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A reissue need not include all that was claimed or covered in the original 758

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All matters of fact involved in the hearing of the application for a reissue and in granting it are conclusively settled by a favorable decision of the commissioner 6

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Harvesters. Reissue No. 1,262. for improvements in grain harvesters, as restricted to valid claims, held not infringed 661
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Paper. No. 1,336. for a machine for making paper, found valid, and infringed, by the verdict of a jury 765

Picks. Reissue, No. 6,951, for a method of forming the eyes of picks by drawing them down on a mandrel between rolling dies, which completely encompass the walls of the eye, held valid and infringed 730

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Sewing silk. No. 173,125, for an improved method of putting up sewing silk, held void because of anticipation 799

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Weaver's harnesses. Reissue No. 5,282, for an improvement in machines for making weaver's harnesses, *held* infringed 304

PAYMENT.

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An assignment of recognizances as security for a debt to be collected as the creditor may think proper is no bar to an action to recover the debt; otherwise when negotiable instruments are assigned 280

Whether the giving of promissory notes for money due under a charter party operated as payment is to be determined in a suit in admiralty in a federal court by the rule prevailing in the state where the transaction took place 481

Where notes are given for money due under a simple contract, the presumption in Massachusetts is that this was accepted as payment, in the absence of circumstances indicating a contrary intent 481

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A plea in bar is bad, whether involving questions of law or fact, where it goes only to the question of damages 511
If an entire plea do not answer the whole count, or if a plea to a part do not answer the whole part which it professes to answer, it is bad on demurrer, and cannot derive aid from any other plea 386
If a plea to a declaration for libel be good justification of what it purports to justify, plaintiff cannot treat it as a nullity, and take judgment by nil dicit for the whole matter of his declaration. He must demur or reply to the plea, and take judgment by default for what remains unanswered 386

If some of the several matters pleaded to a declaration for libel be good justifications of what they profess to justify, and others be not, plaintiff must demur to the latter, and plead over to the former. If he demur to the whole as one plea, and one of the matters should be good justification, the demurrer must be overruled 386

If any actionable part of the declaration remains unanswered by a sufficient plea, plaintiff must have judgment therefor, if he has prayed judgment at the proper time, so as to avoid a discontinuance 386

Where separate and distinct pleas are taken to different parts of the count, and some of the issues thereon are found for plaintiff, and some for defendant, several damages should be assessed, and judgment rendered for each party as to the issues found for him 386

Where several distinct pleas in bar are pleaded to the same count, and issue is taken thereon, if one issue be found for defendant, and the rest for plaintiff, yet judgment must be for defendant 386

Several distinct and independent pleas to separate parts of a count are not double, and, if all be held good on demurrer, will make out a complete bar, so that judgment must be given for defendant 386

If several distinct pleas be pleaded to one part of a count, and issues be taken thereon, and one of the issues be found for defendant, judgment must be for him as to so much of the count as is answered by the plea, although the other issues are found for the plaintiff 386

Where a plea professes to answer only part of the actionable matter charged in the count, and the replication or demurrer treats it as a plea to the whole matter, this is a discontinuance; but otherwise if it is treated as a plea to that part only which it purports to answer, provided that plaintiff, at the time of replying or demurring, take judgment by nil dicit for the unanswered part of the count 386

If there be judgment for plaintiff on demurrer to some of the pleas, and if issue of fact be joined upon others, the jury may be charged to assess damages upon the judgment on the demurrers in case they should find the issues of fact for plaintiff; but this does not give plaintiff the right to open and close the argument where defendant holds the affirmative of all the issues of fact 386

An allegation in a bill of particulars that money unlawfully exacted was paid to a provost marshal raises no inference that the money was received by the commander of the post 498

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In Pennsylvania, any evidence may be given, under a plea of payment, which proves that ex equo et bono the debt ought not to be paid 1167

Under a plea of payment, proof of a discontinuance of the suit is inadmissible; the alleged discontinuance should have been taken advantage of before making defense. 1167

PLEADING IN ADMIRALTY.

Want of jurisdiction appearing on the face of the libel should be taken advantage of by demurrer, not by plea 755

In the absence of written rules, the court will deduce from prior decisions such rules as are applicable to the particular ease 1018

In the absence of written rules of practice, amendments in matters of substance are within the sound discretion of the court, and are allowable until final decree 1018

A possessory libel cannot be amended so as to proceed for damages in personam 888

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It need not be alleged that a trust in lands was created by writing, for that will be presumed until the contrary appears. The statute of frauds requiring such trusts to be created or evidenced by writing is a rule of evidence, not of pleading 1024

A bill of review should state the former proceedings and wherein the party exhibiting it considers himself aggrieved 260

An alternative prayer does not necessarily make a bill multifarious 468

A plea to a bill may be good in part, and not so in whole, and will be allowed as to so much of the bill as it properly applies to, unless it has the vice of duplicity 685

In equity, defendant is entitled to only one plea without leave of court, and leave will be given only in case of obvious necessity 1024

An objection that plaintiff is not entitled to relief because he is a bankrupt, and his assignee is not made a party, should be taken by plea, and cannot properly be raised by answer 701

Where an answer impeached the bona fides and validity of a codicil to a will already approved and allowed by the proper probate court, held, that the allegations should be expunged as impertinent 1105

Allegations in the answer of an attempted settlement, the nature and terms of which were not given, and which was not acceded to by plaintiffs, ordered expunged as irrelevant 1105

When the bill requires answer as to information and belief, and one of the respondents is a corporation, its officers are bound to make full inquiries on the matter before answering 708

When required by the bill, interrogatories must be answered as to information and belief as well as to knowledge 701–708

An interrogatory, not so full and precise as it should have been, held still sufficient to call for a full answer to its plain import. 1105

An answer responsive to the bill must prevail as evidence unless met by two witnesses, or one witness and corroborative circumstances 1101

A demurrer stating facts not appearing on the face of the pleading demurred to is bad as a speaking demurrer 1024

To avoid unnecessary delays, a motion to amend a bill, and exceptions to it may be entertained at the same time, and defendants be required to answer the amended matter and the exceptions together 701

Argumentative pleading in inadmissible. A fact can only be put in issue by a direct allegation in such form that issue can be taken directly upon it 611

Where the bill sets up title under a will, title by codicils thereto not mentioned in the bill cannot be shown 1101

POWERS.

A power of attorney to collect and compromise debts and sign necessary papers gives authority to sign a paper choosing an assignee in bankruptcy 783

A power of attorney to collect debts, with power of substitution, may authorize the attorney to appoint another to act for the principals in bankruptcy proceedings under an act passed subsequent to the execution of the power 783

The presumption is that a sale of a patent annuls an existing power of attorney relating thereto; but, if the power remains outstanding, persons dealing with the attorney on the faith thereof will be protected as against the principal 892

PRACTICE AT LAW.

A default taken for want of a plea will be set aside before the appearance term, on motion, on condition that defendant file a plea to the merits and go to trial 278

On motion to discharge on common bail, the court will not decide doubtful questions of citizenship, or the effect of a discharge in insolvency upon debts contracted in another state 815

Whether an action can be maintained in the name of "The King of Spain," or whether Ferdinand VII. can support an action before he is acknowledged by our government, are questions not proper to be decided on motion 577

PRACTICE IN ADMIRALTY.

See, also, "Admiralty."

An absent owner, on coming within the jurisdiction, may be substituted as claimant in place of his attorney in fact, on payment of costs of opposing the motion, and entering new stipulation for costs 1192

Stipulations taken for the purpose of sustaining and rendering effectual the court's jurisdiction are to be construed by the intention of the court which required them, and not of the parties bound by them 1087

A bond for appearance to answer a libel is not a bail bond at common law, but a stipulation in admiralty, to be construed accordingly 1087

Under a stipulation for appearance to answer and abide the courts decision, the sureties are not irrevocably bound by a return of non est inventus; but they may surrender the principal at any time before decree against them on citation to show cause 1087

Increased stipulation for costs should not be required of claimants on account of delays in the suit occasioned by libelant 1192

The real estate of the sureties in a stipulation in admiralty is subject to execution issued from the admiralty court 347

A proctor bidding at a sale is personally liable where his agency is not known to the marshal 148

A failure to make return of the writ of vend. ex. is a mere irregularity, which is cured by confirmation of the sale 148

There is no warranty of a complete outfit on the sale of a vessel "as she lies," though the published notice read "her boats, tackle, apparel, and furniture." 148

A purchaser at a judicial sale may be compelled to complete his purchase by payment of the money 148

The purchaser is bound by a service upon him of an order to pay the money into court, though he be not named therein 148

PRACTICE IN EQUITY.

Equity practice in the federal courts is derived from the English high courts of chancery, and is not required to conform to the chancery practice of the state courts. 1055

In the federal courts a bill will not be dismissed for want of equity except on demurrer or on final hearing 1197

Under the sixty-third rule, exceptions to an answer for insufficiency must be set down on a rule day for hearing before the judge; a reference of such exceptions on a different day and to a master is a nullity and an abandonment of the exceptions 1197

Where defendants have been once ordered to answer more fully, and exceptions to omissions and evasions are again sustained, the court will allow further amendments only upon payment of costs, to be followed by harsher measures if there are further omissions 708

An amendment of the bill when allowed after answer and replication does not open the pleadings unrestrictedly 180

In such case defendant cannot allege by way of plea a personal disability in the complainant as having existed at the commencement of the suit 180

On the trial of an issue from chancery, the bill and answer cannot be read in evidence, unless the chancery court so directed when the issue was ordered 521

PRINCIPAL AND AGENT.

See, also, "Factors and Brokers"; "Master and Servant"; "Powers."

An attorney in fact authorized to collect a debt cannot extinguish the same by commuting it for one due by himself to the debtor 592

An agent whose orders are positive must strictly observe them, and can exercise no discretion except as to the best method of executing them. If ambiguous, they must be taken most strongly against the principal 592

PRINCIPAL AND SURETY.

See, also, "Bail."

The rights of the surety against the principal are not extinguished by a joint judgment against the two 709

A judgment against a surety on a delivery bond given in attachment proceedings under the Tennessee laws is valid, although entered without notice, and while the surety was a nonresident of the state 874

PRIZE.

A license or protection from the enemy, given an American vessel, on a voyage to a neutral port in alliance with the enemy, will subject the vessel to capture and condemnation 27

Verified copies are admissible where the documents themselves which were the cause of the capture have been surreptitiously taken from the possession of the prize master 27

The rule of a year and a day for claimants to appear is not a vested right in neutrals 34

A vessel documented as neutral, and sailing under a neutral flag, will not be condemned instanter where the captors failed, without any excuse, to send in the master of the prize as a witness 34

Where seamen duly shipped on board a privateer are put ashore without their consent or lawful cause, they are entitled to share in prizes made on the cruise 163

The members of a privateer's crew may maintain a libel in admiralty for their respective proportions of the prize 163

The court will take cognizance of a second libel by members of a privateer's crew improperly omitted from the distribution of the proceeds on a sale under a decree of condemnation 163

The marshal is liable where he distributes the proceeds without an order of court 163

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Custody fees in prize cases are payable in the first instance out of the proceeds, and, in case of condemnation, are taxable to the claimant 1111
Vessel condemned for attempting to break the blockade of Mobile, where her crew escaped to the shore, and fired upon the captors, and her log book showed an intention to deceive as to destination 69
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PUBLIC LANDS.

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Under the Oregon donation act, the estate granted to a married person is a determinable fee, with contingent remainder to the survivor and the children of the grantee; and, in case the grantee dies before patent issues, such survivor and children take as donees of the United States, not as heirs of the deceased 1030
Under the Oregon donation act, upon the death of a settler's wife, before issuance of patent, her share went to her husband and children, who took as donees of the United States, and not as her heirs 1040
A grant under section 4 of the Oregon donation act to the children of L., the wife of a settler, includes her children by a prior husband 1024
Under that act, a grant to the "children or heirs" of a settler or wife takes effect first in favor of the children 1024
Under that act, a settler might change his location before making final proof; and, in ease of death before completion of residence and cultivation, his widow might abandon her interest, and, by marrying another settler, become entitled to one-half of his donation 1024
The act does not include settlers who died before its passage 1024
Covenants between joint occupants to convey to their prior vendees held not a "future contract for the sale of the land," within the meaning of the Oregon donation act 996

A bond given between private parties, in relation to certain lands covered by the Oregon donation act, construed 1034
There never was any usage in Oregon whereby an occupant who sold town lots within his claim by quitclaim deed was held a trustee to acquire title for his vendee 1034
A conveyance by a pre-emptioner where his entry was set aside, and no patent ever issued to him, is inoperative, either by way of grant or estoppel 260
A patent to a deceased person inures to the benefit of his successor in interest. (5 Stat. 31.) 1030
As between individual citizens, rights to the possession of public lands are protected by the courts, and acquiesced in by the government 996
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Location of land with scrip, under the act of July 17. 1854. passed the fee 1160
Under the Cherokee treaty of July 19, 1866, an actual settler upon the "neutral lands," whose rights were perfect on the date of ratification, could sell his improvements and rights to another 1109
The Pennsylvania statute of April 3, 1792, from the second to the tenth section, inclusive, is inapplicable to lands in Luzerne county 1123

Neither under the Pennsylvania statutes, nor on general principles, is a warrant on settled lands void; and the same will he good if the settlement is not followed up 1123

A settlement and improvement made under the Connecticut claim will not support the title 179

QUIETING TITLE.

Under Code Or. § 500, a party in possession cannot maintain the suit unless he shows some legal or equitable interest in or claim to the properly 523

RAILROAD COMPANIES.

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

Three railroad companies, whose roads terminated in Philadelphia, procured a charter for a continuous road to connect their termini, and took most of the stock in the new company. Part of the connecting road was built by one of the three companies upon its own land. Held, that this part was subject to use by the new company for the benefit of the other two roads and its own stockholders 1179

The Kentucky Improvement Company, which has authority under its charter (Act Ky. Dec. 14, 1865) to construct a railroad from its lands to the Ohio or the Little Sandy rivers or to connect with other railroads, is liable to be taxed as a railroad company 349

A charter authorizing counties intersected by the road, and counties intersected by any other road "with which this road may be joined, connected, or intersected," to aid in its construction, extends no such authority to counties intersected by a road passing through a terminus of the road in question, with which no arrangement for any connection or consolidation was ever made. 335

A subscription, made by a township in aid of a railway under a statute which has been declared unconstitutional because it required only two-thirds of the voters voting (Act Mo. May 23, 1868), while the constitution required two-thirds of all the voters in the township, is void, although the officers certify that two-thirds of all the voters voted for it *674

While the state of Missouri was in full possession of a railroad upon an express trust, to continue until state bonds loaned to the company were paid or exchanged, the county of St Louis was empowered (Act Jan. 7, 1865) to loan its bonds to the company, and the commissioner theretofore receiving the road's earnings was authorized to pay into the county treasury a sufficient sum to meet the interest on the county bonds. Held, that thereby the state waived its lien pro tanto in favor of the county, which became substituted thereto 425, 428

Subsequent mortgagees, with notice of the fact that the county had made the loan, and that it was still unpaid, were chargeable with notice of all that the acts authorizing the lien contained 425, 428
Noncompliance by the railroad company with the terms of an ordinance authorizing the execution and delivery of municipal bonds to it is no defense to a suit by a bona fide holder for value 161
Neither is the fact that the questions submitted to the voters embraced two distinct propositions a good defense 161
The reception of railway aid bonds from the company in payment for goods of a character adapted for use in the construction and operation of the road does not prevent the taker from claiming as bona fide holder 333
Act Pa. April 8, 1861, does not authorize the issue of bonds by a railroad company otherwise than for a new and adequate consideration, increasing the available funds of the corporation 280
Bonds issued by a railroad company, expressly pledging its personal and real estate as security, are in effect mortgages, valid, without recording, as against the railroad company and creditors or subsequent purchasers having notice 554
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Under equity rule 48, it is unnecessary to have all bondholders present in a suit to foreclose a railroad mortgage 382
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On a motion for the appointment of a receiver in foreclosure proceedings, the case cannot be heard upon its merits as at the final hearing 382
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To preserve a trust estate mainly within the jurisdiction, the court may remove ex parte a nonresident naked trustee, who cannot be served because he is in a hostile territory, and appoint another 414

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An agreement by a bank to pay the face of its bills is not usurious, though they are not depreciated in the market 939

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See also "Attainder"; "Martial Law"; "Prize"; "Treason."

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Where stock of a Virginia railroad company, owned by a citizen of a loyal state, was confiscated by a decree of a Confederate court, and dividends thereon paid to its receiver without protest, held, that the company was liable after the war for the dividends so declared, but to an amount equal only to what the Confederate money in which they were declared was worth at the time 357

All the inhabitants of the territory of the disloyal states are to be regarded as enemies of all the inhabitants of the loyal states, and the remedy for the recovery of debts owing by one to the other was suspended during the war 108

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There is a maritime lien upon a domestic vessel for wharfage, enforceable in admiralty 144

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A devise to "Zenas K. or his heirs; N. B. Ezra K. is to have a double portion of my estate more than Zenas K.'s other children,"—is a devise to Zenas K. and his heirs, but, in case of Zenas K.'s death before testator's, to such of his children as shall be living at testator's death, Ezra to have a double portion 639

A devise to W. as bishop of the Roman Catholic Church, or his successor, in trust for the benefit of the community attached thereto in which testatrix should die a member, held, not a good bequest to the Sisters of St. Joseph," as beneficiaries, and to K., successor to W., as trustee 75

Under the Louisiana Code, a particular legacy is a charge upon the whole estate in preference to all others; it descends to the heir as a personal debt when he takes possession 902

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