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The surrender of a policy of insurance under a stipulation giving such right, with a return of part of the premium, is not a preference to the insured. 20

A person who has no knowledge of his insolvency may pledge his property to another to secure payment of money which he has unlawfully used. 529

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Money paid to redeem property thus pledged cannot be recovered by the assignee. 529

A general assignment for the benefit of creditors with preferences, made in contemplation of insolvency, is void under the bankrupt act, and the property received thereunder may be recovered from the trustee by the assignee in bankruptcy. 229

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The defect in the verification is waived by the debtor when he calls a meeting for composition; and, in the absence of fraud, the dissenting creditors cannot take advantage of it. 580

#### BANKS AND BANKING.

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

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As between the seller and purchaser of national bank shares, the sale is complete when the certificate is delivered duly assigned, with power of transfer on the books of the bank, and payment received therefor. 758

The directors of a national bank have no power to refuse to register a bona fide transfer of stock without some valid and sufficient reason therefor. 758

A shareholder in a national bank, who sold his shares through a broker to the president of the bank, executing blank transfers, without knowledge of the real purchaser or the insolvency of the bank, and received in payment the broker's check on the bank, which was paid out of the bank's funds, *held* not liable for the amount to the receiver of the bank. 758

Where the officers of a national bank have been making preferential payments, a court of equity, on the application of a depositor, will appoint a receiver. 100

**BENEVOLENT SOCIETIES.**

The directors of a mutual insurance company are personally liable for a failure to make an assessment when a claim for a loss is presented, though its validity is denied and litigated. 1102

**BILLS, NOTES, AND CHECKS.**

**What law governs.**

The question as to due presentment of a bill of exchange is determined by the law of the place of payment, whose tenor, existence, and effect may be proved by parol. 33

**Indorsement and transfer.**

An accommodation indorsement on a note does not make it commercial paper, as to the accommodation indorser. 63

It is no defense to an accommodation acceptor of a bill of exchange that plaintiff took the same from the drawers in payment of a pre-existing debt, with knowledge that it was an accommodation paper. 609

One who, takes drafts of a national bank with knowledge of the fact that they were issued as accommodation paper cannot recover, thereon against the bank in the hands of a receiver. 885

**Demand: Notice: Protest.**

If, the last day of grace fall on Sunday, demand must be made on Saturday, but the notice may be given on Monday. 115

Notice to the indorser of nonpayment of a promissory note, not payable to order, is not necessary in Virginia. 167

Due diligence in giving notice of dishonor to an indorser is a question for the jury. 167

A notary's sealed certificate of protest of foreign bill, payable in his country, is good evidence of presentment and nonpayment. 33

The notary's certificate under seal is evidence of the facts therein recited. 980

One protest to a bill of exchange is sufficient, and that must be according to the laws of the place where the bill is payable. 33

**Actions.**

In an action against the assignor or guarantor of a note, a demand on the maker when it became due must be alleged. 362

A count upon the indorsement of a promissory note, not payable to order, without averring a consideration for the indorsement, *held* bad. 351

A plea in an action against the indorser that the maker of the note, at the date of the writ, had goods and chattels to a greater amount than due thereon, is no answer to an averment of insolvency. 351

A seal and the words "witness my hand and seal," on an inland bill of exchange, may be rejected as surplusage, and the bill be declared on in the usual form. 115

## BILLS OF LADING.

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

A bill of lading, signed in blank by the master of a vessel, is not valid, either against the vessel or owners, even in the hands of a bona fide holder. 1141

The owner of a vessel is not estopped from having the circumstances attending the signing and transfer of a blank bill of lading inquired into by the court. 1141

Damage to cargo by rats is not a peril of the sea or danger of navigation, within those terms in a bill of lading, at least, unless ordinary care and diligence to guard against injury therefrom be shown. 157

A printed clause, "not responsible for leakage," in a bill of lading for oil, changes the general rule that the acknowledgment of goods being received in good order casts the burden on the carrier of showing want of negligence. 78

Proof of greater than average leakage is not sufficient Actual negligence must be shown. 78

The fact that the manner of stowing or the carrying of other kinds of cargo produced dryness, and caused casks to leak, does not show negligence, where such stowing and carriage were usual in the trade. 78

While the ship is still detained in port by ice, an action will not lie for breach of a bill of lading; for goods laden thereon, without a rescission of the contract. 954

Person to whom goods were delivered, though not consignee, *held*, on the evidence, in an action for nondelivery, duly authorized by the consignee to receive them. 87

## BONDS.

See, also, "Municipal Corporations"; "Principal and Surety"; "Railroad Companies."

Railroad bonds payable in different sums, according as the place of payment might be fixed by indorsement of the president, and bearing an indorsement in which the place of payment was left blank, *held* not negotiable, and not valid in the hands of a bona fide holder for value, where they were stolen from the company. 257

In a suit against a surety on an official bond, where the principal is dead, a plea of general performance, craving oyer of the bond and conditions, is good. 247

## BOTTOMRY AND RESPONDENTS.

See, also, "Maritime Liens."

The master is not liable for a deficiency on a bottomry bond given by him, in the absence of a covenant binding him personally for the debt. 93

The lien of a bottomry bond is not discharged by a payment of the debt by the agents of the shipowners with their own money, where they take an assignment thereof. 730

In such case, freight moneys will be applied first to the payment of unsecured disbursements of such agents, leaving the surplus only to be credited on the bond. 730

Bridges.

See, also, "Navigable Waters."

**BUILDING AND LOAN ASSOCIATIONS.**

Loans made to their members by building loan associations, conducted in accordance with the ordinary and well-known methods adopted by such societies, are not usurious. 784

Such associations are partnerships, and loans made to their members are dealings with partnership funds, in which the borrower has the same interest before and after the loan as the other members. 784

The contracts made with the borrowing members upon the well-known and usual terms of such contracts are not such as equity will relieve from, as unconscionable and oppressive. 784

## CARRIERS.

See, also, "Affreightment"; "Average"; "Bills of Lading"; "Charter Parties"; "Shipping."

### Of passengers.

The proprietors of steamboats engaged regularly in carrying passengers between certain points are common carriers, and are bound to receive all persons on board to whose character and conduct there is no reasonable objection. 442

Common carriers may inquire into the habits and motives of persons offering themselves as passengers, and exclude all persons of bad character or habits, or those whose objects are to interfere with their interests, or to disturb their line of patronage, or who refuse to obey reasonable regulations. 442

The proprietors of a steamboat may exclude therefrom one who takes passage for the purpose of soliciting passengers for a connecting line running in opposition to a line with which the steamboat proprietors have a contract to carry passengers through to a distant point. 442

Where a passenger's money is stolen from his stateroom in a steamboat by reason of his neglect to lock and bolt his stateroom door, the owners of the vessel are not liable. 661

A gold watch and chain, gold ornaments for presents, and American coin are not baggage. 88

Where the passenger informed the carrier that his trunk contained nothing but clothing, whereas it contained a large amount of coin and gold ornaments, *held*, that the carrier was not liable for any of the contents where it was lost. 88

### Of goods.

The carrier is liable for a want of proper care and skill in guarding against damages or deterioration arising from the nature of the goods or of the voyage. 80

A stipulation for exemption from liability for damage by rats, where due diligence is not used to guard against injury, must be disregarded. 157

Sale at auction, without communicating with the owners, of flour injured by the capsizing of a vessel at her wharf before sailing, *held* an unlawful conversion. 1153

In such case the cargo owners are entitled to recover the value of the cargo at the port of delivery at the time when the vessel should arrive, deducting freight and charges, with interest on the balance. 1153

An insurance company which pays the loss on an insured cargo, though not legally bound therefor, may maintain an action against the carrier for negligence. 65

## CHARITIES.

The law of charities is fully adopted in Georgia, as far as is compatible with a free government, where no royal prerogative is exercised. 957

- Gifts to charities in form absolute were followed by a clause directing that the devise should not be “executed or take effect” until the completion of a memorial building in process of erection at testator’s death, and full payment therefor. *Held*, that not the gifts but only the payment thereof were suspended. 957
- An immediate gift to trustees for a general charity, which cannot take effect except on the occurrence of contingent and uncertain events, is valid, and the fund will be held up for a reasonable time to await the happening of the contingencies. 957
- A gift to the trustees of a church to devote the income to such destitute and needy churches in the state as they may select, so as to promote the cause of religion, *held* not void for uncertainty. 957
- A gift to “The Widows’ “Society of Savannah,” for “the benevolent purposes of said society,” where such society was incorporated for the relief of indigent widows and orphans, *held* sufficiently definite. 957
- A devise for the establishment of “a hospital for females within the city of Savannah, on a permanent basis, into which sick and indigent females are to be admitted and cared for,” is not void for uncertainty as to the beneficiaries. 957
- A general direction that an act of incorporation should be obtained for the hospital does not render the devise void. 957
- A condition against alienation annexed to property devoted to charity does not render the devise void. 957
- A gift to the trustees of a church on condition that they shall not allow any alteration in the pulpit and galleries of the church, and shall not alien the Sabbath school lot, is valid. 957
- The fact that a charitable society has already a surplus of funds does not vitiate a gift to it. 957
- Where a charity is definite, the court of chancery will provide a trustee if none is named, or if the one named is incompetent to act. 957

#### CHARTER, PARTIES.

- See, also, “Admiralty”; “Affreightment”; “Average”; “Bills of Lading”; “Shipping.”
- A special agent of the charterer cannot charge, against the owners, expenses, advances, or liabilities incurred for the ship. 1132
- The charterers of a canal boat are not liable to the owner where she is sunk by the explosion of the boiler of a tug which they had employed to tow her, where they were free from negligence. 213
- The damages, for breach of charter by the shipper, are the difference between the price stipulated and the freight that could be obtained by reasonable diligence. 1098

#### CHATTEL MORTGAGES.

- See, also, “Bankruptcy”; “Shipping.”

At common law, a mortgage, where possession and power of sale is given to the mortgagor, is absolutely void. 780

In Georgia a mortgage of a stock of goods is valid, though possession is given to the mortgagor with power of sale, and is binding on subsequent additions to replenish the stock as against sellers who had no notice of the mortgage. 780

Record of a mortgage of personal property pursuant to the laws of the state is equivalent to a delivery. 1030

#### CITIZEN.

See, also, "Prize"; "War."

In the United States expatriation is considered a fundamental right. To sustain it the government to which allegiance is sworn, if independent in fact, need not have been recognized as such by the United States. 1179

The right of expatriation recognized in the case of an American citizen accepting from a foreign government a commission authorizing him to cruise as a privateer. 356

#### COLLISION.

See, also, "Admiralty"; "Pleading in Admiralty"; "Practice in Admiralty"; "Towage."

**Nature of liability—Inevitable accident.**

A collision occurring in the daytime in fair weather may be an inevitable accident. 384



Where a vessel, deserted by her officers and crew to save their lives, drifts into collision with another, each vessel must bear its own loss.	702
A collision in a slip, caused by a bark pulling out a pile to which her bow chain was fastened, in a storm lasting two or three days, <i>held</i> not due to inevitable accident.	651
Where a ship brought into a slip to avoid peril from running ice is warned that her position is dangerous to another vessel in the slip, injury caused by her, where her fastenings are carried away by the ice, is not a case of inevitable accident.	900
It is no defense in such case that the vessel injured was lying in the slip head out, in violation of the rule of the harbor master.	900
<b>—Contributive fault.</b>	
A vessel closehauled, crossing the course of another sailing free, will not be <i>held</i> in fault for luffing, where the vessels are brought into imminent danger of collision through the fault of the latter in not keeping away.	895
<b>Rules of navigation.</b>	
The rules of navigation for avoiding collision, the use of lights, etc., before the adoption of the statutory rules.	971
Quaere, whether rule 9 of the board of supervising inspectors (Act Feb. 28, 1871) has the force of law in respect to the lights to be carried on tows.	566
<b>Between steam and sail.</b>	
Where any doubt exists as to the ability of the steamer to pass ahead of the sail vessel, the former must delay to permit the latter to pass.	289
The burden is upon the steamer to show a sufficient reason for not keeping out of the way of the sailing vessel.	382
A sailing vessel coming down the Hudson river does not hold her course within the meaning of the law when, without cause, she changes from the west to the east side of the river in rounding West Point.	637
<b>Overtaking vessels.</b>	
A schooner will be <i>held</i> in fault for suddenly luffing up across the course of an overtaking ferry, for the purpose of taking in sail to make her landing.	425
A steamer with 12 barges lashed alongside ported, to avoid a shoal, and brought an outside barge in collision with a schooner which was outsailing and passing her. The schooner had time to change her course. <i>Held</i> , that she was solely liable.	90
<b>Vessels moored, etc.</b>	
A vessel is not at fault in leaving her sails up while at anchor in broad daylight, at a place where she could be seen for a long distance, and was not obstructing the channel.	715

A vessel injured while at anchor, at night, in the middle of the Hudson river, cannot recover where she failed to keep a good light and a sufficient watch on deck.	22
Anchoring in middle of Hudson river, opposite Ft. Lee, at night, <i>held</i> not culpable conduct.	22
<b>Tugs and tows.</b>	
As against a sail vessel, a tug and tow must be considered as one steam vessel.	619
<b>River and harbor navigation.</b>	
A steamship running under the stern of a vessel at anchor, standing high out of water, should proceed with great caution, and at such rate of speed as will enable her to keep clear of sail vessels passing on the other side.	1190
A steamer carefully navigating a crowded harbor will not <i>beheld</i> in fault for collision with a schooner just getting under way behind the hull of a large ship, which could not be seen in time to avoid her.	384
A steamer will <i>beheld</i> in fault in keeping up a high rate of speed in a narrow channel full of vessels ahead of her, some of which did not become visible, owing to the presence of others, until too late to avoid collision.	337
<b>Speed: Fogs.</b>	
Excessive speed in a steamer is not excused by the fact that she is under contract with the government to carry the mails in a specified time.	323
Vessels sailing during a dense fog are bound to have on deck all the disposable part of their crew, to aid in keeping a lookout.	971
<b>lights: Signals, etc.</b>	
A tug which has no mast must carry the vertical mast headlights required by Rev. St. § 4233, of vessels towing, in such manner as to be equivalent in effectiveness to that prescribed by the rules.	566
<b>Lookouts, officers, etc.</b>	
The master of a tug, where performing other duties, is not a competent lookout.	672
Every doubt relating to the consequences is to be resolved against the vessel which is without a lookout.	672
<b>Particular instances of collision.</b>	
Between schooner and brig off Barnegat, where the latter was <i>held</i> in fault for a change of course.	551
Between bark sailing free and ship close-hauled, where the latter was <i>notheld</i> in fault for luffing when danger of collision was imminent.	895
Between sloop beating up the East river and sloop coming down with wind free, where the latter was <i>held</i> solely in fault for failure of lookout, though the former, in extremis, undertook to go about, and missed stays because of a defective tiller.	683

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Between ferryboat crossing from New York to Jersey City, on an ebb tide, under a port helm, and propeller coming up the river, where the latter <i>washeld</i> in fault for not keeping away, and the former was not in fault for keeping on without slowing where her single whistle had been answered by a single whistle from the propeller.	896
Between steamer and schooner at sea on a dark and hazy night, where the former <i>washeld</i> liable for too great speed and the want of a vigilant lookout.	323
Between steamer and bark at night, the latter being sunk, and all on board save one person lost, where the former <i>washeld</i> in fault, on her own evidence, for too great speed or the want of vigilant lookout.	382
Between steamer and sloop rounding West Point in the Hudson river, where the former <i>washeld</i> in fault for not keeping the usual course in such cases.	637
Between steamer off Sandy Hook, looking for towing employment, and brig sailing free, outward bound.	84
Between steamer going through Hell Gate and schooner drifting with the tide in a light wind, where the former <i>washeld</i> in fault for not stopping to let the schooner pass.	171
Between steamer and schooner in Hell Gate, where both were <i>held</i> in fault, one for too great speed, and the other for indefinite maneuvers.	371
Between steamer and schooner in Buttermilk channel, where the former <i>washeld</i> in fault for not giving the latter a wider berth.	289
Between steamer rounding into her berth and schooner under way in light breeze, *	147

where the latter was <i>held</i> in fault for not keeping away.	
Between schooner and tow lashed alongside of tug near the Astoria dock in the East river, where the latter was <i>held</i> in fault for not keeping out of the way.	619
Between the tows of two tugs in the East river, caused by the effort to avoid an overtaking steamer navigating near the shore, where the latter was <i>held</i> solely in fault.	177
Between steamer under way and schooner at anchor in middle of Hudson river at night, without sufficient light or watch.	22
Between the tow of a tug coming into and the tow of a tug going out of the Atlantic basin, where the former tug was <i>held</i> solely in fault for making a turn too short to enable her to see the approaching vessel in time to avoid a collision.	429
Between schooner at anchor in the East river, between Blackwell's and Manhattan Islands, with her sails up, and schooner under way, where the latter was <i>held</i> in fault.	715
Between steamer passing under the stern of a large vessel at anchor and schooner hidden from view, where the former was <i>held</i> liable.	1190
Between brig at anchor on the flats in the Penobscot river and schooner in tow, where the latter was <i>held</i> solely liable.	430
Between tug and tow coming down the East river, near the piers, and ferryboat just starting out, where the former was <i>held</i> in fault.	665
<b>Procedure.</b>	
Owners of cargo must be made parties to the suit before they can avail themselves of the operation of the decree.	971
A change of course of the tug, set up in defense in the answer to a libel by the tow against the colliding vessel, will not prevent a recovery, where it was justifiable.	90
On a libel against two tugs by the tow of one which came into collision with the tow of the other, the answers of the tugs charging negligence of each other are not evidence against each other, and libellant must offer evidence of negligence to be entitled to recover.	328
Where all the persons on board of a bark sunk in a collision with a steamer who could have given evidence for her were lost, and the steamer is found to have been in fault, she must make out a clear case of fault on the part of the bark to render her equally liable.	380, 382
The testimony of the master of the vessel at her wheel as to the relative positions of the vessels is entitled to greater weight than that of seamen on the bow of the other vessel.	551
In the case of a single stipulation for value, where both tug and tow are libeled for a collision, it is not necessary to decide which of them is in fault, if only one.	665

**Rule of damages.**

The injured vessel is entitled to be put into as good condition as before the injury, and no allowance is to be made for new materials instead of old. 430

A ferryboat injured by a collision while coming out of her slip at Fulton street, Brooklyn, *held* not in fault for attempting to reach Jersey City, where her officers examined her injuries, and were of opinion that she could be kept afloat. 665

An item of \$800 for the difference between the value of the injured vessel before and after repairs disallowed. 146

An item of \$465 for loss of earnings during detention for repairs founded upon the mere opinion of the master and mate, not rejected on exceptions, where the cost of sending the report back would probably equal any abatement in the amount. 146

**Division of damages.**

Where the collision is caused by inevitable accident, each party bears his own loss. 557, 702

In cases of mutual or inscrutable fault, damages are equally divided between the vessels. 684

**Review.**

A rehearing not allowed in the district court on the ground that since the trial libellant's witnesses testified differently in another suit, growing out of the same collision, as such evidence is admissible on appeal. 665

**Compromise.**

See "Bankruptcy"; "Release and Discharge."

**CONFLICT OF LAWS.**

A deed or power of attorney executed and acknowledged according to the laws of New York is a good execution under the law of Ohio. 834

The law of the state where the contract is made will fix the rate of interest in an action thereon in a federal court sitting in another state. 285

**CONSTITUTIONAL LAW.**

A grant of power is to be construed according to the fair and reasonable import of its terms, and not necessarily controlled by a reference to conditions existing when the constitution was adopted. 194

A law which takes away all remedy is equivalent to a law impairing the obligation of the contract, and hence unconstitutional and void. 734

The repeal of the provision of a limitation law excepting the time of the debtor's absence from the state, without allowing any time to sue after his return, *held* unconstitutional. 734

A state tax upon receipts for transportation through the state of goods carried from and to points outside the state is unconstitutional. 24

A corporation is not a “citizen of the United States” or a “person,” within the meaning of Const. U. S. Amend. 14, § 1.	67
A law imposing a higher tax upon a foreign corporation doing business within the state than upon a domestic corporation <i>held</i> not in violation of a constitutional provision that “taxation shall be equal and uniform throughout the state.”	67
State statutes authorizing actions in rem against vessels for causes cognizable in admiralty are unconstitutional as conferring admiralty jurisdiction.	217
The United States has jurisdiction over navigable streams so far as may be necessary for commercial purposes.	919

#### CONTINUANCE.

In a suit on bottomry bond executed in a distant foreign country, where an attested copy was produced, a continuance was allowed to enable libellant to produce the original.	559
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#### CONTRACTS.

See, also, “Assumpsit”; “Sale”; “Vendor and Purchaser.”	
Construction of contract for the building of an engine and boiler for a steamboat “of the most approved construction.”	134
Where the work under a contract on property placed in the hands of a contractor	134

- for repairs and improvements thereto is to be paid for in installments as the work advanced, the owner cannot take possession without compensating the contractor for the benefits actually received, though the work did not comply with the specifications.
- Where the owners of a steamboat take possession and run her, without giving the builders of her engines opportunity to test their work as agreed, the conditions as to the test will be *held* to be waived. 134
- A third person who, at the request of a contractor, executes the contract, cannot maintain an action against him thereon. 1035
- In Arkansas, plaintiff may sue all or as many of the joint contractors as he may see proper. 735
- On the adjustment of a decree for a balance remaining due on work done under contract, the employer is not entitled to be credited with interest on partial payments made as agreed. 143
- In a suit for the contract price for work done, the contractor is entitled to interest on the amount due, at least from the commencement of the suit. 143
- But where the right of recovery is doubtful, and the amount is to be adjusted, interest is only recoverable after the amount is determined. 143
- Plaintiff will be entitled to interest from the filing of a report of referees where the same is confirmed, though both parties prosecuted exceptions thereto. 143

#### COPYRIGHT.

- A musical composition, to be the subject of a copyright, must be substantially a new and original work, and not a copy of an older piece, with additions or variations which a skilled writer might readily make. 910
- The deposit of a printed copy of the title of the work before publication, the printed notice of copyright, and a deposit of a copy of the work, are the three preliminary steps for securing a copyright. 910
- The title is an appendage to the work and, where the latter is not protected by a copyright, the former is not. 910
- The appropriation of the whole or any substantial part of a new air or melody is a piracy. 910
- Where the defense was that plaintiff's musical composition was a copy, with slight additions and alterations, of a composition previously published abroad, the decision on the motion for injunction was suspended, and an issue at law directed, the defendant being required to keep an account of sales. 910

#### CORPORATIONS.

See, also, "Banks and Banking"; "Benevolent Societies"; "Building and Loan Associations"; "Counties"; "Insurance"; "Marine Insurance"; "Municipal Corporations"; "Railroad Companies"; "Receivers."

The general power to make/amendments to existing charters is not taken away by the constitutional provision (Georgia) prohibiting the general assembly to grant corporate powers and privileges to any private companies except business companies. 957  
A transfer of shares in a failing corporation, made for the purpose of escaping liability to creditors, is void as to such creditors and other shareholders. 758  
A corporation of one state may maintain an action in the state or federal courts of Another state. 65

### COSTS.

Costs not refused on a libel for wages because libelant did not sue in the state court, where there was no apparent intention to annoy respondents. 951  
Where a libel in rem for repairs to a vessel was sustained for only a small part of the amount demanded, costs were refused. 902  
The docket fee of \$10, and not that of \$20, is taxable where a suit at law is tried by the court, a jury being waived. (Act 1853.) 1014  
The feebill of 1853 does not interfere with the practice of courts of equity or bankruptcy to allow counsel fees as costs in certain cases. 284  
Costs can be taxed for only two counsel of the same party. 284  
Where claimants in admiralty, in different rights, appear by the same counsel, but one bill of costs will be taxed. 555  
Taxation of costs in case of a claim on proceeds of a vessel in admiralty where other parties are interested. 564  
Costs in admiralty upon exceptions to a commissioner's report made in the alternative. 1153  
The custody fees where a vessel is held by virtue of two warrants to arrest, in different suits, are chargeable equally upon the two suits. 902  
The expense of a stenographer is not taxable. 284  
The expense of printing the record and evidence in an equity suit is properly taxable as part of the costs. (Second Additional Rule, May 25, 1842.) 1084

### COUNTIES.

See, also, "Municipal Corporations"; "Railroad Companies."  
The board of county commissioners in Ohio is a quasi corporation only, and not liable in an action sounding in tort. 276

### COURTS.

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



**Comparative authority of federal and state courts: Process.**

Persons, with knowledge that a vessel was under attachment by a marshal, during the temporary absence of the ship keeper, forcibly carried her into another state, and caused her to be attached by process out of the state court. *Held*, that the marshal might follow and retake her. 1136

**Federal courts—Jurisdiction in general.**

The federal district courts having, under the constitution and acts of congress, exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, the courts of common law are precluded from proceeding in rem to enforce such maritime claims. 158

**—Grounds of jurisdiction.**

Where, in a suit for infringement of copyright, the parties are residents of the same state, and plaintiff fails to make out his title to the copyright, the court has no jurisdiction to restrain the use of the title of the work upon principles relating to the good will of trades. 910

**—Circuit courts.**

The circuit courts of the United States have no original jurisdiction in admiralty. 356

—District courts.

The district court in admiralty may order the restoration of property, the right to the possession of which is in the marshal of the adjoining district. 1136

—Administration of state laws.

On questions of local law the federal courts follow the decisions of the highest judicial tribunal in analogous cases. 1

The decisions of the state court upon questions of general commercial law are not binding upon the federal courts. 609

The decision of the state court that a tax paid under a void law cannot be recovered back where there was a natural obligation to pay it is not binding on the federal court, where the law conflicts with the federal constitution. 688

The mode indicated by the state statute as a judicial process for setting off dower will be pursued in the federal court. 888

**Creditors' Bill.**

See "Bankruptcy."

**CRIMINAL LAW.**

See, also, "Bail"; "Extradition"; "Habeas Corpus."

Act 1790, limiting the prosecution of offenses not capital, etc., to two years, applies to offenses under statutes subsequently passed. 867

A bar, under the statute of limitations, to be available, must be pleaded. 867

A person may be arrested for trial and imprisoned or bailed for violation of a statute, although the only punishment prescribed therein is a fine. 194

The day laid in the indictment is not material, and the offense may be proved to have been committed at any other time within the limitation. 867

But one judgment should be rendered where the various offenses charged substantially constitute but one offense, though a separate verdict of guilty is rendered on each count. 1175

Where a separate sentence was rendered on each verdict, the prisoner is entitled to be discharged on serving the full term of imprisonment under one judgment. 1175

**CUSTOM AND USAGE.**

The adoption by a produce exchange of a rule requiring cargo to be received from lighters in two days does not make a binding custom for the port. 64

**CUSTOMS DUTIES.**

**Customs laws.**

General terms include all the subordinate or special kinds of goods so generally described, though commercially designated by a specific name. 285

Specific names are to be construed according to their general use in trade and commerce. 285

“Silk laces,” as used in Act June 30, 1864, § 8, embrace all laces made of silk, except such as are specifically known exactly by other terms used in the tariff acts. 285

**Payment: Protest.**

The receipt of a collector acknowledging payment is only prima facie evidence. 868

**Actions for duties paid.**

The entry for withdrawal from the warehouse, and not the entry for warehousing, fixes the time from which the 10-days limitation of time for giving notice of dissatisfaction runs. (Act March 3, 1857 § 5.). 166

**Violations of law: Forfeiture.**

Sufficiency of warrant for the seizure of papers and the mode of separating and examining the same determined. 1077

Vessel forfeited for smuggling cigars on the testimony of their owner, who produced an invoice for their shipment to the place from which the vessel sailed, and a letter from the master of the vessel stating that they had been shipped, and that he had paid, the master the agreed freight, though the master denied the shipment. 680

A vessel, arriving from a foreign port, is forfeited by landing goods without a permit from the collector after her arrival in the port of discharge. 663

The prohibition of unlading without a permit (Act March 2, 1799, c. 128, § 50) applies though the port is not that originally intended for the port of discharge. 25

Section 27 of said act applies to vessels which have not reached their port of destination and discharge. 35

A vessel engaged in the coasting trade, having goods on board, which have not paid duties, is not within Act 1799. c. 128, § 50, as to landing foreign goods without a permit. 254

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The cancellation of a bond for duties without receiving payment, in connivance with the debtor, is void. 868

Where a check taken in payment is not paid, the bend is not discharged. 868

**Customs officers.**

The collector cannot bind the government by any acts beyond or contrary to the authority given him by law. 868

**DAMAGES.**

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The measure of damages for refusal to accept boats built under contract is the difference between the contract price and the amount received on a sale to others. 45

The probable earnings of a boat for the time she was delayed in repairing the injury sustained by collision with a bridge are recoverable as damages. 919

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Debt lies for the recovery of a penalty given by statute where no remedy for its recovery is expressly given. 267

#### DECENT.

Shippers for the account and risk of another, having no opportunity to examine the goods, *held* not liable for a false description in the invoice, copied from a prior invoice, upon the faith of which the consignee made advances to the owner. 282

#### DEED.

See, also, “Specific Performance”; “Vendor and Purchaser.”

A subscribing witness to the execution of a deed may be compelled to attend court to prove it. 123

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A witness examined under a dedimus should be sworn according to the law of the forum whence it issued.	999
The commissioner need not certify when or where the examination was taken, nor by whom reduced to writing, or that the witness was cautioned before being sworn, or the form of the oath.	999
Notice of a motion for a dedimus to take depositions in a foreign country may be given to the attorney at law.	113
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The official character of the person taking a deposition will be presumed, without further proof.	376
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What is a sufficient return to a subpoena to enable a party to read the deposition of the witness taken <i>de bene esse</i> .	957
Testimony taken on a commission in blank sent abroad is admissible on proof that the names and materiality of the witnesses were unknown when the commission was sued out.	37
The deposition of a deceased person taken in another cause may be read as hearsay.	907

Discharge.

See "Bankruptcy"; "Release and Discharge."

DISCOVERY.

To obtain a discovery under Act Sept. 24, 1789, § 15, it is only requisite that the cause should be at issue, and that the court should be satisfied that the evidence will be pertinent to such issue, and that the discovery would be decreed in equity.	281
A notice of the time and place of making the application and a plain designation of the documents sought for are sufficient.	281

DISTRICT OF COLUMBIA.

The corporation of Washington has power to prohibit the granting of tavern licenses to colored persons.	876
The corporation of Washington has the right to prohibit colored persons from being out at night after 10 P. M.	547
Justices of the peace have jurisdiction in cases against women.	876

#### Domicile.

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The right to dower in land sold during coverture <i>held</i> within the saving clause of a statute restricting dower to lands of which the husband died seized, providing that no right which had already attached or vested should be affected thereby.	888
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#### EJECTMENT.

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Possession, accompanied with a claim of ownership in fee, is prima facie evidence of such an estate.	235
No other deed or title than that originally asserted can be set up to help out the possession.	235
Whether a deed is to be presumed from long possession is a mixed question of law and fact, to be submitted to the jury under the advice of the court.	235
The recitals in a warrant to a third person <i>held</i> admissible as evidence when corroborated by circumstances, where the papers of the surveyor general have been destroyed by fire.	320

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#### EMBARGO AND NONINTER-COURSE.

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The construction by the customhouse of arms and ammunition for the defense of a vessel, as sea stores, adopted by the court.	161

#### EQUITY.

See, also, "Courts"; "Discovery"; "Injunction"; "Patents"; "Pleading in Equity"; "Practice in Equity."

A conveyance will not be set aside for inadequacy of consideration unless the consideration be grossly inadequate, and such as to clearly indicate the existence of unfair dealing, fraud, imposition, or oppression. 456

A conveyance made to his attorney by a party in embarrassed circumstances will not be set aside unless it be shown that he had been consulted in regard to the particular transaction, or that he was in a position to take an unfair advantage. 456

A bill in the nature of a bill of review lies only after a final decree, and not upon an interlocutory decree. 504

A., owning, alone, certain property, joined with B., who was tenant in common with him of other property, in conveying all of the property to C. *Held*, that A. could alone sue in equity both B. and C. for neglect in managing the estate, and for an account of proceeds. 594

In such suit A. can only recover the proportion which his interest bears to the whole property. 594

Six years' delay in bringing suit to set aside a sale for fraud,*held* sufficient to bar relief. 709

### ESTOPPEL.

The government is not ordinarily bound by an estoppel. 868

In a suit for infringement, plaintiff's patent was*held* to be anticipated by that under which defendant was licensed.*Held*, that plaintiff was not estopped by such judgment in another action against one claiming under a license granted before the judgment. 45

A person is estopped to deny the existence of the authority exercised by another claiming to represent him where he neglects to look after his interests for an unreasonable length of time. 585

The owners of property, who continue their superintendence and payments on account of work done after the time fixed for its completion,*held* estopped to claim damages for the delay. 134

### EVIDENCE.

See, also, "Appeal"; "Deposition"; "Tender"; "Trial"; "Witness".

#### Judicial notice.

The federal courts take judicial notice of the laws of the respective states. 376

#### Best and secondary.

A receipt for money is inadmissible to prove on whose account it was paid, as the person who paid it should be produced. 1113

County surveyors who officially know that certain lands are covered with prior surveys are competent witnesses to prove the fact. 939

Proof that an individual has acted notoriously as a public officer is prima facie evidence of his character, without producing his commission or appointment. 267

The original entries in a book of accounts must be produced, and not a copy. 322

#### Declarations and admissions.

The declarations of a person exercising authority, that he possesses it, are inadmissible to prove authority. 319

In an action against a surety for money advanced to another, the admissions of the latter as to receipt of the money are admissible against defendant. 48

#### Opinions.

The ability of the expert, his knowledge of the art, his impartiality, and his fairness of expression, as well as the reasons assigned, are to be taken into view in considering his opinion. 823

#### Documentary.



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- A connected map of a number of surveys, duly recorded, is evidence, when accompanied by the explanations of the surveyors, without producing the separate surveys. 939
- The copy of an award, exemplified by the certificate of the proper officer of one of the courts of the state, is not primary evidence in Pennsylvania. 306
- A paper signed by one person as attorney for another cannot be read in evidence, unless the power of attorney is produced. 306
- A record produced to prove a fact, and found defective, cannot be assisted by evidence de hors the same. 319
- The books of a merchant, although correctly kept, are not admissible in evidence in his favor. 432
- Papers which had been proved by deposition a considerable time before the trial *held* admissible in the admiralty without strict proof. 614
- Parol evidence.**
- In cases of a joint purchase, where each purchaser is to have an interest in the purchase in proportion to his advances, parol evidence is admissible to establish the trust, as well as to rebut, control, or vary it. 462
- Competency: Materiality: Relevancy.**
- A receipt for one year's rent is evidence that the rent for the preceding years has been paid. 455
- Fraudulent transactions with third person are not admissible to show fraud and collusion in a case not connected therewith. 986
- Evidence of general reputation of a fact can only be given where the persons are dead, or where their death may be presumed from length of time. 907
- Handwriting.**
- The testimony of a subscribing witness may be dispensed with where he is out of the country. 989
- Where the clerk is dead who made the entries in a book of accounts, his handwriting may be proved. 322
- Weight and sufficiency.**
- To determine the truth from contradictory statements, the court will consider which statement is the more probable, aided by such corroborative evidence as there may be. 1098
- The testimony of the master of a foreign vessel that he discharged a seaman, will not prevail in a suit for wages against his official report that the seaman deserted. 37

### EXECUTION.

See, also, "Attachment"; "Bankruptcy"; "Garnishment"; "Judgment"; "Judicial Sales."

Goods in a bonded warehouse under the revenue laws are not subject to levy under an execution against the owner. 881

The judgment creditor in the federal court is entitled to the proceeds of a sale by a marshal under his execution, though the judgment, execution, and levy were subsequent to a judgment, execution, and levy of process from the state court. 1078

#### EXECUTORS AND ADMINISTRATORS.

See, also, "Wills."

An executor may be allowed credit for the loss upon a sale of stock, though the sale was made without order of court. 926

The administrator of a defendant who died after office judgment and writ of inquiry awarded cannot plead plene administravit, nor any other plea which the original defendant could not have pleaded. 352

#### Exemptions.

See "Bankruptcy."

#### EXTRADITION.

A prima facie case must be made out by competent evidence showing that the person charged with crime is a fugitive from the state by whose executive he is demanded, before the warrant of arrest can issue. 197

A copy of the indictment or an affidavit made before some magistrate charging the crime must be presented with the demand for extradition. 197

**FACTORS AND BROKERS.**

See, also, "Principal and Agent."

A factor ordered by his principal to ship goods in his possession has a right to retain no more than enough to secure any lien that he may have upon the goods. 914

He may consign the entire lot to a third person, with orders to deliver the goods to the owner on payment of the sum due. 4

A commission merchant who takes a bond for a simple contract debt for goods sold on commission, and for a debt of his own, is answerable to the principal for the amount of the goods sold. 205

In such case a demand of the bond before bringing suit is not necessary. 205

A usage for a consignee of a vessel, who is also owner of the cargo, to charge a commission on freight paid by himself to the master, is unreasonable and not binding. 437

**FALSE IMPRISONMENT.**

It is a false imprisonment to detain another by threats of personal violence, or to deprive him of the freedom of going at will by a well-grounded apprehension of personal danger. 840

Defendant may plead the general issue, and give in evidence justification under warrant from the proper magistrate. 61

**FALSE PRETENSES.**

A false assertion by means of which money or goods, etc., are fraudulently obtained, is a false pretense. 1035

Persons jointly indicted for obtaining a check by false pretenses are equally guilty where they participate in the proceeds, though the check was given to one only. 1035

**FISHERIES.**

A seaman discharged abroad, at his own request, from a whaling ship, is entitled to be paid the pro rata part of his lay reckoned on the value of the catch at the home port. 537

Where a settlement is made on a different basis under protest, the seamen may recover the difference. 537

The owners of whaling vessels whose crews are paid by shares are responsible for only ordinary care in selecting agents and carrying the cargo. 1163

The freight home on oil where a whale vessel is condemned abroad as unseaworthy is chargeable to the owners, unless there is a usage of the port to the contrary. 386, 1163

The owners are liable to the seamen for their lay where the master embezzles the proceeds of oil sold abroad on condemnation of the ship. 386, 1163

Interest will be allowed after reasonable time for the sale of the oil, adjustment of the voyage, and demand by libelants. 386

Where the whaler is lost, and the cargo sent home, the seaman's remedy is against the owner for his lay, and not against the master for wages. 387

The owners are bound to account to the shareholders for any proceeds of her cargo which come to their hands where the vessel is lost, though the contract be not to pay them until her return. 1163

Where a long delay (nearly six years) to prosecute for a share in the catch is not shown to have led to any losses, acts, or divisions of profits, injurious to the owners, the delay is no bar. 1163

#### Forfeiture.

See "Customs Duties"; "Internal Revenue"; "Shipping."

#### FORGERY.

An innocent purchaser for value of a treasury note, on which the indorsee's name is forged, and the name of the indorser is erased, is entitled to receive the amount thereof from the treasury. 374

#### FRAUDS, STATUTE OF.

The Massachusetts statute of frauds is substantially similar, as respects trusts, to the statute of 29 Car. II. 462

The statute of frauds is never allowed as a protection to fraud, or as a means of seducing the unwary into false confidence to their injury. 462

An agreement of defendant to reduce a trust to writing, or to keep a private memorandum thereof, will take the case out of the statute. 462

#### FRAUDULENT CONVEYANCES.

See, also, "Assignment for Benefit of Creditors"; "Bankruptcy."

A conveyance to one's attorney is not rendered fraudulent by the fact that part of the consideration was the paper of a firm to which the vendor belonged, which was not worth its face value. 456

The fact that the attorney purchases without an abstract or examination of title is not proof of fraud. 456

The fact that the negotiator of a loan, who personally guaranteed the paper, received a large compensation for so doing, does not vitiate a conveyance made to him in settlement of a part of the loan which he was afterwards compelled to take up. 456

A transfer of "all the goods and merchandise" in a certain store is a sufficient description to transfer the title where immediate possession is given. 1030

A conveyance will not be set aside as made to hinder and delay creditors unless the intention of both parties be shown. 456

A creditor who, with full knowledge of the facts that constitute the fraud, concurs with other creditors in assenting to its execution, cannot impeach it as fraudulent. 794

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But an assenting creditor may impeach the transfer as to a claim which he has purchased from a nonassenting creditor. 794

A creditor who purchases property from a trustee, in ignorance of the fraud is not precluded from impeaching the assignment. 794

A party who purchases a judgment has no higher right to impeach a fraudulent assignment than his assignor had. 794

**GARNISHMENT.**

See, also, "Attachment"; "Execution."

Where the garnishee is taken and *held* to special bail, under Act. Md. 1795, c. 56, § 6, no judgment can be rendered against him until he has appeared. 983

As to the form of a *capias* against a garnishee. 983

**GRANT.**

See, also, "Public Lands."

An entry and survey do not, in Virginia, convey the legal estate in lands out of the commonwealth. 939

## HABEAS CORPUS.

Where the court which passed sentence had jurisdiction, its proceedings are not subject to review on habeas corpus. 867

The federal court may issue the writ to produce a federal officer arrested and imprisoned under a state process for his conduct in executing a federal process, and to inquire into the cause of commitment, and, if illegal, order a complete discharge. 445

Where the indictment does not show that the alleged offense was committed by the officer while acting under a federal process or law, the court will admit evidence to sustain the allegations in the petition that the acts alleged were done in proper execution of a federal process. 445

On habeas corpus the court has the power to review its former judgment so far as to determine whether it exceeded its powers in passing such judgment. 1175

On a question of conflict between state and federal process, counsel, not authorized by the state or its proper officers, have no right to appear in defense of the state process. 445

## Homestead.

See "Bankruptcy."

## HUSBAND AND WIFE.

A note given for money loaned by the wife while unmarried, and prior to the passage of the married woman's property act (Wisconsin), passes to the husband under the common-law rule, and his interest is unaffected by the subsequent act. 927

Securities taken in the wife's name by the husband will not be considered as a settlement upon her, where it appears that they were used and collected by him with the wife's consent. 927

A settlement upon the wife by a husband free from debt, and not contemplating bankruptcy, by deed which reserved a power of revocation and a power of appointment by deed or will, will be upheld as against an assignee in bankruptcy. 942

Where the husband habitually receives the income of the wife's separate estate and disposes of it for the benefit of the family he will not be required to account therefor. 927

## INDIANS.

The seisin of lands belonging to Indian tribes is in the sovereign, and a purchaser from the Indians can only acquire the Indian title. 235

## INJUNCTION.

See, also, "Equity"; "Patents."

An injunction to prevent the removal of a colored person who has petitioned for freedom will not be granted upon a mere statement of plaintiff's apprehension. 547

## Insolvency.

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

Inspection.

See “Shipping.”

### INSURANCE.

See, also, “Benevolent Societies”; “Marine Insurance.”

A premium note, when negotiable, is entitled to grace as other commercial paper, and a tender of interest within the days of grace will prevent a forfeiture for non-payment of interest at maturity. 364

A general agent, by charging himself with the payment of a premium in his account with the company, and giving credit to the insured, may waive the condition of the policy requiring payment in cash. 938

Construction of stipulation providing for a right to surrender at any time on payment of customary short rates. 12

Repairs necessary to remedy defects endangering the safety of the insured property may be made, and new machinery substituted for old, where the risk is not increased. 309

The substitution of a horizontal for an upright boiler in a woolen mill, and the building of a structure to cover the projecting end and a brick chimney and fireplace, where thereby auxiliary motive power was obtained, *held* not to render the policy void. 309

The right of a mortgagee whose interest has been insured under a policy payable to him as mortgagee *held* not affected by other insurance obtained by the mortgagor without his knowledge. 776

The rules stated under which recovery may be had in a case of suicide. 373

Where death by suicide or impairment of health by intemperance are excepted under the policy, there can be no recovery where the mental condition under which the insured committed suicide was produced by intemperance. 373

A policy of life insurance is subject to a lien in favor of creditors under Rev. St. Me. 1871, c. 50, § 65, for the excess of premium over \$150 per year paid by the debtor for two years. 1076

A quarterly payment amounting to less than \$150 will not subject the policy to such lien. 1076

A stockholder in an insurance company rendered insolvent by a fire cannot escape liability on a demand note given for stock, by giving in payment of his note, a certificate of indebtedness on an adjusted policy. 453

Interest will run on such note from the date of demand by the assignee or of the exchange of the certificate for the note. 453

### INTEREST.

See, also, "Building and Loan Associations."	
The law of the state must be produced to prove the rate of interest allowed therein.	285
<b>INTERNAL REVENUE.</b>	
A double-stamp duty <i>held</i> not incurred on a conveyance to the original purchaser through an irresponsible middleman.	303
An enhancement of value by stipulated improvements to be made by the purchaser is not to be considered in fixing the amount of the stamp.	303
Nonresident aliens are not liable to the income tax under Act June 30, 1864.	232
Undivided earnings of incorporated companies <i>held</i> not taxable as income in the returns of stockholders.	179
Two offenses—the conspiracy to defraud, and a knowledge of a violation of law without reporting the same—may be committed by a revenue officer, and may be joined in the same indictment. (Rev. St. § 3169.)	1175



International Law.

See "Citizens."

JUDGMENT.

Validity.

Where the service of process is simply defective or irregular, the judgment is valid until set aside or reversed; but, where there is no service of process, the judgment is void. 154

Operation and effect.

The judgment is a lien on subsequently acquired land. 206

A judgment against a partner individually is a lien upon real estate held by the firm, subject, however, to the payment of the firm debts, and the equities of his copartners. 794

A lien by judgment does not create any vested right in the property subject to the lien. 1079

A judgment is not barred under Act Va. Dec. 19, 1792, where execution has been issued thereon, and returned 10 years after its date. 123

A sci. fa. is not necessary to revive a judgment if a fi. fa. has been issued and returned. 744

Where the judgment is revived between the original parties, it is not necessary to issue a sci. fa. to purchasers from defendant. 206

A decree that a preliminary injunction stand continued on the performance of certain acts within a certain time, otherwise to be dismissed, *held* not an absolute bar to a future suit, where the acts are not performed. 462

Amendment.

The terms of a final judgment cannot be altered by the court in any material part except on a review, or appeal, or writ of error, or rehearing allowed for sufficient cause. 517

Decrees are final, after the end of the term at which they are rendered, unless specially entered otherwise. 517

A decree entered up as final, with a view to other proceedings upon it as a final decree, will be considered as final from the day of its entry. 517

Where time of payment has been fixed by a final decree in equity, an extension cannot be granted. 517

Relief against: Opening: Vacating.

A judgment may be set aside at a subsequent term for irregularity. 983

In the absence of fraud or irregularity, accident in not appearing, or otherwise happening before final decree, cannot be relieved against thereafter except by bill in equity. 517

**Of different jurisdictions.**

The judgment is as final and conclusive in every other state as in the one where it is entered. 283

**Actions on judgments.**

Nil debet cannot be pleaded to an action on a judgment. 283

A release, the statute of limitations, or payment may be pleaded. 283

The plea of nul tiel record brings up the validity of the judgment and the description of it, as set forth in the declaration. 283

**JUDICIAL SALES.**

See, also, "Execution."

A sale of land lying in the outer part of a town may be made in lump, and not in parcels, though a company had been formed to purchase the same in lump, which might prevent competition in bidding. 709

**JURY.**

Where the statute gives a right to each party to challenge peremptorily two jurors, plaintiff may be allowed to exercise the right after he has once expressed himself as satisfied with the jury, and after defendant has used his challenges. 1047

The challenged juror cannot be examined as a witness to the triors. 907

The two jurors first sworn in a cause are the proper triors of a challenge for favor. 907

The court will not permit counsel to argue to the triors upon a challenge for favor. 907

**JUSTICES OF THE PEACE.**

Notice of appeal from justice's decision. 278

Where due notice of appeal was not given, the appeal maybe dismissed, with costs, but a judgment on the merits cannot be rendered for the other party. 278

After the justice has certified a transcript on appeal, defects cannot be supplied. 278

Where no proceedings are had for two terms after the death of appellant pending the appeal, the sureties in the appeal bond are not liable for appellant's failure to prosecute the appeal with effect. 431

**LANDLORD AND TENANT.**

An agreement for a lease will be construed as a present demise if no future formal lease be contemplated, and possession be taken under it. 513

Construction of agreement of lease and of the possession taken under it, and the rights of the parties determined in the case of conflict as to the ownership of property. 513

The building must be restored to its former condition where it is injuriously affected by alterations permitted subject to the condition that the lessee would surrender the premises in as good state as reasonable use would permit. 579

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The right of action for breach of covenant is not impaired by the fact that the alterations make the building more convenient to the tenant to whom it was relet by the lessor before the expiration of the lease. 579

Rent is discharged by the taking the note of a third person therefor, and giving time of payment thereon until the maker becomes insolvent. 1162

Goods fraudulently removed by the tenant, though not secretly, may be followed and distrained by the landlord. 455

A distress for rent, laid on the last day of the term, at noon, *held* too soon. 779

**LIBEL AND SLANDER.**

Mere words of disgrace are not actionable where not written and published. 734

It is not actionable to call a white man a "yellow negro," "a villain and a liar." 734

**License.**

See "Patents."

**Liens.**

See "Admiralty"; "Bankruptcy" "Maritime Liens" "Mechanics' Liens" "Shipping."

## LIMITATION OF ACTIONS.

- See, also, "Adverse Possession" "Ejectment" "Equity" "Maritime Liens." 978
- The statute of limitations is the law of the forum. 978
- Where a judgment by default in a suit commenced before plaintiff's demand was barred was set aside after the statute period had elapsed, *held*, that defendant was not entitled to the benefit of the statute. 154
- If the statute of limitations has once run against a tenant in tail, it is a complete bar to a subsequent tenant in tail upon a descent east. 62
- Actions of formedon are within the statute of Rhode Island for quieting possessions, and 20 years' possession under the statute is a good bar. 62
- A formedon in descender is not within the proviso of the statute of possessions of Rhode Island. 62
- The statute is no bar where the holder of an accepted bill of exchange was beyond seas at the time his cause of action accrued, and so continued until suit brought, though the indorsers always were residents of the United States. 113
- An acknowledgment, accompanied by a refusal to pay, unless compelled by law, will not take the case out of the statute of limitations. 454
- A reply to a plea of the statute that plaintiff lived in another state is not good. 978

### Lotteries.

See "Post Office."

## MALICIOUS PROSECUTION.

- It is no defense that defendant's oath did not in law authorize the magistrate to grant the warrant if the defendant personally availed himself of it. 740

## MANDAMUS.

- A mandamus will issue from the federal court on petition of nonresident holders of overdue coupons of county bonds who have obtained judgment thereon in the federal court to enforce the levy and collection of a tax to pay the same. 454

## MARINE INSURANCE.

- There is no implied warranty of seaworthiness in antedated time policies. 982
- It is a material concealment not to exhibit, at the time the contract of insurance is made, a letter communicating the time when the voyage insured commenced, where the vessel is then out of time. 782
- A vessel injured in a collision put back to port, where her cargo of cotton was found so greatly damaged that it was sold, by the consent of master and shippers, and the vessel proceeded on a different voyage. *Held*, that insurers on the freight were not liable. 1105
- Insurers take no risk with regard to the length, retardation, or interruption of a voyage if it be subsequently resumed, or be capable of being resumed. 1105

Insurers cannot avail themselves of freight earned in a new voyage which they have not insured, by way of recompense for losses on another voyage which they have insured, and which has already terminated. 1105

### MARITIME LIENS.

See, also, "Admiralty"; "Affreightment"; "Bottomry and Respondentia"; "Charter Parties"; "Salvage"; "Seamen"; "Shipping."

#### The right to a lien.

The wages of a watchman employed on a vessel while laid up in port are not a maritime lien. 897

The ship keeper of a domestic vessel which is being repaired for a new use has no lien for wages under the general maritime law. 172

The master of a vessel incumbered for more than her value, appointed by the owner after she was libeled in admiralty, has no lien for his wages. 172

No lien arises on a vessel for compressing cotton for more convenient carriage and stowage. 1132

Neither costs of advertising a vessel for sea, portage, nor commissions for procuring freight, nor wages for stevedores or lightermen, are liens on the vessel. 1132

The premium due on a policy of insurance on a vessel is not a maritime lien. 897

A lien arises for advances to release a boat belonging in another state from the possession of the marshal. 350, 1176

But not to save the vessel from a threatened seizure. 350

In the absence of express application by the owner, freight money received by the consignee of the vessel is to be deemed to be applied to the discharge of the liens on the vessel. 616

A lien arises for advances made upon the credit of a foreign vessel for necessary repairs and supplies where the money is actually employed for that purpose. 616

Where the equitable owner lives in the port where the work is done, and the dealings are with him as owner, the ship is domestic so far as liens are concerned, though the legal title be in a foreigner. 172

Supplies furnished and charged to a vessel belonging to a nonresident insolvent owner, who was personally present, *held* a lien upon the vessel. 331

To sustain a libel in rem for repairs to a vessel in a foreign port, the necessity for the repairs and for a lien upon the vessel to enable the master to procure them must be shown. 331, 333

The burden is on libellant to show that materials furnished at the request of the master and former owner, at the place of the latter's residence, were furnished on the credit of the vessel. 1006

#### Priority and enforcement.

A claim for salvage services rendered to a vessel in collision has priority over a claim for damages by the collision.	555
Claims for repairs for damages caused by a collision have priority over a claim of the other vessel for damages.	555
The master's claim for wages and for advances of wages to the crew take precedence to a lien of a bottomry bond given by him.	93
A lien for repairs to a foreign vessel will be preferred to a bottomry interest prior in point of time.	564
Where the proceeds are not sufficient to satisfy either of two mortgagees, a material man whose lien is subsequent only to that of the junior mortgagee cannot object to the application of the proceeds as between the mortgagees.	897
Claims for repairs and supplies in the home port, though duly recorded under the local law, are postponed to maritime liens.	897
A maritime lien is paramount to a later domestic lien, under the state law, and is not affected by a judgment and sale under the statutory lien, regardless of the provisions of the statute.	707

The liens created under Gen. St. Mass. c. 151, are postponed to mariners' wages, but they take precedence of an earlier mortgage.	172
The mortgagee of a vessel is entitled to payment of his mortgage out of the fund in the registry in a court of admiralty after the payment of prior liens.	172
The <i>lex loci contractus</i> is observed in granting or refusing the remedy where a lien is claimed for labor and materials furnished to a vessel in a port of another country. Where a term of credit is given, the lien cannot be enforced until after its expiration.	37 902
<b>Waiver: Discharge: Extinguishment.</b>	
A condemnation and sale, as unseaworthy, set up in a discharge for a previous lien for supplies, <i>held</i> not sustained by the testimony of the claimant, who had, taken part in the proceedings as surveyor, and was an interested party.	614
The burden is on the claimant to prove that time drafts given for the amount of supplies were, agreed to be received in payment.	331
The defense of stale claim in admiralty must be supported by a statement of facts showing that it is inequitable to enforce the claim.	386
Lien for repairs to a canal boat <i>held</i> lost by 16 months' delay to enforce it, where the boat had returned several times to the place where the repairs were made.	693
<b>Liens under state laws.</b>	
Gen. St. Mass. c. 151, giving liens on vessels for repairs, is Valid so far, at least, as it applies to refitting and renewing domestic vessels to adapt them to a new business.	172
A vessel delivered to persons who contracted to purchase her, for the purpose of repairs, though it was agreed that the same should not be a lien on her, <i>held</i> subject to a lien in favor of the material man without notice, as against the owner who retook possession. (Act N. Y. April 24, 1862, § 1. Reversing 667.).	670
Claims for repairs and supplies to a vessel in her home port are a lien under the Louisiana law only when properly recorded.	897
Under the New York lien law, a departure from the port where supplies have been furnished a vessel, although with intent to return, destroys the lien.	455
A steamboat employed upon a ferry between New York and Ft. Lee is a ship or vessel subject to a lien under the New York law.	1134
Such vessel does not depart from the state, so as to destroy the liens, by making one trip on such route on Sunday before her repairs are completed.	1134
The lien is not lost by the vessel leaving the state fraudulently or clandestinely, at a time when the lien creditor could not legally arrest her.	1134
Regular daily voyages between New York and Haverstraw <i>held</i> to be departures, within the meaning of the New York lien law.	550

A lien created by a state law against a domestic vessel for supplies furnished in the home port cannot be recognized or enforced in admiralty.	172, 217
But the admiralty may pay the same where valid out of the fund in its registry.	172
The lien given by the local law, for repairs to a vessel in her home port may be enforced in the district court.	670
The right to enforce the lien in the district court is not affected by the fact that the same law gives an unconstitutional power to the state courts to proceed in rem to enforce the lien.	670
A bond given by a marshal payable to the president of the United States and his successors instead of the United States, is not good, and the sureties are not liable thereon.	249, 250

#### MASTER AND SERVANT.

The proprietor of dangerous machinery is bound to use reasonable care to keep, it in a safe and sound condition.	1074
No recovery can be had against the master for an injury caused by the negligence of a fellow servant, unless it appear that he was incompetent, and that the master was guilty of willful negligence in employing him.	1111
The fireman is a fellow servant of an engineer of the same engine, and cannot recover for injury caused by the neglect of the latter to discharge his duties.	1074

#### MORTGAGES.

See, also, "Chattel Mortgages"; "Shipping."	
A deed, absolute on its face, will not <i>beheld</i> to be a mortgage, unless the grantee, as well as grantor, understood the purpose of the conveyance to be the security of a debt.	940
The fact that the relations between the parties were intimate, and that the vendor expected to be able to repurchase on favorable terms, does not make the conveyance a simple security for indebtedness.	456

#### MUNICIPAL CORPORATIONS.

See, also, "Counties"; "Railroad Companies."	
Under power to levy a license upon trades, professions, and callings, the city may levy a tax upon foreign corporations double that levied upon domestic corporations.	67
The surrender of its charter by a city, and an organization under a general law, works a dissolution of the old corporation, and the new corporation is not liable on bonds theretofore issued.	1004
Act Kan. March 2, 1872, providing for the registration of municipal and county bonds, is not a curative act, in the sense that it takes away any valid defense which the city or county would otherwise have to bonds theretofore issued.	362



Act Kan. March 9, 1874, was intended to change the mode of levying and collecting taxes to pay bonds, and not to validate or make binding bonds which would otherwise be void. 362

**NAVIGABLE WATERS.**

See, also, "Constitutional Law."

A bridge of sufficient elevation, or with a proper draw, is not necessarily an impediment to navigation; nor is any structure such an impediment which facilitates commerce, instead of being a hindrance. 919

Where a bridge constructed over a navigable stream under the authority of a state statute is a material obstruction, the statute is no defense to a suit for an injury caused thereby. 919

Where the injury to plaintiff's boat in collision with a bridge was caused by the negligence of those in charge, he cannot recover, though the bridge was a material obstruction to navigation. 919

### Negotiable Instruments.

See "Bills, Notes, and Checks"; "Bills of Lading."

### NEUTRALITY LAWS.

It is no breach of neutrality on the part of a belligerent to equip vessels of war in a neutral port, unless the act be interdicted. 1179

### NEW TRIAL.

Where irregular conduct of the party or the jury is established, it is not necessary that it should appear that it influenced the jury. If it be such that it might have affected the verdict, a new trial will be granted. 798

Where the finding is not only contrary to the evidence, but in direct contravention of the charge of the court, the error cannot be obviated by allowing the prevailing party to remit an excess in the verdict. 798

### NOTICE.

Notice of a claim and controversy sufficient to put one upon inquiry is a sufficient notice in equity. 462

### NOVATION.

A debtor cannot voluntarily transfer his obligation to pay to a third person without the consent of his creditors. 1059

An agreement for an extension of credit *held* not to supersede a prior agreement under which a mortgage was given to secure notes and the right to enforce the same on default in payment. 881

### PARTIES.

Where an agreement with A. and B. is to reconvey to each separately the different estates conveyed by them, a separate action will lie by either party for his separate proportion. 594

Where all the creditors of a debtor join in a release, they must all join in a bill in equity to set it aside. 1172

Where one of such creditors is a resident of the same state with defendants, he may be omitted as a party plaintiff in a bill by the others, who are nonresidents. 1172

A bill in equity will be dismissed where, after objection for want of necessary parties, complainant neglects to bring them in. 940

In equity and admiralty courts a person who becomes interested in the subject-matter pending the litigation may come in and protect his interest if application is made within reasonable time. 550

### PARTNERSHIP.

See, also, "Bankruptcy."

A person who permits himself to be held out as a partner is liable as such to one from whom credit is secured upon the strength of the supposed relation. 585

A partnership is not liable on an indorsement in the firm name by one member without the knowledge of the other, of an accommodation note, for the benefit of the third person. 110

The fact that plaintiff is suing on a partnership debt in his own name is available to defendant at the trial under the general issue. 1113

### PATENTS.

#### Patentability.

The result produced by a process patent must be an improvement in the trade in the commercial sense. 1069

A change in form, though slight, if it works a successful result not before accomplished in a similar way, is patentable. 152

The application of an old device for the construction of the exterior of iron safes to the construction of the interior of iron jail walls is patentable. 270

The application of a process for preserving perishable foods, to the preserving of green corn cut from the cob, is not patentable. 980

The specification of a prior patent, to anticipate an invention of a compound, must state the relative proportions of the ingredients in terms sufficient to enable one skilled in the art to make and use the compound without experiment of his own. 533

#### Who may obtain patent.

The patentee cannot carry back his invention to a period before the attempted restoration of a machine which four years before he had taken apart as incomplete, where in the meantime another has perfected and patented the same machine, and placed it on the market. 798

#### Prior public use or sale.

Acts of the inventor to determine the value, utility, or success of his invention are to be liberally construed if not inconsistent with the clear intention to hold exclusive privilege. 545

The use of a machine for profit while perfecting the same, where it was concealed from all persons save the workmen in the business, *held* not sufficient to invalidate a patent therefor. 545

The defense under the statute is only made out by proof that the invention was on sale or in public use, with the consent and allowance of the inventor, for a period exceeding two years before his application. 1017

#### Abandonment: Laches.

The invention is the property of the inventor until he abandons it to the public, or suffers it to be in public use or on sale with his consent for more than two years. 1017

The fact of abandonment must result from the intention of the patentee, expressly declared or clearly indicated by his acts. 716

An abandonment may be found from the fact that an inventor laid the parts of his machine aside, and did nothing more for four years to perfect his invention.	798, 807
Use of the invention without the inventor's consent during delays in the patent office is no evidence of abandonment.	1017
Proof of knowledge of and acquiescence in the use by others, to show an abandonment, must be beyond all reasonable doubt.	1017
The issue of letters patent is prima facie evidence that there has been no abandonment.	716
An abandonment will not be presumed by the failure to apply for a patent during progress of experiment, and until the inventor has tested the invention by actual practice.	1017
Six years' delay to appeal from the action of the commissioner in rejecting an application, during four of which years the applicant resided in a state in rebellion, <i>held</i> not an abandonment.	716
A patentee experimented for 11 years after discovering the process, and then applied for and was refused a patent, and did nothing further for nine years, when he made a second application. <i>Held</i> no abandonment.	1017

**Caveat.**

A caveat is not conclusive evidence that the invention is part perfected. 823

A caveat will not protect an unperfected invention which the inventor did not use due diligence to perfect. 823

An inventor cannot, by virtue of a caveat, carry back his invention beyond the date of his application, where he did nothing within the year after the caveat was filed to mature and perfect what he described therein. 807

**Application and issue: Interference.**

The patent relates back to the date of the application; and patents granted to other inventors during the pendency of such application are no protection to an infringer. 716

In an interference proceeding, a caveat filed by one of the parties is admissible in evidence, as part of the *res gestae*, so far as it described the machinery then constructed. 1069

A patent, together with the application therefor, affords prima facie evidence that the patentee was the original and first inventor at the date of the application. 798, 807

The burden of proof is on the applicant to show that a change in form produces a better result. The question cannot be decided by a mere a priori argument. 199

Letters and memoranda of a witness experimenting for the inventor, describing appliances and results, are only admissible for the purpose of refreshing his recollection. 1069

**Appeals from commissioner's decision.**

The decision of the commissioner that he will not review or revise the action, of his predecessor in rejecting an application is no ground of appeal. 349

In interference cases the jurisdiction of the court is not restricted to the mere question of priority, but extends to the question of patentability. 1069

The commissioner on an appeal cannot rely upon references not previously given to the applicant, as required by Act 1836, § 7. 592

Affidavits included among the papers sent up from the office, but which were not taken by authority of the commissioner or acted upon by him in forming his decision, cannot be considered. 199

**Extent of claim.**

Patents are to be liberally construed. 1

An inventor is entitled to protection in all the functions his invention will perform. 41

A patent for an improvement without specifying the original invention, or referring to anything for information, is fatally defective. 153

The court will determine the extent of the grant by the claim, construed in the light of the specification and the documents in the patent office which preceded the grant. 823

**Reissue: Disclaimer.**

Patents reissued after the originals have been declared void for want of novelty cannot be sustained. 989

In determining whether the reissued patent is broader than the original, the court is confined to the records in the patent office. 728

Defendant may show the condition of the model at the time it was filed in the patent office, and at the date of the original patent. 728

The case will be opened to permit introduction of newly-discovered evidence to show a change in the model when the reissue was granted. 728

It will be presumed in support of a reissue that the commissioner duly performed his duty of ascertaining that the defect in the original specification was owing to inadvertence, accident, or mistake, and that the amended description is of the same invention as was covered by the original patent. 1092

**Extension: Renewal.**

Congress may authorize extension of a patent after the original term has expired. 1092

An application filed February 15th for extension of a patent expiring May 15th, *held* within 90 days, as required by law. 777

The decision of the commissioner in granting an extension is conclusive evidence of all the facts which he is required to find before issuing it. 1092

**Assignment.**

An assignment of an interest in an invention and of letters patent “to the full end of the term for which they are or may be granted” will pass a subsequent reissue, but not an interest in a subsequently extended term. 531

**Licenses.**

A grant of an exclusive right to make, use, and vend the patented machine within certain territory is infringed by the manufacture by others of machines within the territory for use without it. 519

A license permitting the invention to be manufactured and used upon certain terms and conditions will not be deemed evidence of an acquiescence in infringements of the licensor’s rights. 1092

**Infringement—What constitutes.**

A mechanical equivalent is one that may be adopted in place of that named, by a person skilled in the art from his knowledge of the art. 823

**—Who liable.**

A contractor who does work for a county is liable for infringement of a patent in such work, though he was ignorant of the patent. 276

**—Remedy, generally.**

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Where there is no sufficient ground for an injunction, and compensation only is sought, there is no jurisdiction in equity.	519
The fact that defendant has refrained from the use of the thing patented, and has promised not to further infringe, is no ground for a denial of the remedy in equity.	519
The remedy in equity given to inventors by Act 1836, § 17, extends to their assignees.	519
—Preliminary injunction.	
The same rule obtains in patent cases as in other equitable cases as to the granting of a preliminary writ.	116
An adjudication in favor of a patent at final hearing on full proofs is controlling unless cogent evidence is presented in addition to that found insufficient upon such hearing.	991
The standing of complainants in the market, and their relation to the trade, may be properly considered on the motion.	116
The fact that defendant has obtained a patent for his process, while not controlling, is entitled to weight.	991
Defendants will be concluded by the statement of their process in their printed labels prepared before the suit was brought.	991
Granted where much more injury would or might result to complainants from refusal than to defendants from granting it.	116
Denied where the court entertained strong doubts as to the novelty of the patented invention.	980
Denied where the infringement was committed by a corporation of another state in which the interested defendant was only one of several directors.	1002

Denied on defendants' giving bond where they were merely selling agents on commission of manufacturers of the alleged infringing articles, against whom a suit was pending in another circuit by complainants.	124
Denied where defendants were misled in continuing the infringement by plaintiffs' answer to their inquiry as to whether plaintiffs regarded their process as an infringement.	991
Denied where the affidavits in opposition raised a doubt as to the novelty of the invention, exclusive possession of plaintiff was not shown, and defendants were able to respond in damages.	953
<b>Procedure.</b>	
The profits recoverable for infringements are not regarded as unliquidated damages, and they are subject to assignment.	519
It is a fatal defect in the bill that all the owners of the patent have not been made parties; but those only are deemed owners to whom the patent was issued, or to whom interests in it have been transferred by assignment in writing, duly authenticated.	1092
An answer to a bill for infringement which is indistinct and evasive as to the use of the patented invention will be considered as an admission.	1104
Amendment setting up a new defense not allowed after interlocutory decree, and account proceeded with, where reasonable diligence not shown.	31
In determining anticipation and infringement, the machines or their several devices must be examined in the light of what they do, or what office or function they perform, and how they perform it.	807
The defense of the insufficiency of the specification to enable the invention to be practiced, to be available, must be set up in the answer.	545
A prior decision in another court is no ground for opening an interlocutory decree, where the question has since been passed upon at law in this court.	44
<b>—Evidence.</b>	
The patentee has the burden of sustaining by competent and sufficient evidence his claim that his invention antedated his original application.	798
Stamping manufactured articles with the name and date of a patent is conclusive on the manufacturers that they were made thereunder, and, where the patent is held to be an infringement, they will be <i>held</i> liable.	1039
The issue, reissue, and extension of a patent, and the fact that it has been sustained in previous suits, create a strong presumption against a defense of want of novelty.	1092
<b>Decree, and its effect.</b>	
Where the patent expires after the filing of the bill, the court can order an account and grant other relief, though no injunction can be awarded.	1, 1092



—Accounting: Damages.

The profits recoverable for infringements are not regarded as unliquidated damages, for defendant stands in the position as a trustee for complainant.	519
On infringement of a patent for an improvement, complainant is only entitled to the value of the improvement separate from the old device.	43
Damages for an alleged reduction in prices or loss of sales caused by the infringement must be based upon evidence furnishing a sound and safe basis of calculation.	47
<b>Various particular inventions and patents.</b>	
Adjustable fastener. Reissue No. 4,870, for fish-plate fastening, <i>held</i> invalid, as being for a different invention than that described in the original patent.	741
Canned corn. Nos. 34,928, 35,274, 35,346, and 36,326, for improvement in process of preserving green corn, <i>held</i> valid and infringed	991, *1017
Carding machine. Patent to Goulding, with reissue and extension, for improvement in machinery for the manufacture of fibrous materials, <i>held</i> valid.	1092
Cotton-bale ties. No. 59,144, for improvement, <i>held</i> valid and infringed.	716
Cotton-bale ties. No. 59,144 (reissued No. 4,896), for improvement, <i>held</i> not infringed.	728
Elastic packing. No. 54,554 (reissued No. 3,579), for improvement, <i>held</i> valid and infringed.	525
Grain drills. No. 90,268 (reissued No. 5,976), for improvement, <i>held</i> valid and infringed.	41
Lamps. No. 20,159 (reissued No. 648), for improvement in lamps, <i>held</i> valid and infringed.	1039
Lamps. No. 65,230, 73,012, 89,770, 86,549, and 99,443, for improvement in lamps and lanterns, <i>held</i> valid and infringed.	117
Mowing machines. Reissue No. 3,460, for improvement, <i>held</i> valid and infringed.	212
Photographs. No. 179,316, for improvement in making colored photographs on glass, <i>held</i> valid and infringed.	92
Railroad cars. No. 389, for improvement in mode of supporting bodies of cars, and connecting them with truck, construed, and <i>held</i> infringed.	1
Railway-track brooms. No. 180,717, for improvement, <i>held</i> valid.	152
Screw augers. No. 56,869, for improved machine for swaging the heads of screw augers, <i>held</i> valid and infringed.	545
Sewing machines. No. 10,597 (reissued No. 355), for improvement, <i>held</i> valid and infringed.	807, 823
Splitting wood. No. 12,857, for improved machine, <i>held</i> valid.	777
Steam globe valves. Patent to Jenkins, for improvement, <i>held</i> valid and infringed.	525

Weaver's temples. Priority of invention of improvement awarded to Jillson.	632
Zinc white. No. 8,756, for improvement in manufacture, <i>held</i> invalid.	1002

#### PAYMENT.

See, also, "Bills, Notes, and Checks"; "Release and Discharge."

In estimating freight, expressed in dollars, on goods shipped to England, the pound sterling is to be reckoned at its mercantile value in dollars in England.	437
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A creditor holding several notes of his debtor has a right to apply a general payment equally to all the notes to protect them from the bar of the statute.	212
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A payment under protest of a half month's storage before the collector would allow goods, which had been entered for warehouse, to be landed for consumption, <i>held</i> voluntary, and could not be recovered back.	106
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#### PILOTS.

The seizure of a vessel on process, which interrupts her regular business, is notice to the pilot that his services are no longer required, and terminates his right to wages.	1142
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A pilot has a lien on the ship for services in bringing the vessel into port, rendered	723
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under agreement with the passengers in pretended mutiny.

### PLEADING AT LAW.

See, also, "Abatement and Revival."

A declaration founded upon a statute must conclude against the form of the statute etc. 1047

A declaration in debt for a penalty describing the offense in the words of the statute *held* good after verdict. 267

A plea that the bill of exchange, on which the action is founded, was not drawn and accepted at the place alleged, constitutes no bar, and is bad on demurrer. 980

The rule that on demurrer judgment must be rendered against him who commits the first fault in pleading is only applicable to faults that are bad on general demurrer. 247

The law of a state need not be set out in a declaration or plea in a federal court, as such court will take notice of the laws of the states without pleading or proof. 978

Where a cause of action is local, a reference to the "district aforesaid," named in any preceding count, is a sufficient designation of the place. 1057

An averment of citizenship in the first count is sufficient for all the other counts where referred to therein. 980

Counts abandoned are considered as still in the record for matters of references subsequent counts. 1057

Duplicity and all defects in form in pleading can be taken advantage of only by special demurrer. 247

The union of several facts constituting together but one cause of action or but one defense is not duplicity. 247

Payment may be given in evidence under non assumpsit without notice. 432

Where the declaration was for money received to plaintiff's use, and the evidence showed that the money was received on joint account for plaintiff and his partners, a nonsuit was granted for variance. 1112

A verdict will not cure a variance between the covenant alleged in the declaration and that produced on oyer. 49

### PLEADING IN ADMIRALTY

See, also, "Maritime Liens"; "Salvage"; "Seamen."

Technical precision is not required; but the cause of action should be clearly set forth, so that a plain and direct issue may be made up on the charge; and the evidence must be confined to the matter put in issue. 539

Libels in civil actions in rem need not state the occupation and residence of the libellant. 1176

Libels in rem in civil causes (in Indiana) need not be supported by the affidavit of the libellant. 1176

Amendment of answer not allowed to make it correspond with the proofs, where the allegations, were deliberately made, under a full knowledge of the grounds relied on by libellant. 84

On appeal from a decree of the district court dismissing a libel in rem for the foreclosure of a mortgage on a vessel, the circuit court will not permit the libel to be amended so as to convert the suit into an action to recover possession of the vessel. 686

#### PLEADING IN EQUITY.

A demurrer to a plea to a chancery attachment waives the right to move to strike out the plea, as having been made without giving special bail. 123

An amendment setting up a new defense in the answer will not be allowed where the matter proposed, with reasonable diligence, could have been sooner introduced. (Rule No. 60.). 31

Evidence as to confessions and statements by defendant not charged in the bill are equally admissible in equity as at law. 462

#### POST OFFICE.

An act prohibiting the carrying, in the mail of letters or circulars concerning lotteries, and punishing as a crime the sending of such matter through the mails, is not unconstitutional. 194

#### POWERS.

A power of attorney to convey land in Ohio must be recorded before a record is made of the deed. 834

A power which authorizes the attorney to sell and convey lands, does not authorize him to make a deed for lands previously sold. 834

An application of the benefits by the beneficiary of a power in trust in a form which the donee could not lawfully direct *held* not to render the appointment void, where there was no prior understanding. 50

A power to appoint among "children" may include grandchildren if they are, in a general way, manifest objects of the trust. 50

Under a power to appoint "among such of the children of A. and B., and in such proportions as B. may appoint," B. may entirely exclude certain children. 50

#### PRACTICE AT LAW.

A party has no right to inspect papers which he has given the other notice to produce at the trial, unless he consent that they shall be used in evidence. 1112

In Ohio a count cannot be abandoned after the jury retire to consult on the verdict. 1047

An account in bar or set-off must be filed one term before trial, under the rules in the District of Columbia. 350

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A demurrer to evidence waives all objections to its admissibility, and admits every conclusion that may be fairly deduced from it.	267, 868, 1040
The court will infer in favor of the party demurring to evidence all the facts which the evidence on the other side conduces to prove.	868
<b>PRACTICE IN ADMIRALTY.</b>	
Seamen suing for wages cannot be made colibelants with the holders of a bottomry bond.	380
A default in payment of an installment due on a mortgage on a vessel gives the mortgagee the right to its possession, and he will be permitted to come in and defend a suit in rem commenced the day before the default.	550
Third persons claiming ownership of a vessel seized on process of foreign attachment may move to amend the marshal's false return of "not found," though they have given bond for release.	70
The objection that the suit was prematurely commenced must be raised by plea in abatement or demurrer, to be available where the right of action is perfected before final hearing.	134
Limitation of time or staleness of libelant's claim will not avail respondent unless pleaded in bar.	1012

Delay pending another case on the same state of facts, arising out of the same transaction, will not render the claim stale.	1012
A nonsuit which is not the result of a judgment of the court is no bar to a subsequent libel for the same cause.	387
An irregularity of practice must be objected, to by the party affected by it within the term of the court next subsequent to its becoming known to him.	39
A defective execution of a stipulation is within the rule.	39
The requisites of a valid stipulation.	39
Sureties on a bond given by the wife who filed a claim to property attached on a libel against the husband and wife are discharged where, the suit is dismissed against the wife, though a decree is rendered against the husband.	424
Where the amount claimed is sufficient to allow an appeal to the supreme court, summary judgment cannot be rendered by the circuit court against the sureties in the appeal bond on dismissal of the libel until after the expiration of 10 days after the rendering of the decree.	573
Time given to permit production of evidence of payment of money to a third person at seaman's request alleged by way of set-off to his claim for wages.	49
The admiralty courts are not bound by the rules of evidence applied in common-law courts, and they may take notice of matters not strictly proved.	614
Where a sworn answer is not demanded by the libel, libelant may contradict its allegations by proofs, without filing a replication thereto, or notice of such proof.	37
In a suit for collision by the master of a vessel in behalf, of the cargo owners, libelant cannot read in evidence a deposition taken in behalf of the owners of the vessel in a suit by them for the same collision.	686
The decision of experts to which a cause is referred will be adopted by the court unless there is a manifest preponderance of testimony against it.	143
A possessory suit being discontinued, no appearance having been entered, the marshal was directed to discharge the vessel, and libelant assumed possession. <i>Held</i> , that the court had no further jurisdiction in such suit, and could not direct the marshal to restore the vessel to the persons from whom he took it.	188
A notice to the marshal is not sufficient to relieve the libelant from expense of a keeper of the vessel arrested. Application must be made to the court.	13
Where both a libel by the master against consignees for freight and a libel by the consignees against the vessel for damages to the cargo are sustained, a decree will be given for each party, with costs.	157
Purchasers under orders in proceedings pending a suit are not bound by a decree as to right of property between libelants and claimants.	1058

## PRACTICE IN EQUITY.

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The dismissal of a bill when not on the merits is not a bar to a subsequent suit.	504
Where the court has the means to stay an account, the matter will not be referred to a master unless both sides agree thereto.	594
The want of a replication will not prejudice the case on the final hearing where the evidence has been taken as if it had been filed.	940
Witnesses cannot be examined the second time by a master without a special order of the court, and then only in respect to facts not before testified to by them, and not then in issue.	504
The testimony of a witness thus examined the second time without a special order cannot be admitted to impeach his testimony on the original examination.	504
New evidence cannot be brought forward by a mere order on a petition for leave to file a supplemental bill, but can only be admitted in the supplemental bill.	504
A supplemental bill to admit new evidence, which the party might by due diligence have originally introduced, is never granted after an interlocutory decree.	504
No new evidence is a sufficient foundation for a supplemental bill, unless it be of such a nature that it would, if unanswered, require a reversal of the decree.	504
New oral testimony tending merely to corroborate evidence on the one side, or to contradict evidence on the other, on the points in issue, is not a sufficient foundation for a supplemental bill.	504
Rehearings are only allowed where some plain omission or mistake has been made, or where something material to the decree has been overlooked.	504
As to the evidence admissible on a rehearings.	504

### PRINCIPAL AND AGENT.

See, also, "Factors and Brokers"; "Master and Servant"; "Powers."	
Where an agent employed to sell territorial rights under a patent procured a sale to himself of the entire territory, on false representations of his inability to sell to others, the vendor is entitled to have the sale set aside as to all portions of the territory not previously disposed of by the agent, and to an account of the proceeds of sales by him.	433

### PRINCIPAL AND SURETY.

Sureties of an insolvent debtor, in a bond for duties to the United States, are not entitled to judgment against their principal at the first term.	708
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### PRIZE.

See, also, "War."	
The prize jurisdiction embraces the whole question of prize, unrestrained by the locality or the capture.	855
As to the jurisdiction of courts of admiralty in an action for damages for unlawful capture, where the court of appeals of the United States, under the Articles of	540

Confederation, had reversed a decree of condemnation, and awarded restitution without ordering damages.	
A suit will not lie in a neutral tribunal against a lawfully commissioned cruiser for an alleged illegal capture.	72
The exclusive cognizance of prize cases is vested in the courts of the capturing power.	72
A condemnation of a prize in court of admiralty is binding and conclusive against all the world.	1179
A decree of condemnation passed by a court held on board a vessel at sea, out of the territorial jurisdiction of the country of the captors, is not binding.	916
As soon as war is declared, all the property of the enemy or of his subjects, wherever found, whether on the land or water, is lawful prize.	855
The commercial residence of the master of a vessel will define his personal relations as apparent owner.	168
A citizen temporarily residing in the enemy's country at the breaking out of the war is entitled to a reasonable time to collect and convert his effects to enable him to withdraw them from the country. (Reversing 672.).	674



A change of ownership during hostilities will not be recognized where the disposition and control of the vessel continue in the former agent of her formerly hostile proprietors.	168
Sailing with intent to go to a port known to be blockaded is a violation of the blockade.	55
The offense of attempting to violate a blockade is not consummated by the wrongful intent, but the vessel must be intercepted while endeavoring to carry out such intent.	672
Where the intent really given up before the arrest, the property is not liable to confiscation.	672
Want of water alleged as a reason of returning to a blockaded port after warning must be shown by clear proof.	55
After cargo has been delivered to a neutral consignee at a neutral port, it is not subject to capture as having been originally brought from an enemy blockaded port in violation of the blockade.	164
Cargo on board a neutral vessel, to which it has been transshipped in a neutral port from a vessel which has run a blockade, is subject to capture, where there is a solidarity of interests between the vessels, and the voyage was continuous.	164
An American vessel, which, after a knowledge of the war, proceeds from a neutral to an enemy port on freight, is subject to forfeiture on her return voyage to the United States.	1126
Property captured trading with the enemy is deemed quasi enemy property.	1126
A capture may be made by a privateer of the United States within three miles of their shores.	1126
Captures by noncommissioned vessels belong to the government.	1126
In cases of trading with, the enemy, the property is to be condemned to the captors, and not to the United States.	1126
Prizes made by armed vessels either equipped originally, or whose force has been augmented in the United, States, will be restored if brought within their jurisdiction.	1179
The captors will be held liable in damages for unjustifiable conduct towards the crew and property on the prize after her arrest.	341
The spoliation of property or the failure to send in the officers and crew with the vessel for examination can only be justified by an overruling necessity.	341
Irregularities against the property seized or the captured crew will forfeit the right of prize to the captors.	341
The master and principal officers and some of the crew of the vessel captured must be Brought in for examination.	341

The burden of proof in all prize causes is on claimants.	836
Claimants, admitted or proved to be alien enemies, must be presumed to be in the ordinary and usual situation of alien enemies; that is, out of our country.	836
In seizures for breach of, blockade, the captors may put in affidavits contradicting the preparatory testimony as to the nearness of the captured vessel to the blockaded port, and the acts denoting an attempt to violate the blockade.	1144
An answer or claim need contain nothing more than a general denial of the grounds of condemnation alleged.	1143
A, motion by the owner of the cargo for leave to put in a claim allowed, omitting the special averments.	1143
Redress for wrongs committed by the captors, or for want of diligence in proceeding to trial, cannot, be had by way of defense in the prize suit.	1144
Decree for condemnation for want of an answer where proctor on whom monition was served filed exceptions under oath on behalf of the owner against the requirements of the monition.	1148
Where there was reasonable ground of seizing a vessel, all costs and necessary expenses will be allowed the captors, where the vessel is restored.	55
What constitutes a probable cause or capture may depend on the ordinances of the country of the captors, as well as on the law of nations.	72
The costs and expenses of the captors will be required as a condition of the restoration of the property where the proofs in preparatory showed a clear case of enemy's property.	324
Cargo condemned for an attempt by the vessel to violate a blockade, though the vessel was not taken on process in the suit.	1144
Vessel loaded with arms, ammunition. etc., found several hundred miles out of her true course, and heading towards a blockaded port, <i>held</i> properly condemned.	1149
Proof <i>held</i> not sufficient to show an intent to violate a blockade.	344
Vessel and cargo condemned as enemy property.	617
Vessel and cargo condemned as enemy property, and for violation of the blockade of Charleston.	643
Vessel and cargo condemned as enemy property, and for a violation of the blockade of Mobile.	566

#### PUBLIC LANDS.

See, also, "Grant."

Public land in Indiana, containing a salt spring not entered at the land office, or not coming within the 36 sections conveyed to the state (Act 1616), is subject to pre-emption. 25

**Pennsylvania proprietary lands.**

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The title is in him who pays the money and obtains the warrant, though it is issued in the name of another. 306

Surveys may be valid, though made by order of the commissioners of property. 319

**RAILROAD COMPANIES.**

See, also, "Carriers"; "Corporations."

Const. Mo. 1865, art. 11, § 14, as to loan of credit by municipalities to railway corporations, construed. 366

Act Mo. March 23, 1868, authorizing township aid to railways, is not in conflict with the state constitution. 1086

Municipal bonds issued under legislative authority to aid a railroad company in erecting machine shops *held* issued for a public purpose. 366

Act Mo. March 18, 1870, authorizing the issue of "machine shop bonds" on a majority vote, *held* in violation of the constitutional provision requiring the sanction of a two-thirds vote. 366

A prohibition against authorizing any "county, city, or town" to subscribe for stock unless authorized by a two-thirds vote does not restrain the legislature from authorizing "township" aid where sanctioned by a two-thirds vote. 1086

Bonds issued by a county on behalf of an unincorporated township voting the aid can only be enforced by mandamus to compel the levy and collection of the special tax provided by law, whether before or after judgment. 1086

Negotiable bonds reciting the authority under which they were issued to a railroad 1090

having power to receive them *held* valid in the hands of a bona fide holder for value without notice.

The president of a railroad company has the right to indorse and assign notes and mortgages given to it to aid in its construction. 114

Where a note and mortgage given to aid railroad construction were transferred as collateral to the company's bond, *held*, that a subsequent indorsement of the note by the president of the company was valid to pass its legal title. 114

In distributing the earnings of a mortgaged railroad while in a receiver's hands, and the proceeds of its sale, priority awarded only to laborers and material men who have perfected their lien according to the state law. 573

Claims of connecting lines for their share of through fares and freight stand upon the same footing as other unsecured debts. 573

#### REAL PROPERTY.

See, also, "Adverse Possession"; "Deed"; "Ejectment"; "Grant"; "Public Lands."

The grantee in an absolute conveyance intended merely as security is liable to account for rents and profits and for mismanagement of the property. 594

A possessor in bad faith in Louisiana is entitled to compensation for improvements accepted by the owner. 226

#### RECEIVERS.

The court will not allow its receiver to be sued, unless the petition for leave states a prima facie cause of action against him. 1111

#### RECORDS.

Where admiralty records have been loosely kept, depositions may be read to prove that a certain order was made in the cause. 1058

#### REFERENCE.

See, also, "Arbitration and Award."

The court will not set aside the report of referees merely because the court might not have drawn the same conclusions from the evidence. 914

#### RELEASE AND DISCHARGE.

A release of one of several joint tort feasons will not in equity be extended beyond the intent of the parties, regardless of its effect at law. 41

In the absence of fraud or unfair practices, equity will not relieve from a release given to a joint debtor under a misapprehension of its operation to discharge a co-debtor. 1174

A release of a claim by an assignee in insolvency, induced by a false and fraudulent statement of account by the treasurer of respondent corporation, will be set aside on bill in equity brought by the assignor after his debts are extinguished. 291, 295

#### REMOVAL OF CAUSES.

See, also, "Courts."

**Right of removal.**

The conditions on which the right of removal depends under Act March 2, 1867, stated by Mr. Justice Miller. 773

A suit commenced in a state court against a corporation of a foreign country cannot be removed by defendant under Act July 27 1868, § 2. 997

It is sufficient if the parties are citizens of different states when the petition for removal is filed, though not such when the suit was brought. 230

A voluntary change of residence made after suit brought, if real, does not affect the right of removal on the ground of diversity of citizenship, caused by such change, although made with intent to give jurisdiction. 773

Either plaintiff or defendant has the right of removal under Act March 2, 1867, which may be exercised at any time in the course of the litigation prior to final hearing or trial. 773

**Proceedings to obtain.**

A petition stating that defendant has a defense under a certain act of congress is sufficient, without stating what the defense is or the facts which constitute it. 997

The question of the actual existence and validity of the alleged defense cannot be determined on an interlocutory motion where the proceedings have conformed to the statute. 997

The failure of the moving party to file a copy of the record from the state court does not deprive the circuit court of jurisdiction. 230

But in such case the court has discretion to remand the case. 230

The terms of the court appointed for the trial and disposal of criminal cases are not sessions, within the meaning of an act requiring copies of proceedings in a suit to be entered on the first day of the session of the court, to perfect the removal. 997

**RULES OF COURT.**

The circuit courts have no authority to rescind a rule adopted by the supreme court to govern their equity practice. 519

The rule of the court stated as to the proper practice on motion to open a default. 538

**SALE.**

See, also, "Vendor and Purchaser."

A joint bill of parcels is not conclusive evidence of joint property in goods sold. 745

Material misrepresentations as to credit made by the purchaser, and relied upon by the seller, are ground of rescission. 781

The articles sold may be recovered back from one to whom they have been mortgaged to secure an existing debt, but not from a third person to whom the title has passed for a new consideration. 781

## SALVAGE.

### Right to salvage compensation.

It is an indispensable ingredient of a salvage claim that the service has contributed immediately to the rescue or preservation of property in peril at sea. 903

Where salvors employed by the owner on contingent compensation are compelled to abandon the wreck on account of the severity of the weather, and it drifts to sea, and is saved by another, the former has no claim to salvage compensation. 903

A vessel without any person on board, and in a condition where her instant destruction was menaced, may be rightfully taken possession of by salvors, though another vessel was employed to go to her relief. 675

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Salvors thus taking possession may retain it if they are able to effect the salvage, and are conducting the business with fidelity and vigor.	675
Such persons will be regarded as the meritorious salvors where wrongfully interrupted in the work by others who complete the salvage.	675
A vessel dismasted in a gale, and lying at anchor on a bank in the open sea, is in a condition to have a salvage service rendered.	7
The sale by auction of the cargo of a wrecked whaler, which the master had no means of saving or storing, to other whalers homeward bound, will be regarded as a salvage service, and not a purchase.	1012; contra, *
Services in placing a navigator aboard, and navigating back to port a vessel, whose principal officers had been killed or injured in an affray, and in charge of a disabled second mate, <i>held</i> , salvage services.	1008
Services rendered to a vessel in need of salvage assistance in pursuance of a signal for a steamer, though not necessarily one of distress, are to be compensated as salvage services.	635
Officers and crew of a United States vessel of war towing into port an American merchant vessel found abandoned at sea, 500 miles distant, <i>held</i> not entitled to salvage.	340
No exertions for the safety of a vessel by a seaman who remained aboard for his own safety when the others took to the boats will constitute him a salvor thereof.	1150
A member of a crew of a vessel at anchor who cuts her cable to avoid collision with a vessel adrift is not entitled to salvage.	702
A corporation organized for wrecking purposes is entitled to compensation for salvage services rendered by its wrecking vessels.	702
<b>Contracts for salvage services.</b>	612, 614
That the services were rendered at the request of the owner, and upon a promise to pay the bill if reasonable, otherwise to arbitrate, will not bar salvage compensation.	7
Salvage cannot be claimed where there is a bona fide contract to pay a quantum meruit for an attempt to save property, whether successful or not. But any other contract will not change the nature of the service.	7
A contract for salvage service and salvage compensation, where the salvor has not taken advantage of his power to make an unreasonable bargain, will be enforced.	617
\$500 agreed to be paid for towing a schooner from a pier on the other side of which a vessel was burning, where both the labor and risk were insignificant, <i>held</i> exorbitant, and \$100 allowed.	265

An agreement to pay \$3,000, for towing 90 miles a vessel worth \$8,000, loaded with sugar, sustained by the court.	617
<b>Forfeiture of salvage.</b>	
Willful breaking of boxes or packages of cargo by salvors, except in cases of urgent necessity, will forfeit salvage.	131
The fact that the salvors' boats were not large enough to carry the packages intact will not justify breaking them where there are other vessels at hand sufficiently large for the purpose.	131
Persons who plunder a vessel turned adrift by a privateer before she is stranded are not entitled to salvage for getting her off.	318
It is blamable to refuse to interpose to save property without a salvage compensation or a contract fixing its amount.	7
From a salvage award of \$15,000. for six days' towing of a rudderless bark, \$3,500 deducted for the mistake of the mate in charge of the salvor vessel in casting off the towing hawser and anchoring the bark when off Absecom.	678
<b>Amount.</b>	
Salvage, where a stranded vessel is saved, should be proportionate to the promptness and skill of the rescue.	131
The fact that libellant's vessels were maintained for wrecking and salvage purposes, at heavy expense, and were often unemployed, is inadmissible as a basis for fixing compensation.	612
A less amount is awarded where the vessel is lost than where it is saved.	131
The fact that the salvors' services might prove unavailing by the breaking up of the vessel before any amount of property could be saved is to be considered.	675
The discretion of the court as to the amount should be used with a view to the circumstances of each case, previous decisions, and commercial policy.	653
In the case of an absolute derelict, the court generally awards a moiety.	903
Where a whaling vessel broke up her voyage to save derelict property valued at \$3,831, <i>held</i> , that one-half should be allowed, less a moiety of the customs duties.	736
One-half the net value of \$96,309 allowed for saving cargo of ship sunk in five fathoms of water, where 434 persons were employed two months.	131
One-fifth only allowed for saving a cargo of negroes valued at \$38,800, where the risk was great, but the cargo, from its nature was easily moved.	550
Thirty per cent. allowed for saving cargo and materials valued at \$18,000.	1132
Twenty per cent. allowed a brig for keeping by and towing for six days a bark which had lost her rudder in a gale, valued with her cargo at \$75,000.	678



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For saving a cargo of cotton, 15 per cent. allowed on dry cotton, amounting to \$121,826, 33 $\frac{1}{3}$ per cent. on damaged cotton, amounting to \$40,000, and 45 and 50 per cent. on the portion dived for.	903
\$400 allowed a wrecking tug for pulling off the Romer Shoal a schooner worth, with cargo, \$23,000.	612, 614
\$750 allowed on a valuation of \$3,000 for towing into port derelict schooner loaded with lumber, found by fishing sloop 12 miles from Sandy Hook.	666
\$3,000, on a valuation of \$50,000, allowed for placing a navigator aboard and navigating back to port a vessel in charge of a disabled second mate, where the master was killed and the first mate seriously hurt in an affray.	635
\$6,000 allowed for saving a vessel aground on Pellican Shoals, worth \$20,000.	653
\$10,000 allowed a tug valued at \$60,000. for towing to place of safety a ship worth with cargo \$160,000, which had dragged her anchors in a gale in San Francisco harbor.	749
\$33,852 allowed for one month's labor in saving property worth \$91,076 from ship stranded on Florida Reef.	30
<b>Remedies for recovery.</b>	
Salvage remuneration cannot be awarded to the owner of a tug on a libel filed by him where he was not present when the salvage service was awarded, but an equitable compensation will be made for the use of the tug.	190
Cumulative testimony for salvors is admissible.	1012

Where a libel for salvage is filed without notice to the owner of the vessel to whom the service was rendered, costs not allowed. 190

Respondents will be charged with costs where they denied the service, though an exorbitant claim, was made therefor. 749

**Apportionment.**

The salvor vessel allowed one-half the award of \$15,000 for six days' towing services of a rudderless bark, where the master was disabled by the breaking of his leg and the fingers of one hand. 678

The share of a mate in charge of the salvor vessel, the master being disabled, reduced, because of his mistake in performance of the services. 678

**Custody of property.**

The marshal's duty as to the care of the salvaged property. 131

**SEAMEN.**

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

**Protection, and relief.**

Damages in the form of additional wages will be given where the crew is put on short allowance without necessity. 690

The seaman is not entitled to double wages on account of being put on short allowance unless the vessel sailed without the amount of provisions required by law. 690

**The contract of shipment.**

A tug engaged in towing between Lake Erie and Lake Huron is not within the meaning of Act 1790, § 5, prescribing the contract of shipment to be entered into. 694

The construction most favorable to the seamen will be adopted in the case of ambiguity, uncertainty, or obscurity in the shipping articles. 352

Though no shipping articles are signed, seamen are bound to remain with the ship until the voyage is terminated. 352

Seamen who ship for an indefinite period may leave the ship after the termination of any particular voyage, and the discharge of the cargo at the port of delivery. 352

Under articles for a voyage to Batavia, and thence, if required, to ports beyond the Cape of Good Hope, the voyage may be extended to Japan. 1033

Construction of an agreement in the shipping articles that no wages shall be paid until the return of the vessel to the port of outfit. 833

A seaman shipped without signing articles must be paid according to the act of congress, and he is entitled to all benefits and subject to all forfeitures prescribed by the maritime law. 386

The seaman has no right to refuse duty required of him on a Sunday by our calendar where the day before was observed as Sunday by the custom of the port, but such refusal is no ground of discharge. 739

Threats by a seaman under the influence of liquor furnished him on board, where his previous character was good, will not justify his immediate discharge.	1014
A steward injured while in performance of his duty on board the vessel is entitled to his wages and board and medical attendance while being cured, though the master and owners are free from negligence.	214
A seaman, during illness occasioned by his own fault, is not entitled to wages, and is liable for the expenses of his subsistence; but not for the wages paid another man in his place.	749
In such case the seaman is not liable for the detention of a vessel for want of his services, where the master could have obtained a substitute.	749
<b>Conduct of master or mate in respect to seamen.</b>	
As to treatment of intoxicated seamen.	1014
It is the duty of the master to interpose and quell an affray between the mate and the crew.	1115
Master has no right to flog seaman, though acting under the honest belief that the men had conspired to poison him.	1150
Proof that the master and mate separately assaulted and illtreated a seaman will not support an allegation of a combination between them to illtreat and oppress him, without some presumptive evidence of concert between them.	539
Where the master lays a complaint before a consul, who, upon examination, causes the crew to be imprisoned, the responsibility for the tort, if any, is transferred to the consul, where the complaint was such that a competent master might believe it to be within the consul's jurisdiction.	1115
The right of the crew to lay complaints before the consul does not apply to mere affrays or quarrels between the officers and crew.	1115
A refusal of duty because permission is not given to lay complaints before the consul is justifiable only when the refusal is necessary to prevent the loss of the right.	1115
The master has no right to detain the effects of men imprisoned on shore on the request of the consul.	1115
Imprisonment of a seaman in a foreign port is only justified in extreme cases of extraordinary violence, where the safety of the ship or those on board require it.	737
A consular certificate of the facts in justification is not evidence.	737
The master is not justified in imprisoning a seaman on mere suspicion that he is a dangerous man, or on request of the crew; and, if his effects are lost while thus imprisoned, the master is liable.	387
Vindictive damages are not allowed in such case, in the absence of bad motives; but compensation will be allowed for the time of the imprisonment and the articles lost, with interest thereon, and passage home.	387

Deadly weapons should only be used when a mutiny exists or is threatened.	372
The ship is liable for all obligations of the master, whether arising ex contractu or ex delicto, where he acts within the scope of his authority as master.	690
<b>Wages—Right to.</b>	
Where the vessel is captured, seamen are entitled to wages to the last port of unloading.	1033
The representatives of a seaman dying on a voyage in the service of the ship are entitled to his wages for the whole voyage.	737
Seamen employed for a specified time, and discharged without cause before its expiration, <i>held</i> entitled to the agreed rate, less the current rate at the time of discharge, with compensation for reasonable length of time to enable them to find other employment.	436
<b>—Remedies for recovery.</b>	
The master is responsible to the seamen for wages, and therefore is not a competent witness in suits by the seamen.	1006
A receipt in full given by a seaman is not conclusive evidence against him.	258
A person who pays the wages may be subrogated to the rank of the seamen.	186
A part owner who pays the wages of seamen may be subrogated to the rank of the seamen as against the mortgagee of the share of another part owner.	186

The wages of the last voyage of a vessel have precedence of all earlier charges.	186
Seamen engaged to serve on a ship for a coasting voyage have a lien for wages while she is getting ready, though she never left the port where they performed labor on several trial trips in the harbor.	172
An attachment of the seaman's wages is no excuse for delay in payment, and the penalty is recoverable. (Rev. St. § 4529.).	667
A seaman who has not been discharged cannot sue for wages before the termination of the voyage for which he shipped.	440
<b>—Deductions: Extinguishment, etc.</b>	
The amount paid a seaman hired in place of another unjustifiably discharged in a foreign port cannot be deducted from his wages.	737
Intemperance will forfeit wages to the extent that it unfits the seaman for performance of his duties.	375
Payment to the consul of the balance or wages due discharged seaman is not a payment to the seaman.	1014
Seaman who had endeavored to commit a revolt, upon repenting and tendering amends, <i>held</i> entitled to be forgiven, and the forfeiture of wages remitted.	741
Receiving a deserted seaman back into service waives forfeiture of his wages, but allowance will be made for the absence.	49
The entry in the log book is not conclusive; and is admissible in support of no circumstances but those stated in the act of congress.	1006
An engineer verbally hired by the month on a tug on the Lakes is guilty of desertion, forfeiting all wages due, where he leaves his post of duty before his month is up, insisting upon a right to accept another offer.	694
An offer by such engineer, made five or six weeks after he was landed, to return, is not within a reasonable time.	694
The conduct of an engineer of a steamboat in making alterations in the engine at the home port, without the consent of the owner, will work a forfeiture of his wages.	698

**SET-OFF AND COUNTER-CLAIM.**

Joint debts cannot be set off in equity any more than at law against separate debts, unless there be some other equitable circumstances.	244
An action will not lie on a claim which has been pleaded or offered in evidence as a set-off, and rejected by the verdict of a jury.	352

**SHERIFFS AND CONSTABLES.**

A rule on a constable to show cause why he should not be removed "for extortion under color of his office" need not specify the particular facts relied upon.	1074
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**SHIPPING.**

See, also, "Admiralty"; "Affreightment"; "Average"; "Bills of Lading"; "Bottomry and Respondentia"; "Carriers"; "Collision"; "Maritime Liens"; "Pilots"; "Salvage"; "Seamen"; "Towage"; "Wharves."

**Public regulation.**

It is the duty of the master or owner of a steam vessel engaged in carrying passengers for hire, whether regularly or otherwise, to make a written application for her inspection, under Rev. St. § 4417. 266

An unfinished vessel need not be inspected before being moved from one place to another in the course of her construction. 1155

A voyage from the place where the vessel is constructed to another place, by direction of the inspectors, to enable her to be inspected, is not a violation of the navigation laws. 1155

In a proceeding against a vessel, under Rev. St. § 4499, for the penalty for violation of the laws relating to inspection, an executive seizure prior to the seizure under the libel is not necessary. 1155

The Revised Statutes not being enacted until June 22, 1874, the carrying of petroleum upon passenger steamers in April, 1874, cannot be punished thereunder. 330

An action of debt, and not an information in rem, is the proper remedy to recover a penalty for violation of Act Feb. 28; 1871, § 4, forbidding the carrying of petroleum on passenger steamers. 330

The penalty for failure to exhibit an enrollment or license when demanded under Act Feb. 18, 1793, § 13, is not enforceable against a canal boat which was not enrolled or licensed. 688

**Title to vessel: Mortgage: Possession.**

The registry of a mortgage on a vessel, to be effectual, must be made in the custom-house of her home port. 897

A later mortgage first recorded will be postponed to a prior unrecorded mortgage, of which the mortgagee had notice. 897

The fact that such prior mortgage could not be registered for want of a proper acknowledgment will not postpone it to the subsequent mortgage taken by one with notice thereof. 897

The legal title and right to immediate possession of, a vessel under an absolute bill of sale given to secure a loan, and registered as a mortgage, is vested in the mortgagee. 426, 428

The filing of mortgages on canal boats in New York depends wholly upon the special act of New York of April 28, 1864. 5

A person purchasing with notice of a prior mortgage is not a purchaser in good faith, within the meaning of the act. 5

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A person having notice enough to put him on inquiry will be held to have notice of everything to which such inquiry would have led.	5
<b>The master.</b>	
Employment as master for a foreign voyage will not be presumed from the rendition of services as master in loading and preparing the vessel for sea.	952
A master appointed in a foreign port by the American consul on the recovery of a vessel from a master who had barratrously run away with her has the same powers as one appointed directly by the owner.	264
The acts of the master in cases of necessity or calamity, during the voyage, in the exercise of a sound discretion, are binding upon all parties in interest.	1105
To support an hypothecation of sale of vessel and cargo to obtain supplies or repairs, the necessity therefor must be clearly shown.	1163
A sale by the master of a wrecked whaler of cargo, which he had no means of saving or storing, at auction, to vessels which had come to the wreck, <i>held</i> valid.	*1008; contra, 1012
The fact that no money was paid at the time, and no bill of sale delivered, and no entry made in the log book, does not invalidate the sale.	*1008
The sale of the cargo by the master, to bind the owners, must be bona fide, and under circumstances of extreme necessity, and for the benefit of all concerned.	1008

Where cargo is so much injured that it will endanger the safety of the vessel and cargo, or it will become utterly worthless, the master must land and sell it at the place where the necessity arises, though it might have been carried to its destination.	1105
The master cannot bind the owners for repairs or supplies when some other person is authorized to manage the business of the ship in that respect, with the Knowledge of the creditor.	1132
<b>Liabilities of vessels or owners.</b>	
The refusal, to fulfill a contract of purchase does not render the possession of the vendee tortious, so as to prevent him making a contract with third persons binding on the vessel.	215
The master or owner of a vessel taken into a dry dock for repairs is not bound by a printed tariff of charges not brought to his notice.	184
Where the owner of the dry dock charges for his labor in superintending the work, he will not be allowed to charge for the labor of his men a greater sum than that paid them.	184
The vessel is liable for cargo jettisoned to save the vessel, where its peril is directly attributable to want of diligence or skill of the master or crew.	547
Running into the Columbia river without a pilot, and without any imperative necessity for so doing, where the navigators had no knowledge of the tide and wind to be encountered at the season, <i>held</i> negligence.	547
Services in detecting the fraud of a master who had barratrously run away with a vessel, and recovering the property, will be recompensed in admiralty, but not as salvage.	264
The vessel is not liable for gold coin intrusted to the master by a person who intended to take passage, where no bill of lading is taken or note in writing delivered, as required by Act March 3, 1851, § 2.	175
The extent of liability of an English vessel stranded in American waters is to be determined by Rev. St. §§ 4283, 4284, and not by the general maritime law.	655
The jurisdiction of proceedings to obtain the benefit of the act limiting liability belongs to the district court of the district in which the vessel was stranded, where the liability arises from such stranding.	655
The owner of the vessel may, before he is sued, institute proceedings to obtain the benefit of the act.	655
A tender, made in the libel of the vessel and wreckage to be disposed of by the court, is a sufficient abandonment.	655
The libel in a proceeding to obtain the benefit of the limitation of liability will be amended so as to show the residence of the libelant.	655



**Slander.**

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**SLAVERY.**

Slavery existed only by virtue of the laws of the states where it was sanctioned.	1040
As to the right to reclaim fugitive slaves.	840
A citizen from whom his slave absconds into another state may pursue and take him without warrant, and use as much force as is necessary to carry him back to his residence.	840
Such slave may be arrested on Sunday, in the nighttime, and in the house of another, if no breach of the peace is committed.	840
No person has the right to oppose the master in reclaiming his slave or to demand proof of property, and the master may use force in repelling opposition.	840
Damages for harboring or concealing a slave in a free state are recoverable only by virtue of the constitution and laws of the United States.	1040
Action for harboring or concealing fugitive slaves; notice; pleading; evidence; damages, etc.	1040, 1047, 1057
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**SPECIFIC PERFORMANCE.**

Where the vendor agreed that the deed should be made before payment of the consideration, he cannot require the money to be brought into court.	834
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**STATUTES.**

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In the construction of laws, punctuation is no criterion of the sense of the legislature, unless it is in conformity with their intention, as expressed in the words used.	125
A statute applicable in its terms to particular actions cannot be applied by construction to other actions standing on the same reason.	267

**Survival.**

See "Abatement and Revival."

**TAXATION.**

See, also, "Internal Revenue."

Interest coupons of railroad bonds are not taxable under the general tax law of Pennsylvania, nor the act of April 30, 1864.	232
The franchise of a corporation is taxable as well as its property; but the tax must be uniform as to the class on which it operates.	574

The action of a board of equalization in disregarding the return under oath of a corporation, and raising the value of its property without evidence or a chance to be heard, *held* illegal. 574

As to legal and illegal methods of taxing the property of railroad corporations lying in different counties, and its capital stock. 574

Revenue Act La., 1870, construed as to taxes upon insurance companies. 67

#### TENANCY IN COMMON.

Tenants in common of a ship who purchased a cargo for a voyage *held* tenants in common of the cargo, and not partners. 244

In such case the master has no right to consign the return cargo to one only of such owners. 244

And, where it is so consigned, the consignee has no lien on it for any separate and distinct demand against the other tenants in common. 244

#### TENDER.

A tender by respondents on libel for services as stewardess of a ship is an admission of ownership of the vessel. 951

**TERRITORIES.**

The legislature of the territory of Arkansas had power to prescribe the conditions upon which an appeal might be taken to the superior court. 346

**TOWAGE.**

See, also, "Collision"; "Salvage."

The liability of a tug for injuries to her tow arises from the nature of the service, and exists although the contract of towage is not made immediately between tug and tow. 544

It is culpable negligence for a tug in her home port to leave her tow beside a dock where, upon the ebbing of the tide, the latter will be in danger from a sunken obstruction. 544

A general direction that the tow brace off from the dock will not excuse the tug when the latter was ignorant of the specific danger to which the tow was exposed. Where the agent of the owner of a barge informs the master of a tug that the master of the barge has no authority to take the risk of being towed through dangerous ice, the tug will be liable for a loss caused there by. 544  
325,  
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A canal boat in a tow on the Hudson river, being unseaworthy, began to leak, and was cast off from the steamboat, but failed to reach a dock, and sunk. *Held*, that the steamboat was liable for half the loss caused by the failure to reach the dock. 639  
641

A vessel engaged in towing is liable in rem for refusal to perform a contract of towage made by her master where the agreed price has been received therefore. 334

A contract to tow boats for a certain sum per trip during the season *held* inconsistent with the right to a lien, and a libel in rem will not lie for the towage services. 643

A delay of three years to enforce a claim against a tug for negligent towing, where the ownership of the tow had changed, *held* to render the claim stale. 573

**TRADE-MARKS AND TRADE-NAMES.**

A writing extending to the purchasers of a Cincinnati distillery "the use of all my brands formerly used by me in my Cincinnati house," where the seller also had a New York house, *held* to convey an exclusive right to use the trade-mark. 831

The surviving partner *held* estopped by partnership letters to purchasers of part of its business, showing assent to the use of trade-marks previously conveyed by one partner, to deny his power to convey the same. 831

**TREATIES.**

See, also, "Extradition."

Under the treaty with Great Britain of 1794, the precincts and jurisdictions of army posts are not to be considered as extending three miles in every direction by analogy to the jurisdiction at sea from the coast line. 235

The distinction between “necessary” and “voluntary,” as applied to validity of treaties, pointed out, and the power of the judiciary to decide upon the validity *held* 1059 restricted to the “necessary” validity.

### TRESPASS.

A seizure as prize is no trespass, though it may be wrongful. 1179

A magistrate who orders the arrest or detention of a person without oath, warrant, and probable cause, as well as the persons concerned in the execution of such order, is a trespasser. 840

Where two or more persons agreed to commit, or unite in committing, an unlawful act, each who is present, or advises, consents, aids, or assists in the act, is liable in trespass. 840

### TRIAL.

See, also, “Appeal”; “Continuance” “Evidence”; “Judgment”; “Jury”; “New Trial; “Practice”; “Reference”; “Witness.”

Witnesses may be separated, and examined each out of hearing of the others. 907

It is discretionary with the court whether or not to take a question from the jury, and dispose of it as a matter of law, where the facts are undisputed. 441

Where a verdict is rendered on certain counts of the declaration by the express direction of plaintiff, the other counts cannot be referred to as sustaining the verdict. 1047

### TRUSTS.

See, also, “Charities”; “Executors and Administrators”; “Wills.”

The title to property willed to executors to convert into a fund, and to keep and distribute, etc., remains in them until actual distribution; and, where a discretion is to be exercised, the ultimate distributee has no previous vested interest. 927

A corporation may be a trustee if not prohibited, where the trust is germane to or in harmony with the objects of the corporation. 957

A church is capable of taking and executing a trust for the benefit of destitute and needy churches, and to care for testator’s cemetery lot. 957

A loose settlement in trust for children *held* not controlling as against a subsequent deed of trust. 50

The fraud of an agent in availing himself of his confidential relation to create an interest adverse to that of his principal creates a trust, even when the agency must be established by parol. 462

A trust created by a release of all claim in land to another for the purpose of freeing it from all claims of the releasor, so as to induce others to advance funds for its improvement, will be enforced in equity. 462

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Persons who loan money on certificates of stock which state that the borrower holds them in trust, with knowledge that the same is borrowed for the private use of the trustee, are liable to the cestui qui trust. 376

One who holds premises as trustee of another is entitled to commissions on renting the same where not guilty of gross misconduct, although he is not an open and express trustee. 513

**United States Officers.**

See "Marshal."

**Usury.**

See "Building and Loan Associations."

**VENDOR AND PURCHASER.**

See, also, "Bankruptcy"; "Deed"; "Frauds, Statute of"; "Fraudulent Conveyances"; "Grant"; "Sale"; "Specific Performance."

The metes and bounds, when they can be ascertained, will control the location, although 253

they contained less than the amount of land specified.

This rule obtains though parallel lines were to be run, from each extremity of a base line, to be ascertained from a known point, until a certain quantity was obtained where a portion of the base has been cut off by prior grants. 253

A sale of land for unpaid purchase money is not vitiated by the fact that it was made while the purchaser is absent during war with the other belligerent power, and had no notice of the sale. 709

The pendency of confiscation proceedings by the United States against such purchaser does not help to vitiate the sale. 709

### WAR.

See, also, "Citizen"; "Neutrality Laws"; "Prize."

Where a portion of an empire, by force of arms, throws off the authority of the general government, so as to compel it to resort to regular hostilities, a state of civil war exists, as distinguished from rebellion, so as to prevent the parties being liable as trespassers in the United States courts, though the independence of the new government is not politically recognized. 1179

Residence determines national character which can only be divested by actual departure or an unequivocal act showing a commencement of departure from the county. 855

A temporary excursion to the place of the original domicile, or to any other will not be deemed to interrupt the residence. 855

The intention as to residence openly declared, however short the residence, will establish the domicile. 855

An alien enemy not in our country under letters of safe conduct, or under the protection of the government, cannot sue in the common-law courts. 836

No suit or proceeding can be maintained in the courts of a neutral nation by the subject of one belligerent against the subjects of the other for acts growing out of the war. 1179

The subjects of one country incur no liability other than the common hazards of war when entering the military or naval service of another. 1179

A commanding officer of a militia cannot lawfully impress the horse of a citizen even in time of war. 279

A declaration of war by competent authority suspends the running of the statute of limitations and of interest upon debts between citizens of the belligerents, until the conclusion of peace. 259

The claims of creditors which existed prior to the American Revolution were not destroyed by the dissolution of the government, though the judicial means of enforcement were for the time lost. 1059

A debtor of a subject of Great Britain who accepted the offer of Act Va. Oct. 20, 1777, to pay the amount of the debt into the loan office, and receive a certificate of discharge, *held* not relieved from payment of the debt where the commonwealth did nothing to extinguish the same. 1059

Debts due to a subject of Great Britain before the revolutionary war *held* within the treaty of peace, and the hostile legislation of the commonwealths were extinguished thereby. 1059

### Waters and Water Courses

See "Constitutional Law"; "Navigable Waters,"

### WHARVES.

The liability of a canal boat for wharfage under Act N. Y. May 21, 1875, and the validity of such act, which discriminates between vessels of different classes engaged in different occupations. 699

A wharf owner whose wharf was used as a free public highway *held* entitled to the regular wharfage for goods carried over the wharf to a vessel lying at another wharf, 400 feet distant. 621

A wharfinger has a lien on a vessel for wharfage. 768

Where a vessel, removed from a wharf secretly or wrongfully, is afterwards brought back without fraud or force, the lien of the wharfinger is revived. 768

And this is so though the vessel has been levied upon in the meantime by the marshal. 768.

### WILLS.

See, also, "Charities" "Executors and Administrators" "Trusts."

The intention of the testator which is controlling in the construction of a will must be collected from the whole will. 220

Technical words will be presumed to be used in the sense the law has appropriated to them, unless a contrary intention is manifest. 220

The word "or" may be read "and" when it becomes necessary for the purpose of carrying into effect the clear and obvious intention of testator. 220

A devise is never construed absolutely void for uncertainty except from necessity. 220

A provision devising, on certain conditions, a gift over of devises and bequests already made, *held* not to vitiate such devises and bequests. 957

A devise to trustees for a charitable purpose, which is to be carried on by them until a building to be erected for the charity shall be completed, which is then to be handed over by the trustees, with the funds to support it, to a corporation to be created, creates no perpetuity. 957

A devise "in fee" to testator's granddaughter, "but, in case of her death without issue," then over, *held* a good executory devise, which took effect upon her death without issue. 220

A devise which increases the income of an incorporated society beyond the sum which it is allowed by law to take and hold is not void. 957

A gift for a library and academy of arts and sciences is for an "educational purpose." (Code Ga. § 3157.) 957

The requirement in the devise of a building for a library that testator's name shall be engraved on a marble slab, and kept over the main entrance, does not render the devise void. 957

#### WITNESS.

See, also, "Bankruptcy"; "Costs"; "Deposition": "Trial."

One defendant in a joint action of trespass cannot be a witness for the other, although they plead severally. 737

The incompetency of the husband to testify as a witness for his wife rests on grounds of public policy, and is not removed by a statute removing the disqualification of interest. 927



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A witness will be permitted to refresh his memory as to the items of an account by the original entries only, made by himself or by another in his presence, and he may swear to such items though he has no distinct recollection as to each one. 983

A witness attending for defendant, if sworn and sent before the grand jury by the government, is entitled to be paid by it for his attendance on the trial. 719

**WRITS AND NOTICE OF SUITS.**

Proper form of process for the commencement of a suit at law in the federal courts in New York. 747

A return by the marshal of "Not found" where defendants, residing out of the district, had a well-known place of business within the district, at which they usually attended every day, is a false return. 70