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A mortgage executed more than four months before the filing of the petition cannot be set aside as a preference	226
A judgment taken with an intention to receive the entire estate for an equal distribution among the creditors, by a creditor who <i>held</i> overdue paper of the debtor, and was informed that they were hard pressed, <i>held</i> a fraudulent preference	654
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, <i>held</i> fraudulent as to creditors	121
The sale by the bankrupt of 6 out of 20 specific bonds, of like character and value, in the hands of a bailee, <i>held</i> valid as against his assignee	362

The giving of a note payable one day after date, with cognovit to confess judgment, to a creditor, with knowledge of insolvency, <i>held</i> a fraudulent preference, and the judgment and all proceedings thereunder were nullities	837
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, <i>held</i> invalid as against the assignee	734
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, <i>held</i> a fraudulent preference	772
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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	286
No suit by an assignee for a sum exceeding 8500 can be prosecuted in a state court. (Act June 22, 1874, § 2.)	286
The objection that there was no direction from the bankrupt court to bring the suit cannot be first raised in the appellate court	286
The assignee represents both the bankrupt and his creditors, and he can contest claims and rights of property which the bankrupt cannot contest	121
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	1
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	373
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	373
A preference to a creditor cannot be set aside unless an adjudication in bankruptcy is had within the time limited by the act.	369
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	369
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	624
In the case of a transfer of property to hold in trust for certain uses, and to become absolute under certain conditions, <i>held</i> , that limitation did not commence to run until the title became absolute	777

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	490
The bankrupt is not a necessary party to such suit	490
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	531
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Certificates of indebtedness <i>held</i> against the bankrupt payee of a note <i>held</i> subject to offset at their market value at the maturity of the note	539
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	286
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#### **Review.**

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#### **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	771
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	771
Creditors receiving their respective shares of a composition are not bound to see that other creditors receive their shares	367
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.	1148
Resolution of composition passed by the requisite number of creditors, but opposed by two creditors who, prior thereto, successfully opposed a discharge, <i>held</i> , should not be confirmed	446

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 367

Irregularities which are the effects of mistake, and not of fraud, are not fatal to the validity of the proceedings 11481

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. 367

#### 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 727

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 795

#### 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 795

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. 795

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 898

An acceptance of such a draft, or an agreement to indemnify the person who signed it, is void 898

An action will not lie on a note given for the purchase of a ticket in a lottery prohibited by law 878

### 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 766

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 98

### Indorsement and transfer.

A duebill payable to order or bearer is as signable, and may be assigned by an agent. 32 A note assigned after its maturity leaves all equities opened between the original parties 133

Possession of a note payable to bearer is prima facie evidence of right, and the holder may sue in his own name 308

### Payment.

The possession by the payee of a time draft, unaccepted and uncanceled, is not prima facie evidence that he has paid it. 434

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 of payment 434

### Release or discharge of indorser.

A release of a remote indorser by the holder of a note is a discharge of the subsequent indorsers 881

### 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 96

A plea of failure of consideration, in defense to a note, should distinctly allege the actual consideration, and that there was never any other 96

The words "without offset," in common use on the face of negotiable paper, will not prevent an offset, as between the maker and payee 539

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 584

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 1021

### 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 553

The remarks, however, made on the map by the proprietor, are not evidence 553  
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. 522

A passenger not rightfully in a certain position cannot complain of the absence of the proper safeguards 921

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. 921

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 921

A passenger who, by concealment, attempts to get valuable articles carried without paying the extra rates charged therefor, cannot recover in case of loss 1055

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 1055

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 736

Evidence of charges for freight two years previous to the charges in controversy, for like freight, *held* competent upon the question of their reasonableness 736

Delivery is completed when there is nothing left to be done to finish the transportation 240

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 571

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 240

An insurance company which has paid the loss may recover against the carrier, on showing negligence 240



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 736

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 738

#### 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 228

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 228

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 228

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 228



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A guaranty of eight feet of water “at the place of loading” <i>held</i> 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	691
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	155
A deduction from the monthly hire will be made, where the voyage has been protracted by reason of the insufficiency of the sails etc	155
The departure of the consignee named in a charter-party from the port of destination constitutes no waiver of the contract	599
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. <i>Held</i> , that freight was not recoverable as for a partial performance	599
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	599
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	437

### 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	121
In Illinois, recording a chattel mortgage in which material changes have been made since its acknowledgment gives it no additional validity	734
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	879
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	286
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	134
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, <i>held</i> a substitute for the mortgage	576

### 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 172

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. 172

A steamboat carrying the mail is bound by the same laws and rules of navigation that govern other steamers 425

### 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.) 854

### Between steam and sail.

The sail vessel must keep her course, and the steamer must keep out of her way 214

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 834

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 425

### 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 462

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 462

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 449, 462

### 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 1047

The burden of proof is on the moving vessel to show that the collision was caused without its fault 236

### Tugs and tows.

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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 caused by some fault of the part of her tug 1195

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 1018

Both tug and tow are liable where the injury would not have occurred had a second tug been employed 1045, 1047

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 1045

**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 172

**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 400

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 100

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 395

Steamer <i>held</i> in fault in maintaining a speed of eight miles an hour on the river St. Clair, on a very dark night	214
<b>Lights, signals, etc.</b>	
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."	214
Signal lights hung on either side of the boat, on nails driven into the nosing of the hurricane roof, <i>held</i> not proper lights	944
<b>Lookouts, officers, etc.</b>	
The master who went below after hearing the whistle of an approaching steamer <i>held</i> in fault	944
The fact that a bark has but one man at her wheel in a fog is no proof of negligence or want of seamanship	451
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	423
The master is not a proper lookout	944
The man blowing the fog horn on a sail vessel is a proper lookout	451
The pilot house of a steamer, in the nighttime, is not a proper place for a lookout	944
The failure of the lookout of a steamer to report a vessel, when discovered, <i>held</i> negligence, though the master and pilot were on the bridge	449
The lookout of a vessel will be <i>held</i> in fault in leaving his post after reporting the light of another vessel	849
<b>Particular instances of collision.</b>	
Between two steamers on the Ohio river, involving mutual fault as to lights, lookouts, etc	944
Between steamer <i>cominir</i> 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	449, 402
Between bark closehauled and steamer at sea in a fog, where the bark's horn was not heard, and the steamer was <i>held</i> liable for excessive speed	451
Between schooner closehauled and schooner sailing free in Chesapeake Bay, where the latter was <i>held</i> in fault for not keeping away	1039
<b>Procedure.</b>	
Proof of title to the injured vessel may be given after trial	849
The testimony of those on board a moving vessel, as to her maneuvers, is more reliable than that of persons aboard the approaching vessel	214

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 395, 451

**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. 598

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 643

There can be no recovery for delays caused by storms, or by ice or obstructions in the harbor or river where a vessel may be, after necessary repairs are made 643

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 1050

**Division of damages.**

In case of mutual fault, the loss must be divided 423

**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 369

**Compromise.**

See "Bankruptcy"; "Composition"; "Payment."

**CONSTITUTIONAL LAW.**

See, also, "Statutes."

The fifth amendment to the constitution is not applicable to state legislation 33

A state has no power to regulate commerce extending beyond its jurisdiction; otherwise as to commerce beginning and ending within the state 172

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 541

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 7

**CONTINUANCE.**

Want of preparation of the attorney, from attention to other necessary matters, is no ground for continuance	390
Failure to give security for costs is no ground for continuance, where it has not been demanded within a reasonable time.	881

#### CONTRACTS.

See, also, "Assumpsit"; "Sale"; "Vendor and Purchaser."	
All wagers are not void, but all gaming contracts are	491
Instruments executed abroad, as the foundation of sealed instruments in this country, must be under seal	530
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	690
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	698
A party does not waive his rights, in accepting a proposition which the other party afterwards refuses to carry out	1181
Delay incident to the badness of the roads is within the agreement to transmit money through express	306

#### 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, <i>held</i> not entitled to a copyright therein	1031
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CORPORATIONS.

See, also, "Banks and Banking"; "Insurance"; "Marine Insurance"; "Municipal Corporations"; "Railroad Companies"; "Receivers."

There can be no corporate existence by prescription 27

In Ohio, a corporation cannot be created or authorized except in pursuance of a general statute 27

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 27

A certificate of incorporation, in Ohio, filed without seals to the name of the incorporators, is a nullity 27

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. 27

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 257

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 778

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 778

A special remedy given by statute against stockholders, for the debts of the corporation, *held* exclusive of all other remedies, legal and equitable 781

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. 500

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 500

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 976



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	976
Such request and refusal need not be shown where the corporation is under the control of defendants, who must be sued.	976
The joinder of a person who is not a stockholder is good ground of demurrer to the whole bill	976
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	976
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	976
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	702
<b>COSTS.</b>	
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	948
The right of the prevailing party to costs is recognized by the rules of the supreme court and acts of congress	818
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	818
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	585
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.	77
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	910
So <i>held</i> in a case where an appeal in admiralty was dismissed, with costs, for irregularity, without being heard.	910



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Expenses of printing and translating testimony are not taxable by defendant, where the bill is dismissed	490
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	818
Act March 1, 1793, allowing parties the same compensation for travel, attendance, and attorney's fees as is given in the state courts, <i>held</i> not now in force	818
Witnesses are entitled to travel "from the places of their abode," though beyond the line of the state, unless otherwise agreed by the parties	818
<b>Counties.</b>	
See, also, "Municipal Corporations."	
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See, also, "Admiralty"; "Bankruptcy"; "Equity"; "Justices of the Peace"; "Maritime Liens"; "Removal of Causes."	
<b>In general.</b>	
Courts of limited jurisdiction can only exercise their powers in the cases and in the mode prescribed by the legislature	686
<b>Comparative authority of federal and state courts: Process.</b>	
Where two courts have concurrent jurisdiction, the one which first obtains actual jurisdiction of the parties and subject-matter may proceed to final adjudication	168
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	889
<b>Federal courts—Jurisdiction in general.</b>	
Where there is an actual sale and transfer of the subject-matter of the suit, the	882

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 649

—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 885

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. 882

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 308

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 1010

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 805

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 674

One defendant cannot object as to jurisdiction over another defendant, who admits that his citizenship is rightfully described to give jurisdiction 674

The defendant may waive the privilege not to be sued out of the state where he resides, by a voluntary appearance 657

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 962

—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 649

Where jurisdiction is not expressly conferred on the federal courts, the party may resort to the state court 649

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. 889

—District courts.

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The district courts of the United States, as courts of admiralty, have jurisdiction over policies of marine insurance	189
—Administration of state laws and decisions.	
The circuit court in Pennsylvania has power to issue writs of foreign attachment under the state laws	108
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	284
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	33
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.).	248
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.	33, 862
The question of the rate of interest and damages on nonpayment of a bill of exchange will not be determined by the local law	1021
State decisions in relation to charges to the jury are not binding on federal courts	434
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The recovery of a judgment in one court in an action on a judgment of another court is no satisfaction thereof 63

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A justice of the peace may reject a plea of misnomer in abatement 278

**Landlord and Tenant.**

See "Fixtures."

**License.**

See "Mines"; "Patents."

**Liens.**

See "Admiralty"; "Maritime Liens"; "Shipping."

**LIMITATION OF ACTIONS.**

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

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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 510

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 95

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 911

If the statute begins to run in the lifetime of the intestate, it is not interrupted by his death, and the want of administration 911

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 640

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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 \*934

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 934

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All expenses resulting as a direct and immediate consequence of a peril insured against are covered by the policy	189
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	189
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	189
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After an abandonment accepted, the insurers are owners for the voyage, liable for seamen's wages, and entitled to freight, from such time	387
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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	1189
A declaration on such policy, averring that at the time of the loss H. was interested in her to the amount of the insurance, <i>held</i> sufficient	1189
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#### 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	123
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	565, 630

A lien arises for labor and materials furnished in a foreign port in rebuilding a vessel which had been burned to the waters edge	518
No lien arises under the maritime law for supplies furnished a vessel in the state in which she is owned	1086
There is no lien for wages of a watchman on board a ship in port	1084
A master may hypothecate his vessel for necessaries in a foreign port, unless he has at his command funds or credit of his owner	126
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	126
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	827
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	126
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	952
A lien attaches for casks furnished to a whaler for the receipt of oil	1178
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	577
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	367

The builder of a vessel, who furnishes materials, and is to be paid in installments, 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.”	477
Masts and spars furnished to a vessel while she is being built are not maritime supplies	4
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	869
A chartered vessel is liable for necessary supplies furnished in a port in which she herself, her charterer, and her owners are all strangers	565
A vessel in the hands of mortgagees, who were in fact the real owners, <i>held</i> not a foreign vessel in the port of their residence, as to one advancing money with knowledge of the facts	110
<b>Priority and enforcement.</b>	
The relative priorities and dignities of many claims upon the same vessel, asserted by libels and petitions, composed, adjusted, and settled	827
The lien of a shipper for the performance of the contract of shipment takes preference over the lien of a prior chattel mortgage	1087
The claimant, in answer to a libel by a material man, need neither admit nor deny that the articles furnished were necessary	126
<b>Waiver: Discharge: Extinguishment.</b>	
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	630
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	565
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	597
Demand <i>held</i> 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	67
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 enactments	626
The seizure and sale of a vessel under a state law do not divest a lien given by the general maritime law	626



### 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	577
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	586, 724
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	1193
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	783
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	1178

### 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.	724
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	724
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	*835
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	835
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	835

### 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, <i>held</i> a mere license, under which no property in the ore accrues until the privilege is exercised	89
The right is without stint, but is not exclusive of the owner of the soil	89
Such license is indivisible, and an assignee in part cannot support a suit against the owner of the soil	89

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In the case, of interfering locations, for which patents have lawfully issued upon due notice to adverse parties, priority of right is determined by priority of patent, and not by priority of location	222
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.)	222
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.)	222
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	222

### MORTGAGES.

See, also, "Chattel Mortgages."

A stipulation requiring payment without deduction for taxes, charges, or assessments does not prevent the mortgagor retaining the amount of income tax on the accrued interest, chargeable against the holder, and, paid by the mortgagor	161
Pending foreclosure, the mortgagor cannot create a mechanic's lien which will affect the rights of the mortgagee	502
A decree of foreclosure in the federal court <i>held</i> not objectionable, in not giving the time allowed for redemption by the state statute	502
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, calculating the value of such property at the time of the actual foreclosure	810

### MUNICIPAL CORPORATIONS.

See, also, "Railroad Companies."

The corporation of Washington, D. C., has authority to prohibit gaming	278
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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 681

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 681

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 98

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 \*144

An alderman of Washington, D. C., is not competent to try a person for a violation of a by-law of the corporation 278

#### 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 33

#### 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: 1099

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 1099

#### 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 1066

Misbehavior of jurors is not a ground for a new trial, if it has not affected the verdict 1188

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. 663

Vacillating conduct of a jurymen, in voting in the jury room, add no ground for a new trial 663

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 41

#### 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 553

#### 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 666

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 510

#### PARTNERSHIP.

See, also, "Bankruptcy."

The actual intention of the parties will alone constitute a partnership, as between themselves 927

A mere participation in the profits will not make the parties partners inter sese 927

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 400

A special partner, who has withdrawn any part of his capital from the firm, is liable, at suit of creditors, to pay it back 400

One partner cannot sue the other in relation to a partnership matter until the partnership accounts have been finally adjusted, and a balance struck 177

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 111

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 879

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 637

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 635

### 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 925

The principle that cotton spun directly from the gin produces a better and stronger yarn than cotton after it is baled, is not patentable 1150

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 103

A new combination of old devices is patentable, if the result produced is new and useful 162

A combination of old devices, which produces merely the aggregate of the several results of the devices when used separately, is not patentable 162

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 1012

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 856, 866, 875

An invention made and used in a private way, and abandoned, and not given to the 768, 900, 1019

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An invention <i>held</i> 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	211
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The patentee must not only be an original inventor, but the first inventor	900
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	1003
“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	1003
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	1003
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	(Act 1870).1182
<b>Prior public use or sale.</b>	
Public use in good faith, for experimental purposes, while perfecting the invention, is not within the meaning of the statute	1180
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	1180
“Public use” means use in a public manner, and not use by the public generally	1182
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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	894

Incompleteness of prior application is no evidence of a change in patentable features, where it appears that the machines are identical	894
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	899
The omission to file a caveat while maturing an intention does not impair the rights of the inventor	1003

**Application and issue: Interference.**

The inventor may make each improvement the subject of a separate patent, or combine them, if he chooses	899
Upon the application for a patent, the testimony of practical men as to the utility of the invention is entitled to consideration	899

**Extent of claim.**

Both the specification and claim will be looked to, to ascertain, the invention	900
The specification and claims are to be liberally construed to carry out the intention of the inventor	341
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	1079
The drawings must be considered in connection with the specifications	341
The description of each separate element must be read and construed with reference to the entire combination and its results	341

**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.)	1150
The court cannot consider loose drawings sent up with the papers, which are not signed by the inventor, and attested by two witnesses	1150

**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	899
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**Duration.**

A domestic patent expires at the same time as the original term of a foreign patent for the same invention. (Rev. St. § 4887)	1182
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A purchaser of the exclusive right to make, use, and vena patented parts in a particular combination, without limitation of time, <i>held</i> should be protected, as against an assignee of an extended term of the patent	394
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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 255

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A license of the “exclusive right to use and sell” in a certain territory, reserving the “right to manufacture,” construed, and *held* assignable 346

Mere licensees have no interest capable of affording the foundation of a suit in their names 81

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 348

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**Infringement. What constitutes.**

A combination of old devices does not prevent others from using them separately, or in a new combination 162, 187

A patentee cannot repudiate one of the parts of his machine after another inventor has taught him to dispense with it 187

A patent claiming invention of an hotel register with alternate leaves of bibulous paper, for advertisements, *held* infringed by the use of yellow medium paper for such advertisements 867

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 875

A wire gauze dipper, substituted for a perforated dipper, for stirring oil, and raising enough for a single operation, <i>held</i> a mere equivalent	764
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