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**Procedure.**

It is immaterial that the vessel, if attached within the district, was out of the jurisdiction when the libel was filed, as the time of service of process is the commencement of the suit.

A claim by a seaman against the master for personal damages cannot be joined in the same libel with a claim for the fine imposed by the act of 1840. (5 Stat. 396.)

The admiralty rules prescribed by the supreme court relate merely to the remedy, and were not intended to affect jurisdiction.

The twenty-third admiralty rule requires that in petitory and possessory suits the proceedings shall be jointly in rem and in personam.

**AFFREIGHTMENT.**

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

Under ordinary bills of lading from foreign countries to New York, landing cargo at a proper time, upon a proper dock, with notice to the owners, is equivalent to delivery.

Such landing and notice do not free the ship from responsibility for her own wrongful act, as where she overloads the pier, and causes it to break, whereby the goods are damaged.

Freight on molasses to be estimated “gross customhouse gauge of cask” may be recovered on empty and broken casks, where they are customarily carried with bungs out to prevent fermentation.

Violation of an express stipulation not to take other cargo makes the carrier an insurer.

Violation of the contract, by deviation and taking other cargo, does not forfeit the freight, but creates liability for damages.

The mere fact that a vessel is wrecked does not vary the liabilities of the owner and master as common carriers, unless the property perished with, and in consequence of, the wreck.

In case of wreck, it is the duty of the master to forward cargo by another ship, if practicable; and his duty as a carrier is not ended until the goods are delivered at their destination, returned to the owner, or otherwise lawfully disposed of.

Where a vessel was wrecked upon the reefs, and the captain removed from a state room a box of gold, coin shipped under a bill of lading which excepted the perils of the seas, and placed it where the crew and wreckers had free access to
it, without personally looking after it, held, that the shipowners were liable for its loss.

A libel for loss or damage to cargo may be brought either in the name of the shipper or of an insurance company which has paid the loss or accepted an aban-
donment.

Damage to cargo, for which the ship is liable, may be recouped in a libel for freight, but respondents can have no decree for damage in excess of the freight. Where a steamboat with loaded barges approached a bridge too closely to back or stop, and was driven against a pier by a sudden gust of wind, held, that the carrier was not liable for loss of cargo.

The burden is upon the carrier to bring a loss or damage within the excepted perils. It is not sufficient to show merely that the vessel was stranded, but it must be shown that she was stranded by an unavoidable danger.
Goods will be presumed to have been damaged en route where it appears that they arrived in a damaged condition, and the shippers swear that they were in good order when loaded

**ALIENS.**

A state cannot make a foreigner a citizen of the United States

**APPEAL AND ERROR.**

When an appeal from a justice is not prayed on the day of trial, appellant must give at least 10 days' notice to the opposite party before the next sitting of the court authorized to try the same.

An order in railroad foreclosure proceedings, approving, only on certain conditions, a consent contract for the erection of a bridge, held not appealable.

A division in opinion between the judges holding the circuit court in respect to granting a new trial is not a case which can be certified to the supreme court.

The prayer for appeal, and an order granting it upon terms, is not evidence that the terms were complied with or the appeal prosecuted.

In passing upon a collateral branch of a case which has been to the supreme court, the circuit court will not admit that the supreme court made a mistake in regard to any facts actually passed upon.

Where defendant acquiesces in a reference, and appears before the auditor, and contests the claim, he cannot, on writ of error, object that the case should have been tried by a jury

**APPEARANCE.**

An appearance by persons whose names are alleged in the bill to be unknown, and who are designated by fictitious names in the bill, and subpoena served on them, does not cure these defects or make such persons parties on the record.

Appearance by attorney to set aside office judgment held not to waive irregularity of service.

General appearance by solicitors is a waiver of exemption from jurisdiction by a nonresident of the district.

Presentation of a petition for removal is a sufficient appearance to make the removal proceedings valid.

**ARBITRATION AND AWARD.**

Where, after vain efforts to secure agreement, the third referee refused to sign the award, and declared it unnecessary to ask him to meet again, held, that the remaining referees might make the award.

Under a general submission, referees are not bound to award on principles of law only, but may decide according to equity and good conscience.
If the submission be general, and the award be of a particular thing, it will be presumed that nothing else was in controversy unless the contrary appears.

In the case of common awards, the arbitrators cannot be called upon to disclose the grounds upon which the award was made.

In Pennsylvania it is the rule that awards of referees must be so plainly expressed that the parties may know precisely what they are to do. An objection otherwise fatal may be cured by averment of something dehors the award which renders it certain.

A general award cannot be impeached collaterally.

An award is conclusive upon all matters of fact, and a mistake of fact is no ground for setting aside the award; but when apparent on the face thereof, or when the arbitrators certify that they have made a mistake, and wish to correct it, the award will be recommitted for that purpose.

If referees refer a point of law to the court by spreading it on the award, the award will be set aside if they have mistaken the law; but if they admit the law, and decide contrary thereto, upon equity and good conscience, the award must stand.

**ARMY AND NAVY.**

A minor enlisted without the consent of his parent or guardian will be discharged on habeas corpus at the instance of his parent, guardian, or next friend.

**ARREST.**

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

A bankrupt on his way to the register’s office, for the purpose of being examined under an order previously served on him, is entitled to be considered a witness, and, as such, to be protected from arrest at the hands of a state court.

**ASSIGNMENT FOR BENEFIT OF CREDITORS.**

See, also, “Bankruptcy.”

Delivery of schedules is not necessary to the validity of the assignment.

An assignment of “all the goods, wares, merchandises, and personal property of every kind” belonging to the assignor, does not pass an interest under a contract.

The execution of a deed of assignment and the transfer of the property, under the New Jersey assignment act, constitutes the assignee a trustee in possession for the equal benefit of all creditors.

Recovery of judgment, and levy thereunder prior to the filing of an inventory and bond, but after the execution of the assignment, and after the assignee has taken possession, create no lien under the New Jersey assignment act.

**ASSUMPSIT.**

There can be no recovery in assumpsit if a special agreement be proved.
See, also, “Bankruptcy”; “Execution”; “Garnishment”; “Writs and Notice of Suits.” Under the Maryland act of 1795, it was not necessary to state in the affidavit and warrant that plaintiff was a citizen of the District of Columbia or of the United States or any state.
The rule applicable to a purchaser claiming land, with notice of a prior unrecorded attachment, does not govern where two creditors are proceeding by suit in invitum with knowledge of the attachments of each other; and each is entitled to any priority which he can lawfully obtain.
ATTAINDER.
The owners of estates wrongfully forfeited under Act N. J. Dec. 11, 1778, have no remedy by ejectment to recover the property forfeited, but can only proceed by writ of error according to the statute.

ATTORNEY AND CLIENT.
If defendant insists upon it, plaintiff's attorney must file his warrant of attorney as evidence of authority to bring the suit. Where payment of a claim to an assignee thereof by officers of the government will defeat an attorney's lien upon the fund, the court will enjoin the assignee from demanding payment without the attorney's consent.

BAIL.
See, also, “Arrest”; “Execution”; “Principal and Surety.”
In slander, appearance bail is not required if the affidavit does not state the words spoken, and that defendant is about to leave the district.
An affidavit that defendant is justly indebted to plaintiff in a sum certain for goods sold and delivered to a third person upon defendant's written guaranty is sufficient to hold to bail.
If the affidavit to hold to bail is sufficient, the court will not, on a motion to appear without bail, inquire into the merits.
If the principal is discharged under a state insolvent law, after judgment against him in the circuit court of the District of Columbia, the court of said District will discharge the bail.

BAILMENT.
See, also, “Carriers.”
One hiring a horse is bound to take such care of him as a prudent man would of his own.

BANKRUPTCY.
See, also, “Assignment for Benefit of Creditors”; “Insolvency.”
Operation and effect of bankruptcy laws, and of proceedings thereunder.
American bankruptcy laws have differed from the English in that they apply to any debtor, while the English law is applicable only to fraudulent traders.
One permitting himself to be held out as a partner may be adjudicated a bankrupt as a member of the firm.
A partnership consisting of husband and wife may be adjudicated bankrupts, and it seems the wife may also be adjudged individually bankrupt.
The bankrupt is not exempted from arrest, under process of a state court, on the charge of fraudulently contracting the debt there sued for. (Act 1867, § 26.)
A bankrupt is not entitled to be discharged from arrest under process of a state court where the claim there sued for was created by defalcation while acting in a fiduciary capacity. (Affirming 476.)

In determining whether the arrest of the bankrupt on process of a state court after adjudication of bankruptcy was founded on a debt or claim from which his discharge would not release him (Act 1867, § 26), the court can only look to the affidavits on which the order for arrest was granted and not to a complaint which was not before the state court at that time. (Affirming 476.)

A suit commenced in a state court, after adjudication, to enforce mortgages on property in possession of the assignee, may be enjoined. (Affirming 379.)

The bankruptcy court may restrain a prosecution of a suit in the state court against a marshal for seizing property as that of the bankrupt

The bankrupt court may enjoin a sale under a judgment and levy, even where the execution issued before commencement of the bankruptcy proceedings.

A surety who has paid money for a bankrupt in discharge of a customs duty bond has not the right of the United States to proceed against the person of the bankrupt, but only against his effects. (Act 1800.)

**Jurisdiction of courts.**

Under the act of 1842 the proceedings can be had in a district other than that of the bankrupt's residence only when it appears that he has a fixed and notorious employment, denoting a place of business in such other district

The circuit court has jurisdiction to revise, correct, and reverse rulings of the district court

The district courts have no power to make general rules under the act of 1867, such power being vested elsewhere by section 1 thereof

**Register—Powers and duties.**

The register has authority to allow an order for the examination of the bankrupt under Act 1867, § 26

In a case referred to him under the rules of the court, the register has the powers of the district judge in all uncontested administrative matters

**Commencement of proceedings—Voluntary bankruptcy.**

Under the act of, 1841, a proceeding upon the debtor's petition was not ex parte.

Under Act 1867, § 37, authority to file a petition in behalf of a corporation can only be given by a vote of a majority of the stockholders, even if the management of the corporate affairs is vested in a board of trustees

A voluntary petition, filed in behalf of a corporation without express authority by a vote of the stockholders, gives the register no jurisdiction; and a ratification by the stockholders, after adjudication, does not cure the defect.
—Involuntary bankruptcy.

A petitioning creditor’s debt, which is certain and liquidated, though payable in future, will support a decree in bankruptcy. (Act 1841.)

In involuntary proceedings against a partnership, one of whose members is a married woman having separate property, it is not necessary to join her husband.

The absence of an allegation as to the number and amount of the creditors joining in the petition is not supplied by an admission in writing of the debtor, not duly authenticated, and shown to have been made in good faith.

Where verifications are knowingly false, the petition will be summarily dismissed, and an injunction issued thereon will be vacated, though part of the petitioners were free from fraud.

A petition on which issue was taken and a jury had rendered a defective special verdict, without a general verdict, at the time the amended act of June 22, 1874, was enacted, should be considered as a pending case, to which the retroactive provisions of the amended act applied.
If the petitioning creditor fails to prosecute, another creditor may intervene and prosecute the petition, and his right to do so cannot be defeated by any settlement whereby the petitioning creditor attempt to withdraw the petition.

On such intervention, the case proceeds upon the original petition, and the adjudication will operate upon preferences given within four months before it was filed.

The burden is on the creditor to prove that the debtor procured or suffered his property to be taken on legal process with intent to give a preference.

The bankrupt cannot be examined as a witness, either to support the petition in bankruptcy or to defeat it. (Act 1842.)

A petition by a member of an insolvent firm who was adjudged a bankrupt and his assignee to bring the other members in for adjudication, held entitled to consideration.

**Acts of bankruptcy.**

Repayment by insolvent insurance company of unearned premiums upon termination of a policy, is not an act of bankruptcy, if done without thought of creating a preference.

Members of a commercial partnership owned jointly a plantation, and, not being indebted individually, they mortgaged the same, without consideration, to defraud firm creditors. *Held,* an act of bankruptcy.

An assignment for the benefit of all creditors, generally, is not an act of bankruptcy.

An assignment for benefit of creditors, at a time when a judgment is about to be recovered against the assignor, is not a conveyance with intent to delay, etc., unless made with such intent.

Notes given in settlement of partnership accounts, on dissolution of a manufacturing firm, are not commercial paper given in the course of business, nonpayment of which would constitute an act of bankruptcy.

The running of the 14 days, necessary, after stoppage of payment of commercial paper, to make an act of bankruptcy, cannot be prevented by making an assignment for benefit of all creditors.

**Adjudication.**

In making an adjudication, the court need not formally determine whether the requisite proportion of creditors in number and amount have joined in the petition.

The rights of the parties are fixed at the date of adjudication in bankruptcy.

An adjudication relates back to the time of filing the petition, and carries to the assignee title to all property which the bankrupt then had.
Service of a copy of the order of adjudication by publication is a right personal to the bankrupt, and delay therein should not retard the general course of proceedings.

The mere service of an injunction upon a person does not give him the right to contest or vacate the adjudication.

A delay by a creditor of two months and a half, after discovering that the proceedings were instituted by collusion, is not necessarily laches, which will prevent him from moving to set aside the adjudication.

That the bankrupt caused an involuntary petition to be prepared and presented to creditors, who signed and verified it without inquiry, held to show a prima facie case of collusion, warranting a reference to take proofs, under a petition to set aside the adjudication.

Warrant: Notice: Meeting of creditors.

If the marshal undertakes the service of the warrant, the service of the order of adjudication is a necessary incident thereto, though not embraced within the command of the writ.

The return of such service may be made wholly on the warrant, or separately on the warrant and order of adjudication.

The mere fact of an attorney verifying proof of debt for a firm, and swearing that he was duly authorized thereto, does not show authority to appoint another to act for the firm at a creditors' meeting in bankruptcy proceedings.

Assignee—Appointment and removal.

The vote for assignee will not be postponed to allow other creditors to prove their claims, unless by consent of those who have already proved.

No particular manner is prescribed of voting for an assignee. It may be by ballot, viva voce, by calling the name of each creditor, or by calling upon the persons representing them to name their choice.

Creditors whose proofs of claims have been postponed, and who have not been allowed to vote for assignee, may have the proceedings certified to the court; and, if the postponement be held erroneous, the choice may be set aside, and a new vote taken.

Creditors proving claims filed after election of assignee cannot vote, to change the result of an election appealed from.

—Rights, duties, and liabilities.

The assignee will not be ordered to amend his return when no reason is shown why the proposed amendment should be made.

Property of bankrupt—What constitutes.
A husband has no interest, which can pass to the assignee, in his wife's contingent estate in remainder under a will. English and American bankrupt laws compared.

The fee-simple title in a street, subject to the public easement, is "property," which would vest in the assignee under the act of 1842; and where the street terminated in a lake, the right to subsequent accretions passed, with the title, to the assignee's grantees.

A transfer of promissory notes by the payee, pending bankruptcy proceedings against him which result in an adjudication and an injunction against disposing of his property, vests no title in the purchaser, though he had no actual notice of the proceedings.

--- Custody and control.

When a petition for injunction against third parties is united with a petition in involuntary bankruptcy, the injunction will be only provisional until the debtor is adjudged bankrupt, and a bill must then be filed against such third parties.

After adjudication, and before selection of the assignee, a temporary receiver may be appointed under special circumstances.

Injunction granted to restrain certain persons from collecting rents from real estate in which the bankrupts had a legal or equitable interest, and a receiver appointed.

A receiver appointed to care for the property, until the selection of an assignee, cannot sue to recover property fraudulently transferred; and if he commence such suit, the assignee will not, on motion, be admitted to prosecute it.

An involuntary bankrupt, who swore that he had sold certain notes and spent the proceeds before an injunction was served on him, and whose testimony was utterly discredited, ordered to turn over the amount within five days, on pain of attachment for contempt.
—Exemptions.
The amendment of March 3, 1873, in relation to exemptions, is constitutional
Where no homestead was allowed by the state laws, none can be allowed either
under the act of 1867 or that of 1872
The application for the exemption allowed by the act can only be made before
obtaining the discharge
Jewelry is not exempt as wearing apparel
—Wife's claim.
Jewelry acquired by the wife, either before or after her marriage, if suitable to her
condition, may be retained by her. (Act 1841.)
The wife of a bankrupt is not entitled (in North Carolina) to claim dower in land
owned by the bankrupt when he filed his petition, he being still alive
—Liens.
Judgment creditors, obtaining an advantage by execution and levy, will be pro-	ected, although at the time they may have had doubts as to the debtor's solvency
Where a chattel mortgage is void as to creditors, because not recorded as re-
quired by law, where the possession is not changed, the mortgagee cannot help
his case by taking possession after knowledge of the mortgagor's insolvency
A person's rights as mortgagee of a stock of goods are not impaired by a sale to
him which is void under section 35, Act 1867
A mortgage given by a railroad company to an association of which its president
and vice president were secret members, held constructively fraudulent; but the
mortgagee allowed to prove its advance to the railroad company as an unsecured
debt
The assignee need take no proceedings in respect to personal property mortgaged
beyond its value, and he has nothing to do but designate the exempt property
—Sale.
The court possesses no power to summarily order a sale of property claimed for
the bankrupt, but in the actual possession of a third person claiming absolute title
The bankruptcy court has jurisdiction to order a sale free of incumbrances, and the
proceeds will stand as a substitute for the land for the benefit of lien holders.
(Act 1867, § 20.)
The court will authorize a private sale of land, with power to make good title,
but will hold the assignee responsible for neglect to obtain the best value
An order should not be made authorizing a private sale of land on credit, or for
less than the amount claimed by an incumbrancer, without the latter's consent,
or a submission of the terms of sale to the court, on notice to him
Proof of debts.
Retiring partners held not entitled to prove, against the estate of the new firm, unliquidated damages arising from their liability on the covenants of a partnership lease.

A claim for alimony, whether accruing before or after commencement of proceedings, is not a provable debt, and enforcement thereof cannot be stayed by the bankrupt court.

A debt barred by limitation in the state where the bankrupt resides, and where his petition is filed, cannot be proved.

A proof of debt is not open to objection because it appears that the statute of limitations, if set up, would be a bar.

Entering on the schedule a debt barred by limitation is not an acknowledgment or new promise.

That there is usury in a judgment sought to be proved, and that the bankrupts did not defend against it on that ground, is not available to the assignee, where no fraud or collusion therein is alleged.

One holding the bare legal title to a note cannot set off against it a debt which he owes the bankrupt.

Where a debtor, holding the legal title to a note as trustee, deducted a debt due from himself to the bankrupt, and proved for the remainder, held that he had proved for too little, and the proof would be expunged without prejudice to his proving the whole note as trustee.

No proof can be made between the joint and separate estates of partners in respect of money drawn out without fraud by one partner, or of goods sold to him by the firm, though he was to sell them again.

A creditor selling a note of the bankrupts to their agent for less than its face, intending to compromise his claim, cannot prove for the balance.

An agent of the bankrupts who purchased their note for less than its face cannot prove for the balance.

A judgment procured against three persons as partners may be proved against the estate of two, regarding the other as a surety, where the third was held, in the bankruptcy proceedings, not a partner.

A bona fide taker of commercial paper may prove the same on showing that he paid a valid consideration, without showing the consideration between the original parties.

A pledgee in good faith and for value before maturity of promissory note can receive dividends from the estate of the bankrupt makers only for the amount for which he holds them in pledge, where the equities between the original parties would prevent the pledgor from proving them.
A settlement with the insolvent pledgor, by which the notes are taken as payment for a certain sum, will not prevent proving them against the estate of the bankrupt makers.

A chattel mortgagee, against whom the assignee obtained a judgment for the value of the property, on the ground that he was guilty of actual fraud in taking possession and selling the same, only allowed to prove a moiety of his claim.

Creditors, who were also debtors to the bankrupt in an amount less their claim, held, should be allowed to withdraw their proof, pay back a dividend received, and file new proof of their claim as secured, to the extent of the amount due from them.

A secured creditor who proved his debt under a misapprehension of the effect thereof, allowed, under special circumstances, to withdraw the same.

A creditor who secures a preference by obtaining property applicable to his whole debt, and indorses the payment as made only on part of the notes held by him, will nevertheless be prevented from proving his whole debt, and not merely the notes upon which the payment was indorsed.

A creditor who, having reason to believe that his debtor could not pay his debts in the ordinary course of business, secured from him goods and accounts against third persons to be applied on his debt, and indorsed on his notes sums so received under false dates, and who failed to surrender the property to the assignee, held not entitled to prove his debt, having secured a preference contrary to the provisions of the act.
A preferred creditor may surrender (Act 1867, § 23) at any time before judgment against him in a suit brought by the assignee, and his right to prove his debt will not be affected by the commencement or pendency of such suit. Proof taken before a notary public, who is the attorney and solicitor of record for the bankrupt, will not be allowed to be filed.

A note evidencing a debt must be produced when required by the assignee, register, or the bankrupt. Not so, however, if the note has been merged in a judgment.

Postponement of proof of claims affects no right of the creditor, except the right to vote for assignee.

Allowance or rejection of claim.

An appeal by a creditor from a rejection of his claim cannot be supported, if not claimed and noticed within 10 days from the decision.

The fact that certain creditors had made a champertous agreement with a third party for the collection of their debts from the bankrupt held no obstacle to the allowance thereof.

Payment of debts: Priority: Dividends.

Where a voluntary assignment in good faith for benefit of creditors is set aside by subsequent bankruptcy proceedings, the assignee will be allowed the necessary expenses of administering the estate while in his hands.

Such assignee has no priority for his compensation or attorneys' fees.

Persons purchasing proved debts, as agents for the bankrupts, held entitled to subrogation to the lights of the creditors to the amount actually paid.

One purchasing imported goods, and being compelled, in order to obtain possession thereof, to pay duties which the importer was to pay, is entitled, on the importer's bankruptcy, to be substituted to the priority of the United States, although he has proved his claim as unsecured.

Where there are no partnership assets and no solvent partner, both partnership and individual debts may be proved, and the estate distributed pari passu.

Prior attachments are not discharged by the bankrupt law, in favor of a subsequent judgment and levy.

Where payment of a dividend to a creditor has been delayed, through objections by other creditors or the trustee to the claim, interest should be allowed from the time it became payable.

Where interest becomes due to a creditor on a dividend, in consequence of delays attributable to the assignee or other creditors, the rate will be the legal rate in the state, where the assignee has not applied to have the money set aside or invested pending reexamination of the claim.
Where, upon appeal from an order allowing interest at 7 per cent, on a creditor's dividend, the creditor procured an order directing the trustee to deposit the money with a trust company pending the appeal, held that this was no waiver of his right to full interest.

**Examination of bankrupt, etc.**

A nonresident creditor becomes subject to the jurisdiction by proving his debt, and is bound to obey an order to appear for examination touching the same, and in case of disobedience, his claim may be stricken out.

If a nonresident creditor, whose claim is contested, cannot personally appear, without hardship, an order will be made for his examination before a register of the district in which he resides.

A bankrupt cannot refuse to be sworn merely by reason of claiming that he has an offset which extinguishes the creditor's debt, and desires to file a petition for re-examination of the claim.

The assignee's application for examination of the bankrupt need not be verified by affidavit, or specify the reasons therefor, or the matters to be inquired into.

The bankrupt may be examined to show that the debt of the examining creditor was fraudulently contracted.

The bankrupt may decline to answer, if the answer would incriminate himself.

It seems that, since the act of February 25, 1868, the bankrupt cannot refuse to testify on the ground that his answer might criminate himself; but the privilege of communication between client and solicitor is still protected.

The bankrupt cannot consult with his counsel as to the answers to be made to questions propounded to him.

A witness who purchased claims against the estate, being examined as to where he obtained the money paid therefor, and having answered that it did not come from the bankrupts, held bound, on pain of contempt, to state where he did obtain it.

The register cannot make a binding decision, or compel a witness to answer; and, when required, he must take and report testimony which he deems inadmissible.

**Costs: Fees: Disbursements.**

The creditor on whose petition the adjudication is made is entitled to receive out of the assets a reasonable attorney's fee, before payment of any dividends, but he is not entitled to this preference for expenses in attending court.

Reasonable compensation to the solicitor of a voluntary bankrupt in preparing the petition and schedules should be allowed out of the assets.

An application for such allowance will not be entertained after the filing of the assignee's account and an order for a meeting of creditors for final dividend.

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The register has authority to make an order directing the assignee to pay fees to court officers.

**Discharge—Proceedings to obtain.**

“Other persons in interest,” to whom notice of the application is required to be given by the act of 1841, construed.

The bankrupt is entitled to a discharge without the assent of his creditors if his gross assets equal 50 per cent, of proved debts, without deducting costs or expenses. (Act July 27, 1868.)

The amendment of 1874, in relation to the discharge of bankrupts, applied to pending cases.

Application of the provision in section 48 of the act of 1867, in respect to excluding from computation of time Sundays or holidays, when the last day falls thereon.

——**Opposition: Acts barring.**

A creditor who has not proved his debt cannot file objections and make opposition to the discharge.

An exception to the competency of a creditor to present objections to the discharge, on the ground that he had not proved his debt, should be taken before the court when the objection was offered, and if presented for the first time to the commissioner, he may disregard the same. (Act 1841.)

A specification in opposition to a discharge under section 29 must allege willful false swearing as well as willful omission from schedule.

An act of bankruptcy committed a long time before the passage of the bankrupt act is no ground for refusing a discharge.
A general assignment for the benefit of creditors without preferences is an act of bankruptcy, and will defeat the discharge, irrespective of the time when made.

Suffering an adjudication of bankruptcy by default is without prejudice to the right of discharge.

Departure from the district before submitting to examination under an order will prevent a discharge until rectified by submission to examination.

A willful omission to state a debt due from the bankrupt in his schedule is ground for refusing a discharge.

A failure to keep proper books of account is no ground for denying discharge where the bankrupt carried on a cash business, and had no debts, assets, or capital outstanding.

—Scope and effect.

A decree and certificate of discharge, under the act of 1841, is conclusive, unless fraud in obtaining them is averred.

Discharge bars the debt of a creditor whose name was not on the schedules and who had no actual notice of the bankruptcy proceedings.

The default of a factor in not making payment to his principal is not a fraud, nor is the debt one created “while acting in any fiduciary character,” within the meaning of section 33.

Only technical or special trusts, as contradistinguished from those which the law implies from the contract, are within the meaning of section 33.

Prohibited or fraudulent transfers.

A transaction out of the ordinary course of the debtor’s business, whereby a preference is given, is prima facie fraudulent.

Regard must be had to the nature of the property sold in determining whether a transfer is made out of the usual and ordinary course of business.

The validity of a deed executed by an officer of a corporation without authority, and subsequently ratified by the corporation, must be determined by the circumstances existing at the time of the ratification.

An act which the statute declares shall be prima facie evidence of fraud must be deemed contrary to its provisions, unless the presumption is repelled by opposing proofs.

A fraudulent transfer takes place when an insolvent debtor suffers property to be taken on legal process, with intent to give preference, and the creditor takes the same with reasonable cause to believe that the debtor was insolvent and intended a preference.
A creditor, having before him what the statute declares to be prima facie evidence of fraud, will be deemed to have reasonable cause to believe in the existence of such fraud, until the presumption is overborne by opposing evidence.

Circumstances which would be reasonable cause for belief in insolvency or fraud in a commercial community may have less significance in a rural district.

A sale of a stock of goods and fixtures to a creditor, who gives his note for the excess over his claim with knowledge of the insolvency of the debtors, is void.

A sale at a fair price of property to raise money to defray expenses of contemplated bankruptcy proceedings is not invalid.

A sale for $7,000 of mortgages amounting to $10,000 received in payment of a stock of goods, held not fraudulent.

A delay of more than three months in filing the petition in bankruptcy, after the making of an assignment for the benefit of creditors, will prevent the assignee in bankruptcy from obtaining possession of the assigned property.

**Suits and proceedings in relation to the estate.**

The assignee cannot sue to recover a preference in a circuit court for a different district than that in which the proceedings are pending.

A district court of a district other than that in which bankruptcy proceedings are pending has no jurisdiction of an action by the assignee to recover assets.

The two-years limitation provided by section 2 of the bankrupt act of 1867 applies to a petition filed by the assignee in the bankruptcy court to recover assets, as well as to a formal action at law or suit in equity.

Said limitation does not apply where the other party claims no interest in the property, but merely asserts a personal indebtedness.

The district court has jurisdiction of an action by an assignee to recover a balance due from a principal to the bankrupt as factor at the time of the presentation of his petition in bankruptcy.

A suit by the assignee to set aside certain transfers as in fraud of the bankruptcy act is maintainable, notwithstanding the property is in his possession after seizure by the marshal.

A proceeding by the assignee to have a mortgage declared invalid, and a state court enjoined from foreclosing the same, should be by formal bill rather than by mere petition.

A bill by an assignee in bankruptcy to recover notes alleged to have been transferred in violation of the bankrupt act need not directly allege an adjudication of bankruptcy, where it sets out the filing of the petition, the appointment of the assignee, and the assignment to him.
An order of assessment by the court, upon the premium notes of a bankrupt insurance—company. does not bind the maker of such a note, so as to preclude him from disputing its validity when sued thereon by the assignee

**Arrangement with creditors.**

Only those creditors who prove their claims are competent to take part in proceedings at a composition meeting. At a second meeting either party may furnish competent testimony on the question whether the composition is for the best interests of all concerned. The court will interfere where the vote would have been otherwise had the facts been honestly and fairly laid before the creditors. The court will withhold its assent to the composition, if satisfied from evidence that the proceedings are collusive, although there is only one dissenting creditor. A composition agreement, whereby creditors accept payment in notes, is bad, though payment by installments secured by notes would be valid. A provision in a composition agreement, that it is not to be binding on any one unless signed by all creditors, includes secured as well as unsecured creditors. Delay in paying composition notes, occasioned by legal or other difficulties, does not ipso facto avoid the composition, nor does failure to pay one creditor according to the composition forfeit the bankrupt's rights as to creditors punctually paid. Where it appears that the ordinary administration would not change the result, the composition will be confirmed, in the absence of proof of collusion.
Any creditor may testify that he has been induced to sign the resolution by the false statements or evil practices of the debtor
The register who presides at a composition meeting may examine and pass upon a disputed claim, subject to review by the court
One who advanced money with a mere understanding that it was not to be pressed for payment, held entitled to share in the debtor's estate under a composition deed in the usual form
Moneys payable under a composition cannot be attached, or their payment obstructed, by proceedings of another court for the security of a suitor therein
The court will not suspend or deny a creditor's right to receive his composition, except in favor of one who claims a specific lien thereon, or who has procured the appointment of a receiver to take the creditor's title

BANKS AND BANKING.

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

A cashier has authority by custom to assign or accept bills of exchange for the bank
An unauthorized discounting, by the president of a bank, of a note payable to the cashier, held to have been ratified by the bank in drawing for the proceeds, through its cashier, and in approving, by its cashier and vice president, a statement of the account sent to them by the discounting bank
A banker has a lien for all securities of the debtor in his hands for the general balance of his account, where not inconsistent with the actual or presumed intention of the parties
An undertaking by a bank to "collect" is not merely an undertaking to select a suitable agent, and transmit the paper to him, but to answer for any default of such agent
A bank undertaking to collect a draft for another bank is liable for the proceeds, although the agent selected by it to make the collection failed while the proceeds were in his hands
On the winding up of a bank, held, that stockholders who had paid their subscriptions in full were entitled to a return of the excess over what was paid by others, before ratable distribution, notwithstanding that dividends had been paid in proportion to the amounts paid in
A national bank cannot take a mortgage upon real estate as security for a debt concurrently created or for future advances. (Act June 3, 1864.)
The directors of a national bank have authority under the statute (Act June 3, 1864, § 8) to forbid any stockholder indebted to the bank, whether as principal or surety, to transfer his stock without the consent of a majority of the directors
BILLS, NOTES, AND CHECKS.

See, also, “Banks and Banking.”

What constitutes a promissory note.
A promise to pay a specified sum, with current exchange on New York and expenses of collection in case of suit, is not a promissory note 1081

Validity.
A bond to convey land is a good consideration for a promissory note, although the obligor has not the legal title when the note becomes due 1080
A duebill by an agent to his principal for money received for the sale of lottery tickets, in violation of a state statute, cannot be sued upon 1061, 1116

Acceptance.
The acceptance of a draft drawn on another “if in funds” is evidence of the possession of funds of the drawer 279

Indorsement and transfer.
A pledgee in good faith and for value before maturity is a bona fide holder for value 277

Demand: Notice: Protest.
If demand is made on Saturday, and notice by mail would reach the indorser on the same evening, it is too late to mail the notice on the following Monday 522

Release or discharge of indorser.
Giving time to the maker of a promissory note, after judgment against both maker and indorser, does not discharge the indorser 553

Actions.
Demand at the place named need not be averred in an action against the party primarily liable. Readiness to pay is matter of defense 302
A judgment in an action on a bill of exchange will not be arrested because the declaration fails to allege a consideration if the instrument as declared on imports a consideration 279
Where a note was indorsed by two persons, held, that an averment that it was indorsed by defendants by the name of A. and B. was sufficient without averring that they were partners, for they assumed a joint liability whether they were general partners or not 303
In an action by the indorsee against the indorser, it is necessary to prove only the indorsement, and not the execution of the note by the maker 303
In an action by an indorsee against an indorser, the maker is a competent witness to prove usury in the contract, unless he is interested 791
A discharge in insolvency will not make the maker competent, for in case of recovery he would be liable over, as upon a new cause of action 791
In an action by the drawee against the drawer, the acceptor, after being released by the drawer from liability for costs, is a competent witness to prove that the bill was drawn for the indorsee's accommodation without consideration.

In an action on the case by payees and indorsers of a bill of exchange, to recover from the acceptor the amount of the accepted bill, plaintiffs cannot recover damages and costs paid by them in a suit against them by the indorsee of the bill, there being no money count in the declaration.

An indorser is not entitled to recover of the drawer damages incurred by nonacceptance, unless he has paid them or is liable to pay them.

**BILLS OF LADING.**

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

A bill of lading in the usual form is a mere receipt for goods, and a different contract may be shown by parol.

As between the original parties, the carrier may show that the property receipted for was not all received by it.

The carrier is not liable to the shipper for a deficiency from the amount receipted for where it has delivered to the consignee all of the property received for shipment.

The fact that the shipper gave an order to warehousemen for the cargo, and then settled with them on the faith of the bill of lading, does not change the rule.
Construction of clause providing for shipment on other vessels of the same line if prevented by any cause from shipping on the vessel named
Under a bill of lading giving the vessel the right to store the cargo at the consignee's risk and expense, where it is not taken from alongside "immediately the vessel is ready to discharge," the consignee in the case of boxwood scattered through the cargo, having been used as dunnage, must receive the same as it is unloaded from day to day
Under the common bill of lading, there is no liability for loss due to deterioration, arising from the nature of the article, when stowed in the manner sanctioned by usage.
But, if there has been want of proper skill and care by the carrier, the damage will be ascribed to negligence
A stranding caused by mistaking a shore light for a pier light on entering on a dark night, with a heavy sea and high wind, a harbor to which access was not usually dangerous or difficult, held within the exception of dangers of navigation. Embezzlement is not a "peril of the sea"; neither is theft or robbery, except where it amounts to piracy, which is not the case when committed by persons coming on the ship when she is not on the high seas
Damage by rats is not a "peril of seas and navigation," within the meaning of a bill of lading
In a voyage from a port known by the master to be infested with rats, the keeping of cats on board is not sufficient to excuse the carrier from liability

BONDS.

See, also, "Counties": "Municipal Corporations"; "Principal and Surety"; "Railroad Companies."
Under an order requiring claimants to prove their bonds before a master, presentation by an agent or attorney is sufficient, though the proofs were taken in another state, if no suspicion has been thrown upon the bona fides of the bonds. Claimants presenting negotiable bonds to a master, pursuant to an order of the court, are presumed to be bona fide holders until evidence tending to negative that presumption is introduced
The holder of coupons payable to bearer may sue thereon without producing or being interested in the bond from which they were cut
Coupons declared on should be identified in the declaration by the number of the bond, date, sum, and time of payment

BOTTOMRY AND RESPONDENTIA.
The master who is also part owner may create a bottomry on his own interest without the existence of any necessity for a bottomry
The master cannot hypothecate the cargo without assent of the owner on notice of all the essential facts where communication is practicable. Where the master of the vessel which put into St. Thomas in distress failed to communicate with the cargo shippers at Rio de Janeiro or the consignee at Philadelphia by telegraph, held, that a bottomry bond on the cargo to raise money for repairs was void. It is no objection to a bottomry by the master for necessary repairs in a foreign port that the loan was effected after the same were made. Where the necessity for the repairs is shown, claimant has the burden of showing that the money could have been obtained otherwise than by bottomry.

See “Counties.”

See “Factors and Brokers.”

CARRIERS.

See, also, “Affreightment”; “Bills of Lading”; “Charter Parties”; “Demurrage”; “Railroad Companies”; “Shipping.”

There is no difference in point of law between common carriers on land and common carriers by water. Carriers by water on the Mississippi river are subject to the full liability of common carriers. A carrier by water must provide a seaworthy vessel for the voyage and cargo. He is bound to know the condition and strength of the vessel. The vessel is not entitled to compensation for storage, wharfage, and incidental expenses of loading where the cargo is returned to the shipper on notice of an embargo being given after it was all loaded, but before the bill of lading was signed.

A charter requiring a railroad company to transport “all merchandise and property” does not oblige it to become a common carrier of money. Transportation of money for an express company, under a special contract, does not make a railroad company a common carrier thereof. If coin is so packed as to deceive the carrier as to the contents of the package, he is not liable as a common carrier. But, if there is anything from which he might infer that the box contains money, he is bound to inquire in regard to it. If the circumstances under which property is received relieved from the responsibility of common carriers, there is yet an implied contract for ordinary care. A railroad company receiving goods from a connecting road is liable to the owner for failure to deliver them.
CERTIORARI.

Certiorari from the circuit court of the District of Columbia to a justice of the peace is the proper remedy, where the latter is proceeding in a case in which he has no jurisdiction.

CHARTER PARTIES.

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

Under a charter party giving the whole capacity of the ship, the owner is not a common carrier, but a bailee for hire.

Where the ship is to be navigated at the expense of the owners, and the whole tonnage is not let, the charterer is not owner for the voyage.

Where the covenant is to proceed to a foreign port, take in cargo on account of the charterer, and bring it to the United States, and, when the ship reaches such foreign port, the charterer declines to put any cargo on board, the ship is released, and may take other cargo on the return voyage for the account of her owners.
Under the charter of a vessel to carry a load of coal from Baltimore to Pawtucket, charterers to pay three dollars a ton, “with towage from Providence to Pawtucket,” the charterers are not bound to furnish the towboat.

A charter party for a cargo of merchandise from Calcutta to Boston, prescribing no mode of stowage, tacitly refers to the established and known usage of the trade.

A provision that, “during the obstruction of navigation by ice, lay days are not to be counted,” applies to ice which prevents lading of the vessel as well as to such as prevents her going to sea.

The liability of the owner to a charterer of the entire vessel is not varied by the fact that the master gives a bill of lading in common form.

Under a charter party, the shipowner has a lien for his freight unless the charter contains provisions inconsistent therewith.

The fact that a charter party contains a clause giving five and ten days’ credit after “discharge” of the homeward cargo is not inconsistent with the retention of a lien for the freight.

Giving promissory notes for money due under a charter party discharges the shipowner’s lien if the notes are accepted as payment.

The charterer is liable for an injury to the vessel sustained in a voyage not authorized by the charter party.

A broker negotiating a charter cannot afterwards assert a claim so as to interfere with the voyage, but may enforce it if the vessel is properly arrested by a third party.

**CHATTEL MORTGAGES.**

See, also, “Bankruptcy.”

A mortgage upon a stock of goods authorizing the mortgagor to sell and replace them in such manner as he may determine, and use the proceeds as he sees fit, is void.

Such power of sale may be proved by parol, or inferred from circumstances and the conduct of the parties.

A mortgage covering fixtures, a stock of goods on hand kept for sale, and all such as should afterwards be purchased and put into the store, may be valid as to the fixtures while void as to the goods.

A recorded chattel mortgage upon merchandise and fixtures, the mortgagor to remain in possession, with implied permission to sell the merchandise, but not the fixtures, is void in Missouri as to the merchandise, but valid as to the fixtures.
In Michigan the mortgage must be filed in each township in which any of the mortgagors reside, to render the same valid as against creditors where the mortgagors retained possession.

**CITIZEN.**

See, also, “Aliens”; “Courts”; “Indians”; “Removal of Causes.”

An American citizen has two classes of privileges: (1) Those which he has as a citizen of the United States; and (2) those which he has as a citizen of the state where he resides.

**COLLISION.**

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

**Nature of liability—Contributive fault.**

The owners of the vessel at fault are not exonerated from liability by having a licensed pilot on board.

Inevitable accident occurs only when the collision results from natural causes, without any fault of the owners or the crews of either vessel.

A faulty maneuver in a moment of peril, brought about by the fault of the other vessel in not giving way under the rules, will not render the vessel liable.

Where there is a reasonable doubt as to which vessel was in fault, the loss must remain where it has fallen.

**Rules of navigation.**

Nothing in the rules will excuse neglect of precautions required by ordinary practice of seamen or the special circumstances.

**Between sail vessels.**

When sailing vessels are meeting “end on or nearly end on,” so as to be governed by the eleventh sailing rule.

**Vessels moored, etc.**

A vessel in motion colliding with one at anchor in the daytime is presumptively in fault.

A vessel which is merely passive, as where the collision is caused by the swell of a passing steamer, is not to be held in fault.

Anchoring directly leeward of another vessel, a distance of 125 fathoms, is not of itself negligence.

Vessels anchoring in Hampton Roads, within the area described in the United States coast survey charts as “the usual anchoring ground,” cannot be held in fault because lying within the customary track of steamers.

An anchoring place designated by the harbor master of Boston is a proper anchorage, though in the channel.
An anchor watch is not bound to take active measures to get his vessel out of the way of a vessel approaching in daylight under command, or to hail the latter unless he discovers that his vessel is not seen.

River and harbor navigation.

During a high stage of water in the Ohio river, a descending steamboat should keep near the middle of the river without regard to the channel.

A steamboat descending the Ohio river 200 yards from the Indiana shore has no right to signal by one tap of the bell, and attempt to take the starboard side of another boat near that shore.

The rule requiring the up-stream boat to give the first signal to indicate its choice of sides does not apply when there are 18 feet of water above the bars.

It is gross fault for a sailing vessel to attempt to run into New York harbor on a dark night, in a northwestern gale, without a pilot.

Speed: Fogs.

Thick fog in the morning will not excuse a steam ferryboat for colliding with a schooner anchored near her track, and which she had seen and passed repeatedly during the night.

Lookouts, officers, etc.

Where the accident would not have happened but for the absence of a lookout, the vessel thus in fault will be held solely liable where the other vessel had the right of way.
No fixed position is established by law as the place where the lookout must be in the forward part of a vessel under way, but he must have a free vision over each bow and ahead of the vessel. The pilot of a sailing vessel held in fault for going aft, after watching for a time the light of a vessel which would pass very near, although his own vessel had a right, under the rules, to keep her course.

**Particular instances of collision.**

Between sail vessels, where one was *held* in fault for failing to keep her lights brightly burning and to have some person specifically stationed as a lookout.

Between vessel shorthanded, hove short, before making sail, and vessel anchoring 125 fathoms to leeward, where former was *held* solely liable for adopting improper method of getting under way.

Between schooner and bark in the North Sea, where the latter; being on the port tack, was *held* in fault for not keeping away.

Between sailing vessels, one having the wind two points free, the other close-hauled; both *held* in fault, the former for porting so as to cross the latter’s bow, the latter for negligent lookout.

A steamer colliding with a schooner, on opposite courses, where each was plainly visible to the other, held solely in fault for failure to keep out of the way.

Between steamer and schooner in New York harbor, steamer *held* in fault for porting her helm, the schooner having kept her course.

A schooner which suddenly came round and made across a steamer’s bow, though warned off, *held* in fault for the collision.

A vessel struck by a schooner while anchored in or near the edge of the channel, without displaying lights, held in fault.

Where a canal boat was injured by striking the anchor of a schooner suspended under water at a pier, *held* that both were in fault.

**Procedure.**

A charterer may maintain a libel against another vessel for collision.

A general allegation of negligence on the part of libelant’s vessel is insufficient to constitute a defense.

An owner of goods lost in collision, in order to recover against the other vessel, must show that the vessel on which they were shipped was free from fault.

Testimony of passengers, who have no practical knowledge of seamanship, should be received with caution.

Evidence of disinterested witnesses in favor of libelant is not overcome by testimony of an equal number of interested witnesses for respondent.
The identity of a colliding vessel held established by the testimony of her master that he passed the place in question about the time of collision, and struck an unknown vessel.

**Rule of damages.**

Damages may include further repairs where the first repairs are found insufficient after a voyage.

Damages for detention may be estimated at the market value, though the vessel was under charter.

**Division of damages.**

Where the fault is mutual, damages must be apportioned; and, if only one vessel is injured, half of her damages may be recovered, and all the damages to her cargo.

**Compositions.**

See “Bankruptcy.”

**CONFLICT OF LAWS.**

The merchantable quality of goods sold is to be determined by the law of the place of delivery.

Where a bank received a draft from a bank in another state, credited the same to it, entered it for collection, and so advised the latter, *held*, that the contract to collect was governed by the law of the state of the collecting bank.

An application for insurance, accepted at the home office in Illinois, whither it had been sent, with a note and money constituting the premium, by an agent in Indiana, held to be an Illinois contract.

**CONGRESS.**

See, also, “Constitutional Law.”

The immunity of members of congress from arrest under the constitution does not exempt them from service of summons in a civil suit.

**CONSTITUTIONAL LAW.**

An act of congress should not be declared unconstitutional upon a motion to remand a cause to a state court.

Congress has no authority to legislate in respect to damages done on land within the body of a state by a vessel upon public navigable waters.

The Iowa statute of April 12, 1870, authorizing townships, towns, and cities to vote a tax to raise money to be absolutely given to a railway company, is not in conflict either with the constitution of the state or the question of the legality of the incorporation of a city, because it did not have the number of inhabitants required by the constitution, cannot be examined collaterally.
It is not competent for the legislature of a state to declare that its citizens shall not make such contracts as they please out of the state.

A state statute requiring, as a condition precedent to recovery in the state courts on any debt or contract made since June 1, 1865, proof that all taxes thereon have been paid (Act Ga. Oct 13, 1870), is void, as impairing the obligation of contracts.

Congress is not prohibited from passing laws violating the obligation of contracts, and hence the national bankruptcy laws are not void because they provide for the discharge of the bankrupt from his debts. (Reversing 719.)

The power of congress to regulate bankruptcy extends to both voluntary and involuntary bankruptcy.

The fourteenth amendment forbids the states to abridge the privileges belonging to a person as a citizen of the United States, but not the privileges belonging to their citizens as citizens of the state.

Marriage is a privilege belonging to persons as citizens of the states, and is not a contract which the states are forbidden to abridge by the federal constitution.

One imprisoned for violating a law of his state relating to marriage cannot be released by a federal court on habeas corpus, on the ground that such law violates the constitution of the United States.
CONTEMPT.

Strikers or other persons, who, in violation of the court's orders, interfere with the operation of a railroad in charge of a receiver, are punishable for contempt. A bankrupt who procures a fraudulent petition to be filed by his creditors with intent to procure a discharge, which he could not obtain by voluntary proceedings, is in contempt of court in every movement based thereon. Practice on motion for attachment for refusal to obey a subpoena for examination before a commissioner de bene esse, as a witness in a suit pending in another district. On such motion the court will not examine to determine whether the foreign suit is real or fictitious. The same rules apply, in determining the propriety of compelling a witness to answer a question on an examination de bene esse before a commissioner, that govern in trials before the court. An attachment, for refusal of a witness to answer a question on an examination de bene esse before a commissioner, will not be granted, where the materiality of the evidence sought is not shown. An attachment will not be granted unless a case of clear contempt is established. When the contempt is not committed in facie curiae, it must be proved by affidavits from persons who witnessed it. In this proceeding the court may proceed in a summary manner, and the accused is not of right entitled to a jury trial. The offense being clearly proved, the court will summarily punish the offender.

CONTINUANCE.

If the blanks in a declaration have been filled up at the trial term, and defendant pleads with knowledge thereof, it is no ground for continuance. Continuance will not be granted for absence of a material witness where the party knew he intended to depart, and failed to take his deposition, or where, knowing the place to which the witness had gone, he failed to issue a commission to take testimony. Continuance by consent or order of court, while the cause is under rule for trial or non pros., does not discharge the rule. Where a cause has been continued from term to term by consent, the parties are bound to be ready for trial at any subsequent time, and notice of intention to try is not requisite.

CONTRACTS.

See, also. “Sale”; “Vendor and Purchaser.”
In construing a contract courts will consider the circumstances existing at the time and with reference to which it was made. Several successive contracts between the same parties in respect to the same subject-matter, and apparently in pursuance of the same general purpose, may be read together, to ascertain the intent of particular covenants in one of them. Where the language of the covenants is more comprehensive than that of the recitals, the intent will be ascertained from the entire instrument. Where an agreement provided that certain parties might redeem their half interest in a contract by paying certain drafts drawn upon them, no time being mentioned, held that the redemption must be made within a reasonable time. Where the whole consideration for a stipulation fails, or it becomes incapable of performance by the voluntary act of one party, the other party may decline to proceed further under it. Where an illegal contract is but partially performed, money paid under it may be recovered, although the parties are in pari delicto. Covenants between joint vendors, in an agreement for a partition for the purpose of obtaining title from the United States, held to be for the benefit of their vendees, who could sue thereon in equity in their own names, though not parties to the agreement.

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CORPORATIONS.

See, also, "Banks and Banking"; "Counties"; "Insurance"; "Marine Insurance"; "Municipal Corporations"; "Railroad Companies." Defects in the proceedings for incorporation are cured by the subsequent legislative recognition of the existence of the corporation. A corporation created by the state of Virginia, before the erection of the state of West Virginia, continued to be a corporation of the former state until its compliance with Act W. Va. Oct. 26, 1863. A corporation is limited to the powers especially conferred upon it. An act incorporating the proprietors of certain lands, and giving the directors power to levy a tax for the purpose of extinguishing the Indian title, making partition, and to meet "all other necessary expenses of the company," does not authorize a tax to pay state taxes.
Money paid in partial performance of a subscription for an illegal increase of capital stock, held, recoverable, though the parties were in pari delicto.

A corporate body may exercise its functions in a foreign territory upon such conditions as the laws thereof prescribe.

A state may impose such reasonable regulations as it sees fit as a condition of allowing foreign corporations to do business therein.

A state statute, requiring foreign corporations to file an agreement for accepting service within the state, applies to process from federal courts.

A corporation of one state doing business in another under a statute requiring the appointment of an agent upon whom service may be made, may be “found” in the latter state, within the meaning of Rev. St § 629.

In a suit by a corporation, defendant cannot raise the objection that the corporation had forfeited its rights by nonuser before the suit was commenced.

COSTS.

The common law gave costs in no case, and the statute of Gloucester gave them only where damages were recoverable before the statute.

The provision in the judiciary act of 1789 that plaintiff shall not have costs if he recover less than $500 applies to actions for infringement of patents.
In the federal courts in North Carolina, the marshal's and clerk's commissions on money received and paid out are part of the taxable costs. A successful respondent should not be denied costs because libelant has mistakenly sued in admiralty, instead of in the state courts, in disregard of a long-settled law. Upon the death of the resident member of plaintiff firm, defendant may demand security for costs.

**COUNTIES.**

See, also, “Municipal Corporations”; “Railroad Companies.” A state has authority by legislative act to compel a county, against its will, to levy a tax for the improvement of a harbor within its limits, although other counties may derive some benefit therefrom. A statute authorizing county supervisors to erect a courthouse, when there is money in the treasury, or when they may deem it expedient to levy a tax therefor, impliedly prohibits them from borrowing money which will be a charge on the county. A limitation in the revenue laws of the amount which may be annually levied for bridges and the support of paupers, does not limit the county's power to bind itself by contract for those purposes and issue warrants in excess of such limit. Money borrowed by a county, without authority, but used for its benefit, may be recovered by an action for money had and received. County warrants are not negotiable paper, and are open to all defenses in the hands of purchasers, whether with or without notice.

**Coupons.**

See “Bonds.”

**COURTS.**


**In general.** Whether a court can enjoin a nuisance consisting of odors generated by a factory situated outside the territorial jurisdiction, and carried by the air to a residence within the jurisdiction, where the parties are properly before the court, quaere. Every court has power to superintend the conduct of its officers, and see by what authority they act, and that its process shall not be vexatiously employed. It is within the power, and is the duty, of the court to set aside summarily any process obtained by fraud and deception practiced upon itself.

**Comparative authority of federal and state courts: Process.**
A sheriff, holding a vessel by attachment on mesne process to secure a debt, must yield possession to a marshal having a warrant to arrest the vessel to enforce a seaman’s lien for wages.

A federal court cannot allow the amendment of an execution issued out of a state court, especially where the state supreme court has refused to allow such amendment.

The state courts have exclusive jurisdiction over the probate of wills, and their action is conclusive.

**Federal courts—Jurisdiction in general.**

The act of August 23, 1842, authorizing the supreme court to frame rules of practice, is generally understood to give that court no power to repeal or modify existing regulations prescribed by congress.

Under the treaty between the United States and the free Hanseatic towns, the federal courts have no jurisdiction of a dispute in respect to wages between the master of a vessel belonging to Bremen and a seaman who is a citizen thereof.

Under the act of 1839, the federal courts have jurisdiction over nonresidents of the district, if they voluntarily appear, and where they do not appear, the suit may proceed without them, if they are not necessary parties.

The jurisdiction of the circuit court must appear affirmatively by the record. The want of jurisdiction need not be pleaded.

A judgment of a federal court is binding on other federal courts, although a plea to the jurisdiction might have been sustained, if taken, for irregularity of process.

The general chancery powers of the federal courts are derived from the laws of the United States, not from the state laws.

A state law cannot enlarge the chancery jurisdiction of the federal courts.

Quaere, whether mandamus will lie from a federal court to a state judge.

**—Grounds of jurisdiction.**

The constitution gives jurisdiction to the federal courts in cases where foreign nations are parties, and this jurisdiction is vested by statute in the circuit court.

When diversity of citizenship is wanting, consent can give no jurisdiction, and a consent decree will be set aside on a bill of review.

A general appearance estops the corporation from afterwards insisting that the court never acquired jurisdiction over it, because process was not served in the district in which it was an inhabitant.

A resident of Pennsylvania cannot be sued as a citizen of Maryland, although he temporarily resided and exercised the rights of a citizen in Maryland until one year before the suit.
There is no jurisdiction on the ground of citizenship when complainant and one
defendant are of the same state

A federal court has no jurisdiction of a suit by a citizen of New Jersey against a
Pennsylvania corporation, some of whose members are citizens of New Jersey

An Indian residing within the United States is not a “foreign citizen or subject”
(Const, art. 3, § 2), and cannot upon such ground maintain a suit in the circuit
court

An omission to allege sufficiently that defendant is a citizen of a different state
from that of plaintiff is amendable

An insufficient allegation of citizenship is good ground of demurrer

---Circuit courts.

The circuit courts have no original jurisdiction of a proceeding for the forfeiture
of a vessel for an offense

The circuit court has jurisdiction of a suit in equity to enforce the right of re-
demption from the lien of a trust deed of lands lying in another state

If nonresident taxpayers, citizens of different states, join in a bill to enjoin the
enforcement of an illegal tax, it seems that there must be in dispute as to each
complainant more than $500

The amount in dispute is the sum of the claims in all the counts upon causes of
action which are properly joined

Defendant in ejectment cannot prove the value of the land to defeat jurisdiction,
where the value is not averred in the declaration. The issue should be taken by
plea, but a plea will not be admitted at the trial
Action of ejectment dismissed at the trial because there was no averment as to the value of the matter in dispute

The circuit court has no jurisdiction of a suit between citizens of different states, when neither is a citizen of the state where the suit is brought

—District courts.

A district court invested with circuit court powers (Rev. St. § 571) is not constituted a circuit court, and neither the circuit justice nor the circuit judge can sit therein

The district courts have jurisdiction of all cases of a maritime nature, whether they be particularly of admiralty cognizance or not. They are governed by the principles of maritime law recognized in the maritime nations of continental Europe

—Following state decisions.

Federal courts will follow the latest state decision as to the liability of lands to taxation for municipal purposes

A federal court will follow the latest decision of the highest state court as to the construction of a state statute, or its validity under the state constitution, although the prior state decision was the other way, where the case involves no contract made on the faith of such prior decision

Decisions by the Indiana supreme court, that the fee to the bed of a canal, constructed by the state, is vested in the state by condemnation proceedings, and that the commissioners to assess damages had authority to consider benefits, will be followed by the federal courts

In construing the bankruptcy law, the federal courts are not bound by decisions of state courts upon a similar insolvent law

—Procedure.

Under the acts of 1789 and 1792, the lien upon land, created by judgments in the federal courts, and the mode of obtaining satisfaction of judgments, are regulated by the state law.

Under the judiciary act of 1789, and the act of 1792, the federal courts may make rules of practice according to their pleasure not repugnant to the laws of the United States. And a rule may be established by long course of practice, without adoption in writing

The process act of 1789 adopted the forms, modes of procedure, etc., of the state courts as they existed at that time, but did not operate prospectively to adopt subsequent alterations

Upon a creditors’ bill, a federal court may avail itself of regulations provided by state statute which facilitate the progress of the cause and the attainment of equitable relief
Federal courts will enforce a new remedy, given by state statute, which is appropriate to the exercise of chancery jurisdiction.

The taking of a bail bond for appearance to answer to suit is governed by the rules of practice in the federal courts, and not by those of the state courts.

**Covenants.**

See, also, “Deeds”; “Vendor and Purchaser.”

No covenant is implied from the words “bargain, sell, and quitclaim,” either at common law or under the Oregon statute. (Or. Archives, 138, “Conveyances.”)

A clause in a quitclaim, “and by these presents give them peaceable possession of the same, to have and to hold for their own use and benefit forever,” is not a covenant for quiet enjoyment, nor a representation estopping the grantor from asserting after acquired title.

A covenant against the claim, right, or title of any person claiming through the grantor is a special covenant of nonclaim, which does not operate upon after-acquired title.

A covenant “against the claims of all persons claiming by, through, or under the grantors” operates only upon the estate which the grantors then had, and not against a title afterwards acquired.

A covenant against incumbrances caused by the grantor is not prospective.

A covenant that, if the grantors obtain title from the United States, they will convey the same to the grantees by deed of general warranty, is a covenant for further assurance, entitling the grantees to a conveyance of the legal title when the contingency happens.

A covenant to warrant and defend against all persons except the United States or those deriving title therefrom, does not estop the grantor or his heirs from claiming an interest subsequently purchased from a donee of the United States.

**Criminal Law.**

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

**Custom and Usage.**

A usage or custom of trade may always be waived by, and cannot vary, a positive stipulation.

A usage in the Calcutta trade to stow full cargoes, including gunny cloth and bags, close up to the deck, without air space at top, is valid although cloth thus stowed is liable to damage from condensation of vapor.

**Customs Duties.**

Customs laws.
A charge of a specific duty upon an article in a particular form or vessel is a charge upon the whole article, as described, including the vessel or material described as containing it.

The sacks in which salt subject to a specific duty is imported are not subject to an additional ad valorem duty.

The right to reimport exported American products under Act 1799, § 47, is not affected by a sale of a part thereof in a foreign port.

One claiming to reimport American goods free of duty under Act 1799, § 47, has the burden of showing that the goods are American goods in the same condition as exported.

The oath as to the American manufacture of an article sought to be reimported may be waived by the collector when he admits its American character but claims duty on another ground.

Waiver of such oath by a deputy collector estops the collector from setting up the omission to give it.

There is no importation under the customs laws unless the goods are landed, and it is not a compliance therewith to merely bond or pay duties and permit reexport without landing.

The acts of August 30, 1842, and March 3, 1823, relating to smuggling and receiving smuggled goods, were repealed by the act of July 18, 1866.
Rotes of duty.
Barrels manufactured in this country, sent to Cuba, and reimported filed with molasses, are liable to duty
Under the act of 1857, colored engravings were dutiable as "engravings," at 8 per cent., and not as "nonenumerated articles, at 15 per cent.
"Cork squares" are free from duty under the act of 1870, as "cork unmanufactured."
In order that cork wood or bark should be classed as "manufactured," under the act of 1864, it should be in a state capable of being used, and designed for use, without further manufacture
"Patent leather" was dutiable under the act of July 30, 1846, at 20 per cent, ad valorem as "leather, upper, of all kinds," and not as a manufacture of leather
Silk and cotton velvet ribbons, silk constituting the chief value, were dutiable at 60 per cent, under section 8 of the act of June 30, 1864

Payment: Protest.
Grounds not stated in the protest cannot be urged at the trial
Where the protest stated only that the invoice value was correct, held that plaintiff could not show an illegal appraisement
That the deputy collector dictated the form of protest does not estop the collector from denying its sufficiency for a purpose not brought to the deputy's notice
A protest according to the act of February 26, 1845, is necessary to sustain an action to recover back the additional duty of 20 per cent, assessed by way of penalty under the act of 1846
A protest within 10 days after liquidation of duties, and appeal within 30 days thereafter, is good, although the liquidation is subsequently revised

Actions for duties paid.
The common-law right to sue a collector, by action for money had and received, for exacting illegal duties before surrendering goods, was taken away by the act of March 3, 1839
This right was restored by the act of February 26, 1845, and under it an execution will issue against the collector personally

Violations of law: Forfeiture.
Under the act of March 3, 1863, all suits and prosecutions for penalties and forfeitures, and all crimes arising under the customs laws, are subject to a five-years limitation
The secretary of the treasury may remit the whole or any part of a forfeiture, and may make conditions upon such remission, the acceptance of which will bind the party by way of estoppel
Bonding: Warehousing.
Where a consignee gives bond for duties under the act of 1799, and fails to pay them, the United States has no remedy against the owner for whom the con-
signee acts as agent or trustee
Where a surety for a consignee, upon a customhouse bond, pays the debt, he has no remedy against the owner, unless the latter requested him to sign the bond

DAMAGES.
See, also, “Affreightment”; “Bills of Lading”; “Carriers”; “Collision”; “Contracts”; “Shipping.”
In executing a writ of inquiry, plaintiff's own affidavit of the amount of the dam-
ages is admissible in evidence
The value of gold coins, shipped by a vessel and lost through the master's negli-
gence, is to be estimated at their worth at Key West, at the time salvage proceed-
ings were there instituted, with interest

DEDICATION.
Where a dedication to pious uses is too vague to be effectuated in equity, but the property has been long occupied for those uses, with the donor's consent, his heirs will be enjoined from disturbing the possession

DEED.
See, also, “Covenants”; “Vendor and Purchaser.”
A grant of common in a described lot, confers all rights of common which the land is capable of supporting, including a commonable right to take seaweed from the beach
The words “rights, liberties, privileges, and appurtenances,” are sufficient to create a right of common when the deed refers to a plat and gaps which show that a right of common in a described lot is annexed to the land
A quitclaim of all “right, title, or interest, whether in possession or expectancy,” passes only what is then vested in the grantor; and “expectancy” does not include an after-acquired title
It is not necessary, in a general warranty-deed, to use the word “warrant,” if other words of equal import are used
It being the universal practice in Texas, though not required by law, to record deeds and mortgages in separate books, held, that a deed recorded in a mortgage book did not operate as constructive notice
A deed executed in Massachusetts by one grantor, and at a later date in the District of Columbia by another grantor, may be properly recorded within six months from the latter date

DEMURRAGE.
A vessel, chartered to have “dispatch in discharging,” held not obliged to await her turn in respect to any other vessels which the consignees were discharging.

DEPOSITION.

Depositions sworn to, but not signed, by the witness may be read where the objection has been waived

Interrogatories in a commission should be answered separately, and failure therein is fatal to the whole commission, although the witness, in answering the general interrogatory, says that he knows nothing further material to either party

Discharge.

See “Bankruptcy”; “Insolvency.”

DISTRICT OF COLUMBIA.

The corporation of Washington has power to designate the sites where fish may be cleaned and packed, and may purchase sites for that purpose and prohibit the use of any others

An attachment for rent not due, is superseded by the tenaat’s discharge under the insolvent law of March 3, 1803 (section 5)
DOMICILE.
See, also, “Courts”; “Prize”; “Removal of Causes”; “War.”
Actual residence in a place, with intent that it shall be the permanent residence, makes domicile, and temporary absences do not change it.

DOWER.
A widow’s dower is not barred by her acknowledgment of a deed not recorded.

EJECTMENT.
An interest or subsisting title in the premises need not be shown in order to make persons lessors in the action. It is sufficient that the circumstances of plaintiff’s case require that they should be made lessors.
In ejectment in the federal courts, defendant cannot set up an equitable title.
Where defendant derives title under a foreclosure decree which does not describe the land, but simply refers to it, the question whether the land in controversy was covered by the decree is for the jury.

ELECTIONS AND VOTERS.
The acts to enforce the rights of citizens to vote (16 Stat. 140), held constitutional under the fifteenth amendment and applicable to the election of a state governor.
Sufficiency of petition to give federal court jurisdiction under such statutes.
The proper composition of a returning board of Louisiana determined.
The question of the eligibility of complainant to the office of governor cannot arise under a bill for the preservation of evidence to enable complainant to prosecute a suit at law, alleging that voters have been deprived of registration and their votes suppressed on account of race, color, etc.

EMINENT DOMAIN.
Where the state took possession of a public street wherein to construct a canal, and abandoned the canal before completion, held that the title did not pass to the state or its grantees, and that the property owners became reinvested with their rights.
Where the state of Indiana condemned land for a canal, and the benefits were assessed as equal to the damages, held, that the state acquired only a conditional fee, and having failed to construct the canal so that the benefits were never realized by the landowners, the fee reverted to them, and did not pass to the state’s grantees.

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

Jurisdiction.
Equity will not grant relief upon grounds available to complainant at law.
“Adequate remedy at law” does not mean ability to employ every form of legal procedure. If any form will give such remedy, equity will not interfere.

Equity has no jurisdiction to enjoin a judgment debtor of complainant's debtor from paying the judgment to complainant's debtor, or to require its payment into court to be applied to complainant's claims.

Equity has no jurisdiction to enjoin the levy of an execution against a mortgagor upon mortgaged goods in possession of the mortgagee, as the mortgagee has an adequate remedy at law.

A bill charging that defendant, by fraudulent practices, secured the transfer to his name of shares of corporate stock, to which complainant held the equitable title, and praying that complainant be declared the owner, makes a case of equity jurisdiction.

Where a harbor board was created by legislative act, with authority to contract for the improvement of a harbor, and the county in which the harbor was situated was required to deliver its bonds to the board, to be used in paying the contractors, held, that where the harbor board was afterwards abolished, contractors who had already completed their contract could maintain a bill in equity to compel the county to deliver the bonds directly to them.

Equity has jurisdiction of a partition suit in which the legal title is not disputed, though the entire equitable title is claimed by certain defendants, which is disputed by complainants.

**Jurisprudence.**

One who conveys his property for the purpose of defrauding his creditors can obtain no relief in equity against his grantee, nor will a trust relation be recognized for the purpose of reforming, on the ground of mistake, a subsequent deed from him to parties taking through the fraudulent grantee without notice of the fraud.

Complainant conveyed, by unstamped conveyances, an interest in a mining claim, and his grantees, by good conveyances, deeded the same to defendant. Complainant afterwards conveyed his remaining interest directly to defendant, and afterwards filed a bill to correct a mistake in the latter conveyance. To make out the mistake, it was necessary for him to repudiate his unstamped conveyances.

**Held,** that equity would not correct the mistake.

If a grantor, conveying part of a mining claim, makes a mistake against himself in one part as to the amount conveyed, and in another part a mistake in his favor for a corresponding amount, the equities between him and his grantee are equal, and the mistake will not be corrected on his application to the injury of the other party upon the entire transaction.
Where parties deal with each other with knowledge that something is uncertain as to the amount or condition of the subject-matter, and the contract is in the form intended, there is no ground for correcting a mistake, if it should finally appear that one was made.

Mistake, to be available as ground of reformation, must not have arisen from negligence, where the means of knowledge were clearly accessible.

A party seeking relief on the ground of mistake must act promptly, especially in the case of speculative property.

Relief on the ground of mistake will not be granted unless the parties can be put in statu quo, except where the clearest and strongest equity imperatively demands it.

If one creditor has lost his legal lien and priority, equity will not set it up again as against other creditors equally meritorious.

If a contract is made by which the owner of a patent is bound, a court of equity will disregard the form of its execution.

Where judgment is obtained against a vendor before the making of a deed or payment of the purchase money, the vendee may enjoin execution upon paying the purchase money into court to satisfy the judgment.
See "Appeal and Error."

**ESCAPE.**

Right of action upon a prison-bounds bond, for an escape after the debtor had been ordered into close custody on being found guilty of fraud on an application for a discharge under the insolvent act

**ESTOPPEL.**

Estoppel by statements in pleadings does not arise except as to matters necessarily alleged as the basis of the cause of action or defense

Allegations in a complaint that the three defendants were partners, and that plaintiff loaned money to them as such, does not estop him, after recovering judgment against the three, from showing, in another proceeding, that one was not a partner, but was liable as a surety by reason of holding himself out as a partner

**EVIDENCE.**

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

**Judicial notice.**

The federal courts and judges cannot take judicial notice of justices of the peace of another state

Courts are bound to take judicial notice of public navigable waters, the boundaries of states and counties, and the location of cities and towns

Judicial notice will be taken of the general condition of the country and of the titles to lands in Oregon prior to the donation act

**Presumptions: Burden of proof.**

A person seised in fee simple has constructive possession, and will be presumed to be in actual possession until the contrary appears

**Declarations and admissions.**

Admissions by one underwriter are not admissible against another on the same policy

**Documentary.**

A deed is admissible, though acknowledged or proved after suit brought

A sheriff’s deed is inadmissible without the record of the judgment under which the sale was made

In ejectment, explanatory notes of a surveyor, appointed by the court to retrace lines, are admissible so far as they relate to the marks on the ground, and explain his own work, but not as to matters of possession

An affidavit made in connection with a warrant of survey, but not certified as an office paper in the land office, is inadmissible

**Parol evidence.**
Parol evidence is equally inadmissible to explain as to contradict a written instrument.
Parol evidence is not admissible to show the meaning given by the parties to certain words in a written instrument which is free from ambiguity.
An unambiguous charter party cannot be varied by parol evidence of a usage.
A record of a court of general jurisdiction, collaterally introduced as evidence, and showing on its face jurisdiction in that court, cannot be contradicted by parol evidence.

**Competency: Materiality: Relevancy.**
Evidence competent for one purpose, but incompetent for another, is admissible, subject to proper instruction.
The deposition of a party in another cause is admissible to contradict his oral evidence, or as an admission.
In a civil suit, evidence in support of defendant's good character is inadmissible, when his character has not been impeached.
Letters between parties engaged in negotiating bonds held incompetent to impeach the bonds in the hands of parties claiming to be bona fide holders, who were not shown to have any connection with the letters.

**EXECUTION.**
See, also, “Attachment”; “Bankruptcy”; “Garnishment”; “Judgment”; “Sheriffs and Constables.”
The interest of a grantor in a trust deed is not liable to levy and sale under execution.
A fi. fa. issued after the death of defendant, but bearing teste before his death, will not be quashed.
An execution against two only, upon a judgment against three, without a suggestion of the death of one, is void on its face.
An execution in the names of two plaintiffs after one is dead is defective, but may be amended.
A levy and sale of lands under a pluries execution, while a prior levy under the same judgment is undisposed of, instead of issuing a venditione exponas, is a mere irregularity, which can only be taken advantage of in apt time.
A sale which is void for want of notice to the judgment debtor is not protected by the prescription of five years provided for by Rev. Code La. § 2809.
Seizure and sale by a sheriff of property in New Orleans belonging to a judgment debtor, who had been expelled by the United States military authorities, and carried within the Confederate lines, notice being served upon a curator ad hoc appointed by the court, held void under the Louisiana Code.
The aldermen of Alexandria have no power to discharge, under the Virginia laws, a debtor committed on process from a United States court. Since the adoption by the supreme court, in 1850, of rule 48, there has been no imprisonment for debt upon an execution in admiralty in New York. A surety in a stipulation in admiralty is exempt from imprisonment on execution when he would be exempt under like process from the state courts. (Acts Feb. 28, 1839, and Jan. 14, 1841.)

**EXECUTORS AND ADMINISTRATORS.**

Where a person presenting a claim for the wages of another has letters of administration granted by the proper authority upon his estate, the court must take the fact to be that the latter is dead. Letters testamentary granted without security agreeable to the will may be revoked upon petition of creditors. Where an executor takes possession as such under the authority of the probate court, the fact that he is also universal legatee does not change the character of his possession, so as to make him hold in the latter capacity, and thereby render him the personal debtor of the legatees and creditors.
The Virginia statute, providing that an administrator shall not be compelled to make distribution until security is given for the refund of any part necessary to meet debts subsequently discovered (1 Rev. Code 1819, c. 105, § 58), extends to executors, though they are not named therein.

The amount of the security, which the executor or administrator is authorized to take under this statute, is within the sound discretion of the court, and need not cover the whole amount distributed.

An executor may bring a bill to enjoin a sale of property of the estate, under a personal judgment against himself, without joining legatees or others interested in the estate.

**Exemptions.**

See “Bankruptcy”; “Execution”; “Homestead.”

**EXTRADITION.**

Manslaughter is not an extraditable offense under the treaty with Great Britain of 1842, not being included in the term “murder.”

The act of August 12, 1848, is not in conflict with the treaty with Great Britain of August 9, 1842, but is merely supplementary thereto.

Under the treaty with Great Britain of August 9, 1842, a demand must first be made directly upon the government for the surrender of a fugitive, and its authority obtained before a warrant of arrest can be issued.

A federal judge has authority to issue a warrant for the arrest of a fugitive under the treaty with Great Britain of 1842, and the statutes passed to aid in carrying it into effect, without a previous application having been made to the executive.

Proceedings for the arrest and commitment of a fugitive under the treaty with Great Britain of August 9, 1842, and the duties and powers of magistrates there-under.

The proof to warrant a commitment for extradition to a foreign country must be sufficient to authorize a conviction.

The circuit court on habeas corpus has no authority to reverse the decision of the commissioner for error or irregularity in order to determine the credit or weight of the evidence on which he acted.

**FACTORS AND BROKERS.**

A del credere commission is not demandable when the sale is made on credit, but is, nevertheless, paid for in cash upon the deduction of a percentage.

A consignee impliedly contracts for the exercise of a sound judgment, and, if he be authorized to direct the destination of the ship with a view to the best market, he must make all necessary inquiries to find the best market; but, if the consign-
ment be general, he is not bound to look for any other market than that to which the vessel is consigned.

A custom of London being proved for consignees having a lien on the cargo to insure the same against fire, held that, if the custom were intended for the benefit of the consignor, a consignee was bound to insure, and, if he did not, was himself held as insurer, and was entitled to the premium; otherwise if the custom were merely to protect the consignee's interest.

A factor who pledges his principal's goods to secure individual advances, with power of sale, is guilty of conversion, and liable for their value at the time of the pledge.

In the settlement of accounts between the principal and factor, the former is entitled to an adjustment of a claim for such conversion without being driven to a cross action.

**FIXTURES.**

A tenant who erected a wooden shed upon posts inserted two feet in the earth may remove it during the term.

**Forfeiture.**

See “Attainder”; “Customs Duties”; “Informers”; “Prize”; “Shipping”; “Treason”; “War.”

**GARNISHMENT.**

See, also, “Attachment”

Money in the hands of a garnishee must be applied to drafts drawn upon it by the debtor before service of the attachment although the garnishee had no notice of the drafts until afterwards.

**Grant.**

See “Public Lands.”

**HABEAS CORPUS.**

See, also, “Extradition.”

To ascertain the nature of the writ which the federal courts and judges are authorized to issue, reference must be made to the common law.

A writ of habeas corpus from the circuit court for the Western district of Arkansas will run to the Indian Territory to inquire into the cause of imprisonment of a person convicted by an Indian court without jurisdiction.

The writ should not be granted to a prisoner whose commitment by the commissioner has been duly approved by tie circuit court unless all the proceedings before the commissioner and tie court are laid before the judge to whom the application is made.

A decision under one writ refusing the discharge of a prisoner is no bar to the issuing of other successive writs by any court or magistrate having jurisdiction.
The writ will not be granted where the application is sworn to before a justice of
the peace of another state, of whose official character there is no evidence
The application must be supported by an affidavit stating the circumstances un-
der which the prisoner is entitled to the benefit of the writ
A district judge allowing the writ at his chambers in term time of the circuit may
make it returnable in the circuit court
The proceedings in the federal courts are not governed by the local law, but by
the common law
A prisoner cannot traverse the returns of the writ, nor demand an issue on the
legality of his commitment
The prisoner may show on the face of the proceedings or aliunde the incompet-
tency of the committing magistrate to grant the writ, or that the subject-matter
was not brought within his jurisdiction

HOMESTEAD.

See, also, “Bankruptcy.”
If there is a dwelling house and a store upon the same lot, the former may be set
off as a homestead; but a building will not be divided and homestead assigned
in part of it
Homestead exemption in Wisconsin does not extend to a business block used as a dwelling.
The adoption by an unmarried person of another's child, and keeping servants and a household, does not make him the head of a family, entitled to homestead exemptions under the South Carolina statutes.

"Lot," as used in the Illinois homestead law, will be construed as confined to a 40-acre tract, according to governmental survey, upon which the debtor's residence is situated.

If the sheriff sells as one tract two 40-acre lots, one of which is the homestead, the whole sale will be set aside.

In Illinois the sale of property under an execution and levy, while occupied as a homestead, is void, whether the premises are worth more or less than the $1,000 allowed as the value of the homestead.

Whether there has been an abandonment must be determined by the purposes and declarations of the wife, as well as of her husband; and, if she has an intent or desire to return, the homestead may not be lost, though he had no such intent.

HUSBAND AND WIFE.

See, also, "Marriage."
Where the wife consents to the purchase of property with her means by her husband in his own name, she cannot afterwards reclaim it as against his creditors, whose debts accrued while the property was so held by him.

In equity a married woman may hold, control, and dispose of her separate property; and it may be subjected to the payment of debts contracted in respect to it.

In Illinois a married woman retains all the property, real or personal, which she had at marriage or acquired thereafter, except from her husband, and may contract in regard thereto; and such contracts may be enforced, either at law or in equity, to the same extent as if she were sole.

She may also engage in trade, with her husband's consent, and, it seems, without his consent, using her own property, and may bind herself by contracts in her business.

In Illinois a married woman may enter into copartnership with her husband.
Where a man and wife hold themselves out as partners in trade, it will be presumed, in the absence of proof, that she contributed her share of the capital, and that her time, skill, and earnings went into the business.

It is the acknowledgment of a married woman which gives effect in Illinois to a deed of her own real property, and it must be in substantial conformity with the law, or the deed is invalid.
A deed by a wife and her husband, purporting to convey her separate estate in Illinois held invalid where the acknowledgment was a mere relinquishment of dower.

**INDIANS.**

Indians residing in the United States, and maintaining tribal relations, are not foreign citizens or subjects

An Indian may abandon his tribe, and, for purposes of jurisdiction, become a citizen of the United States

**INFORMERS.**

In an admiralty seizure cause, a proportion of the proceeds cannot be awarded to informers unless by special statutory authority

**INJUNCTION.**

Before equity will stay a judgment at law, it must clearly appear that complainant has equity on his side

An injunction requiring a party to do a particular thing, as to surrender the possession of certain premises, is never allowed before final hearing

Notice of application for a provisional injunction, in a suit in equity to restrain the enforcement of a judgment at law, does not operate as a stay

A provisional injunction will not be granted in such case where it appears that the judgment has been enforced by execution before the time of the application

A demurrer to a bill praying an injunction must be decided before a motion for the injunction can be heard

An injunction served upon a sheriff is effectual, though he is not named or described therein, except as “all other persons”

An injunction will be dissolved for want of equity in the bill, upon motion and notice, at any time

**INSOLVENCY.**

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

Under the insolvent act for the District of Columbia (2 Stat. 237), a finding of fraud could only be justified when there was an intent to defraud creditors, who were such at the time of the conveyance and at the time of the trial

A bona fide sale of property to pay preferred creditors is not fraudulent under said act

The insertion in the deed of a consideration less than the true one is not of itself a fraud, if the actual consideration was a fair one

A deed technically void as to creditors, because not followed by change of possession, is not evidence of fraud justifying a conviction under the act, if there was a real bona fide consideration
On an issue of fraud under the act, the burden is upon the complaining creditors to show a fraudulent intent. A discharge in Pennsylvania does not bar a subsequent suit in Delaware for a debt previously due, and hence a plea of duress in a suit in Pennsylvania, upon notes given while under arrest in the Delaware suit, is bad. The discharge, under the insolvency laws of a state, of a citizen of the state does not bar an action against him by a citizen of another state upon a foreign contract. Neither under the act of 1867 (14 Stat. 543) nor the act of 1863 (12 Stat. 656) will a state insolvent law operate to release one imprisoned under process of a federal court in default of paying a fine in a misdemeanor case.

INSURANCE.

See, also, “Marine Insurance.”
Failure of a foreign insurance company and its agent to comply with the laws of the state in which the assured resides does not avoid a policy made and issued at the home office of the company.
It is a good defense to a premium note that it was given to an agent in a state with the laws of which, respecting foreign insurance companies, the company had not complied.

The issuance of a new policy without any new consideration, merely for the purpose of substituting a different beneficiary, will not authorize the company to change the conditions by making the representations warranties.

A vacancy, while the owner was endeavoring to procure a tenant, held not within the condition rendering the policy void where the premises become vacant or unoccupied, and so remain without consent of the company.

**Insurrection**

See “Treason”; “War.”

**INTEREST.**

See, also, “Usury.”

The jury may or may not allow interest upon the balance of an account, considering the general usage.

**INTERNAL REVENUE.**

To justify a holding that Rev. St. § 3224, does not forbid the issuance of an injunction, it must appear that the assessment could not by any possibility be legal.

Under Rev. St. § 3224, a federal court cannot enjoin the collection of an assessment levied by the commissioner of internal revenue against a stockholder of a corporation engaged in the business of distilling spirits.

**INTOXICATING LIQUORS.**

Act Va. Dec. 26, 1792, preventing a tavern keeper from recovering more than $5 for liquors sold to one person in one year, applies to boarders.

**JUDGE.**

A district judge can hold a circuit court, in the absence of a circuit judge, and exercise all the powers of a circuit court.

**JUDGMENT.**

Under the Civil Code of Oregon of 1854, a judgment by confession was not valid, so as to authorize execution, until after the judgment was entered in the judgment book.

**Validity.**

A supplemental decree, purporting to be entered by consent made, after final adjudication and after the end of the term, and not based on any allegations in the pleadings, held void.
As between parties who claimed title under such a, decree, and purchasers from their grantees who all acted upon the hypothesis that the decree was valid, the court will act upon a like hypothesis, and hold that there was no mistake which equity will correct.

Where a foreclosure decree shows that the court was apprised of the existence of infant heirs at law, and took measures to preserve their rights, the legal presumptions in favor of its validity are not limited by producing the bill, in which their names are not given but process is prayed against them generally.

**Operation and effect.**

The declaration in the New York statute of March 19, 1787, that no judgment shall affect land until filing of the roll and docketing, implies that a lien arises when this is done.

By the Minnesota statute (Rev. St. p. 339, § 1), judgment creditors were put upon the same footing, in respect to unrecorded deeds, as bona fide purchasers for value.

In Texas, the lien of a mortgage, executed and recorded subsequent to a judgment, but prior to the recording of the judgment in the clerk's office, has priority over such judgment.

A judgment lien is not a title to land, against which the statute of limitations can operate, but a mere security, which is not affected by a subsequent conveyance.

The legislature which created a court of limited jurisdiction may alter or qualify the principle that its authority must appear on the face of its proceedings.

A consent decree, upon a bill asking for an issue of devisavit vel non, and denying testatrix's competency, setting aside the issue of the devisavit, and providing for certain payments under the will, is not res judicata as to the sufficiency of the bequests under the bill.

The court will presume, in favor of titles derived under judicial proceedings, that every act necessary to confer jurisdiction was done unless the record shows that it was not done.

**Relief against: Opening: Vacating.**

A judgment quod computet in an amicable action, in which the court is without jurisdiction as to one of the parties, being interlocutory and not appealable, is under the control of the court, and may be set aside even after many years.

**Of different jurisdictions.**

Neither a decree ordering the conveyance of land situated in another state, nor a conveyance made pursuant to it, can operate beyond the jurisdiction of the court unless a conveyance is made by the person holding the title.
An admiralty court is not concluded by an adjudication of a foreign court, not of admiralty, upon principles not recognized within the jurisdiction of the admiralty court, though professing to decide according to the law thereof

Landlord and Tenant.

See “Fixtures.”

Lex Loci.

See “Conflict of Laws.”

LIBEL AND SLANDER.

It is libelous to charge one with fraudulently deceiving another as to a fact, so as to induce him to indorse a note for a larger sum than he intended

It is actionable libel to charge defendant with such matters “as induce an ill opinion to be had of the plaintiff,” as to charge him with maliciously devising slanderous accusations against a third person

Words charging plaintiff, a single woman, with incontinence, are not actionable, without an allegation of special damage
The rule for construing words in a libel differs from that in construing averments in a plea. In the former, the words are to be understood in the sense which the author intended to convey, as evinced by all the circumstances; in the latter, especially in pleas of justification, words are taken most strongly against the pleader. Belief of the author in the truth of a libelous charge is no justification. A plea in justification does not require the same degree of certainty and precision as an indictment. It is sufficient if it contain a clear and distinct statement of the facts constituting the ground of defense.

The matter alleged in a plea of justification must, in every respect, correspond with the imputation complained of in the declaration. A plea in justification, which merely reiterates the words of the libel, with an averment that they are true, is not good unless they are so precise as to contain within themselves everything that can be inferred from them. If the declaration avers that the words used amount to a charge of forgery, and if they are capable of that construction under the circumstances stated, the defendant, in his plea of justification, must show a clear case of forgery. An averment that plaintiff falsely, fraudulently, and unlawfully altered a note, so as to materially change its terms, is a good plea in justification of a charge of forgery. A plea in justification of a libel charging moral turpitude is defective, unless it sets forth acts of moral turpitude. The expressions, “unfairly and secretly computed, “unjustly and unfairly attempted,” and “artfully and purposely framed,” used in a plea of justification in regard to the official act of a cashier, do not necessarily imply moral obliquity. Plaintiff cannot prove special damage not stated in the declarations. Plaintiff may recover, though he failed to prove the special damage laid in the declaration. The construction of the alleged libelous words, under the circumstances stated in the declaration, is a question for the court. Whether defendant used them in that sense is a question for the jury, which cannot arise upon a plea of justification.

See “Admiralty”; “Bankruptcy”; “Maritime Liens”; “Mechanics’ Liens”; “Pilots”; “Shipping”; “Wharves.”

**LIMITATION OF ACTIONS.**

The action in the case of a debt taken out of the statute by an acknowledgment is on the new promise, and it can be enforced only under its conditions, and in the terms proposed.
An acknowledgment, connected with a condition which shows that there was no intention to pay the debt, does not take the case out of the statute

**LITERARY PROPERTY.**

See, also, “Copyright.”

Additions to a play made by an actor while in the employ of the owner, in adapting the play to the performance by him, belong to the owner.

The proprietor of the play will be protected against the communication by such actor to others of his unwritten additions, though they are not the subject of literary property.

The right of an assignee from a foreign author of an unpublished play will be protected in equity.

A representation before an indiscriminate audience of a play existing in manuscript only is a publication entitling others to represent the play so far as they are enabled to do so by memorizing the same through such representation.

A representation, from an unauthorized copy, of a foreign author’s play existing in manuscript only, will be restrained at the suit of an assignee of the rights in this country, notwithstanding a public representation of the play by such assignee.

Cases on the subject of literary property, especially in dramatic compositions, reviewed at great length by Cadwalader, District Judge.

**MANDAMUS.**

Mandamus will not lie to the mayor, aldermen, and common council of Washington City to compel them to make regulations relative to the erection of private wharves.

The writ will not issue to a court where there has been an apparently honest exercise of discretion confided by law.

**MARINE INSURANCE.**

The contract—Generally.

Insurance made between parties ignorant of a loss is valid, where the policy has been completed though not delivered.

**Representations: Concealment.**

That a cargo brought from Laguira to Charleston in 1799, and then carried on a voyage to Spain, was not actually landed at Charleston, was a fact material to the risk, which the insured was bound to disclose, in view of the British regulations in respect to the colonial trade of enemies.

A misrepresentation as to the port whence the voyage commenced held immaterial, the risk being no greater.
In respect to insurance, the effect of neutrals engaging in colonial trade, contrary to the British regulations, is the same, whether such regulations are consistent with international law or not. The underwriter is presumed to be acquainted with public transactions, foreign laws, and ordinances, the course of nature and of trade, but the insurer is bound to disclose all facts within his private knowledge which may be material to the risk. It is the duty of the assured to disclose all facts material to the risk. If regulations of a belligerent, with respect to neutrals engaging in colonial trade, are known only to the insurer, he must ask for information as to the facts; if known only to the insured, he must disclose them.

**Abandonment.**

Indorsement on papers of warning by war ship not to proceed to any port in enemy's possession is not "an arrest, restraint, or detainment" which will justify abandonment of the voyage. Where a vessel, still in the early stages of a voyage from Philadelphia to the Isle of France, was boarded by a British war ship, warned not to proceed, and falsely informed that the Isle of France was blockaded, it elicited that she was not justified in thereupon abandoning the voyage, and claiming insurance on the freight.
The notice of abandonment must state the reason therefor, and will estop the assured from setting up any other reason. The question whether, upon facts specially found by the jury, the voyage was broken up, so as to justify a return to the port of departure, is one of law for the court, and a finding of the jury thereon will be disregarded.

Suits.

In an action upon a policy, plaintiff cannot show that another insurance company, or other underwriters, on the same policy, have paid upon the same risk.

In a suit upon a policy, the sentence and proceedings of a foreign admiralty court, condemning the goods as enemy property, is competent, prima facie evidence of the fact.

MARITIME LIENS.


The right to a lien.

Wages on an illegal voyage are no lien.

The master has no lien for his advances and disbursements abroad.

A part owner, though ship’s husband, has no lien upon the share of his co-owner for advances and disbursements. (Reversing 1142)

If, in such case, he had a lien in equity, an admiralty court could not take an account, and enforce it.

The services of stevedores in loading or unloading a vessel are not maritime in their nature, and they have no lien therefor enforceable in admiralty.

A lien arises for supplies furnished in a foreign port on credit of the vessel.

To sustain a lien for supplies, a maritime necessity for credit upon the vessel must be established.

Supplies furnished on the order of the master, to a vessel running on regular trips, give no lien, though charged directly to the vessel.

One furnishing labor and materials, in putting in machinery ordered as an experiment, is entitled to a lien, although the experiment is an utter failure.

For materials furnished generally for two vessels, building at the same time, the material man has the lien on both vessels, and may enforce it against either.

Privileged liens are matters stricti juris, and cannot be extended argumentatively from one case or person to another.

Under rule 12 there is a lien enforceable in rem in admiralty for repairs to a domestic vessel, though no lien is given by the local law.

Priority and enforcement.
A creditor advancing money to the builder on a mortgage of the vessel stands in place of the owner, and is postponed to the liens of laborers and material men
A mortgage on a vessel for labor and materials furnished in her home port, in fitting her for a voyage, notice whereof is entered on the register, is inferior to a lien arising for the loss of goods shipped during the voyage
A duly-recorded mortgage upon a vessel takes precedence to a claim for supplies and materials furnished in the home port
The proceeds of a vessel sold on a libel for wages distributed in the following order: Wages and costs; recorded mortgage: clerk's, marshal's, and proctor's fees; supplies at the home port
A party who might have perfected his lien under a state law, had not the issue come into the admiralty court, is entitled to priority
The prior sale of a vessel under state process will not prevent a sale under process of the admiralty court to enforce a maritime lien
A proceeding by petition against the proceeds of property charged with a maritime lien is a proper method of invoking the admiralty jurisdiction
A lien which could be enforced against a vessel by the state law follows the proceeds of a sale made to satisfy a maritime lien
The twelfth admiralty rule, as amended May 6, 1872, affects merely the remedy, and is therefore applicable to all suits for repairs or supplies instituted after its passage, whether such repairs or supplies were made, or furnished before its passage or not

Waiver: Discharge: Extinguishment.
Where repairs are originally charged to the several vessels on which they are made, the fact that a general account is subsequently made out against the firm owning the vessels does not affect the lien.
A lien limited in time is waived by giving a credit extending beyond its duration
Where a vessel seized as prize is delivered on bail, wages are in no case a lien on the proceeds after condemnation
Delivery of the vessel on bail does not discharge the lien for seamen's wages
A lien for breach of maritime contract is not divested by making another voyage before libel filed

Liens under state laws.
The lien given by Rev. St. Me. c. 125, § 35, does not cover charges for tools or other articles used by the workmen in doing the work, but only for materials which make part of the vessel
The lien does not cover a claim for insurance on a cargo of timber used in the construction
Rev. St. Me. c. 125, § 35, does not give a lien on one vessel for materials furnished for it and for another one, but only for what was used in the vessel proceeded against.

The lien obtained by one furnishing materials for construction, under the local law of Maine, is prior to that of a mortgagee, although the mortgage is prior in time.

A lien on a vessel given by the local law for services not maritime in their nature, such as that of stevedores, is not enforceable in admiralty.

The New York statute of limitations in respect to enforcing liens on vessels does not apply to liens arising from torts.

MARRIAGE.

See, also, “Husband and Wife.”

Rev. St. § 1977, giving to all persons the same right of making and enforcing contracts as is enjoyed by white persons, does not extend to a marriage contract which is void by the law of the state where the parties reside; and this whether the marriage was solemnized in that state, or in another state where the marriage was lawful, and to which the parties resorted, to evade the law of their own state.

MARSHAL.

The deputy marshal is an officer of the district court, and summarily punishable by it for malfeasance in office.
The marshal and his deputies are personally answerable for failure to pay into court forthwith moneys attached by them.

A marshal attaching foreign coin must pay it into court as money, and cannot consider it as cargo merely.

The resignation of a marshal or of his deputy does not oust the court's jurisdiction to punish for misconduct in office by attachment for contempt.

**MARTIAL LAW.**

See, also, “War.”

The existence of martial law does not prevent the administration of justice between citizens in the civil courts, when such courts are authorized thereto by the military power; and their decrees are binding on the parties.

**Master.**

See “Shipping.”

**MASTER AND SERVANT.**

One voluntarily continuing in a dangerous occupation, knowing that insufficient means are provided for avoiding the dangers, cannot recover for injuries resulting therefrom.

A master who exercises due care in selecting his servants is not liable for injuries resulting from the negligence of a fellow servant in the same line of employment.

The rule exempting the master from liability for injury by fellow servants rests upon the implied condition in the contract of service that the servant takes upon himself all ordinary risks of the service.

Servants, some of whom are engaged in breaking down ore in a mine, and others in loading and wheeling it out, are fellow servants in the same line of employment.

Those only are “fellow servants” who serve in such relation to the master and to each other that their means for protecting themselves from the negligence of each other are equal to or greater than those of the master to afford them protection.

An assistant yard master, injured by a defective car, cannot hold the company by showing notice thereof to the car inspector and master mechanic, for they are his fellow servants.

Notice to a master mechanic of the habitual negligence and bad habits of a car inspector will not make the company liable to a servant injured by a defective car, unless the master mechanic has power to employ and discharge the car inspector.

A railroad servant suing for an injury caused by a defective car must aver that it was defective when placed on the road, or, if it afterwards became defective, that notice thereof was brought home to the company.
Knowledge by servant of defect in premises whereby he is injured need not be negativend in his complaint
Knowledge by master of defect in premises may be proved under the general allegation of negligence

**MECHANICS' LIENS.**

In an action to enforce a lien which continues only two years, defendant will not be compelled to plead at the return term

**MINES.**

In early days in Nevada, actual transfer of possession of a claim, with intent to pass title, followed by actual possession of the transferee, acquiesced in by the transferer, conferred a valid title Possession, work, and general recognition by miners of the vicinity of the validity of the claim gives good title, even if the original location was not in strict accordance with the mining rules; especially so as between coclaimants and their grantees.
The Utah statute of conveyances of January 18, 1855, did not apply to mining claims

**MORTGAGES.**

See, also, “Bankruptcy”; “Chattel Mortgages”; “Railroad Companies”; “Shipping.”
Grantors in a deed of trust held not in default in not paying a debt secured thereby during the time the power of sale thereunder was suspended by the injunction of a competent court.
The grantees of the heirs of the mortgagee have the same right as the mortgagee to enter for condition broken
The grantee of the mortgagee must prevail in ejectment brought by the mortgagor after condition broken
Lapse of time does not raise the presumption of payment if foreclosure proceedings have been taken, or the mortgagee and his heirs' have never resided within the state
Scire facias does not lie under the Illinois statute (Rev. St. 1845, c. 57, § 23) to foreclose a mortgage not duly acknowledged, although by chapter 24, § 28, the record of mortgages not acknowledged is made notice to subsequent purchasers
A foreclosure decree is a judicial finding of default in payment, and the mortgagee has thenceforth the right of entry for condition broken
After foreclosure, the mortgagor is, in general, entitled to possession until the time for redemption has elapsed; but, if such possession is likely to impair the purchaser's rights, a receiver may be appointed
One in possession of mortgaged lands is accountable to the mortgagee for rents and profits if, on foreclosure, there is a deficiency. A mortgagee purchasing the property under a power, at a sale to which the mortgagor's assignee in bankruptcy was a party, held entitled, as against the assignee, to the rents and profits between the day of sale and the day of confirmation by the bankruptcy court.

**Municipal Corporations.**

See, also, “Counties”; “Railroad Companies.”

It was competent for a town to adopt article 9 of the Illinois incorporation act by ordinance, without a vote of the people.

Equity will enjoin a municipal corporation from enforcing the penalties of an illegal by-law to the irreparable injury of the complainant.

In an action on negotiable coupons, cut from bonds of a public corporation, which has no general authority to make negotiable paper, special authority must be alleged.

A bona fide holder of municipal bonds for value without notice is not affected by the omission of a special registration of voters where the bonds recite that they were duly authorized by a vote of the voters of the city.
NAVIGABLE WATERS.
See, also, “Constitutional Law”; “Riparian Rights”; “Waters and Water Courses.”
Navigable streams should be left open, and no one has a right to obstruct their channels.
Where a raft was driven by vis major into a river channel, and every effort was made by those in charge to remove it, held, that a steamboat was not justified, by apprehension of pecuniary loss from reasonable delay, in summarily destroying it.

NEGLIGENCE.
See, also, “Master and Servant.”
Contributory negligence in respect to the burning of a building by sparks from a steamer is not imputable to the owner for constructing the building of wood, though it be within five feet of a dock on a public navigable river.
What facts constitute due care, the want of which is culpable negligence, is a question for the jury.
Defendant's steamboat, having no spark arrester, communicated fire to its elevator, which, in turn, communicated fire to plaintiff's mill. Held, that the questions of proximate and remote cause, and of defendant's negligence, were questions of fact for the jury.

Negotiable Instruments.
See “Bills, Notes, and Checks.”

NEW TRIAL.
Misstatement by the judge in his charge, in respect to an immaterial fact, held no ground for a new trial.
A new trial will not be granted as for newly-discovered evidence, in order that defendant may avail himself of the testimony of persons jointly indicted with him, who were acquitted.
The court may grant a new trial if it thinks the verdict against the evidence.
In general, affidavits of jurymen cannot be read to show mistake, miscalculation, or misconduct of the jury as ground of new trial.
A rule for new trial must be discharged when the judges are divided in opinion as to granting a new trial.

OFFICE AND OFFICER.
See, also, “Marshal”; “Sheriffs and Constables.”
A public ministerial officer who caused the arrest of one residing in the rebellious states on an order emanating from the president is not liable for false imprisonment unless he co-operated with or induced the president to issue the order with motive to oppress.

PARTIES.
Neither the creditor nor the grantors in a deed of trust, nor the trustees named therein, nor the substituted trustee, are necessary parties to a suit by the grantee of the equity of redemption to redeem the lands from the lien of the trust deed. Persons cannot be made parties by designating them by a fictitious name in the introductory part of the bill and in the prayer for process. If process is prayed against all necessary parties, a demurrer for want of proper parties will not lie on the ground that some have not been served.

**PARTITION.**

The possession of a tenant in common, being the possession of his cotenant, will enable the latter to maintain a partition suit even where possession is necessary. If complainant's title is not doubtful or suspicious, equity will decree partition whether he is in actual possession or not; but if he claim legal title, and that title is doubtful, it is usual to remit him to an action at law to try title, and retain the suit awaiting the result. If he claim equitable title, and that is doubtful, the court will first ascertain the title before making partition. A partition by which allotments were made to some of the parties as heirs held to estop them from claiming by purchase, and not as heirs. The effect of a decree in a partition suit considered and declared.

**PARTNERSHIP.**

See, also, “Bankruptcy.”

Permitting the use of one’s name in a firm after retiring therefrom makes one liable on a note of the new firm in the hands of a purchaser without notice. A mortgage given by partners upon partnership property to secure an individual debt of one of the partners is valid as against partnership creditors. Real estate held for partnership purposes or purchased with partnership means is personal assets for paying debts or balances due the partners. Real estate of a partnership, vested in the partners as tenants in common, is subject to a trust in favor of creditors and the partners. Upon the death of one partner, this title descends to his heirs or devisees, subject to the same trust. Partnership funds fraudulently diverted to individual purposes by one member may be followed by the other members, and treated as trust property, if they can be distinctly traced in the hands of any one except a bona fide purchaser without notice. Until a partnership is dissolved, the accounts of the partners liquidated, and a balance struck, one cannot maintain indebitatus assumpsit against another. To constitute a settlement of accounts among partners, all must consent to and be bound by it or none are.
Notice of the dissolution of a limited partnership must be published on the same day in each week, under a statute requiring publication “once in each week for four weeks.” (1 Rev. St N. Y. p. 67, § 24.) Creditors of a partnership, consisting of husband and wife, are entitled to payment from the partnership assets in preference to individual creditors of the husband.

**PARTY WALLS.**

Under the building regulations, there is no right to build a party wall for a brick house when there is already a frame building on the adjoining lot.
PATENTS.

Nature of the grant.
Patent rights rest exclusively upon statute, and statutory provisions must be complied with in all essentials

The commissioner of patents.
The commissioner is bound by the decision of his predecessor granting a patent while it is unreversed by a competent court.

Patentability.
No discovery will entitle the discoverer to a patent which does not amount to the production of a new thing
The discovery of a new effect of that which existed before is not patentable
Experiments by the inventor with the abandoned and unsuccessful machine of another are no evidence of want of novelty in an invention subsequently reduced to practice
A machine so imperfect as to be altogether unfit to perform the functions of a later machine will not defeat a claim of novelty in the latter
Evidence of crude and unsuccessful experiments is not sufficient to anticipate a patent.
The date of an invention held to be when the same was embodied in a complete machine in actual, though private, use
Placing blocks of ice edgewise in storage, which is effective to better preserve them, is not patentable
Copper-plate printing on the back of bank notes is a patentable art
There is no invention in shifting the raker's seat on a harvesting machine so that the raker sits facing the falling grain
Combining elements so as to produce a new and practical result, not reached by their separate action, involves invention
The patent law protects simplicity and economy of construction as against prior, complex, and expensive combinations
A combination may be patentable, though the separate elements are old
An inventor of one element cannot claim it in combination with every form of another element with which he unites it, but only in the particular combination described in his specification
The combination of a movable reservoir with a jet bath, in substantially the same manner as a fixed reservoir was previously combined therewith, constitutes no invention, although the patentee had no knowledge of the previous combination; otherwise if the manner of connection was substantially different
“Useful,” as used in the patent law, means not mischievous or immoral
An invention not “useful,” in the meaning of the patent law, is not patentable
It seems that if, by plaintiff’s own showing, the invention is useless and an imposition on the public, the court should direct a verdict
The invention of an ornamental mode of putting up thread, which gave it no additional value, but merely made it sell more readily and for a larger price at retail, held not useful
Quaere, whether the usefulness of an invention is a question of fact or of law

Who may obtain patent.
Communications to the patentee by one who has a distinct conception of the invention, so as to enable the patentee to construct the thing itself, destroys its originality
An employer who conceives the general idea of a machine, but uses the manual dexterity or even the inventive skill of his servant in carrying out the mechanical details, is entitled to a patent, as against the servant

Prior public use or sale.
The two years’ public use or sale prior to the application need not have been with the inventor’s consent and allowance to defeat his right to the patent

Prior description or foreign patent.
Prior use and knowledge of the invention in a foreign country does not affect the validity of the patent. The statute contemplates a description in a printed publication or a foreign patent
The invention must have been so clearly and intelligibly described as that the invention could be made or constructed by a competent mechanic
The publication must have been prior to the time when the invention was actually made
Under the act of 1839, the inventor’s rights are not affected by the act of a third person in obtaining a foreign patent without his knowledge or consent

Abandonment: Laches.
Delay by an inventor residing in the Confederate States held not an abandonment, where the invention was so guarded that no knowledge of it came to the public
An inventor does not forfeit his right to a patent by keeping his invention secret, unless another in the meantime make the invention and secure a patent therefor
A willful omission to apply for a patent for more than two years after knowledge that another is publicly using and claiming the invention as his own bars the right to a patent

Application and issue: Interference.
The specifications need not describe what is in common use and well known
Merely describing, in the specification, parts of the machine not included in the claim does not invalidate the patent.
The specification is sufficient if a skilled mechanic can construct the improvement therefrom.
Mistake in expression shown to be such by other parts of the specification will not vitiate a patent.
The grant of a patent is an adjudication that every fact necessary to the patentee's rights has been established by sufficient proof, and the patent is sufficient primary evidence of the patentee's title.
The commissioner must decide whether the invention is the proper subject of a patent, and refuse the patent where he holds against such contention.
The rule that, where the question is at all doubtful, the patent should be granted, is superseded by Act 1839, giving a right of appeal.

**Appeals from commissioner's decision.**
The commissioner's decision in interference, awarding a patent to each applicant, but limiting the claim of one to a part only of what he describes and shows in his specifications, is reviewable by the judge.
An extension of the time to appeal made by the commissioner on the direction of the secretary of the interior gives the court jurisdiction of the appeal.

**Extent of claim.**
The claim made by the patentee must govern in the construction of the patent, although he might have claimed something different.
The requirement in the act of 1836 that the applicant shall particularly specify what he claims as his own invention does not strictly limit the patent to the matter specified, but the whole specifications and the drawings may be taken together in explanation of whatever is dubious.
The oath of the patentee is not confined to the specific claim, but applies to the whole specification.

In construing a claim, the entire specification and drawing may be examined; and, though there be an error in the claim, yet, if the rest of the patent affords means for correcting it, the patent is not void.

A claim for the “arrangement of,” etc., “as herein described,” requires a reference to the description and drawings to ascertain its true construction.

“Substantially as described,” used in a claim, limits general words to the particular description found in the specifications.

**Reissue: Disclaimer.**

The improvement described in a reissue must, in principle and mode of operation, be substantially the same as that intended to be described in the original.

A patentee cannot properly claim, in a reissue, features not embraced in the original, and which he had not conceived when he obtained the original.

Where the original describes merely a new and useful manufacture, the reissue cannot include a claim for the process.

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

An obvious mistake in description made in copying the specifications of a reissue, and which can easily be corrected, does not impair the patentee’s rights.

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.

The commissioner's action in granting a reissue conclusively determines that the original patent was not invalid by reason of insufficient specification, or by reason of claiming too much, and that the error arose by inadvertence or mistake, without fraudulent intent.

Whether a reissue was improperly granted is a matter of construction to be determined by the court from inspection and comparison of the original and reissued patents.

**Duration.**

Under the act of 1839, an inventor could take out a patent for the full term, although he had obtained and published a foreign patent within six months.

**Assignment.**

A transfer of “the sole and exclusive right and monopoly of manufacturing” under a patent, for a certain royalty, is a transfer of the entire interest, and not the establishment of a license fee.

**Licenses.**

Failure of licensee to comply with condition to advance money for procuring patent, and the presentation by him to the inventor of a bill for money already ad-
Infringement—What constitutes.

On the question of identity, the law regards substance, and not form. Identity of principle is the thing to be determined.

“Principle,” as applied to machines, refers to mode of operation; and identity of principle may exist in structures widely different in appearance and dimensions.

There is no infringement of a combination patent unless all the parts of the combination are used.

Infringement is not avoided by mere formal alterations, or the substitution for one ingredient of a well-known equivalent.

Equivalent devices, acting in the same combination to accomplish the same result, are not prevented from infringing because they accomplish more than the devices of the patent.

Infringement of a combination is not avoided by changing the location of one element where the operation and result continue the same.

Making the lower roll of a fluting machine adjustable, instead of the upper, and the use of a rack and pinion to make it adjustable, instead of a screw, does not avoid infringement.

A claim in a fluting machine for an arched guide in combination with fluting rollers is infringed by a combination in which the position of the arched guide is changed, but without varying its mode of operation or the results produced.

Mere formal differences, such as substituting two additional dies, in a method of forming the eyes of picks, which perform the same function as the side walls of the dies of the patent, do not avoid infringement.

A screw rotated in a stationary nut by means of a spur wheel gearing with another screw, producing longitudinal movement, is the equivalent of one to which like movement is imparted by means of a nut rotated by a pulley.

A claim in which the lower chords in truss bridges were described as of bars “wide and thin” held not infringed by a bridge having chords of bars round in section.

—who liable.

One making a machine which may be easily adjusted so as to infringe, with intent that it shall be so adjusted by a third person, is an infringer.

—remedy—procedure.

A trustee of the legal title may sue for infringement in his own name.

Where two or more patents are included in one suit, a defense addressed solely to one patent has no application to the others.
Proof of two-thirds ownership in a patent will not sustain an action for infringement where plaintiff claimed sole ownership. Upon the issue of infringement, the jury is limited to the question as to whether the two things involve substantially the same mechanical principles. Rehearing on the ground of newly-discovered anticipating devices will be denied, in the absence of clear proof of anticipation.

—Evidence.

Defendant, on the general issue, without notice, may introduce the act of congress, and may set up that the invention is not patentable, that the specification is ambiguous, that the patent is broader than the invention, and a license to use the machine.

Under the general issue without notice, defendant cannot set up that the specification does not show the whole truth relative to the discovery, or that it contains more than is necessary for the purpose of deceiving the public.

The notice of special matter (Act 1836, § 15) must give the name of the person who had knowledge of the prior use and the place of such use. It is not sufficient to name the party using the thing.

Notice that a prior machine was used at Cincinnati,” “Covington,” “Pittsburg.” “Wayne County, Ind.” is not sufficiently specific to authorize introduction of proofs.

Evidence of want of novelty, of which no notice was given in the answer, is inadmissible except to show the state of the art.

The existence of the patent casts upon infringers the burden of proving that the improvement was not the patentee’s invention, or that it was in public use before his application.
Complainant may show that his invention was made and reduced to practice at a date much earlier than that of the date of the application
Testimony of what might have been done with prior machines is inadmissible upon the issue of novelty
The testimony upon the issue of novelty must be confined to a comparison of the prior machines with that of the patentee
Evidence of mere prior knowledge or discovery, without use, is not sufficient to defeat a patent to another. The invention must be shown to have been complete, and capable of working

—Accounting: Damages.

The accounting should cover all infringements down to the date on which the accounting is had
The jury must find that the invention is useful and of some value before they can award damages for infringement
Profits are the net gains of the infringer from the invention; damages are the losses sustained by the owner
The profits recoverable from an infringer are those derived from the use of the invention over what would have been derived from the use of other machines then open to the public
Upon an accounting, complainant may recover the entire profits accruing from the infringement, irrespective of the established royalty
Expenses of defendants for advertising the infringing machine are to be deducted in estimating their profits
A license fee, where there is only a single license, will not fix the measure of compensation
Damages should include not merely defendant's profits, but plaintiff's entire loss, including the expense of bringing suit
Where complainant proved a royalty for the use of similar machines to those of defendant, held, that defendant was not entitled to prove that some of his machines infringed several of the claims, and others only one of the claims
A royalty paid in consideration for the whole monopoly of a patent is not a safe criterion of damages, unless it is shown that plaintiffs lost the sale of the same number of machines made and sold by defendants
Royalties paid or due by defendant under an infringing patent, which contains improvements over complainant's patent, should be deducted from the amount of profits

Various particular inventions and patents.
Baling press. No. 60,196, for an improvement, held valid and infringed
Beds. No. 191,244, for an improvement in spring-bed bottoms, held valid and infringed
Bonnets. No. 19,932, for an improvement in bonnet frames, construed and limited
Bcots and shoes. No. 122,030 (reissued Nos. 6,098, 6,099), for improvements in the manufacture of moccasin boot and shoe packs, held valid in part and infringed
Bridges. No. 2,707, for an improvement in bridges, construed and held valid
Bridges. Linville's patent of 1862, and Linville's and Piper's patent of 1865, relating to the lower chord bars of truss bridges, held not infringed
Corset springs. No. 173.124 (reissued No. 7,729), for improvement, held valid and infringed
Dies. No. 68,446, for an improved die for swaging mattocks, hoes, etc., held not anticipated, and valid
Doors. No. 9,765, for an improved door fastening, construed, and verdict returned for defendant on the questions of novelty and infringement
Fluting. Reissue No. 3,000, for an improvement in fluting machines, construed, and held valid and infringed
Fluting. Reissue No. 3,001, for an improvement in fluted puffing, held void for want of novelty
Harvester. Reissue No. 1,211, for improvements in combined harvesting machines, construed, and held void for want of invention
Harvesters. Reissue No. 1,262, for improvements in grain harvesters, as restricted to valid claims, held not infringed
Harvesters. Reissues No. 4,484, 4,672, and 4,673, for improvements in grass cutting and harvesting machines, held valid and infringed
Lamp chimneys. Reissue No. 7,069, for an improved attachment, held valid and infringed
Mattress. Reissue No. 2,092, for a spring mattress, held valid and infringed
Mill. Reissue No. 3,794, for an improved smut mill and separator, construed, limited, and held not infringed
Mitres. Reissue No. 3,445, for improvement in mitre machines, held valid, and infringed by a machine made according to the Hall patent of August 17, 1858
Paper. No. 1,336, for a machine for making paper, found valid, and infringed, by the verdict of a jury
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

Plastering hair. No. 152,560, for a method of putting up plastering hair in convenient packages for sale and transportation, held void for want of invention

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

Valves. No. 7,755 (reissued No. 255), for improved valves for governors, held valid and infringed

Vaults. Reissue No. 303, for an improvement in vault covers, construed, and held not infringed

Watches. No. 61,207 (reissued No. 4,334), for improvement in stem-setting watches, held valid and infringed

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

PAYMENT.

See, also, “Bankruptcy”; “Bills, Notes, and Checks.”

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

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

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
The presumption of payment of a bond arising from lapse of time is not rebutted by the obligee’s indorsement of a payment on account by work done, unless this was with the privity of the obligor.

Where the revenues of Spain were pledged to secure a loan, duties payable to the king of Spain, coming legally into the hands of the creditors, are properly applied by them to the liquidation of the loan.

Under the act of April 18, 1814, requiring moneys received by court officers to be deposited in bank, the court may require officers to pay moneys received by them into court, to be deposited in bank by the clerk.

**PILOTS.**

A claim for half pilotage under a state law for a tender and refusal of services constitutes a lien upon the vessel.

To sustain a claim for half pilotage by a Hell Gate pilot, he must show that the vessel was in the prosecution of a voyage which would carry her through Hell Gate.

**PLEADING AT LAW.**

A declaration on a bill of exchange, payable to a firm, must aver that plaintiffs were joint partners or traders under the firm name.

A declaration for a penalty given by a single statute is good on error, although it concludes against the form of the “statutes.”

A suit in equity for infringement of a patent was stayed until plaintiffs could establish their rights by action at law. In the action at law, the complaint referred to the equity suit and the stay order. Held, that this reference was not irrelevant or redundant matter.

A special plea in assumpsit averring that the contract was entered into in another state, by the law of which it was usurious, is good on special demurrer.

A plea setting up a judgment of discharge by a bankruptcy court having plenary jurisdiction is sufficient without avering the proceedings prior to discharge.

A plea in bar is bad, whether involving questions of law or fact, where it goes only to the question of damages.

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.

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.
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.

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.

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.

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.

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.

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.

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.

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.

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.

Under a count on a contract to deliver rations for a year, plaintiff cannot recover for rations furnished only part of a year, unless prevented by defendant from completing the contract.
A bond payable on a day certain constitutes a variance from a declaration describing it (in legal effect) as payable on or before that date. 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. 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.

**PLEADING IN ADMIRALTY.**

Want of jurisdiction appearing on the face of the libel should be taken advantage of by demurrer, not by plea. In the absence of written rules, the court will deduce from prior decisions such rules as are applicable to the particular ease. 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. A possessory libel cannot be amended so as to proceed for damages in personam.

**PLEADING IN EQUITY.**

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.
A bill of review should state the former proceedings and wherein the party exhibiting it considers himself aggrieved. An alternative prayer does not necessarily make a bill multifarious. 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. In equity, defendant is entitled to only one plea without leave of court, and leave will be given only in case of obvious necessity. 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. 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. 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. 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. When required by the bill, interrogatories must be answered as to information and belief as well as to knowledge. 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. An answer responsive to the bill must prevail as evidence unless met by two witnesses, or one witness and corroborative circumstances. A demurrer stating facts not appearing on the face of the pleading demurred to is bad as a speaking demurrer. 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. Argumentative pleading inadmissible. A fact can only be put in issue by a direct allegation in such form that issue can be taken directly upon it. Where the bill sets up title under a will, title by codicils thereto not mentioned in the bill cannot be shown.

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.
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. 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.

**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. 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. 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.

**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. 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. 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. Under a stipulation for appearance to answer and abide the court’s 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. Increased stipulation for costs should not be required of claimants on account of delays in the suit occasioned by libelant. The real estate of the sureties in a stipulation in admiralty is subject to execution issued from the admiralty court. A proctor bidding at a sale is personally liable where his agency is not known to the marshal. A failure to make return of the writ of vend. ex. is a mere irregularity, which is cured by confirmation of the sale.
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.”
A purchaser at a judicial sale may be compelled to complete his purchase by payment of the money
The purchaser is bound by a service upon him of an order to pay the money into court, though he be not named therein

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.
In the federal courts a bill will not be dismissed for want of equity except on demurrer or on final hearing
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
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
An amendment of the bill when allowed after answer and replication does not open the pleadings unrestrictedly
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
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

**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

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

**PRINCIPAL AND SURETY.**

See, also, “Bail.”

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

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

**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

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

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

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

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

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

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

The marshal is liable where he distributes the proceeds without an order of court
Captors are not liable for damages where the vessel presented probable cause for capture, though her predicament was involuntary, and caused by mistakes of the revenue officers of the captor's own government.

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.

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.

Vessel condemned after the lapse of a year and a day for an attempt to break the blockade of Beaufort, N. C.

Vessel condemned for an attempt to violate the blockade of Wilmington, N. C.

Vessel and cargo condemned for attempting to violate the blockade of Wilmington, N. C.

Process.

See “Writs and Notice of Suits.”

PUBLIC LANDS.

As to existing settlements, the Oregon donation act was a grant in presenti to the party entitled.

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.

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.

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.

Under that act, a grant to the “children or heirs” of a settler or wife takes effect first in favor of the children.

Under that act, a settler might change his location before making final proof; and, in case 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.

The act does not include settlers who died before its passage.

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.
A bond given between private parties, in relation to certain lands covered by the Oregon donation act, construed

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

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

A patent to a deceased person inures to the benefit of his successor in interest.

(5 Stat. 31.)

As between individual citizens, rights to the possession of public lands are protected by the courts, and acquiesced in by the government

Evidence held insufficient to establish a Mexican land grant.

Authority of Mexican governor to sell certain mission property

Location of land with scrip, under the act of July 17, 1854, passed the fee

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

The Pennsylvania statute of April 3, 1792, from the second to the tenth section, inclusive, is inapplicable to lands in Luzerne county
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.

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

**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.

**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.

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.

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.

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.

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.
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
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
Neither is the fact that the questions submitted to the voters embraced two distinct propositions a good defense
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
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
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
To prevent from lapsing a land grant, which constitutes the principal security of the bondholders, a receiver will be appointed with authority to borrow money and complete the road
Under equity rule 48, it is unnecessary to have all bondholders present in a suit to foreclose a railroad mortgage
A receiver may be appointed in railway foreclosure proceedings where the security is inadequate, the mortgagor irresponsible for any deficiency, earnings are not applied to interest, and the mortgagor is in possession by itself or its tenant
In a suit to foreclose a railroad mortgage, a receiver may be appointed, notwithstanding that the premises are in possession of a lessee, the latter being a party before the court
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
A court in foreclosure proceedings should not enter upon the work of building or completing a railroad except in case of irresistible necessity, and to prevent great and certain sacrifice of rights and securities
Under extraordinary circumstances, with consent of the trustees and four-fifths of the bondholders, held, that a receiver would be authorized to finish a railroad with money to be advanced by bondholders, and to be secured, after completion, by debentures constituting a lien upon the property
Right of Ohio material men, under statute, to priority over the mortgage on a consolidated road traversing Ohio, Indiana, and Illinois, where no such statutes existed in the latter two states, considered

REAL PROPERTY.

See, also, “Deed”; “Ejectment”; “Partition”; “Public Lands”; “Quieting Title.”

Compensation for improvements made to an innocent person who made the same supposing himself to be the absolute owner of the land

Receivers.

See “Railroad Companies.”

REFERENCE.

See, also, “Arbitration and Award.”

Report set aside because of palpable mistake of fact appearing by examination of the referees

REMOVAL OF CAUSES.

Right of removal.

An unnaturalized foreigner may remove a cause as such, though he has long resided in a state, and, by permission of its laws and constitution, has voted at the state elections
An action is removable, though diverse citizenship does not appear on the face of the writ, if it appears on the petition for removal. To justify removal, it must appear that over $500 is in dispute, but this may appear either by the writ or the declaration: and if there is doubt, from different counts claiming different sums, the court may inquire into it by evidence. The right of removal cannot be taken away by release of damages bringing the matter in dispute below $500. The right of removal under the act of March 3, 1875, is to be determined by the state of affairs as it appeared at the time of filing the complaint, and is not affected by an admission in the answers. There is no authority for removing civil causes, irregularly brought in the circuit court, to a district court invested with circuit court powers. Under the act of 1875, the circuit court, to which the cause is removable, is that for the district within whose territorial limits the cause is pending in the state court. A minor is incapable of consenting to a removal either by his guardian ad litem or any other person.

**Time for removal.**

A removal under the act of 1789 cannot be made by defendant later than the time of entering his appearance. Subdivision 1, § 639, Rev. St. was repealed and superseded by Act March 3, 1875. Under the act of 1875, a removal could not be had after the expiration of several terms at which the case might have been tried in the state court. The cause may be removed after a reversal on appeal and the granting of a new trial by the state supreme court.

**Proceedings to obtain.**

A stipulation for removal will not confer jurisdiction unless the record shows the facts necessary to a removal under the acts of congress. On petition by a United States marshal to have a case against himself removed from the state to the federal court, it must be shown that he is sued on account of some act done by him under color of his office. A petition in general form that defendant has “a defense to the plaintiff’s action arising under and by virtue of a law of the United States” is sufficient.

**Effect of removal: Subsequent proceedings.**

Where legal and equitable relief is sought by the same pleading in the state court, the plaintiff must replead after removal. The want of jurisdiction may be shown at the trial.
The federal court *held* to have jurisdiction on removal notwithstanding a plea to
the jurisdiction, filed but not passed upon in the state court, which would have
defeated the action, but which set out facts requisite to give jurisdiction to the
federal court.

In a cause removed under the act of March 3, 1863, because it involved an act
done under the authority of the president of the United States during the Rebel-
lion, held, that the act of March 2, 1867, legalizing acts done by the president's
authority, and providing that no person shall be held to answer for such acts in
any court, did not deprive the court of jurisdiction so as to require a remand.
The circuit court will not remand the cause on account of erroneous steps in the
mode in which it has been removed where otherwise it would have jurisdiction.
A federal court has no power in a removed cause to amend the record of a state
court in another action.

**SALE.**

See, also, “Bankruptcy”; “Vendor and Purchaser.”

One to whom sugars were shipped without orders held entitled to a few days,
after learning of the shipment, to deliberate whether to receive them on his own
account or to reject them.

A usage of the wool trade to imply a warranty that the bale of wool is not falsely
packed held valid and controlling.

Where the contract is terminated solely on account of the default of the purchas-
er, an action will not lie by him to recover back an advance payment.

**SALVAGE.**

**Right to salvage compensation.**

Towing a raft of timber, drifting out to sea, to a safe place, and securing it there,
is a salvage service.

A seaman who in November, 1800, assisted in recapturing his vessel from
French captors, *held* entitled to salvage, notwithstanding that the convention
of October 3, 1800, between the United States and France, had already been
signed, it having not yet been ratified at the time of the hearing.

Where a master turned his own vessel over to the supercargo, and navigated into
port a vessel whose crew were dead or disabled by yellow fever, held a salvage
service, entitled to a liberal award.

**Amount.**

Salvage should vary with the peril from which the property was saved.

**Remedies for recovery.**

Right of salvors to take the vessel into port for adjudication, against the master's
protest and offer to pay for services.
Cargo should not be sold for salvage when the vessel cannot be temporarily repaired, and her master prays that she be sold to pay salvage

SEAMEN.

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

Protection and relief.
A seaman severely beaten without cause by the mate, on a voyage to a foreign port, is entitled to lay his grievance before the American consul, and the master has no right to refuse his request therefor
Where a seaman had been brutally maltreated by the mate, and was refused permission by the master to see the American consul, and severely punished for refusal to return unconditionally to duty under the mate, held, that he was justified in leaving the ship, and was entitled to wages to the time of reaching home by another ship, and to damages

The contract of shipment.
Fishermen on mackerel voyages, in licensed and enrolled vessels, are entitled to be cured at the vessel’s expense, though they are paid in proportion to their individual catches. Strong evidence of a custom to the contrary held insufficient to take away the right
Expenses for board, medicine, and medical attendance for a seaman who voluntarily goes on shore to be treated for yellow fever are chargeable to the ship, and cannot be deducted from his wages
Wages—Right to.
A seaman advanced during the voyage to a position having a higher rate of pay held entitled to the advanced rate.
Wages run to the time of actual sale of the vessel, not merely to the date of advertising the sale.
A person called Lebrun and Lebring having been on board a vessel as a seaman, and there being no one among the crew by the name of Lebering, held, that the administrator of Lebering should have the wages due for the services of the person so designated.
The roll d'equipage is good evidence of the shipment of a seaman and of the contract as to wages.

—Remedies for recovery.
The certificate of a consul that the discharge of a seaman was granted with the seaman's consent is conclusive, unless it is shown that the consul acted corruptly or fraudulently.
A certificate of a United States commissioner to the clerk as the foundation of process in behalf of seamen (Act 1790, § 6) must show on its face that the commissioner had authority to act, and hence must show the absence of the district judge, or that he resided more than three miles distant from the place.

—Deductions: Extinguishment, etc.
Mate and sailor leaving boat unattended on shore, whence it is stolen, are chargeable therefor.
Under the act of July 20, 1790, the entry in the log book is indispensable to a forfeiture of wages.
Leaving vessel at last port of delivery, before discharge of cargo, is cause for deduction of wages, but not forfeiture of the whole.
Where a seaman was discharged for misconduct, but was received again on board, his services accepted, and wages credited in his account, held a waiver of forfeiture, although the shipping articles provided that reinstatement should not be a waiver.
Where forfeiture by misconduct was found to be waived, held, that deduction should still be made for absence without leave, and for losses or expenses resulting from the misconduct.

SEARCH WARRANT.
Act March 2, 1867, authorizing the issuance of a search warrant in certain cases of frauds upon the revenue, is constitutional.
The marshal may examine all books and papers on the premises in order to select those mentioned in the warrant, but for no other purpose.
SET-OFF AND COUNTERCLAIM.

A debt of two joint debtors to two joint creditors cannot be set off against a debt of one of the joint creditors to one of the joint debtors

SHERIFFS AND CONSTABLES.

At common law, a sheriff may sell, after going out of office, goods seized on execution while in office

It seems that, where an attachment is made by a sheriff who resigns before execution issues, he is not the proper person to levy it

Upon general principles, a sheriff can only levy upon such real estate as is within his county

A new county was set off after certain lands lying therein had been attached. Subsequently execution was issued to the sheriff of the old county, and was levied on the lands by his deputy, who was also deputy, of the sheriff of the new county. Held, that the levy was utterly void

SHIPPING.


Public regulation.

A licensed coaster engaged in an illegal traffic is forfeited under Act Feb. 18, 1793, c. 8, § 32

“Foreign voyage,” in section 8 of the coasting act of February 18, 1793, means a voyage to some place in the jurisdiction of a foreign country, or at least without the waters of the United States

A coasting vessel is not forfeited for proceeding on a foreign voyage where such vessel has not actually broken ground with an intention to commence such voyage. (Act 1793, c. 8, § 8.)

The forfeiture of a vessel for a fraudulent registry under Rev. St. § 4189, only takes effect from the seizure and condemnation, and a purchaser in good faith before seizure acquires a good title as against the United States

A vessel using a steam register adopted by the supervising inspectors is not liable to seizure under the act of February 28, 1861, although the same is defective and insufficient

Libel by passengers for deficiency of water and provisions held not sustained by the evidence

Title to vessel.

A simple allegation of fraud in a petition to set aside a sale, without setting forth the facts which constitute the fraud, is insufficient
The master.
A contract by the master hiring a third person, as nominal master for the purpose of clearing the vessel, at monthly wages, held binding on owner and vessel, but not as to a stipulation for a further sum in case of discharge.

A contract made by the master in his own name, in excess of his authority, is not validated, so as to bind the ship, by the fact that the ship's husband assumed to authorize him to make the contract.

The master of a merchant steamer engaged in the transportation of merchandise has no authority to bind the ship by a contract to tow another vessel on a long ocean voyage; and for breach of such a contract he alone is liable.

The master as such, or as agent of the owners in the absence of a consignee, cannot pledge the freight to raise money for private purposes; otherwise where he acts as mortgagor in possession.

In case of wreck, the master has no right to abandon his vessel to the care and custody of wreckers.

A master overloading a pier is personally liable for resulting injury to cargo which he had already delivered thereon.
Employment of vessel.
The master is authorized to use force to a passenger, not for a mere breach of regulations, but only when there is a clear necessity for it
No punishment higher than a reprimand should ever be inflicted on a passenger without conference with the other officers and entry of the facts on the log book

Liabilities of vessels or owners.
A libel in rem will not lie for injuries to goods by fire, caused by the alleged negligence of the master, who was also part owner. (Act March 3, 1851.)
The act of the master in overloading a pier renders the ship liable for resulting injury to cargo, which she had already deposited thereon, even if such deposit was under circumstances rendering it equivalent to delivery to the consignee
A mortgagee who after taking possession of the vessel, and while she is under arrest for wages, promises to pay outstanding wages earned while he had title to her, becomes thereby personally liable

Limiting liability.
The act of March 3, 1851, does not limit liability for damage done by a vessel to property on land, as where a warehouse is burned by sparks from a steam tug

Slander.
See “Libel and Slander.”

SLAVERY.
A slave manumitted by will, to take effect at a future date, is not entitled to freedom until that time, but the court will enjoin the respondent from removing him from its jurisdiction
Eight to freedom of Maryland slave carried into Virginia by bailee
A slave imported into the county of Washington from Virginia, and not recorded within 30 days, is entitled to freedom

SPECIFIC PERFORMANCE.
Specific performance will not be enforced between the original parties unless the terms of the contract are clear, definite, and positive; a fortiori, as against an assignee
The party seeking specific performance must show that he has been always ready to perform his part

STATES.
Under the patent and charter of Connecticut of March 19, 1631, and April 23, 1662, respectively, and the patent of March 12, 1664, to the Duke of York, and the possession claimed and held pursuant thereto, the islands lying easterly of the land boundary between Connecticut and New York and adjacent to the Con-
necticut shore are within the jurisdiction of Connecticut, and this jurisdiction includes Goose Island

**STATUTES.**

See, also, "Constitutional Law."

An act entitled "To incorporate the town of," etc., is not open to the objection that it relates to more than one subject, etc., where it provides for the issue of railroad aid bonds.

Judicial inquiry into the motives of legislators in passing a statute is not permissible.

A legislature re-enacting a British statute in this country presumably adopts the construction given to it by the British courts.

When a statute gives a right without providing a remedy, the common law may be looked for the remedy.

Where a statute giving the right to recover money paid under an illegal contract is repealed, a pending suit and the cause of action involved in it fall with the repeal.

**SUNDAY.**

As a general rule, judicial acts cannot be performed on Sunday.

Depositions taken on Monday, after adjournment from Saturday to Sunday, and from Sunday to Monday, must be suppressed.

**TAXATION.**

See, also, "Internal Revenue."

Stocks and bonds of Pennsylvania corporations, and claims against Pennsylvania debtors, belonging to a decedent not domiciled in Pennsylvania, and passing to collateral heirs, but not under the intestate laws of the state, nor under any will proved and administered therein, are not subject to the state collateral inheritance tax.

The board of equalization created by the Missouri constitution of 1875 (article 10, § 18) became at once the only board for that purpose, was clothed with all the powers of the previous board, and had power to act as an original assessing body.

Levies which were not ascertained until the summer of 1876, although the assessment related back to August, 1875, were governed by the rates prescribed by the Missouri constitution of November, 1875.

Where the receiver of a railroad and the taxing officers agreed to submit to the court the question of the validity of certain levies, *held*, that the company was not subject to the penalty prescribed by the Missouri statute of March 15, 1875,
against railroad companies failing to pay taxes, but the court would allow 10 per cent, interest from the date the taxes became due.

In a suit to recover taxes, the court cannot reduce assessable value or include omitted property; it cannot go behind the action of the board of equalization, finding the number of miles of a railroad in a county, or adjust the amount of taxable property, or correct mistakes of fact.

Intervening petitions by taxing officers in a railroad receivership case, for payment of taxes, are not suits to recover taxes, within the meaning of the act allowing 5 per cent, for attorney's fees. (Act Mo. March 29, 1875, § 4.)

In a suit to collect taxes, tax bills purporting to be certified by duly-authorized officers are presumed to be correct, and the burden of proof is upon those contesting them.

Outstanding tax title in another is no lawful ground for a refusal by the county auditor to receive from the owner of the regular title money tendered to redeem from another tax sale.

The doctrine of presumption in favor of the acts of sworn public officers applies in cases involving the validity of tax proceedings.

In proof of the proceedings preliminary to the sale, it is only necessary to show by the county auditor's record such facts as the statute requires to be of record; other facts may be proved by parol.
Recitals in the county auditor's deed, being made on his official oath, are presumed to be true until the contrary is proved.

Under a statute making tax deeds prima facie evidence of valid title (Act Ohio, March 14, 1831), the deed is admissible in evidence, without proof of the preliminary proceedings.

In such case the burden of showing that the prior proceedings were irregular or illegal rests on the other party.

TENANCY IN COMMON.

A deed by a tenant in common, of his interest in a particular part of the tract, though void as to cotenants, is good against himself and those claiming under him.

TENDER.

It is not a tender for one to ask if the money will be taken, and to say he is ready to pay it, and offer to give a check.

TOWAGE.

In a towage contract, the words "at the risk of" the tow's master and owners do not discharge the towing boat from the exercise of reasonable skill and care.

A steamboat endeavoring to round the Battery in New York harbor with a large tow, against a strong tide, being apparently without sufficient power, held liable for loss of tow by collision with a vessel at anchor.

TRADE-MARKS AND TRADE-NAMES.

A trade-mark in the symbol "½" as ordinarily printed, cannot be acquired for cigarettes made of two kinds of tobacco, half and half; but held, that plaintiff had acquired a right to it in a particular form, size, color, and style, under which it was registered.

A trade-mark used only in connection with the dry white oxide of zinc is not infringed by use in connection with paint composed of white oxide of zinc, ground in oil, falsely represented as containing white oxide of zinc made by the owner of the trademark.

TREASON.

Levying war against the United States by persons however combined and confederated, even though successful in establishing their actual authority in several states, is treason.

The jurisdiction of state courts as to treason is not limited.

Construction of Act N. J. Dec. 11, 1778, relating to forfeited estates, and of inquisition proceedings thereunder.

TRIAL.

A verdict will be directed for defendant when the court, upon the evidence, would necessarily set aside a verdict for plaintiff, if one were returned

TROVER AND CONVERSION.

A bailiff who distrains goods for rent, and leaves them on the premises of the owner, who takes them away, cannot maintain trover therefor

TRUSTS.

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

One purchasing the legal title, with notice of a prior equitable title, is trustee for the holder of the equitable title; but, if the latter encouraged the purchaser to pay the purchase money, the legal title will not be disturbed in equity

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

A trustee removed without notice while in a hostile territory held to have abandoned his office by a silence of 10 years after cessation of hostilities and notice of removal

USURY.

To constitute usury, there must be a corrupt loan of money

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

Where the sale of depreciated bank notes at a greater or less than the market price is a mere device to evade the statute, it is usurious

VENDOR AND PURCHASER.

See, also, “Bankruptcy”; “Covenants”; “Deed”; “Sale”; “Specific Performance.”

A penal bond construed as a contract of sale with covenant to make good title

A valid contract of sale vests the equitable interest in the vendee, from the execution of the contract, though the purchase money is not then paid

A covenant to convey by “a good general warranty deed, with the fee simple annexed,” is complied with by a deed containing a covenant against incumbrances and a general warranty of title, without covenant of seisin

If the purchaser sells the land to a third person, and the deed is duly recorded or made known to the original vendor, the latter cannot, by virtue of his lien, extinguish the third person's rights without legal process

In Texas a vendor’s lien reserved in the deed is equivalent to a mortgage for purchase money, and the purchaser has the same equity of redemption as if he had received a deed and given a mortgage for the purchase money
Where a vendor's lien was reserved for part of the purchase money, and the grantee conveyed to another in trust for a joint-stock company, and the trustee went into possession, held, that a foreclosure of the lien, without making the trustee a party, did not extinguish the joint-stock company's right to redeem. In such case the proper party to file a bill to redeem would be the trustee; but where he had been removed, and the directors of the company failed to appoint a new trustee, the stockholders might file the bill. Actual notice of a deed is as effectual as constructive notice based on the record.
What is sufficient possession to constitute notice to judgment creditors or bona fide purchasers

WAR.

See also “Attainder”; “Martial Law”; “Prize”; “Treason.”

Transactions between individuals, which would be legal under ordinary circumstances, are not void because done in conformity with laws enacted by an insurgent body actually organized as a government within a large territory, and in complete exclusion of the regular government

“De facto,” as descriptive of a government, is most correctly used as signifying a government completely, though only temporarily, established, in place of the lawful or regular government, occupying its capital and exercising its powers. In this sense the Confederate government was never a de facto government

The Confederate government was not a de facto government in any such sense that its acts are entitled to judicial recognition as valid

Acts of the Confederate government prejudicial to the interests of citizens of other states cannot be upheld in the federal courts

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

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

Where the creditors were residents of a loyal state, a sale, during the War of the Rebellion under a power of sale in a trust deed whose grantors were residents of a state in rebellion, and were not in default when the war broke out, is void

The right of redemption from the lien of the trust deed upon paying the debt may be enforced against the grantee of the creditor who purchased the lands on such sale

Property was not “abandoned,” in the meaning of the statute (13 Stat. 375), unless the owner was voluntarily absent engaged in aiding or encouraging the Rebellion by arms or otherwise

Waters and Water Courses.

See “Navigable Waters.”

WHARVES.

A contract for the wharfage of a canal boat is a maritime contract
There is a maritime lien upon a domestic vessel for wharfage, enforceable in admirality

WILLS.

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

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

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

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

A bequest of “$20,000 out of the 6 per cent. stock of the corporation of Washington in my name, if so much should remain out of my personal estate after satisfying all previous bequests,” is a specific legacy.

A bequest of corporate stocks, or money in lieu thereof, with power to the executors to change the investment, held not a specific legacy, but liable to contribution on deficiency of assets

A devise for life to testator's wife, then to his son, passes the fee by implication to the son

A devisee takes a fee by implication where the will charges him personally with the payment of legacies

It is not competent for the purpose of preventing a devisee from taking a fee by implication, where he is personally charged with payment of legacies, to show the value of other real estate expressly devised to him in fee

On renunciation by the widow, the remainder man takes an immediate estate subject to her dower

WITNESS.

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

Affirmation instead of oath will only be permitted when the court is satisfied that the witness belongs to a society which professes to be conscientiously scrupulous of taking an oath

Affirmation instead of oath may be permitted where the witness has applied for admission to full participation in the membership of the society of Quakers, and usually meets with them for worship
Letters between partners concerning a lawsuit which they expect to and do begin are privileged; so are letters which concern only litigation of the party writing them.

A party remaining such on the record cannot, by any arrangement with his co-claimants, discharge himself from liability to the libelant, so as to become a competent witness for them.

The court can, against libelant’s consent, discharge a claimant who has parted with all his interest, and make him a competent witness.

In ejectment against two, if there be no evidence whatever of any possession by one, the jury may find a verdict for him at the bar, so as to authorize the other to examine him as a witness.

A shipmaster’s protest may be read to discredit what he says on his examination in the cause.

**WRITS AND NOTICE OF SUITS.**

The provision of the constitution of Louisiana requiring the style of process to be “The State of Louisiana” does not apply to citations.
The absence of a seal from a citation in the copy of a record of a Louisiana court is no proof that the original was without a seal, it being the practice of the clerks to omit the seal in copying. Absence of a seal from a citation is immaterial after personal service thereof.

A nonresident defendant, coming within a state for the purpose of defending a suit, cannot be legally served with process in another suit, even though the prior suit be first discontinued.

Service of subpoena upon persons whose names are alleged in the bill to be unknown, and who are designated therein by fictitious names, is void.

In case of a bill in equity to stay proceeding at law or a crossbill, an order for the service of a subpoena upon the attorney for the absent plaintiff will not be made when the judgment in the action at law has been enforced.

Shares of corporate stock held by a nonresident of the district, within which the corporation is domiciled, are not “personal property within the district,” so as to authorize constructive service on the owner, under Rev. St. 738.