, but only the actual loss sustained

The amount which plaintiff might have obtained from advertisers in his patented advertising hotel register, as well as the profits he might have made upon selling the book, must be considered, in estimating damages

A verdict for damages gives no right to the defendants to use the infringing devices. The court will increase the amount of verdict only where the circumstances are aggravated, and repel the bona fides of the infringement

The failure to file a disclaimer until after suit brought (Act March 3, 1837, § 7) will prevent the patentee recovering costs, but will not prevent the court increasing the amount of the verdict

-marking patented articles: penalty.

Each article should be stamped with the day of the month, as well as the year. The word “Patented” may be abbreviated

In a qui tam action under Act 1842, § 6, the proof as to the patent must correspond with the allegations as to the sale of the article

-various particular inventions and patents

Brick press. No. 2,768, for improvement, construed

Chains. No. 43,987, for an improved machine for stretching chains, held valid and infringed
Coal scuttles. Reissue No. 3,438, for improvement in manufacture, *held not infringed* 139
Cotton cleaner. Hayden’s improvement *held* patentable 894
Cotton cleaners. Nos. 18,742 and 29,971, for improvements, *held* valid and infringed 900
Ferrotypes and ferrotype plates. Reissue No. 6,982, for improvement, *held* valid 1019
Firearms. Improvement in priming tubes, *held* to involve patentable invention 292
Fly traps. Reissue No. 6,493, for unapprovement, *held* valid and infringed 573
Hotel register. No. 63,889, for an advertising hotel register, *held* valid and infringed 856, 866
Hubs. Reissue No. 5,366, for improvement in hubs of wagon wheels, *held* valid and infringed 233
Lubricating machinery. No. 36,603, for improvements in machinery for oiling or lubricating wool or other fibrous materials, *held* valid and infringed 764
Pavements. Reissue No. 4,106, for Belgian pavement, *held* invalid for want of novelty 105; contra, 103
Sawmills. No. 51,310, for improvement, *held* valid and infringed 341, 364
Sewing machines. No 29,785, for improvement, *held* valid and infringed 775
Shades. Reissue No. 2,756, to Hartshome, for improvement in spring fixtures, construed broadly, and field to be infringed 708, 710, 711
Shears. No. 1,092, for improvement in tailors’ shears, *held* valid and infringed 1037
Spoons and forks. Reissue No. 2,682, for improvement, *held* valid and infringed 72
Squares. Reissue No. 5,408, for improvements in machinery for graduating carpenters’ squares, *held* valid and infringed 694
Stoves. Reissue No. 3,523, for improvement in self-feeding coal stoves, *held* valid and infringed 1079
Turning lathes. Reissue No. 1,400, for machine for shaping irregular surfaces in wood, *held* not infringed by the machine patented to Oakes for cutting irregular forms 187
Wagon gearing. No. 16,648 (reissued No. 6,660), for improvement, *held* valid and infringed 305
Water-cooling pitcher. Hebbard’s invention. *held* patentable 1012
Wells. No. 42,126, for improved method of putting down and operating bored wells, *held* not infringed 768
PAYMENT

See, also, “Bills, Notes, and Checks” “Compromise.”
Note against one partner held paid by agreement of other partner to credit its amount on a note which he held against the payee, where the proper credits were made in the firm accounts Payments, without objection, of illegal exactions by government officials, cannot be recovered back

Pilots

See “Admiralty.”

PLEADING AT LAW.

See, also, “Abatement and Revival.”
A writ in debt, “that they answer unto him of a plea of debt of $1,000,” held good on a demurrer to a plea in abatement that the writ did not run in the debt and detent Matter in defeasance of an action need not be stated in the declaration The continued, use of an improvement, where, under the agreement with plaintiff, nonuser was to release defendant from his obligation to pay, need not be alleged in the declaration A plea is bad which sets up matters in defense, and neither denies nor admits, and avoids plaintiff’s allegation A plea is bad which states facts that amount only to the general issue A plea is bad, if it set up two distinct matters of defense, either of which is sufficient to defeat plaintiff’s action Defendant may plead inconsistent or contradictory defenses to the same action under Civ. Code Or. § 72 A plea to a declaration on a bond conditioned to pay a certain sum in pounds sterling, that it was not equivalent to and that defendant did not owe the sum in United States money, as averred in the declaration, held bad on demurrer; A plea in abatement does not waive process. It may be abandoned, and a motion made to quash the writ for defective service A demurrer puts in issue the sufficiency of all previous pleadings, and judgment will be given against him who committed the first fault A repleader is never awarded in favor of him who commits the first fault in pleading, nor where there is one material issue in the cause A variance between November and September in the allegation and proof of the making of a usurious contract held not material
Profit of the bond declared on, and a collateral agreement necessary to establish the right to a recovery, being made in the declaration, defendant is entitled to oyer

**PLEADING IN ADMIRALTY.**

See, also, “Maritime Liens”: “Seamen.”

Impertinent and irrelevant allegations in an answer stricken out on motion

Articles signed by “William Henderson”, as cook and steward, *held* admissible on a libel for wages by “William Henry”

**PLEADING IN EQUITY.**

A bill uniting a controversy as to the validity of a will, with claims of heirs, with the suit of a creditor, and with a demand for an account by the executor, *held* multifarious

Where the bill is good in part, a demurrer covering the whole bill will be overruled 976 A general demurrer to the whole bill cannot be sustained as a demurrer to relief prayed in respect of persons who are not made parties to the bill

The practice, with reference to a plea in bar for want of parties, stated

The waiver of an answer on oath is ineffectual if defendant does not choose to accept it

An answer relying upon the statute of limitations is in time, if filed before the bill is taken for confessed

The answer, so far as it is responsive to the allegations in the bill, is conclusive evidence, unless contradicted by two witnesses

**PLEDGE.**

A silver cornet was delivered to the landlord, with an absolute bill of sale, as security for rent. The tenant subsequently borrowed it to use, and failed to return it. *Held*, that the transaction was a pledge, and that the lien was gone
PRACTICE AT LAW

An unnecessary plea will, on motion, be directed to be withdrawn, as improperly incumbering the record

PRACTICE IN ADMIRALTY.

See, also, “Admiralty” “Maritime Liens” “Seamen”
The remedy against the vessel and the remedy against the owner cannot be united or enforced in the same action
The affidavit on a motion for additional security for costs may be made by the proctor of the party
A statement by the advocate of the party, in open court, the day after the hearing, made by authority of the party, may be taken as an admission in contradiction of the evidence submitted by him
The decree of distribution does not follow the report of the auditor, as matter of course, because no exception has been taken there to
A party having a prior right to a vessel may claim distribution from surplus proceeds in admiralty, although his original demand was not one enforceable in admiralty
Where a vessel, bona fide assigned by the owner, is subsequently sold under a maritime lien, the assignee is entitled to a distribution of the surplus, in preference to a creditor having no such appropriation

PRACTICE IN EQUITY.
The court will not allow a rule respecting parties, adopted for convenience, to operate so as to defeat the ends of justice
Before a bill can be taken for confessed, defendant must have been ruled to answer, under rule 17
The court will not permit the bill to be taken for confessed where defendant offers to file his answer
A cross bill seeking a discovery from complainants is unnecessary, in view of Act July 6, 1862, § 1; Act July 3, 1864. § 3 permitting parties to be witnesses
Substituted service of a cross bill against alien complainants in the original bill cannot be made upon their solicitors, where they file a stipulation that the answers may be amended by setting up the matter contained in the cross bill
On exceptions to an answer for impertinence and scandal, the court give the answer a liberal consideration, having regard to the nature of the case as made by the bill
Where a cause is set down for hearing on the plea that defendant has not been served with process within the state, docket entries showing a prior appearance by a solicitor cannot be considered
An amendment was allowed after argument, by which the plaintiff was allowed to traverse the fact of such an appearance having been entered. A dismissal of a bill, except upon the merits, is no bar to a subsequent bill for the same cause. An order for the dismissal of a bill taken ex parte, where the defendant died after it was granted, may be entered as of a date antecedent to his death. The rules of evidence, except the answer of the defendant, are the same in chancery as at law. Testimony of complainant in support of the allegation of the bill, directly contradicted by an officer of defendant corporation, held insufficient to overcome the denials in the answer. An affidavit not sworn to before a judge of the court, or a commissioner appointed to administer an oath, cannot be read in evidence. No exception can be taken at nisi prius to the opinion of the judge who tries an issue of devisavit vel non.

**PRINCIPAL AND AGENT.**

See, also, “Factors and Brokers” “Master and Servant.” The principal is bound by the acts of a sale agent, though not personally known to him, where authority to employ sale agents is implied from the nature of the duties and powers committed to his general agent.

**PRINCIPAL AND SURETY.**

See, also, “Bail” “Duress”; “Guaranty.” The liability of sureties on the official bond of the cashier of a bank is limited to his acts during the term of office to which he was elected when the bond was given. Arrest and discharge of bail on a cap. ad sat. will not prevent resort to security taken in the shape of notes of a third person.

**PRIZE.**

See, also, “War.” Enemy property, shipped by an enemy, from an enemy port, to his creditor, to be applied on a debt, is subject to capture at sea before it comes to the creditor’s lands. Vessel having been used by the enemy without the knowledge of her owners, and recaptured from the enemy, will be restored, with costs to the libelants. A vessel approaching a blockaded port, with intent to violate the blockade, is not entitled to be warned off. A capture as prize of war overrides and supplants all claims of private liens, and a libel on the instance side of the admiralty court will be dismissed.
The master of the vessel is not entitled to be paid freight for the voyage out of the proceeds of condemned property.

The failure to send the officer or crew of the captured vessel into port with her, or produce them as witnesses, held cured by the subsequent appearance and examination in preparator of the master.

Where the apparent ownership of a cargo is in an absent party, capable of claiming, it will not be condemned until he has had the benefit of the rule allowing a year for the assertion of claims.

Decree of condemnation opened to permit loyal owners to show that the vessel had been previously captured from them by an enemy's privateer, and restoration awarded on the payment of one eighth of the value, as salvage, to the captors.

On an appeal to the circuit court, the property follows the appeal into that court, and the district court has no authority to bail or sell it.

Act July 17, 1862, forbids the allowance to a prize commissioner in the Southern district of New York of any larger emolument than a salary of $3,000 a year.

A vessel condemned because her destination was falsified at the port of departure, and because the master, in the preparatory examination, made false statements as to the ownership of the cargo.

Vessel released, as not being enemy property, and restored on payment of costs, there having been reasonable cause for her seizure.

Cargo condemned as enemy property, employed in aiding the insurrection on foot at the place of its capture.
Vessel and cargo condemned as enemy property, and for a violation of the blockade of Charleston
Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade of Mobile
Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade of Savannah

PUBLIC LANDS.

See, also, “Grant.”
The interest of a pueblo in lands in California, and the rights acquired by the United States upon the cession, considered
The president of the United States may reserve from sale certain lands within a pueblo, by order to that effect
Validity of San Francisco alcalde titles. The title of the city of San Francisco to its municipal lands within its charter limits became perfected on the passage of Act July 1, 1864
The statute of limitations of 1863 commenced to run in favor of the adverse possession of such lands at such time
A settler under the Oregon donation act, who dies before the conditions requisite for vesting title in him have been fulfilled, has no devisable interest in the land, and his heirs and widow take as donees of the government

QUIETING TITLE.
The rule is not universal that more than one trial at law is required to authorize a bill of peace
On a bill to quiet title, the court cannot direct that on a second trial before a court of law the same evidence shall be received as was used upon the first trial

QUO WARRANTO.
When an information in the nature of a writ of quo warranto may be sustained against a person usurping an office under a private corporation

RAILROAD COMPANIES.
See, also, “Carriers”; “Corporations”; “Mandamus.”
Bonds issued for stock in a consolidated company under a vote for subscription for stock in a constituent company, where the facts were recited therein, held void in the hands of a bona fide holder for value
The insertion of a power of sale in a mortgage to trustees for the benefit of bond holders does not supersede the right of foreclosure by bill in equity

Real Property.
See “Adverse Possession”; “Boundaries”; “Deed”; “Ejectment”; “Grant”; “Public Lands.”
RECEIVERS.
Receiver appointed at the suit of stockholders in an action by one corporation against another, where certain persons, who are directors in both companies, are about to discontinue the action in favor of the one in which they have the greater interest.
A suit cannot be maintained against a receiver without leave being first obtained from the court by which he was appointed.
A state statute providing that receivers appointed by any court may be sued without leave of the court is inapplicable to receivers appointed by the federal court.

REMOVAL OF CAUSES.
See, also, “Courts.” Page

Right of removal.
Quaere: Whether Rev. St. § 639. sub. 3, allowing removal on the ground of prejudice and local influence, has been repealed by Act March 3. 1875.
A foreign corporation, by having an officer transacting business within the state of New York, does not lose the privilege of having all its members regarded as citizens of the state in which it was incorporated. (Act N. Y. April 10, 1855.)
A suit in which citizens of the state are joined as defendants with a foreign corporation and nonresidents cannot be removed, under Act Sept. 24, 1789, § 12. unless the citizens of the state are merely nominal parties.
Officers of a corporation, joined as defendants with the corporation, against whom, in their individual capacities, no relief is claimed, are merely nominal parties.
Nominal defendants will not be considered, in determining the right of removal. If a case is within Act 1789, § 12, the fact that it is connected with and grows out of matters litigated in the state court, will not prevent its removal.
A person brought into court by order interplead will not be regarded as voluntarily before the court, and waiving his right of removal.
A consent to a reference at the time a cause is called for trial, and might, in the ordinary course, have been tried, held a waiver of the right of removal on the ground of prejudice or local influence.

Time of removal.
Application must be made at or before the first term at which the cause may be tried, although the court and parties may not be ready to try it.
The jurisdiction of a county or circuit court in Virginia on appeal from a board of county supervisors is original, and not appellate. Application to remove must be made at or before the first term of the court after the appeal is taken.

Proceedings to obtain.
Where the proper steps to effect a removal have been taken, and evidence there of is presented to the state court, the right of removal may be perfected by defendant's entering the proper papers in the federal court, and appearing. No order by the state court for the removal of the cause is necessary.

Effect of removal: Subsequent proceedings.
When a case is removed under Act 1789, any injunction issued before its removal, ipso facto, falls. Where the cause is removed on the ground of citizenship, it will not be remanded on motion, where the question of citizenship is fairly disputed.

REPLEVIN.
After issue joined in replevin, it is too late to move to quash the writ. Upon the plea of property, plaintiff has the burden of proof, and the right to open and close. Judgment for defendant should, in all cases, be for a return. A finding for defendant, with damages in the value of the goods, will not prevent defendant maintaining an action upon the replevin bond, and recovering damages beyond the value of the goods.
RIPARIAN RIGHTS.
See, also, “Navigable Waters”: “Waters and Water Courses.”
The proprietor of adjoining lands, who is also owner of the bed of a creek, may grant and convey the bed of the creek, separate from the land which bounds it.

SALE.
See, also, “Vendor and Property.“
An absolute bill of sale of personal property, unaccompanied by possession, is void, at common law, as to subsequent purchasers without notice, although acknowledged and recorded agreeably to Act Md. 1729, c. 8, §§ 5, 6
Sending a circular naming “present price a” of an article, held an offer to sell, and its acceptance in a reasonable amount completes a contract.
The property does not pass unless there be a certain price agreed upon and a delivery of possession.
When there is no unfairness, the price agreed upon, though extravagant, must be paid.
To disaffirm a contract, the property must be returned, if practicable.
The purchaser of property sold without title cannot recover the purchase money, in assumpsit, without proof of a return, or offer of return, of the property, nor where there was a bill of sale under seal, with an express warranty of title.
Where notes given for the purchase price of property are misdescribe in the declaration, plaintiff may recover on the general counts, but in such case the recovery is limited to the market value.
The purchaser may claim as damages the difference between the contract price at the time delivery was to be made and the current price of the article at the actual time of delivery.

SALVAGE.
Right to salvage compensation
Salvage service is such service as is rendered in rescue or relief of property at sea, in imminent peril of loss or deterioration.
Services rendered by a tug in towing to a wharf a vessel which, being overtaken by a storm while entering a harbor, was left by her crew, field entitled to salvage remuneration.
Services in towing into harbor a vessel leaking badly, anchored near shore of Cohas set and liable to stranding on change of wind, held entitled to salvage remuneration.
Where no agreement is made for compensation for towing a vessel in distress, the rate is to be governed by considerations applicable to salvage cases.
Seaman discharged from a ship of war at sea, to assist in bringing into port a short-handed whaling ship, *held* entitled to compensation as for a salvage service.

What a pilot does beyond the limits of his duty, as such, may be the foundation of a claim for salvage, but not such acts as are within them.

A steamboat dismantled and stripped of her motive power, and fitted and used as a saloon and hotel, cannot be the subject of salvage services.

*Contracts for salvage services.*

A contract made by the master with salvors, for the recovery of the cargo of a sunken vessel, sustained.

*Forfeiture of salvage*

Salvors who fall into distress, and are relieved by other salvors, do not thereby lose their original right to salvage. The second salvors cannot lawfully make a contract to that effect.

Salvage on derelict cases and boxes not forfeited for refusal to deliver to owners' agent at a small port, into which the vessel put because of adverse winds.

A person who recovers property lost at sea, or shipwrecked, and sells the same and appropriates the proceeds, in violation of law, forfeits the right to salvage.

*Amount.*

The amount is estimated by the compound consideration of the danger and importance of the service.

The fact of the property being derelict only makes out a prima facie case of extreme danger of total loss, which enhances the award.

The rule to allow a moiety in case of derelict is not departed from, except under extraordinary circumstances.

A stoppage to save life is not a deviation which discharges a policy of insurance, but a stoppage merely to save property is a deviation.

Extraordinary expenses, such as the breaking of a propeller, in rendering salvage services, are not included in the compensation.

A vessel with cargo of cotton on fire was towed into shallow water, and scuttled and sunk. *Held,* that the amount which they brought at a sale in such condition was the measure of value in estimating salvage.

$750 allowed on net proceeds of $2,000 of vessel lying dismasted, and in a helpless condition, near the shore of a dangerous coast, at a great distance from any port.

$1,500, on a valuation of $9,500, allowed a schooner for towing into port derelict bark found near the mouth of Delaware Bay.
$3,600 allowed for towing to Boston a ship valued, with cargo, at $120,000, anchored near dangerous reefs near the shore of Cohasset

$21,050 allowed on cargo of iron valued at $36,222, saved, by diving, from vessel wrecked on Carry fort Reef

One-fourth allowed on a valuation of $12,583, where a small schooner loaded with coal saved floating cases and boxes

Salvors awarded 14 per cent, on dry cotton saved, amounting to $168,000, and 40 per cent, on damaged cotton, amounting to $22,000, and on materials sold at $3,078

Remedies for recovery.

Salvors have a right to the possession of the salved property until their claims are legally adjusted

Cosalvors omitted from the original libel may present their claims by suitable allegations without notice or process to the other parties

Apportionment of costs among cosalvors and claimants

Apportionment.

A second set of salvors have no right to interfere, and become participators in the salvage, unless it appears that the first set will not be able to save the property without their aid

Rule of apportionment between the master, officers, and crew, and between cosalvors

The owner of the salvor vessel is usually allowed one-third, but, in cases of extraordinary merit or peril to the ship, a greater allowance may be made

Right to property or proceeds.

Underwriters cannot make any claim for salvage property in the admiralty, unless
there has been an abandonment of the property to them, and an acceptance

Review.

An appeal by any parties interested in the distribution of salvage, as to their shares, brings up incidentally a review of the whole decree, so far as the distribution is concerned

SEAMEN.

See, also, “Admiralty”; “Maritime Liens.”

The contract of shipment

No stipulation contrary to the maritime law, to the injury of seamen will be allowed to stand, unless explained to them, and an adequate additional compensation be given to them.

Where a master agrees, with a mariner, to carry the latter’s goods free of expense, a charge for freight thereon cannot be supported, as between the master and mariner.

A seaman injured during a voyage, and left sick in a foreign port, is entitled to wages during such sickness, and up to his arrival home, together with medical expenses, deducting wages actually earned on the return voyage.

The expenses of curing a sick seaman, chargeable against a ship, include, not only medicines and medical advice, but nursing, diet, and lodging, where the seaman is carried ashore.

A stipulation, that the seamen shall pay for medical advice and medicines, without any condition that there shall be a suitable medicine chest, etc., is void, as contrary to the policy of the act of congress.

The onus probandi in respect to the sumciency of the medicine chest lies on the owner.

Conduct of master or mate in respect to seamen.

The action of the master in confining seamen for insubordination, and in sending seamen on shore for supplies of wood and water, where they were attacked by savages, held justifiable.

The master must hear complaints made in a reasonable manner against superior officers, and redress grievances found to exist.

The master is liable for an unjustifiable assault by one of his officers upon one of the crew, when done by his connivance, consent, or authority.

Such consent and authority will be presumed when it appears that he knew of the trespass, or had reason to know it, and did not interfere to prevent it.

A receipt acknowledging satisfaction of all claims for assault and battery is not binding unless shown to have been the result of a fair compromise, on compensation given.
A receipt for all “demands and dues” against a vessel, her master and officers, is not, upon its face, a receipt for assault and battery.
The vessel owner is not responsible for injuries to a seaman, caused by negligence of the mate, where no personal negligence on the part of the owner appears.
Rules for assessment of damages in cases of beating and wounding a seaman.

Wages—Right to.
Where freight is lost by the fraud or wrongful act of the master, seamen are still entitled to their wages.
Seamen are not entitled to the two-months wages allowed by law, where the vessel is abandoned to the insurers in a port of necessity, where it would cost more than half her value to repair her.
The unjustifiable discharge of a mariner in a foreign port entitles him to wages, and to damages, also, if accompanied with oppression.
The discharge made in a foreign port must be before the consul, but the money settlement need not-be; and the consul is not entitled to charge a commission on the amount paid, for merely witnessing the payment.
A seaman on a whaling voyage, discharged abroad without his own fault, held entitled to the pro rata settlement provided in the articles for a discharge from sickness.
Rights of a nonconsenting mariner, where the cruise of a privateer is broken up, and a new one commenced, with the consent of all the others.

—Remedies for recovery.
The mate and cook of a porpory steamer employed for the fishing season ac stipulated wages have a lien upon the vessel therefor.
A minor employed on such steamer by the master, at all work, has a lien for his wages, even though the owner is authorized by the sharesmen to retain from their shares his wages.
An agreement of the charterer, with the owner, to pay the seamen's wages, will not bar their lien, where they contracted with the master.
The lien for wages is not lost by taking the owner's time note in settlement, where the circumstances rebut the presumption of payment.
The taking of such note operates as an extension of time of payment.
Acceptance of nonnegotiable note of master, on giving a receipt for wages, and putting the note in suit, do not waive the lien.
A receipt in full of all demands is open to inquiry and explanation. A settled account for wages, etc., is not conclusive, but it may be surcharged and falsified.
A seaman’s lien for wages will not be enforced in admiralty, as against a bona
fide purchaser, after the lapse of two seasons
A new clause in the shipping articles, relied upon to repel a claim for wages, must be pleaded

—Deductions: Extinguishment, etc.

Owners of whaling vessels are not allowed to charge the officers or crew com-
misions for selling the oil
The owners, on the ground of established usage to the contrary, have no right
to deduct the value of the casks from the sales of the cargo
The cash market price is the measure of compensation for the officers and
crew who are to be paid lays
There can be no specific forfeiture or deduction for misconduct which is not
specially charged in the answer
Wages cannot be forfeited under Act July 20, 1790, where there is no entry in
the log book of the absence of the seaman without leave, and he is received
on board again
It is not desertion for seamen to leave the vessel, against orders, to go before
the consul and complain of their treatment
Such conduct will not justify their imprisonment, nor the deduction from their
wages of the amount paid other hands, in their places, while so imprisoned
An intention to desert will not bring seamen within the act of July 20, 1790,
where there is no actual desertion
An American ship was captured by a French cruiser, recaptured by an English
frigate, and restored on payment of salvage. held, that a seaman carried into
France by the French cruiser was entitled to wages for the entire voyage, after
deducting his proportion of salvage
Temporary absence, occasioned by imprisonment upon a charge of a trivial
offense, is not a total desertion
A seaman, who, in the peril of a collision, jumped aboard the colliding vessel, and afterwards endeavored, without success, to rejoin his own vessel, will be allowed wages up to the time of collision

SHERIFFS AND CONSTABLES,

Sufficiency of averments in debt upon a constable's bond, in not conveying realty sold to plaintiff on a fi. fa

SHIPPING.
See, also, “Admiralty”; “Affreightment”; “Average”; “Carriers”; “Collision”; “Demurrage”; “Maritime Liens”; “Salvage”; “Seamen”; “Towage”; “Wharves.”

Title to vessel.

Equitable ownership in a vessel, or ownership pro hac vice, need not be shown by a bill of sale or registry

A boat with an entirely new hull, with parts of the machinery and upper works of an old boat, which had been abandoned or dismantled, held a new boat

The master.
General advances made by the owners to the master and co-owner of a whaling vessel, lidd, might be appropriated in payment of his lay

The forfeiture provided in the shipping articles for taking on board spirituous liquors will not be decreed against the master's entire lay

The master is not personally liable for the wages of the hands

Where a loss by collision arises from the negligence of the master and crew, the master is personally responsible; but the ship also is primarily, although not exclusively, liable for the compensation

A sale of the vessel by the master will only be sustained where enjoined by a policy so clear as to be equivalent to a moral necessity

The burden of proof is on the purchaser to show that the sale of the vessel by the master was bona fide and necessary

The facility with which a stranded vessel was reclaimed is evidence on this question

The presence of the owner's agent at the sale does not constitute the sale any the less a sale by the master

The receipt by a special agent of the proceeds of the sale is no ground for the presumption of ratification by the owner

A paper purporting to be a survey, but not drawn up, subscribed, or sworn to prior to the sale, will not be received as evidence of a survey

Sale, without notice to owner, of unseaworthy vessel, safely anchored in the harbor of St. Thomas, and not exposed to any immediate peril, held, did not pass title
A sale in a foreign port by a master, who is without means or credit to repair the vessel, advised on a survey by disinterested persons, where there was no
time to consult with the owner, will be upheld. 1196
The purchasers of a stranded vessel at an authorized sale by the master will be allowed the value of necessary repairs, the expenses of navigating her home, and the price paid. 1153
The fight to the freight earned upon the homeward voyage follows the ownership of the vessel. 1153

Employment of vessel.
The master of a vessel upon the Great Lakes has power, under the custom of the port, to bind the vessel by receiving for transportation goods subject to prior charges, which he is to collect from the consignee, and to return to the shippers. 1087
The lien of a shipper for the performance of such contract is a privileged hypothecation, and takes preference over the lien of a prior chattel mortgage. 1087
A contract to collect the price of goods shipped, and the freight, from the consignee, and to pay the balance to the consignor, is within the scope of the master's authority, and binding on the vessel owner, where the shipper had no knowledge that the vessel was already chartered. 503
Where a child was taken sick with smallpox while on the voyage, held, that the master was justified in changing his quarters, and in quarantining him, with his parents, who insisted on going with him. 398

Liabilities of vessels or owners.
The vessel is not liable for performance of a contract of affreightment, where the property has not been shipped in pursuance there of. 437
A shipowner is not liable personally for work upon the ship, unless done by his order or on his credit. 1193
The general owners of a vessel are not liable for supplies or repairs furnished in a foreign port, to a vessel hired on shares, to one who was to victual, man and control the vessel, but the vessel is liable. 952
A master appointed by the owner, and sailing the vessel on shares with him, has no power to bind one who holds the title merely as security, for supplies furnished in her home port, by representing such person as owner. 602

Slander.
See “Libel and Slander.”

SLAVERY.
Right to freedom on failure of executor to carry imported slave out of the district
Right of importation of slave under Act Md. 1796, c. 67, held forfeited by a sale within three years

**SPECIFIC PERFORMANCE.**

Specific performance of a contract for the sale of land will be decreed if the vendor is able to make a good title at any time before the decree is pronounced, notwithstanding dismissal of a former bill by the vendor on account of defective title

**STATES.**

The resolution of annexation of Texas, assented to by the convention of Texas, is equally binding on the state, whether considered as a treaty or as a contract
The recognition by the national government of the government established at Wheeling, Va., after the secession of the state, as the lawful government of Virginia, is binding on the judiciary
Act June 25, 1868, to admit certain of the seceding states to representation in congress, did not re-enact the constitutions of such states
The acceptance by congress of the cession by a state of exclusive jurisdiction over territory in a military reservation which existed before the state was created, is not necessary to vest such jurisdiction in the United States, under Const, art. 1, § 8
A bill filed against the commissioner of the general land office of Texas to restrain him from allowing locations of land within the limits of a grant made to a party under whom complainant claimed, and which was afterwards confirmed by the state, is not a suit against the state
The colonization contract made with Mercer, January 22, 1844. It is valid and binding on the republic of Texas. Vacant unappropriated lands in Texas are to be applied to the republic of Texas, under the conditions of the resolution of annexation.

**STATUTES**

See, also, “Constitutional Law.”

All the provisions or section of a penal statute must be taken together and interpreted according to the import of the words so as to give effect to its objects and intent.

Similarly, all statutes relating to the same subject-matter are to be interpreted together. As between conflicting sections of the same statute, the last in order of arrangement will control.

**Surface Water.**

See “Waters and Water Courses.”

**TAXATION.**

See, also, “internal Revenue.”

The power of taxation belongs to the legislative department of the government. The judicial department has no general jurisdiction over the subject. Personal estate upon the premises may be distrained for taxes against the realty. Realty in Washington, D. C. cannot be sold for taxes, even with the assent of the true owner, if there be upon it personal property sufficient to pay them. A fee simple cannot be sold for taxes where an estate for life, in existence, is of sufficient value to pay them.

**Towage.**

See “Collision”; “Salvage.”

**TRADE-MARKS AND TRADENAMES**

The word “Centennial” is general property, and cannot be used for a trademark.

The commissioner of patents may institute an interference between opposing claimants for registration of the same trade-mark, to determine ownership. The decision of the examiner cannot be questioned collaterally, and the successful party is entitled to a provisional injunction against the licensees of the unsuccessful party when no doubt exists as to the infringement. Equity will not protect by an injunction the trade-marks of owners of quack medicines.

**TREATIES.**

See, also, “Extradition. See, also, Extradition.”
Treaties with foreign nations comprise a portion of the public and supreme law of the land, and a violation by a citizen of the United States, may be punished in the federal courts by indictment.

A debt due to a British subject maybe recovered, under the treaty of peace of 1783, though paid to a state under its confiscation act.

TRIAL.

See, also, “Continuance”; “Evidence”; Judgement”; “NewTrial”; “Practice”; “Witness”

Where the plaintiff holds the affirmative of any of the issues, he has a right to open and close the whole case.

A jury may be waived in a civil case in the circuit court, on the filing of a stipulation with the clerk.

Upon the cross-examination of a witness, he may be asked leading questions, to draw a further disclosure in reference to the matter testified about on his direct examination, but not as to other matters.

Defendant, by reading in evidence part of plaintiff’s account filed with declaration, makes the whole account evidence for plainyg

An objection to evidence, on which the court is divided, does not prevail.

The court will not give an instruction upon a point not material to the issue.

TROVER AND CONVERSION.

See, also, “Replevin.”

The possession of tobacco notes held evidence of the possession of the tobacco which they represent.

TRUSTS.

See, also, “Executors and Administrators” “Guardian and Ward”; “Wills.”

Wherever property is acquired by fraud, or under such circumstances as to render it inequitable for the holder of the legal title to retain it, a court of equity will convert him into a trustee of the true owner.

Persons who secure the legal title of a Mexican grant by the presentation of a worthless document as a transfer of the grantee’s interest will, in equity, be treated as trustees of the heirs of the grantee.

An executor who has taken charge of a trust estate under a will, will not be displaced, and a receiver appointed, unless it appear that the property is in danger, and the trustee is irresponsible.

Neither lapse of time, nor any defense analogous to the statute of limitations, can be set up by the trustee of an express trust as a defense to his liability to execute the trust.

A trustee resident in the Confederate States held not personally liable for the amount of investments in Confederate bonds, where he did not deal di-
rectly with, the Confederate government, except as to nonresident cestuis queitrustent adhering to the United States
Trustees implicated in a common breach of trust are liable to suit jointly orseverally, at the election of the cestui que trust
The same doctrine applies to any wrongdoer who is confederated with a fraud-
ulent trustee

VENDOR AND PURCHASER.
See, also, “Boundaries”; “Deed”; “Fraudulent Conveyances”; “Sale”; “Specific Per-
formance.”
A written contract by a bank to convey, under the hands and seals of the pres-
ident and cashier, reciting authority from the directors, is admissible without 130
further evidence of authority of such officers to make the contract
The vendee may recover back the purchase money in assumpsit, where the 130
vendor's title was defective, though he has been in possession several years
An insufficient deed, received by the vendee of land, held admissible in evi-
dence, in 130
an action to recover back the purchase money, to show defective title
The vendee cannot recover back the purchase money paid upon failure of the vendor to convey, without tendering the form of a deed of conveyance, unless the vendor's title is defective
Actual possession is constructive notice to all the world of the title under which it is held
The purchaser is chargeable with notice of a fact which the instrument through which he is obliged to make out his title leads him to
Recitals in patent held, not sufficient to affect the grantee of the patentee with constructive notice of defective proceedings under which the land was sold

WAR.
See, also, “Insurance”; “Prize.”
contract for the purchase of cotton, made during the Civil War by a subject of Norway, domiciled in New York, with a citizen of Texas, actually residing therein at the date of the contract, held void
Regulations of secretary of treasury, exacting certain payments as condition precedent to shipment of cotton from disloyal states (Act July 13, 1861), held legal and valid
Trading with the enemy's country, which has been reduced to subjection, with permission and encouragement of the invading army, is not unlawful
Private property may be seized to prevent it from falling into the hands of the enemy, or for use of an army in some immediate danger, such as will not admit of delay
Private property cannot be seized for the purpose of insuring the success of a distant expedition upon which the army is about to march
An officer cannot justify an unlawful seizure by showing the orders of his superior officer
A citizen of a loyal state, during the Civil War, is not entitled to the benefit of both the suspension of the statute of limitations by reason of his residence, and the suspension under a state statute (Act Miss. Dec. 31, 1862) of actions of ejectment

WAREHOUSEMEN.
In the absence of statute or usage, “warehouse receipts” need not be in a particular form
An instrument, “Received in store, for account of B. & W., 3,000 sacks of corn,” signed by a warehouseman, held a ware house receipt, and the title to the corn will pass by its indorsement and delivery

WATER COMPANIES.
A company required to supply water to a city, “in case of fire or other great necessity, without charge,” held bound to furnish free water for irrigating public parks and squares, flushing sewers, etc.

**WATERS AND WATER COURSES.**

See, also, “Navigable Waters”; “Riparian Rights.”

Twenty years’ possession of an easement or use of a water course is a conclusive presumption of right, if unexplained.

Unity of possession does not extinguish the right to use a water course appurtenant to a mill.

The owner of a lower mill lowered his dam so as to prevent obstruction of an upper mill, and, after 38 years, sold his mill to the upper owner, who sold it to a third person. Held, that the lower owner had no right to raise the dam so as to obstruct the upper mill.

Twenty years’ adverse possession of water which had previously flowed to plaintiff’s mill field to vest a complete title, which was not impaired by three years nonuse during which the water reflowed to plaintiff’s mill, where defendant did not intend to abandon its right.

Acquiescence by plaintiff or his grantors in a diversion of water by defendant, even for a shorter period than 20 years, held sufficient to induce a refusal of injunction.

**WILLS.**

See, also, “Descent and Distribution”; “Executors and Administrators.”

The person to whom a fee is given by testator if she should survive his daughter dying without issue then living, is not a competent witness.

The devisee must show that the will was read or that its contents were known to testator, where it appears that he was blind or incapable of reading, or if a reasonable ground be laid for believing that it was not read to him, or that there was fraud in the transaction.

The testator should appear to have had a sound disposing mind and memory; that is, that he was capable of making his will, with an understanding of what he was doing.

A witness may depose as to what he thought of the testator’s sanity, at or about the time the will was made; but not as to what the witness had declared upon the subject to other.

A man may be capable of disposing by will, and yet incapable, by reason of infirmity, of making a contract, or of managing his estate.
The proceedings of the Pennsylvania orphans court, upon the offer for probate of a will as to personal property, and the decree of the prerogative court, refusing the probate, are not admissible upon an issue to determine the validity of the will to pass real estate

A devise to the executor. In trust to apply the rents and income to the support of the widow, with power to sell the estate if the income should not be sufficient, is a devise in fee to the executor, and he is entitled to receive the rents accruing after the death of the wife

WITNESS.

See, also, “Bankruptcy”; “Costs”; “Deposition” “Trial”

A person is a competent witness for either party if he is liable in either event of the suit

The principal obligor in a bond is a competent witness for the surety

Possession of goods by a witness will not render his testimony inadmissible in favor of the party under whom he holds

An interested witness, who has been sworn in chief and examined, and whose interest is disclosed upon cross-examination, may be released, and re-examined

A release may be executed by the party leaving a blank for the name of the witness, to be filled up by the party's attorney

The testimony of witnesses, who, while testifying under circumstances calculated to

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create a strong bias, state what is, in its nature, incredible, need not be believed.
The fact that an expert requires payment for his opinions, as such, should not
discredit him before the jury.
Plaintiff's witness cannot be cross examined by plaintiff to discredit himself by
confessing that he had previously made a different and inconsistent statement
of the matter.
A previous and contradictory statement of a witness may be given in evidence
to impeach his credit, but not as proof of the facts formerly stated.
A witness supported by Ms previous deposition, though not on file, will be
believed, rather than one whose previous deposition does not support Ms test-
imony.
The fees must be paid or tendered at the time the summons or subpoena is
served.
If the fees are not paid, and the witness attends, they may be collected as in
ordinary actions.
Where a case is suspended for a few days, witnesses from a distance will be
paid for continued attendance, rather than for travel fees home and return.
The attendance of a witness living within 100 miles, but outside, of the
District of Columbia, may be compelled by the circuit court of the District.
Witnesses residing more than 100 miles from the place of trial, and out of the
district, cannot be compelled to attend.

**WRITS AND NOTICE OF SUITS.**
Where personal service is not made, the requisites of the statutes substituted
for it must be strictly complied with.
The services of process, in an action against a county, upon the charmian of
the county board, where the statute requires it to be made upon the county
judge, gives no jurisdiction.