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| Proof of claims may be filed after an order discharging the assignee has been set aside and the assignee ordered to proceed. | 1221 |
| The claim of a broader lien than the facts warrant will not affect the actual lien of the creditor | .225 |
| Informality in proofs will not avail where the creditor, as a witness, has sworn positively of his own knowledge —Allowance or rejection of claim. | 225 |
| The whole claim will be rejected where an invalid part is intentionally included by the creditor | 780 |
| The register cannot order or permit the withdrawal of proof of a debt after he has passed upon it, and allowed, certified, and transmitted the claim to the assignees | 151 |
| Payment of debts: Priority: Dividends. | |
| A claim by the warden of a state prison for the price of goods sold as the state's agent is entitled to priority | .1331 |

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| The individual and firm creditors have the primary right to resort to the respective estates | 240 |
| A debt due by one partner for money advanced to him by the firm cannot be enforced for the use of the creditor copartners until all the joint creditors are fully satisfied, though provable as a separate debt of the firm | 240 |
| Real property purchased with partnership funds is to be treated as personalty, and judgment creditors have no prior lien thereon | 782 |
| Firm and individual creditors are paid ***ari passu out of the separate estates of the partners, where the joint estate is all expended in payment of costs | 82 |
| Where lands are sold by the assignee free of incumbrances, pursuant to an agreement with a sheriff who had levied executions thereon, the execution creditors are entitled to payment from the proceeds | .1304 |
| Examination of bankrupt, etc. | |
| A judgment creditor may refuse to be examined in relation to a question of usury in a debt for which the judgment was rendered | 225 |
| Original papers referred to in the bankrupt's deposition, and annexed thereto, cannot be withdrawn from the files at the option of the bankrupt | 315 |
| A bankrupt summoned by a creditor to appear as a witness is not entitled to witness fees | 315 |
| Adjourning or certifying questions to court. | |
| On the adjournment into court of the question of granting a new trial, the whole case must be brought fully before the court. | 790 |
| Whether the bankrupt is entitled to a discharge is a question which cannot be certified to the court by the register | 1191 |
| Costs: Fees: Disbursements. | |

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| The petitioning creditor is entitled to his costs and reasonable expenses in procuring the adjudication, but not to compensation for his personal services | 1274 |
| A docket fee of \$20 is only allowable in involuntary cases, and where there has been a denial and jury trial | .1274 |
| The register is not entitled to the fee of one dollar for making an order for the examination of the petitioner in bankruptcy on application of a creditor | 148, 228 |
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| Considerations stated which govern additional allowances to assignees in bankruptcy under general order No. 30 as amended | 675 |
| Compensation allowed attorneys employed by the bankrupts who procured the discharge of a warrant of arrest against one 1359 of the bankrupts and prepared the schedule and inventory required by section 41, Act 1867 | 659 |
| The rent of leased premises in which was a stock of goods in the possession of the marshal until the appointment of the assignee is not payable out of the estate. | 126 |
| An assignee under a general assignment for creditors made by an insolvent debtor, subsequently set aside, <i>held</i> entitled to his disbursements | .41 |
| On examination of the bankrupt, at the instance of a creditor, the bankrupt must pay the expense of taking down statements made in his own behalf, after the examination for the creditor is finished | 1302 |

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| Discharge—Proceedings to obtain. | |
| Failure to apply within a year after adjudication prevents discharge | 881 |
| Adjournment of the examination of the bankrupt warrants adjournment of proceedings on an order to show cause why discharge should not be granted | 1194 |
| On application after 60 days from the adjudication, the notice, form No. 52, need be served only on creditors who proved their debts, though containing a notice of the second and third general meeting of creditors | 150 |
| It is not necessary, in such case, that the request of the assignee, form No. 28, should be furnished the register | 150 |
| On withdrawal of specifications in opposition, the bankrupt must take anew the oath required by section 29, Act 1867 | 146 |
| Payment of creditors' counsel fees does not show procurement of their assent by a pecuniary obligation, where they have previously announced that they would not oppose discharge | .1193 |
| —Proceedings in opposition. | |
| A creditor who has not entered his opposition and filed his specifications within a proper time and according to rule cannot oppose the discharge | 352 |
| Creditors will not be allowed to intervene, after the return day, to prosecute specifications filed by a creditor whose claim was stricken out after the filing of such specifications | 36 |
| Leave to amend defective specifications will not be granted on application after lapse of a month from the granting of the discharge | 150 |

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| An allegation of destruction, mutilation, and falsification of papers is defective, unless an intent to defraud creditors is averred | 857 |
| Specifications of opposition merely charging concealment, transfer, etc., of property, without specifying the property, are too vague | 1192 |
| A specification of opposition stating that the bankrupt procured the assent of certain creditors, without stating that he did so by means of a pecuniary consideration, is insufficient | 1192 |
| —Acts barring. | |
| Fraud consummated under an assignment for benefit of creditors before, and not in contemplation of, the passage of the act (1841), does not bar a discharge | 89 |
| Loss of property by gaming will bar a discharge, though it was acquired by gaming | 827 |
| One buying and selling stocks through brokers is not a merchant or tradesman, and may be discharged, though he has kept no books of account | 857 |
| Discharges cannot be granted where the entries of receipts and disbursements in the cash books are unintelligible | 156, 157 |
| The absence of a cash book by partners engaged in lumber dealing will not bar a discharge, where each partner kept a bank account and an account book of receipts and expenditures | 792 |
| —Scope and effect. | |
| Where there are no partnership assets to be collected and distributed, an individual member of a former partnership may, upon his own petition, be discharged from all his debts, both partnership and private | 763 |

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| The election of the United States to take judgment upon a bond given to secure a claim against a vessel <i>held</i> to prevent them from proving it as a debt due from the bankrupt obligor; and such debt is not affected by the discharge previously obtained | 1221 |
| 660 The liability of a guardian to his ward is not affected by his discharge | |
| A discharge does not bar the assignee's right to recover property afterwards discovered | 1223 |
| Counsel employed by the bankrupt, prior to the proceeding, to carry on a suit at their own expense for a contingent fee of one-half their recovery, are entitled to such one-half, though they recover after the bankrupt's discharge | 1223 |
| —Vacating: Setting aside. | |
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| Prohibited or fraudulent transfers. | |
| Any mortgage or other lien which is intended to give a preference to one or more creditors over others is void | 253 |
| A general assignment for benefit of creditors is not necessarily in fraud of the bankrupt act | 857 |
| A general assignment in contemplation of a state of insolvency is a fraud against the bankrupt act (1841) | 251 |
| A general assignment by an insolvent for the benefit of creditors to one who is not a bona fide creditor or purchaser without notice is void. (Act 1841, § 2.) | 282 |
| A general assignment without preferences, made by an insolvent debtor within three months of the filing of the petition in bankruptcy, will be set aside | 41 |

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| An assignment for benefit of creditors is not fraudulent for stating the assignor's desire to distribute his estate without the sacrifice incidental to judicial sales and to winding up an estate in bankruptcy | 857 |
| A warrant of attorney to confess judgment, executed by an insolvent within 60 days of filing a petition in bankruptcy, is void, and proceedings founded thereon are of no effect | 253 |
| Conveyance of property in part or whole satisfaction of a debt, by one knowing himself insolvent, is a fraudulent preference | 907 |
| A merchant knowing that he cannot pay his debts in the ordinary course of business must be <i>held</i> to have knowledge of his insolvency | 907 |
| A conveyance made two months before petition filed is not void if the grantee acted fairly and had no notice of the bankrupt's unlawful intention. (Act 1841, § 2.). | 264 |
| A conveyance of property in contemplation of a state of insolvency is void under the bankrupt law | 253 |
| "Contemplation of bankruptcy" means a thorough breaking up of the bankrupt's business | 264 |
| A sale of goods with a view of giving a preference to a creditor who has reasonable cause to believe the debtor insolvent is void | 68 |
| "Reasonable cause" in such case means a state of facts which would put a prudent man upon inquiry as to the condition of the person from whom he purchases | 68 |
| Ignorance of the law cannot avail creditors who, knowing of facts showing insolvency, yet receive property in satisfaction of their debts | 907 |
| A creditor of a banker who receives payment of his debt after knowledge that the debtor has | 774 |

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| suspended payment and closed his doors is liable to the assignee for the amount received | |
| That property of a debtor is sold under execution is evidence that the creditor has reasonable cause to believe that the debtor is insolvent and contemplates bankruptcy | 1240 |
| That a merchant, having no defense to debts maturing in his current business, submits to be sued for them, is strong evidence of insolvency | .1240 |
| Knowledge by an attorney, who sues to recover a debt, of facts which will make the collection of the debt a preference, is imputable to his client | 1240 |
| Inability to pay debts in the ordinary course of business, as merchants usually pay them, is insolvency within the act of 1867 | 907, 1240 |
| The taking of a mortgage by a bank from its debtor does not show that the bank considered him to be insolvent, nor that the mortgagor contemplated bankruptcy | 264 |
| A mortgage by a merchant to secure payment for goods to be furnished on credit held valid to the amount of goods actually furnished in good faith | 927 |
| Dissolution of an insolvent partnership, and the giving of notes for the money put in by the retiring partner to the person from whom he borrowed it for that purpose, indorsed by a third person, who was secured by a mortgage of firm property, <i>held</i> a fraudulent transfer | 1149 |
| The assignment of a lease by the lessor to secure a debt held valid against his assignee in bankruptcy | 1300 |
| A judgment confessed within two months before filing the petition, where the bankrupts had broken up their business, and all proceedings under it, <i>held</i> void | 264 |

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| Where a transaction for securing a debt is out of the ordinary course of business, it is prima facie fraudulent | 907 |
| A sale of an entire stock of goods is presumably fraudulent, and the purchaser must show that he used all reasonable means to ascertain that the sale was an honest one | 503 |
| A contract made within two months of the bankruptcy must be affirmatively shown to be bona fide | 264 |
| Suits and proceedings in relation to the estate The federal circuit court has jurisdiction of/an action to set aside a general assignment by the bankrupt, and distribute the property among the lien and general creditors | 282 |
| The bankrupt court may authorize a creditor to proceed in the usual way to collect his debt | 107 |
| An order made in composition proceedings appointing the bankrupts custodians of their property does not permit them to maintain a suit under Rev. St. § 4979 | .103 |
| The assignee, suing as such, must produce the commission and proceedings and deed of assignment | 153 |
| The assignee may proceed in a summary manner by petition to collect the bankrupt's assets | 764 |
| The assignee of a corporation for the purposes of a suit to recover back a dividend wrongfully declared stands precisely in the position of the corporation | 506 |
| The assignee may file a bill against all incumbrancers to ascertain the validity, priority, and amount of incumbrances. | 258, 264 |
| Adjudication of bankruptcy on a petition charging fraudulent conveyance does not estop | 857 |

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| Property recovered, after the bankrupt's discharge, by means of a suit in which the assignee was substituted as plaintiff more than two years after his appointment, cannot be claimed by the bankrupt on the round that the action was barred | 1223 |
| A decree declaring a conveyance void at the suit of the assignee, and directing defendant to convey to the assignee, does not establish title in the assignee under such defendant, nor any privity between them | 90 |
| One compelled to surrender to the assignee property purchased with knowledge that it was fraudulently conveyed is not entitled to reimbursement for improvements, or for money advanced to reduce incumbrances | 1277 |
| Review. | |
| An order for the sale of lands of the bankrupt free of incumbrances may be reviewed in the circuit court under section 2, Act 1867 | 769 |
| The circuit judge has power in vacation, at his chambers, outside the district, to entertain and act upon a petition for review. | 769 |
| A petition filed by the bankrupt after discharge, praying that certain money recovered for his estate since the discharge might be applied to his debts and the costs of the proceedings, and the balance paid to him, is not a bill in equity, but a petition, and a decree there under is reviewable by petition | 1223 |
| Arrangement with creditors: Composition. | |
| A second meeting will be ordered where the object of the first one failed by reason of the mistakes or misinstructions of attorneys for creditors | 69 |

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| Creditors who have not proved their debts are not entitled to vote on proposals for compositions | 1093 |
| A provision of the agreement that the proceedings may be discontinued at any time without notice to the creditors is not binding on the court . | 313 |
| Confirmation of a composition payable in equal quarterly installments in three years refused where a defaulting officer was continued in office | 313 |
| A composition is none the less payable in money because the payment is postponed to a future day | 313 |
| In a voluntary proceeding in which a composition had been agreed upon for payment of 30 per cent, in cash, <i>held</i> , that a discontinuance and restoration of the property would not be decreed on petition of the” bankrupts joined in by a majority of creditors until the terms of the composition had been carried out | 207 |
| A composition agreement, where no assignee was appointed, <i>held</i> to bind creditors in another state whose names were entered on the schedule, but not to affect their rights in rem against property attached | 103 |
| BANKS AND BANKING. | |
| Construction of special charters of certain Ohio banks . | 264 |
| A charter authorizing a bank to discount notes, etc., on banking principles, does not make void a contract or note reserving more than 6 per cent, interest | 264 |
| The Bank of the United States is bound to pay the full amount of a note which has been cut | 885 |

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| in two, and each part mailed separated to it, though but one part is received. | |
| A bank president borrowed money for his personal use, on the security of shares of 1361 stock fraudulently issued to him. The money went into the assets of the bank. <i>Held</i> , that it was liable therefor | 602 |
| It is within the authority of a cashier to sign a blank transfer on a certificate of stock held as collateral, and deliver the certificate to the pledgor, on payment of the loan | 1113 |
| A declaration at law by a single bank creditor to enforce the charter liability of one stockholder, who owns nearly all the stock, for twice the amount of his shares, is not demurrable where it does not appear that there are any other creditors | 804 |
| National banks may hold real-estate security acquired by subrogation from a holder of a negotiable note | 1094 |
| A national bank cannot purchase its own stock | 568 |
| To relieve the holder of national bank stock from the obligations imposed by law, the transfer by him must be made on the books of the bank to some person capable of succeeding to his obligations | 568 |
| Stockholders of an insolvent national bank are bound by the action of the comptroller in making an assessment against them, and have no right to examine the accounts of the receiver as to the assets or debts of the bank | 568 |
| The jurisdiction of the federal circuit court on a creditor's bill against a national bank, for discovery and other relief upon allegations of fraud by the officers, is not superseded by the appointment of a receiver by the comptroller | 71 |

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| In such case, the costs of a master appointed to investigate the affairs of the bank will be ordered to be paid by the recover | 768. |
| Where usurious interest has been actually paid, double the amount thereof may be recovered from a national bank under Rev. St § 5198 | 768 |
| An assignee in bankruptcy is a "legal within," within Rev. St. § 5198, and may sue to recover usurious interest paid to a national bank | 768 |
| BILLS., NOTES, AND CHECKS. | |
| Orders. | |
| An order drawn on a general or particular fund does not amount to an assignment of that part, or give a lien, as against the drawee, unless there has been an express or implied acceptance by him | 299 |
| Letter of credit. | |
| The acceptor of bills drawn under the usual forms of commercial letters of credit can compel the holder of the letter to furnish funds to meet the acceptances; and a bill due by the issuer of the letter to the holder cannot be set off against this obligation | 8 |
| Validity. | |
| It is a good defense to a note given in 1864, for the hire of slaves, that, as part of the consideration, the hirer was to keep them out of reach of the Federal army | 888 |
| Indorsement and transfer. | |
| One holding a promissory note as collateral security is not a purchaser for value | 155 |
| Notes given by factors by way of advances on goods consigned, where not in excess of the value of the goods cannot be <i>held</i> to be accommodation paper | 676 |

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| Fraud in the origin of a negotiable note is no defense against a bona fide holder | 1038 |
| A member of a company, who individually discounts a note belonging to the company, without knowledge of fraud in its origin, is yet affected by the fraud of the company's agent | 1038 |
| The holder must show the insolvency of the maker, to maintain suit against the indorser | 153 |
| An indorser is in any event liable to his indorsee only for the amount actually paid by the indorsee, with lawful interest thereon, and not for the face value of the note. | 676 |
| One indorsing a note, after previous indorsement by two others for accommodation of the maker, may recover from either of them the whole amount paid by him to take up the note | 1048 |
| The indorsers of accommodation paper are considered as joint sureties, and liable to contribution | 41 |
| On a several indorsement for the accommodation of the maker of a note, one indorser, who is obliged to take up the note, may recover his proportion from the other. | *488 |
| Demand: Notice: Protest. The custom of merchants as to days of grace does not apply as between maker and payee | 231 |
| To hold the indorser of a note payable on demand demand must be made within a reasonable time. An unexplained delay of seven months is unreasonable | 918 |
| Demand by a notary public, the day after the last day of grace, upon the indorser at his house (where the note was payable), without inquiring for the maker, or whether he had funds there, <i>held</i> not sufficient to bind a second indorser | 1307 |

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| Testimony of a notary that he made demand at the shop of an indorser, but did not remember whether he saw him, <i>held</i> not sufficient proof of notice | 1307 |
| Where Sunday is the last day of grace, demand must be made on Saturday, but notice may be given on Monday | 82 |
| If Sunday be the last day of grace, the demand, protest, and notice may be on Saturday, and suit may be instituted the same day, after banking hours | 592 |
| The accommodation drawer of a check on a bank in which he had no funds is entitled to notice of nonpayment, where the holder took it with knowledge that the drawer had reasonable expectations that the drawee would furnish funds to meet it. | 155 |
| Notice to an indorser should be given, though he be beyond sea, if his residence is known, and reasonable diligence should be used to find his place of residence | 312 |
| A notice left at a boarding house where the indorser resided when it was drawn, but which he had left without the holder's knowledge, having embarked for Europe, <i>held</i> sufficient | 312 |
| Release or discharge of indorser. | |
| The indorser is released where, without his consent the holder assents to the discharge of the maker in bankruptcy | 36 |
| Plaintiff must show, in an action against the indorser, that he instituted his suit against the maker in due time, and prosecuted it diligently to an ineffectual execution | 591 |
| A promise by an indorser to pay, after being discharged by neglect of due notice, is not | 918 |

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| binding unless made with knowledge of all material facts | |
| Actions. | |
| In Georgia, both total and partial failure of consideration is pleadable in defense to sealed notes or single bills | 888 |
| A note in the hands of an assignee is prima facie evidence that the face thereof was paid by him for it, but the assignor can prove what actually was paid | 896 |
| Due diligence in making demand and giving notice cannot be inferred from the 1362 fact that the parties to a check resided in the same town, and that the drawer was insolvent | 218 |
| BILLS OF LADING. | |
| See, also, "Admiralty"; "Affreightment"; "Carriers"; "Demurrage"; "Shipping." | |
| The master is bound to give a bill of lading when goods are laden on board, even if the freight is not agreed on, or there is a dispute about it; and in such case the bill need not specify the freight | 1250 |
| A bona fide purchaser of a bill of lading to consignee or order may hold the ship liable, though the goods are replevied on arrival by one who sold them to the shipper, for nonpayment of the price. (Affirming 956.) | 955 |
| A vessel is liable to a consignee who has advanced money on the bill of lading, although the goods were illegally seized by the customs authorities at the commencement of the voyage | 1108 |
| A bill of lading stating the weight of the cargo on the representations of the shipper, without weighing, binds the consignee to pay freight on such weight, where he receives the goods without weighing them | 563 |

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| The acknowledgment that cargo was received in good order may be explained or disproved by parol testimony | 867 |
| The option to reconsign under the provision "with shipper's reconsignment option" cannot be exercised by the consignee; and parol evidence is inadmissible to show a usage to the contrary | 123 |
| The answer, in an action on a bill of lading, which fails to allege that the damages claimed accrued from the sweating of the vessel, is amendable | 11 |

BONDS.

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

A bond under seal, perfect in all respects, held valid against the sureties, notwithstanding their testimony that they signed on condition that another signature should be obtained

The liability of sureties signing a bond, given pursuant to an order of court copied therein, is unaffected by anything the obligee may tell them as to their liability.

In debt on a bond with collateral condition, nothing is recoverable but what the obligee is entitled to on a breach of the condition

BOTTOMRY AND RESPONDENTIA.

The risk of the lender, and his right to repayment only on the safe arrival of the vessel, constitute the essential difference between bottomry and a simple loan

Marine interest is requisite to a bottomry loan, but, if not expressed in the bond, it will be presumed to have been included with the principal

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| The owner, as well as the master, may pledge the vessel by bottomry in a foreign port; and, while the power of the master is limited to cases of necessity, the owner may pledge her for money to purchase cargo | 938 |
| Supplies are "necessary" when fit and proper for the service, and such as a prudent owner would order | 13091 |
| A bill of exchange taken with a bottomry bond for the same sum must share the fate of the bond | 522 |

BOUNDARIES.

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| See, also, "Deeds"; "Grants"; "Public Lands." Courses and distances must give way when inconsistent with calls in the deed for natural or well-known artificial objects | 340 |
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CARRIERS.

| | |
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| See, also, "Affreightment"; "Average"; "Bills of Lading"; "Charter Parties"; "Demurrage"; "Shipping." | |
| A contract by passengers with an agent of a stage line, limiting the number of passengers for the trip, is not admissible in an action for damages by a passenger not a party to it, who entered the coach on the way | 1182 |
| In such case, defendant may prove a general custom as to number of passengers carried, but not the practice of its own line | 1182 |
| Stage owners are bound to the greatest care; and the least neglect or want of skill by the driver makes them liable for injuries to a passenger | 1182 |
| It is the duty of a stage driver to caution the passengers when about to pass over a dangerous bridge or piece of road | 1182 |
| A stage proprietor is bound to furnish proper coaches, horses, and harness, and a skillful and | 219 |

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| careful driver, and he is liable for the smallest degree of negligence in this particular | |
| A stage proprietor is not responsible for casualties which could not be foreseen nor guarded against | 219 |
| The upsetting of a stage is prima facie evidence of negligence in the proprietor, and the passenger need not show more | 219 |
| A vessel receiving goods from a connecting carrier under a through bill of lading may be sued primarily for goods lost by her | 1203 |
| A carrier by water must, as a general rule, notify the consignee of the arrival of the goods. If he fails to do so, he must prove an excuse | 1006 |
| The fact that a carrier is accustomed to store goods in his warehouse until the consignee learns from the consignor of their arrival does not excuse the carrier from himself notifying the consignee, where it is not shown that the consignor knew of the practice | 1006 |
| A carrier stowing goods in his warehouse, without notifying the consignee of their arrival, remains liable as a carrier until the consignee learns the fact from some source; and, if the goods are injured before such notice, the carrier is liable, though the consignee afterwards refuses to take them. | 1006 |
| Where the loss of a cargo has been paid by the insurer, it is no defense to a libel against the carrier that the policy was issued by a foreign insurance company which had not complied with the laws of the state | 617 |
| The shipper of grain, who takes no bill of lading, is bound, in an action for short delivery, to prove the amount delivered to the carrier | 655 |

CERTIORARI.

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| Federal courts have jurisdiction to issue a writ of certiorari as ancillary to a writ of habeas corpus, and to render their jurisdiction under the latter writ effective | 875 1363 |
| Where a prisoner committed by a United States commissioner is brought up on habeas corpus, the circuit court may issue a writ of certiorari to the commissioner to bring up the proceedings had before him | 875 |
| Certiorari to magistrate's court to bring up proceedings in forcible entry and detainer dismissed under circumstances stated | 341 |
| CHARITIES. | |
| The English statutes of mortmain and superstitious uses were never adopted by the colony or state of Pennsylvania | 408 |
| The principles of the common law relative to charitable uses, which were resorted to in England by the statute of charitable uses, were, however, adopted, as well as the principles of equity in the administration of such trusts | 408 |
| The jurisdiction of chancery over charitable uses and gifts therefor does not depend upon the statute of charitable uses (43 Eliz. c. 4) | 408 |
| Unincorporated religious, literary, or charitable associations, in Pennsylvania, may take property by devise or bequest, for pious or charitable purposes, without a license from the state | 408 |
| Societies of Friends, unincorporated associations in Pennsylvania, <i>held</i> capable of taking property by devise or bequest for the purposes of their organization | 408 |
| A devise or bequest to a society for its purposes, with which testator is familiar, where such purposes are proper objects of | 408 |

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| charitable uses, is a good devise or bequest for such charitable uses | |
| A gift to a religious society for the relief of the poor thereof, and towards enlarging and improving the meeting house, is a good charitable use | 408 |
| A gift to a religious society for the relief of the poor members thereof is a good charitable use | 408 |
| An annual subscription to the stock of a religious society, which is applied to the printing and dissemination of books and writings approved by such society, is a good charitable use | 408 |
| A gift to the treasurer of a society organized for the civilization and improvement of certain Indian tribes, for the benefit of such Indians, is a good charitable use | 408 |
| A gift to a town for a fire engine and hose is a good charitable use | 408 |

CHARTER PARTIES.

See, also, "Admiralty"; "Affreightment"; "Average"; "Bills of Lading"; "Demurrage"; "Shipping."

A verbal contract for the use of a steamboat for excursion trips, at definite times, for definite sums, is a charter, for breach of which admiralty has jurisdiction in personam

Where the vessel arrived two days late, and, without notice to the charterer, discharged the cargo, and employed persons to cart and pile it on the wharf, *held*, that the charterer was not liable for this expense

Where charterer's agent is to have a commission on freight at port of discharge, it is to be reckoned only on freight received, if some is not collected

CHATTEL MORTGAGES.

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| A mortgage on a stock in trade, where the mortgagor is allowed to keep possession and sell in the regular course of business is void as against creditors | 264, 628 |
| A chattel mortgage permitting substitution of property <i>held</i> not binding on the substituted property in the absence of a formal delivery by the mortgagor | 16 |
| A mortgage concealed by fraudulent representations, to the injury of third persons, is void | 264 |
| A mortgagee of a share in a vessel is not liable to the mortgagor for supplies furnished while the latter was in possession | 353 |

CITIZEN.

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| By the common law, a child born within the allegiance of the United States is born a subject thereof, without reference to the political status or condition of its parents | 161 |
| A child of a member of an Indian tribe within the territory of the United States, though born within the limits of the United States, is not a citizen thereof | 161 |
| Under the treaty with Great Britain of October 20, 1818, art 3, a child born in the Oregon territory in 1823, of British subjects, was born in the allegiance of the king of Great Britain | 161 |
| A person born in 1823, in the Oregon territory, whose father was a British subject, and whose mother was a member of the Chinook Indian tribe, is not a citizen of the United States | 161 |

COLLISION.

See, also, "Admiralty"; "Pleading in Admiralty"; "Practice in Admiralty"; "Towage." Nature of liability—Contributive fault.

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| A contractor, building a lighthouse for the United States on a mud shoal out of the fairway, and forbidden by the lighthouse department to keep lights on the structure, <i>held</i> not liable for damage to a schooner colliding therewith at night | 1157 |
| The want of extraordinary measures of precaution, or a fault on the imminence of a collision brought about by the fault of another, cannot be alleged as a contributing fault | 478 |
| The want of a lookout will not be considered a fault where the other vessel was seen in good season by the master and mate | 734 |
| A vessel having the right of way must keep a proper lookout and use proper seamanship to avoid collision | 962 |
| Rules of navigation. | |
| Rules of navigation on the Mississippi river | 391, 478 |
| A steamer navigating a river leaving the ordinary and usual track of vessels, under the circumstances is bound to show some palpable necessity for the deviation | 478 |
| Between sail vessels. | |
| A vessel approaching another so circumstanced as to be difficult of control is in fault for colliding with her, if, by proper exertions and management, she could keep out of the way | 1160 |
| Where both vessels are closehauled, the vessel on the port tack must keep away from one on the starboard tack | 972 |
| A vessel on the starboard tack, nearly closehauled, with the wind baffling, and perhaps at times one or two points free, need not give way to one on the port tack, close hauled, on crossing courses | 962 |

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| In thick or foul weather, a vessel on the port tack must exercise all possible vigilance. There should be some one on deck to give orders instantly on an emergency. | 972 |
| A vessel on the port tack, with hardly sufficient headway to give control, is yet in fault for colliding with one on the starboard 1364 tack, if the former could have gone clear by keeping strict watch and either going about or taking her boom in board. | 1160 |
| A vessel sailing free, and meeting one beating, has no right to go ahead and compel the latter to go about before running out her tack Between steam and sail. | 979 |
| A vessel beating down a river need not “heave in stays” on meeting a steamboat, but must keep her course Between steam vessels. | 187 |
| The rule requiring steamers meeting to pass to the right does not apply where both colored lights are anywhere but ahead | 620 |
| The obligation to slacken speed arises in case of continuous approach, or when the approaching light is found to be closing in, instead of opening out | 620 |
| If there is confusion of signals between approaching steamers, each is bound to stop, under article 16 of the rules Overtaking vessel. | 1001 |
| The boat astern takes all the risk of an attempt to pass, and the vessel ahead is not obliged to give way or change her course | 130 |
| A vessel approached from behind by another, intending to cross her bows from starboard to port, is under no obligations to promote such movement Vessels moored, etc. | 316 |

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| A vessel voluntarily approaching another moored at a dock, and striking her, is solely liable, although the other may somewhat block the passage | 841 |
| Anchorage in a narrow channel, where vessels are constantly passing, is not necessarily improper, if room be left for vessels and tows to pass in safety; but a vigilant anchor watch must be maintained | 1082 |
| Tugs and tows. | |
| It is no defense to a tug colliding with another vessel that she was acting under the orders of a steamer which she was towing | 841 |
| River and harbor navigation. | |
| A propeller will be <i>held</i> equally in fault for passing at full speed a tug within 100 feet, where she comes into collision with the tow astern, which is improperly handled | 734 |
| A boat running at great speed up the Mississippi river on a dark night, when a descending boat is visible, of whose course she is in doubt, takes the risk of a collision. | 478 |
| A steamer used as a harbor ferryboat, in violation of law, is liable for collision with a vessel in the lawful use of the harbor | 1186 |
| A steamer entering a narrow and crowded harbor without slowing down will be <i>held</i> in fault, though the colliding vessel was also in fault for taking a wrong course and not signaling | 1200 |
| Speed: Fogs. | |
| Seven miles an hour for a steamer in a fog, surrounded by sail-vessels, <i>held</i> too great speed | 618 |
| lookouts, officers, etc. | |

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| A steamer will be <i>held</i> in fault where a collision was caused by her failure to keep her lookout stationed in the bow | 391 |
| The absence of a competent and skillful lookout is prima facie evidence of fault | 130 |
| A steamer is responsible for a collision which a better lookout might have prevented | 478 |
| Particular instances of collision. | |
| Between tows, resulting from failure of one to pay out the hawser in obedience to an order from the tug, <i>held</i> to have occurred from the sole fault of such tow | 923 |
| Between a steamer and tow of another steamer, where the former was <i>held</i> in fault for being out of her proper course | 215 |
| Between ferryboat coming out of Fulton Perry slip and tow of tug coming down East river and rounding to pick up a boat just above the slip, where the former was <i>held</i> in fault | 593 |
| Between steamer and schooner in Delaware river, where both were <i>held</i> in fault the former for insufficient lookout, and the latter for failure to exhibit a torch | 715 |
| Between schooner going out of harbor and sloop anchored in channel outside harbor master's line, where both were <i>held</i> in fault, the former for want of lookout, the latter because anchored in an improper place | 701 |
| Steamer colliding with sloop in New York harbor in a fog <i>held</i> in fault for merely stopping, without reversing, on hearing fog horn | 1111 |
| A sailing vessel entering a crowded harbor at night at six miles an hour, in addition to a current of four miles, and colliding with an anchored vessel, <i>held</i> in fault | 1080 |

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| Sloop sailing free and attempting to pass ahead of two schooners beating, being struck by one of the schooners, <i>held</i> solely in fault | 979 |
| Where steamers were meeting nearly end on, <i>held</i> that one was in fault for starboarding instead of porting, and for not reversing on perceiving a confusion of signals | 1001 |
| Procedure. | |
| The insurer of a cargo lost by a collision may sue the colliding vessel, after notice and proof of the loss and demand of payment, though before actual payment | 617 |
| Where there has been actual payment of the loss before trial, it is no defense that the suit was brought before payment | 618 |
| Libelant must show absence of fault on the part of his boat, as well as fault on the part of the other | 130 |
| The fact that the engineer and master left their posts of duty after the lights of an approaching vessel were seen may he considered on the question of negligence in giving and executing orders | 620 |
| The deposition of a witness on an investigation before the board of inspectors, who is called for libelant in a suit for the collision, can only be used by respondent for the purpose of contradicting him | 744 |
| Evidence of verbal statements made in time of excitement and peril should be received with great caution | 1080 |
| In a case of collision with the foundation of a pier for a lighthouse, it must be presumed that jurisdiction over the site has been ceded to the United States, as the law provides that no lighthouse shall be built until such cession | 1157 |

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| The testimony as to the course and deflections of a vessel of those who hold her helm is entitled to more weight than those on board another moving vessel | 310 |
| Where the testimony shows that the fault of one is flagrant, and leaves the question of fault of the other in doubt, the former only will be held in fault | 618 |
| A vessel negligently running into another, which is lying disabled, may be held liable, although the precise manner of the collision is not proved as alleged | 926 |
| On a libel by a tow against her tug and the colliding vessel, the libelant may recover against the latter alone, where "there was independent fault on her part | 593 |
| The finding of a commissioner of the amount of damages in a collision case will not be disturbed when there is not a palpable preponderance against it | 1243 |
| Rule of damages. | |
| The party in fault should bear any inconvenience or hardship in proving the exact damages | 1243 |
| In the absence of a market value, the value of the vessel to the owner, in the business she was engaged in at the time of collision, is a proper basis of damages | 1243 |
| In such case, the books of the owner showing previous and subsequent earnings are competent to show probable earnings during the detention | 1243 |
| Services of an agent in settling and paying bills are not chargeable as damages | 1243 |
| Estimates of the cost of repairs are not competent when the repairs have been actually made | 1243 |

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| In a case of collision by mutual fault between a steamer and sail vessel, the steamer may be allowed, as part of the damages, a sum for towing the sail vessel into port after the collision | 998 |
| A fishing boat making weekly trips to market, and losing one trip by a collision, which injures her seine, may be allowed the probable profits of such trip | 1003 |
| Interest will not be allowed as damages when the repair bills have not been actually paid before the trial | 972 |
| Interest on items of damage is allowed at 6, and not at 7, per cent | 981 |
| Where the full value of a vessel sunk is awarded, the expense of raising her to ascertain the extent of the loss is a proper charge | 981 |
| The measure of damages for cargo lost is its value at the time and place of shipment | 991 |
| Damages for cargo shipped by canal boat in Canada, where United States gold coin was the currency, and lost on the Hudson river, in New York, must be paid for at its value in such coin | 991 |
| Freight money lost by the master when hurrying from his sinking vessel, and sails used for covering the deck load, are proper items of damage | 962 |
| Division of damages. | |
| The damages will be equally divided where both vessels were in fault for the collision | 391, 701, 998 |
| In such case, costs are also equally divided | 701, 998 |
| But it seems that if one vessel suffers all the damage, and both are in fault, the libelant | 998 |

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recovering half damages should recover full costs

COMPROMISE.

See, also, "Accord and Satisfaction"; "Bankruptcy"; "Payment."

To sustain a contract of settlement on the ground that it was a compromise of doubtful claims, the doubt must be such as an ordinarily intelligent person would entertain

1343

CONSTITUTIONAL LAW.

See, also, "Statutes."

The legislature of a state cannot take away the right of citizens of other states to sue in the federal courts, by providing a special remedy in its own courts

1012

Quaere: Whether the law of 1850, § 1, in relation to recording the transfer of vessels, is constitutional?

871

A New Jersey statute for the relief of the creditors of a certain manufacturing corporation *held* void because it deprived the mortgagees of a remedy existing at the date of their contract

903

A legislative act authorizing the issue of municipal bonds, and providing a method for their payment, *held* to constitute a contract with the bondholders

377,
380

A distress warrant issued by a government officer to seize property under the laws for collection of internal revenue is due process of law

1061

A devise or bequest cannot be defeated on the ground that the beneficiary is a citizen or a corporation of another state than testator. (Const, art. 4, § 2.)

408

CONTINUANCE.

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| Where proper diligence has been shown, the expected arrival of a deposition which may be material is ground for continuance. | 809 |
| When a writ of inquiry is set aside by defendant, plaintiff may have the cause continued at defendant's costs | 3 |
| Counter affidavits cannot be read on a motion for a continuance | 637 |

CONTRACTS.

See, also, "Assumpsit"; "Sale"; "Vendor and Purchaser."

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| A contract to pay for services rendered in obtaining the passage of a law by "lobbying" is void | 828 |
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| A contract to pay for services in obtaining the passage of a law is void if the parties agree to conceal the fact of the employment, or if the party employed did in fact conceal it, from the members of the legislature, while advocating the passage of the law , | 828 |
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| After a contract is executed, third persons cannot question its consideration | 1029 |
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| An agreement as to the proper interpretation of a contract bars each party from thereafter claiming a construction inconsistent therewith | 783 |
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| A contract free from ambiguity cannot be varied or contradicted by extrinsic evidence | 317 |
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| Contract of lumber dealers to pay for sawing logs furnished by them <i>held</i> dependent on stipulations to saw and pile in a specified manner; but their agreement to furnish logs <i>held</i> dependent only on stipulations in respect to the boom for receiving them | 1056 |
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| Where the promises are to be concurrently performed, neither can sue for a violation of the agreement, or insist on a specific | 317 |
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| performance without showing an offer to comply, or a sufficient excuse for not doing so | |
| A contract to deliver a certain quantity at such times as may be required by the purchaser may be waived by acceptance of a less amount than that named in the notice, and giving notice to furnish at subsequent periods | 322 |
| Where the party refused to accept at subsequent periods, in accordance with his notice to deliver, the previous nonperformance by the other party is no defense | 322 |
| After refusal to receive one load of a certain quantity to be delivered, tender of the balance, if ready for delivery, is not necessary to charge the other party | 322 |
| Abandonment of repairs to a vessel by a contractor before completion thereof bars recovery for more than a quantum meruit. | 301 |
| Damages for failure of a railroad contractor to put on an increased force, as notified by the railroad company, cannot be recovered where the contract provides that the company may in such case put on an increased force at the contractor's expense | 45 |

1366

COPYRIGHT.

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| The rights and remedies of persons registering in the patent office prints and labels under the act of June 18, 1874 (18 Stat. 78), are regulated by Rev. St. 4948-4971, relating to copyrights | 821 |
| In exercising its constitutional power in relation to copyrights and patents, congress may discriminate in favor of good morals and against vice | 920 |
| The act of August 18, 1856, relating to dramatic compositions suitable for public representation, does not include a mere exhibition or spectacle of scenic effects, but | 920 |

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| having no literary character; especially if of immoral tendencies | |
| Where two exhibitions, called "Black Crook" and "Black produced," produced upon spectators the impression that they were substantially the same, <i>held</i> that one was a colorable imitation | 920 |
| CORPORATIONS. | |
| See, also, "Banks and Banking"; "Counties"; "Insurance"; "Marine Insurance"; "Municipal Corporations"; "Railroad Companies"; "Receivers"; "Religious Societies." | |
| A lease of the mine, made by a mining corporation to the minority stockholders, to withdraw control from the board of directors about to be elected, and to perpetuate the control of the minority, will be canceled on a bill filed by the corporation | 497 |
| The officers of a moneyed corporation have no right to make a dividend unless there are actual profits over and above all losses | 506 |
| An officer is bound to know the condition of the corporation's affairs, and he has no right to receive a dividend unless it is earned | 506 |
| In deciding whether a dividend was rightfully made, the transaction must be viewed from the standpoint of that time, and not in the light of subsequent events | 506 |
| Notes of a corporation given in payment of unearned dividends <i>held</i> void in the hands of the stockholder receiving them | 176 |
| The withdrawal of any portion of the capital by a stockholder renders him liable under Rev. St. Me. 1857, c. 46, § 24, for corporate debts to the amount so withdrawn | 176 |
| The limitation of one year does not apply to an action on such liability | 176 |

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| The surrender by a stockholder of shares, and receiving in exchange therefor the stock of another corporation, that he originally paid for his shares, on the receipt of unearned dividends, or the surrender of shares in exchange for corporate notes which are subsequently paid, operates as a withdrawal of capital | 176 |
| When the legislature creates a corporation it may also prescribe what remedies shall be used against it, and such remedies then become exclusive | 665 |
| COSTS. | |
| Where a juror is withdrawn on motion of plaintiff and consent of defendant, who elects a continuance of the cause, he is not entitled to costs also | 337 |
| On reversal in the circuit court of the decree of the district court in admiralty, the successful party is entitled to costs on the appeal, unless new evidence was introduced which might have affected the judgment in the court below | 716 |
| Counsel fees to the successful party in such case may be allowed in the discretion of the court, but such power is sparingly exercised | 716 |
| No costs on appeal awarded to either party where a decree of the district court was affirmed in so far as it dismissed the libel, but reversed as to the award of costs to claimant | 37 |
| Costs will not be allowed where the libel is dismissed on a dilatory plea after a trial in which the court overrules the defense on the merits | 860 |
| Where a demurrer to a bill is overruled in part and sustained in part, costs not allowed to either party | 133 |

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| Costs are not taxable for the preparation of written arguments, except upon a stipulation in writing to that effect | 574 |
| Summary costs only are recoverable on a libel in admiralty where libelant admits that a sum less than 550 is all that is due, irrespective of the claim in the libel | 110 |
| In what cases costs may be taxed for motions to postpone the hearing of a cause called in its order on the calendar | 574 |
| In what cases costs may be taxed upon motions to enlarge time to answer, for a final decree, for costs, for a reference, etc | 574 |
| The district court, on dismissing a libel for want of jurisdiction, has no power to award costs against libelant | 37 |
| An unfounded claim for a lien dismissed without costs, the vessel owners being personally liable | 15 |
| Costs denied to owners of canal boat sunk by swells, because they delayed for 30 days to give notice of their claim | 1066 |
| On dismissal of a libel for wages, <i>held</i> that costs should be imposed on libelants, when they had taken possession of the vessel and brought her home, though this was done on reasonable grounds of suspicion that she was about to engage in the slave trade | 949 |
| Costs on appeal from a justice of the peace are in the court's discretion, where he judgment is affirmed | 1281 |
| Defendant may require security for costs from a plaintiff who has removed from the district since the commencement of the action . | 13 |
| Where a cause has been continued at defendant's costs, an attachment will be | 107 |

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| granted against defendant for such costs, after judgment for plaintiff | |
| COUNTIES. | |
| See, also, "Municipal Corporations"; "Railroad Companies." | |
| County commissioners in Ohio may sue and are liable to be sued in relation to all matters which involve the exercise of their powers | 247 |
| Plea of non est factum not allowed as to engraved bonds of the county, substituted for other bonds of like date, etc., where the county paid interest, without objecting, for two years | 188 |
| COURTS. | |
| See, also. "Admiralty"; "Bankruptcy"; "Equity"; "Justices of the Peace"; "Maritime Liens"; "Removal of Causes"; "Rules of Court." | |
| In general. | |
| It is only where the court is without power to pass upon the subject-matter of the complaint or to grant the relief sought that its jurisdiction may be challenged | 302 |
| The court can take jurisdiction of parties who not being within its jurisdiction, voluntarily appear | 264 |
| Courts of law and equity have concurrent jurisdiction in cases of fraud, and the one first obtaining jurisdiction must settle the matter conclusively | 1038 |
| Comparative authority of federal and state courts: Process. | |
| The federal circuit court has concurrent jurisdiction with a state probate court to decree an account in favor of distributees. | 542 |
| Where two courts have concurrent jurisdiction, the one which first has possession of the subject may adjudicate; and neither of the parties can be forced into another court | 542 |

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| An administrator in the process of accounting before a probate court cannot be compelled to account in a federal court by a bill in equity | 542 |
| Federal courts—Jurisdiction in general. | |
| The equity jurisdiction of the federal courts is not affected by state statutes giving legal remedies | 1231 |
| The distinction between law and equity, as recognized in the jurisprudence of England, must be observed in the federal courts; but this relates only to the remedy, and not to the existence of rights | 1283 |
| The federal courts have no authority to enjoin federal officers against performing any merely ministerial act | 74 |
| County commissioners, though not possessing in every respect the technical qualities of a corporation, are amenable to the process of the federal court within the state | 247 |
| Under the judiciary act of 1875, a federal court has no jurisdiction to attach property of a citizen of another state who is not found in the jurisdiction | 1164 |
| A federal court has no jurisdiction of a bill of revivor against an administrator with the will annexed of the original respondent, where such administrator was appointed in another state | 1334 |
| —Grounds of jurisdiction. | |
| The circuit court has jurisdiction in covenant where the damages laid exceed \$500, though the penalty named in the contract is less than \$500 | 906 |
| The fact that defendant corporation was organized under a federal law is not enough to give the federal court jurisdiction | 390 |

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| A joint-stock association organized under the laws of New York may be sued in the federal court by a citizen of another state without regard to the citizenship of its individual members | 566 |
| In a suit by a national bank, an allegation that plaintiff is a citizen of the state of Illinois, and located and residing and doing business in the city of Chicago, in said state, and that defendant is a citizen of New York, is sufficient to give jurisdiction to the federal court in New York | 671 |
| A motion to dismiss is the proper remedy when it appears that the real plaintiff in interest is a citizen of the same state with defendant | 1195 |
| An action of ejectment will be dismissed where it appears that plaintiff acquired naked legal title from a citizen of the same state with defendant merely to give jurisdiction | 1195 |
| An executor or administrator is not an "assignee," within the meaning of the eleventh section of the judiciary act of 1789 | 1231 |
| —Circuit courts. | |
| The circuit court has no cognizance of causes of admiralty and maritime jurisdiction in the district court save by appeal | 292 |
| A national bank cannot be sued outside the district in which it is located. Service on the cashier when found within another district does not give jurisdiction | 509 |
| —District courts. | |
| Consent of the parties cannot confer jurisdiction on the district court | 215 |
| A libel in personam is not a "civil within," within the meaning of Act 1789, § 11, | 570 |

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| requiring defendant to be a resident of the district within which suit is brought | |
| —Administration of state laws. | |
| The right to sue and the liability to be sued of county commissioners arising under the local law constitute a rule of decision for the federal courts | 247 |
| —Following state decisions. | |
| The federal courts will follow the decisions of the state in respect to the validity of a bequest to charitable uses | 1283 |
| The Pennsylvania doctrine that the assignee of a bond and mortgage takes subject to all existing legal and equitable defenses does not apply to a suit in equity in the federal court . | 94 |
| The federal courts are not bound to follow state decisions based on general principles of commercial law | 1283 |
| —Procedure. | |
| The act of June 1, 1872. adopting state practice, etc., does not authorize the commencement of an action at law in the circuit court by a summons in the name of plaintiff's attorney, according to the New York procedure | 892 |
| Local courts. | |
| Where the verdict in an action in the circuit court of the District of Columbia is for a sum less than the jurisdictional amount, judgment will be arrested | 234 |
| It is no ground of arrest of judgment in the circuit court of the District of Columbia that the sum sued for has been reduced by offsets to a sum below the jurisdiction | 231 |
| The probate court in Rhode Island has exclusive jurisdiction of the probate of wills of land | 1103 |
| Terms: Sessions. | |

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| A federal court may be held on a day appointed by the president of the United States and the governor of the state as a day of thanksgiving | 122 |
| At a special criminal session, the circuit court of the District of Columbia cannot try a case pending at the preceding stated session | 1340 |
| CRIMINAL LAW. | |
| See, also, "Arrest"; "Bail"; "Extradition"; "Habeas Corpus"; "Indictment and Information." | |
| CUSTOM AND USAGE. | |
| The rules of law in relation to the proof and nature of customs stated by Washington, J | 129 |
| A usage for vessels to let go their warps on the approach of a steamer is not applicable in favor of a steamer having no right to use the waters of the harbor | 1186 |
| CUSTOMS DUTIES. | |
| Customs laws. | |
| Goods removed from a bonded warehouse and carried without the jurisdiction of the United States, and returned, are subject to duty, though not actually landed at a foreign port | 118 |
| A law imposing a duty on articles used for a particular purpose should not be construed to cover articles not so used at the date of the act, unless expressly so provided | 892 |
| The purpose, adaptation, and use of the article, and not its commercial designation, is the test of its dutiable description by the words "wearing apparel." (Act July 30, 1846.) | 500 |
| Rates of duty. | |
| Substances not used for cotton bagging before the act of July 14, 1832, are not dutiable as such thereunder | 892 |

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| Shawls or scarfs manufactured on looms in strips or pieces, but separated before importation, <i>held</i> dutiable as "wearing apparel." (Act July 30, 1846.) | 500 |
| Invoice: Entry: Appraisal. | |
| The valuation of goods as at the time of their exportation, instead of the time of their purchase, is illegal. (Act 1846.) | 501 |
| The penalty of 20 per cent. (Act July 30, 1846, § 8) cannot be exacted for a 10 per cent, undervaluation in coal arising solely from an excess of quantity | 600 |
| The importer is not liable in such case, under section 4, to pay the fee of the weigher and measurer | 600 |
| Payment: Protest. | |
| The objection that the collector did not order a reappraisement, or that one of the examiners was hostile to the importer, cannot be raised unless made in the protest | 501 |
| Under the act of February 26, 1845, a protest objecting merely in general terms to the additional duty will not support an action | 1044 |
| A protest against the illegal exaction of the penalty of 50 per cent, under Act Aug. 30, 1842, § 17, is necessary in order to recover it back | 501 |
| Protest held sufficient to raise the objection that the goods were erroneously valued as of the time of their exportation, instead of the time of their purchase | 501 |
| Actions for duties paid. | |
| The acts of 1799 and 1845 do not prevent the actual owner of the goods from recovering duties paid under protest by the consignee | 1044 |
| Payment under protest of duties on goods never imported, to avoid suit on a warehouse | 848 |

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| bond, is a voluntary payment, and an action to recover back is not maintainable | |
| Violation of law: Forfeiture. | |
| In cases within Act March 2, 1799, c. 128, § 89, judgment cannot be rendered on the bail bond until after 20 days from the day of condemnation, and then in open court | 292 |
| Customhouse documents are prima facie evidence of the facts which called for their issue | 118 |
| “Fines” imposed for obstructing officers of the customs, as well as “penalties,” under Act March 2, 1799, c. 128, are to be received and distributed by the collector of the customs | 776 |
| DAMAGES. | |
| See, also, “Contract”; “Collision”; “Patents.” | |
| The measure of damages for refusal to deliver certain merchandise as agreed is the difference between the contract price and the market value at the place of delivery | 322 |
| Damages for nonpayment of money or nondelivery of obligations for money is the amount due, with interest. Collateral damages are not given | 1343 |
| Damages for failure to provide a sinking fund for bonds, according to agreement, are ascertained by taking the difference in the value of the bonds as agreed to be made and their value as in fact made | 1343 |
| Vessel owners are only liable in actual and not in punitive damages for the torts of the master involving a breach of a passenger’s contract | 141 |
| One allowing his vessel to be taken, on command of officers of the law, for the purpose of making an arrest in an illegal place, but without malice, is not liable for exemplary damages | 868 |

When the sum is certain, or may be reduced to certainty by computation, the intervention of a jury to assess damages is unnecessary

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231

DEATH BY WRONGFUL ACT.

No recovery can be had under the Maryland statute for the death of a fireman on a railroad train, by collision with another train, unless the company had not used ordinary and reasonable care in selecting the officers of the train in fault

994

Under the Maryland statute, a mother can recover for the death of her son her actual damages, though he was over 21 years old

994

Grandchildren living with their grandparent have no right of action for her death, through the wrongful act of defendant, under Wag. St. Mo. c. 43, § 22, giving a right of action to the husband or wife or minor children of deceased

13

DEBT, ACTION OF.

Debt will lie for two sums distinctly awarded, one for damages and one for costs

1120

DEED.

See, also, "Boundaries"; "Vendor and Purchaser."

A deed of land in Maryland cannot be read in evidence unless recorded in Maryland

153

The words "grant, bargain, and sell" import the conveyance of a fee simple, indefeasible with special warranty

105

DEMURRAGE.

Time lost in getting from one dock to another, by requirement of the charterer and according to the custom of the trade, is not by default of the charterer, for which he must pay demurrage

978

Though the shipper only has the right to reassign, under the bill of lading, the master,

123

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by accepting a reconsignment from the consignee, waives his right to object, and cannot recover demurrage for delays incident thereto

DEPOSITION.

No person but the magistrate or witness can reduce to writing a deposition taken under the judiciary act of 1789, § 30 856

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| The court will quash an execution upon a supersedeas judgment, and also the supersedeas judgment itself, if it does not truly recite the original judgment | 349 |
| The orphans & court of Washington county, D. C., may review its sentence, even after the right of appeal is lost; and an appeal lies on that review | 1171 |
| A petition for review in the orphans & court is analogous to a bill of review in chancery | 1171 |
| Equity will not relieve against a judgment confessed by an attorney through defendant's negligence | 1038 |
| An erroneous judgment cannot be set aside after the end of the term, unless entered by misprision or fraud | 1309 |
| Satisfaction and discharge. | |
| Where a judgment for money was on condition that plaintiff indemnify defendant against certain claims, which he refused to do, and defendant paid claims in excess of the judgment, held, that satisfaction must be entered | 1309 |
| The lien of a satisfied judgment cannot be revived in favor of one of the debtors, who was a surety, to the prejudice of third persons | 264 |

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| Actions on judgments. | |
| The enforcement of a judgment is regulated by the laws of the state where it is recovered, though the cause of action is a contract made in another state | 1105 |
| JUSTICES OF THE PEACE. | |
| A justice of the peace in Alexandria county, D. C., has jurisdiction in detinue | 1255 |
| The creditor may if the debtor does not object, give a sufficient credit on the debt to bring it within the jurisdiction of the justice | 361 |
| It is an indictable offense for a justice to demand any fees other than those established by law | 1144 |
| A bond or writing obligatory cannot be given in evidence were the summons describes the cause of action as a note of hand | 361 |
| No appeal lies from a judgment of a justice of the peace rendered upon the verdict of a jury | 361 |
| LANDLORD AND TENANT. | |
| Chairs left with a painter for repairs are not liable to distress for his rent | 1171 |
| The landlord may distrain after the death of the lessee | 234 |
| In replevin for goods distrained for rent, upon the issue of "no rent defendant," defendant need not prove that the distress was laid by his order or authority | 234 |
| LIBEL AND SLANDER. | |
| One proprietor of a newspaper is responsible for the act of his coproprietor in publishing a libelous article | 49 |
| The fact that the libelous article was copied from another paper, and so appeared on its face, is no justification | 49 |
| But such fact is admissible in mitigation of damages under the general issue | 49 |

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| Under a plea of justification, no evidence in mitigation of damages can be given | 1263 |
| Under a plea of justification, the truth of the libel, with the innuendoes, must be proved as laid | 1263 |
| Under a plea of not guilty, defendants cannot prove the truth of the libel, even in mitigation of damages | 1263 |
| Plaintiff in slander may have leave to withdraw his general replication and file a general demurrer, and the court will give defendant leave to change his plea | 107 |
| The amount of damages for a libel depends upon the degree of malice | 49 |

LIENS.

See, also, "Admiralty"; "Bankruptcy"; "Maritime Liens"; "Shipping."

| | |
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| Advances to the master to enable a ship detained in France to prosecute her homeward voyage are not a lien on the compensation awarded under the French convention | 1035 1375 |
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LIMITATION OF ACTIONS.

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

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| State statutes of limitation are applied in the federal courts, unless congress has otherwise provided | 896 |
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| A state statute of limitations is ineffectual to bar a right of action secured to the United States by act of congress | 118 |
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| Nine months and a half allowed in a statute of limitations for bringing suit in causes of action accrued over four years prior thereto held reasonable | 797 |
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| The Indiana statute of 1852 gives full effect to the statutes of other states, and places debtors | 996 |
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| removing to Indiana in the same condition as if still in the place of the contract | |
| Under section 190 of the California probate act, suit to recover lands sold by an administrator by order of the probate court is barred in three years from the sale | 1314 |
| The statute of limitations does not begin to run against an action by the assignee of a corporation to recover back a dividend wrongfully declared until the fraud is discovered by him | 506 |
| Fraud which will prevent the running of limitations is secret or concealed fraud,—a concealment of the cause of action | 896 |
| Where plaintiff has been negligent in discovering or attacking fraud, the statute will run from the commencement of his laches, notwithstanding the fraud | 896 |
| In California, the exclusive right to recover real estate is in the administrator until distribution, and, if his right becomes barred by neglect, the right of the heir, though a minor, is also barred | 1314 |
| The inability of an heir to sue to recover real estate pending administration is not a disability, within the meaning of section 191 of the California probate act | 1314 |
| The exemption by Code Ga. § 2548, of an administrator from suit for one year from his qualification, held, not repealed by the limitation law of March 16, 1869 | 797 |
| Act Ga. March 16, 1869, barred suits on causes accruing prior to June 1, 1865, if not brought by January 1, 1870. Held, that, in the case of an administrator, the time was extended one year. (Code, § 2548.) | 797 |

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| In the absence of positive provision, the statute, after it has commenced to run, is not suspended by defendant's removal from the state | 996 |
| Action on note held barred in 13 years, notwithstanding frequent absences of defendant from the state | 14 |
| The statute may be pleaded on the first day of the term next after office judgment | 1307 |
| In trespass, the infancy or coverture of some joint plaintiffs does not prevent the plea of limitations as to the others | 855 |
| Amendments made to the writ after the statute has run where they introduce no new cause of action, will not bar the right of action | 118 |
| The act of limitations cannot be given in evidence upon nil debet | 153 |

LOTTERIES.

| | |
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| Liability of city of Washington, D. C., for prizes in "The Lottery for Building Lancasterian Schoolhouses, a Penitentiary and City Hall in Washington City." | 1 |
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MANDAMUS.

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| Mandamus will not lie to the head of an executive department to compel the performance of an act not merely ministerial, but involving the exercise of judgment | 74 |
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MARINE INSURANCE.

See, also, "Average."

The contract—Interpretation.

| | |
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| A policy on goods on board a vessel for a voyage out and return, "\$12,000 valued," must be considered an open policy for the return voyage | 216 |
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| A second policy on the return cargo of coffee valued at a certain sum per pound, deducting \$12,000 previously insured, is only binding on | 216 |
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| the balance of cargo after deducting so much as would at first cost amount to \$12,000 | |
| Representations: Concealments. | |
| Concealment by the assured of the fact that part of the cargo is such as would be condemned by belligerent courts vitiates the whole policy | 849 |
| The assured is not bound to anticipate and disclose every possible ground of suspicion which may weigh with belligerent cruisers; but he must disclose circumstances under which belligerent courts are in the habit of condemning, though against right. | 849 |
| The risk. | |
| Construction of exception in Boston policies with regard to seizure on account of illicit or prohibited trade | 483 |
| In case of a capture, where the vessel is lost by fire or accident, or negligence of the captors before she is delivered up, the whole loss is attributable to the capture | 483 |
| Underwriters are liable as for a total loss where a vessel seized for violation of revenue laws is acquitted by a foreign court, but by the long exposure is so injured that necessary repairs will amount to more than her value, and she is abandoned | 483 |
| Where the insurer was to be liable for a total loss only, he is not liable where the cargo saved on the wreck of the vessel did not pay the expense of saving it | 707 |
| Where the risk is to terminate, at the end of the voyage, after the vessel has been "moored 24 hours in a," a mere anchoring in the usual anchorage grounds, for temporary purposes, does not end the risk. | 1323 |
| Deviation. | |

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| The smallest deviation without justifiable necessity discharges the underwriters, though the loss is not an immediate consequence | 894 |
| Abandonment. | |
| The right to abandon is determined by the actual state of affairs at the time it is made. Where a captured vessel was restored at the time of attempted abandonment, though not known to the owner, held, that the same was ineffectual | 838 |
| A waiver of abandonment by the first insurer does not affect the relations of the insured with a second insurer | 216 |
| Abandonment in writing, pursuant to the policy, held to convey full title, so as to prevent claim of ownership by the assured after raising and repair of the vessel | 975 |
| Right of recovery. | |
| An alleged local custom to keep back one-third the gross freight for charges in a policy on freight where the loss is total is unreasonable, and will not control against the terms of the policy | 129 |
| Suits. | |
| Safe performance of voyage raises a presumption that the vessel was properly manned, and devolves upon the insurers of cargo injured by fire the burden of showing the contrary | 1323 |
| Where the property has been condemned by the court of a belligerent, only the sentence of that court is to be read in evidence, except under peculiar circumstances. | 851 |

MARITIME LIENS.

See, also, "Admiralty"; "Affreightment"; "Bottomry and Respondentia"; "Charter

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| Parties"; "Demurrage"; "Salvage"; "Seamen"; "Shipping." | |
| Tie right to a lien. | |
| A general creditor of a ship has no lien. | 1203 |
| By the common law, the lien for work or repairs on a domestic ship does not exist independently of possession | 751 |
| The repair of a vessel used to navigate tide water, although used partly on inland navigation, is a maritime contract | 293 |
| Repairs upon a vessel in winter quarters in a foreign port, done by contract with the owner, there being no express claim of a lien at the time, and no immediate necessity for such repairs, do not constitute a lien | 520 |
| A watchman on board a vessel laid up for repairs has no lien for wages | 111 |
| The mate and engineer of an enrolled steamer employed in towing vessels in Boston harbor have a lien for their wages | 1268 |
| Such lien extends to her boiler, though the seamen knew that the makers who put it in were to retain title until paid, with a right to remove it on any default | 1268 |
| Where a vessel was sold on condition, and possession delivered, and one of the purchasers, after default, sold his interest to his partner, and engaged as mate, held, that he had no lien for wages as against a subsequent vendee of the owner | 973 |
| That a bill for supplies is made out against the vessel by name and her owners is evidence that credit was given to the vessel, and that the personal responsibility was not exclusively relied on | 957 |
| The maritime law gives no lien for supplies furnished at the home port | 957 |

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| The residence of the owner is the home port, though the vessel is enrolled elsewhere. The place of enrollment is only prima facie the home port | 957 |
| Priority and enforcement. | |
| Attachment of a vessel on process from a common-law court operates on nothing but the owner's interest after the maritime liens are satisfied | 1203 |
| A bottomry bond given by the owner in a foreign port for money to purchase cargo held entitled to priority over an earlier mortgage, under which the mortgagor was allowed to remain in possession without alteration of the ship's papers | 938 |
| Where a vessel was libeled in the home port while in possession of shipwrights, held, that they must be first paid; then a prior mortgagee; and, afterwards, one who made repairs, but was never in possession, ratably with furnishers of supplies | 810 |
| The act of 1850 does not give a recorded mortgage priority over maritime liens, which by the maritime law are preferred to a bottomry bond | 810 |
| Seamen's wages are payable out of proceeds prior to the claims of material men furnishing supplies during their employment | 957 |
| The jurisdiction of the admiralty courts to enforce maritime liens cannot be ousted by any proceedings in the state courts by owners or agents | 293 |
| Waiver: Discharge: Extinguishment. | |
| Maritime liens are not divested by a sale of the vessel under process from a common-law court | 1203 |
| Liens under state laws. | |

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| Whenever the existence of a lien on a vessel for work or repairs is established, under the local law, whether by statute or by common or municipal law, the jurisdiction of the admiralty attaches proprio vigore | 751 |
| A lien held to have attached upon a vessel by the common law for materials furnished and repairs made, and not to have been divested by a voluntary surrender of the vessel by the owner | 751 |
| There is no statute law in Massachusetts (1840) which gives a lien in rem to shipwrights for building, equipping, or repairing ships | 751 |

MARRIAGE.

| | |
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| In Michigan, it is essential that a marriage shall be solemnized in the presence of a minister or magistrate, and two witnesses | *1326 |
| Marriage articles are not affected by not being recorded within the time prescribed by the laws of New Jersey . | 451 |
| Marriage articles will not be presumed to have been abandoned by any delay or negligence of the trustee in their execution | 451 |
| A covenant by the father of the intended wife to stand seised to her use after marriage, of a piece of real estate, does not operate after marriage to pass the legal estate by the statute of uses; the use remains executory in the trustee and his heirs | 451 |

MARSHAL.

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| Plaintiff is liable to the marshal for his whole poundage if he levy goods to the value of the debt, whether they be sold or not | 1052 |
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MASTER AND SERVANT.

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| A person employed to assist in unloading a vessel is charged with the usual knowledge of its construction, and the location of the usual | 561 |
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| hatches, and cannot recover for injuries caused by falling through an open hatch | |
| MORTGAGES. | |
| See, also, "Chattel Mortgages"; "Shipping." | |
| A prior mortgagee may release his claim on payment of the debt, unless he have actual notice of the claims of subsequent mortgagees | 204 |
| A person who may be chargeable with a balance in case the proceeds of the mortgaged premises do not satisfy the debt is an indispensable party to a foreclosure suit | 1091 |
| The purchaser at a trustee's sale held not relieved from paying interest as agreed from the day of sale, pending investigation of the title, and waiting its clearing, though he refused to take possession | 761 |
| But interest will cease to run from the time the money is paid into court . | 761 |
| Auction sale set aside where a party interested publicly announced that it was merely a legal form to perfect his title, and that purchasers would be subject to a suit at law | 133 |
| A mortgagor is not responsible, without notice, for the application of any surplus which may remain on the sale of the mortgaged property after satisfying his mortgage | 280 |
| | 1377 |
| MUNICIPAL CORPORATIONS. | |
| The municipality of Alexandria, D. C., has power to prohibit the keeping of gaming tables under penalties to be recovered by warrant to be levied on the offender's personal property, though he be also liable to prosecution under the state law | 234 |
| In a justice's warrant for the penalty of a by-law, all such defects will be disregarded as would be disregarded after verdict in debt or information upon a penal statute | 146 |

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| In respect to all acts which the corporation has power to perform, it may bind itself by those agents whom it suffers to act for it, and in the modes which its usages sanction . | 1343 |
| The mayor, city attorney, and treasurer may engage attorneys to collect demands due the municipality, where they have ordinarily been suffered to make similar agreements . | 1343 |
| When contracts have been made, acts done, and labor performed pursuant to a construction of a city charter, acquiesced in by all the citizens, that construction will be sustained, if justified by any possible reading of the statutes | 1343 |
| In the ordinary course of its government, and in the conduct of improvements which it is the city's duty to make, it may execute promissory notes, bonds, and guaranties necessary and convenient for the purpose. | 1343 |
| The mere fact that New Orleans consolidated bonds were older than bonds subsequently issued held to give them no priority over other bonds. (La. A ct. Feb. 23. 1852.) | 380 |
| Money collected as provided by law to pay interest on bonds is a trust fund for such purpose, and the city will be enjoined from using it for other purposes . | 377 |
| NAME. | |
| "Jeffery" and "Jeffries" are not idem sonans . | 841 |
| NAVIGABLE WATERS. | |
| A steamer going at excessive speed through the channel between Blaekwell's Island and New York City, and thereby causing swells which sink a moored canal boat, is liable | 1066 |
| One constructing a boom of specified dimensions under a private statute containing a proviso that navigation shall not be obstructed | 1012 |

cannot assert that logs of others, which went into his boom were there by inevitable accident, and that he was not responsible for their detention

NE EXEAT.

The writ will not issue where plaintiff's clerk, about to quit the district, had embezzled his goods, and converted them into money, which he has deposited in a bank to his credit; no debt being positively averred 202

NEW TRIAL.

New trial will be granted upon the discovery of new, material, and important evidence 850

It must clearly appear that the newly-discovered evidence was not known before, and is not merely cumulative, and that the witness is credible 353

Failure of witnesses to state facts which the party expected them to state is no ground for new trial . 892

New trial not granted because of interest of a witness, where such interest would probably be released on another trial 353

Errors of the court are no ground for a new trial where the verdict was right, and the moving party was not prejudiced 790

The whole previous cost must be paid where a new trial is had on newly-discovered evidence 353

NOTARIES.

Notaries public have authority to take the acknowledgment of creditors to their powers of attorney in bankruptcy proceedings 71

OATH.

Affirmation by juror not a Quaker, not attached to any particular religious sect, not permitted 151

PARTNERSHIP.

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| An agreement to furnish \$3,000 and personal services to the business of another for a year, at a stipulated price, and not to be chargeable with losses, does not constitute a partnership as between the parties | 1149 |
| But where the party furnishing such money holds himself out as a partner he is liable as such to creditors, and, in case of insolvency, the sum contributed is partnership assets | 1149 |
| A partner cannot compel his copartner to accept a purchaser of the former's interest as a member of the firm | 317 |
| Owners of whale ships, in the absence of express contract making them partners, are only part owners in the vessel | 353 |
| The representations of a member of a firm to the purchaser of its negotiable paper that it is business paper will estop the firm or their assignee from setting up that it is accommodation paper, and void for usury . | 676 |
| The dissolution of a partnership by mutual consent does not affect the rights of existing creditors, nor of those who subsequently become creditors, if the members continue to treat each other as partners. | 89 |
| A debt put at the disposal of one partner after dissolution of the firm may be dealt with in equity as his individual property. | 232 |
| A continuing partner who agrees, on dissolution of the firm, to pay the firm creditors, is a trustee for them, and a subsequent assignment by him, with preferences, of the partnership effects, is fraudulent and void | 793 |

PATENTS.

Patentability.

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| The substitution of wood for paper in the construction of a box of peculiar pattern does not amount to novelty . | 640 |
| There is no invention in placing on a soft metal gun cartridge a bottom of hard metal, to give capacity for repeated discharges. | 1260 |
| A metallic paint produced by well-known methods from the refuse left in the manufacture of bichromate of potash is not patentable as a new composition of matter. | 1165 |
| A device consisting of perforated tubes set vertically in a grain bin, so as to allow a free circulation of air through the grain, thus preventing overheating, is anticipated by a prior invention of hollow perforated side walls for the same purpose. | 788 1378 |
| The mere location of an old apparatus on a machine is not patentable unless it results in a new combination, producing new and useful results | 805 |
| A prior invention to anticipate must have been reduced to practical use. The mere conception of the invention and experiments alone are not sufficient | 677, 684, 1133 |
| Superior utility, where not derived from the use of better material or greater skill or care in the manufacture, is evidence of invention . | 684 |
| The condition as to utility does not require that the thing invented should be the very best article for the use to which it is applied. Practicability is all that is required . | 677 |
| The amount of labor, study, or thought which the invention cost is of no consequence, if it be really a new and useful invention . | 684 |
| Combining a curved metal receiver with an elevated instead of a horizontal delivery involves no invention, and is not patentable | 635 |

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| A new and useful process for the making of hoop skirts held patentable, although effected by the use of a “former” previously known and used for other purposes | 630 |
| The double independent leather covering for base balls, where such covering had been previously applied to soft balls, <i>held</i> not a patentable invention . | 494 |
| A device for mending rents in firemen’s hose by clamping the torn edges together between metal plates is not anticipated by a similar device for making preserving cans air-tight | 155 |
| Who may obtain patent. | |
| One first conceiving an invention, and using reasonable diligence to perfect it, and doing so in fact, is entitled to a patent over a subsequent original inventor who first reduces it to actual use | 843 |
| Prior public use or sale. | |
| Mere public use by others before issuance of the patent is not decisive against the inventor here, as in England. | 1332 |
| The public use for more than two years before the application, which renders the patent void, may be a public use by the inventor himself of a single machine. | 302 |
| The use of the invention in the inventor’s factories, when not for the purpose of experiment, is a public use . | 643 |
| Prior description or foreign patent. | |
| Prior publications which do not so describe the invention that the public may construct and put it in practice without further invention do not destroy the patent | 302 |
| An application withdrawn and instantly refiled in the same words is a continuing application, | 1136 |

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| and not affected by the issuance of a foreign patent within six months before such refiling | |
| Abandonment: Laches. | |
| An inventor who knowingly suffers his invention to be in public use for years without objection dedicates the same to the public . | 1332 |
| Passive conduct with knowledge of an appropriation by defendant, which the inventor is powerless to prevent, does not estop him from subsequently asserting his right on obtaining a patent . | 302 |
| The proviso in Act 1870, § 35, providing for renewal of rejected applications, does not restore a right once lost by laches. | 818 |
| The inventor delayed 12 years after the final rejection of his application on appeal to the commissioner before amending his specification. Held no abandonment | 302 |
| Delay of 18 years in renewing a rejected application is an abandonment where another has in the meantime secured a patent for the same thing | 818 |
| During two years before application made, the inventor may publicly use and sell his invention without any presumption of abandonment | 302 |
| The first inventor's delay to apply for a patent for eight years after the second inventor has secured one bars him from thereafter making application | 705 |
| Application and issue: Interference. | |
| Upon the application, the commissioner should decide, not only questions of law, but also of fact, including abandonment or neglect | 705 |
| It must be assumed from the granting of the patent that there was evidence before the commissioner to show that there was | 302 |

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| unavoidable delay in preparing the application for examination. (Act 1861). | |
| The decision of the commissioner upon a question of fact upon which he is authorized to pass is unimpeachable, except upon the ground that it is ultra vires | 302 |
| The commissioner, after deciding an interference, may, for cause shown, allow one party to withdraw and refile his application, and may then declare an interference anew | 1136 |
| Appeals from commissioner's decision. | |
| The questions of practicability and usefulness are not subject to appeal in cases of interference . | 1136 |
| The judge cannot order reasons of appeal to be stricken out, but may overrule them | 1136 |
| Validity. | |
| A claim for a result merely, or for every means by which certain advantages in a harvester can be secured, is invalid | 805 |
| A patent for a new article so described that it can be made without invention is not invalidated by an ineffective attempt made to describe the best machine for making it | 394 |
| Patent held, on the evidence, to date back for 12 years before the application . | 37 |
| Extent of claim. | |
| The claims in a patent should be liberally construed, but must be limited by the state of the art, showing the degree of improvement effected | 635 |
| A disclaimer made by an attorney in the prosecution of an application does not necessarily estop the patentee from maintaining that his claim embraces the matter referred to . | 635 |
| Repeal of patent. | |

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| Method for repeal of patents provided for by Act 1793, § 10 | 96 |
| Assignment. | |
| The assignee of territorial rights not restricted as to sales within the territory, may, as to subsequent assignees of other territory, sell within his own territory without restriction or condition . | 183 |
| Licenses. | |
| The infringing articles were put into defendant's factory at its expense, under the direction of the inventor, and were used under his direction up to the time of the application for a patent. Held, that defendant had a special license to use such articles | 483 |
| A grant of the exclusive right to "manufacture and sell" in a specified city carries to a purchaser from the licensee a right to use the machine anywhere | 1216 |
| Sale of patented machine or product. | |
| When a patented article has been lawfully made and sold without restriction or 1379 condition, it is no longer within the monopoly, and the purchaser may use it without restriction as to time and place | 183 |
| Infringement—What constitutes. | |
| A patent for a composition of several ingredients covers known equivalents of each ingredient | 1133 |
| The use of substantially the same means to accomplish the same result is an infringement | 1218 |
| A mechanical equivalent is a means which may be adapted by the mere skill of a mechanic to accomplish the same result as the device used in the patent | 1218 |

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| An equivalent of a substance is another substance having similar properties and producing substantially the same effect. | 1133 |
| A claim for a patent can having a thin rim of soft metal, to be cut through in opening, is infringed by making one end wholly of thin tin | 1087 |
| . | |
| —Who liable. | |
| One may be an infringer without knowing of the existence of the patent | 1133 |
| —Remedy generally. | |
| Equity has jurisdiction in case of infringement on the ground of want of adequate remedy at law. | 302 |
| Defendants, in consideration of a license to manufacture under plaintiff's patents, expressly recognized their validity, and agreed not to manufacture certain articles covered thereby. Held, that plaintiff could sue in equity either for breach of the agreement or for infringement | 399 |
| —Preliminary injunction. | |
| Denied where the validity of the patent, six months old, was put in issue, and defendant alleged a license granted by complainant before the patent issued. | 140 |
| A prior decree sustaining a patent, if entered by default, will not warrant a preliminary injunction in a subsequent suit | 640 |
| The rendition of a verdict in favor of plaintiff is not conclusive upon his right to an injunction | 690 |
| Where the patent is only recently granted, very strong evidence of acquiescence on the part of the community is required to justify a preliminary injunction | 640 |
| —Procedure. | |

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| In an infringement suit, it is sufficient for plaintiff to aver that title is vested in him, without tracing it by the assignments | 1319 |
| The express recognition by agreement of the validity of a patent, in consideration of a license, will estop the licensee, in a subsequent suit for infringement, to set up its invalidity | 399 |
| A mere mercantile agreement not to deal in certain patented machines therein named is not an estoppel to deny the validity of the patent | 640 |
| Prior knowledge of a person, of which notice is given, cannot be proved by another person, not mentioned in such notice | 677 |
| —Evidence. | |
| The patent is prima facie evidence that the patentee is the original inventor | 302 |
| Declarations of the patentee, made after he had assigned all his interest, impeaching the validity of the patent, are inadmissible against the assignee . | 677 |
| Nor is evidence of such declarations admissible to contradict the patentee, who has testified as a witness for the assignee, where he has not been interrogated as to such declarations | 677 |
| The evidence on the subject of anticipation must be clear and convincing | 394 |
| —Injunction and its violation. | |
| The fact that defendant, who has sold an infringing article, sold it on behalf of its owner, and had no interest in it, or in its sale, is no ground of refusing an injunction against him | 563 |
| Various particular inventions and patents. | |
| Base balls. No. 127,098, for double leather covering, held invalid for want of invention | 494 |

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| Brushes. No. 160,933, for improvement, held infringed | 1320 |
| Capstans. No. 63,917, for improvement in applying steam power to capstans, held valid and infringed | 302 |
| Car wheels. No. 640, for improvement in mode of making cast-iron car wheels, construed | 677, 684, 690 |
| Harvesters. No. 15,044 (reissued No. 4,281), for improvement, held invalid | 635 |
| Harvesters. Reissue No. 2,254 (original No. 37,630), for an improvement in harvesters, consisting in a raking and reeling apparatus, construed, and held not infringed | 805 553 |
| Hats. No. 34,043, for improvement in men's hats, held valid and infringed | |
| Isinglass. No. 134,690, for improvement in manufacture, held invalid, the invention having been in public use for more than two years | 643 |
| Jails. No. 110,483, for an invention relating to the construction of jails, construed in a charge, and found infringed by the jury | 1218 |
| Metallic packing. No. 5,767, for an "improved composition for metallic packing in steam construed," construed in a charge to a jury . | 1133 |
| Paint cans. No. 24,748, for improvement, construed, and held valid and infringed | 1087, 1089 |
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| Shoe-sole machine. A patent for cutting the soles of shoes by means of a cutting die mounted on a shaft held infringed.— | 1258 |
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| Stop valves. No. 102,187, for an improvement in stop valves for petroleum packages, construed, and held not infringed | 1324 |
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| Foreigners employed as seamen in American merchant ships are seamen "of the United within," within the meaning of the act of 1803, c. 62 | 1128 |
| An action against a master for the penalty given by Act 1803 for refusing to bring destitute seamen to the United States must be brought in the name of the United States, and not of the consul | 1128 |
| In such action the certificate of the consul is prima facie evidence of the facts | 1128 |
| Double wages are given under Act July 20, 1790, § 9. if there is a shortage in any one of the three articles named therein 946, | 1000 |
| In determining whether an allowance be short or not, the navy ration is the standard 946, | 1000 |

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| Five pounds a week is a short allowance of bread, within the statute | 1000 |
| An overabundance of meat cannot be substituted for the bread required by the statute | 1000 |
| If the master is unable to obtain the kind of provisions required by the statute, other kinds may be substituted | 946 |
| The contract of shipment. | |
| Where the shipping articles for a sea-elephant voyage contained novel provisions for computing the shares, held, that the seamen, whose attention was not called thereto, were not bound by them | 1270 |
| A clause in use only three years in shipping articles, and authorizing the master to disrate any seaman whom he judged incompetent or indisposed to his duty, held not binding where it was not brought to the Seaman's notice | 1092 |
| Seamen on a fishing voyage, who were discharged on an island in the Pacific, and then entered for a new voyage held not bound by the shipping articles, but entitled to a quantum meruit | 1270 |
| The shipping articles must declare explicitly the ports at which the voyage is to begin and end | 384 |
| Where the voyage is "from Philadelphia to South America, or any other port or ports, backwards and forwards, when and where required, and back to the," the master may proceed from South America to Europe | 384 |
| A ship is bound by her master's contract for any voyage for which he has authority to engage her | 204 |
| Foreign seamen unwittingly shipping for a voyage wherein the navigation acts forbid their | 204 |

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| employment, may recover in rem damages resulting from nonperformance | |
| Whether seamen are bound to remain after the end of a voyage to assist in discharging depends on the custom of the port. | 946 |
| That the cargo is owned by the freighter does not make the mere arrival in port a delivery, within the meaning of the shipping articles. Such ownership is no ground of distinction | 860 |
| Under the British law, where an injured seaman is left behind in a foreign port, his wages stop, but the ship is liable for his cure and care | 448 |
| Where a sick seaman, left behind at a foreign port, is picked up by the vessel on the same voyage, it will be presumed that the old rate of wages is to be paid him, where there is no express agreement | 448 |
| The first engineer, who employs the second engineer, may also discharge him, even against the consent of the master | 450 |
| Conduct of master or mate in respect to seamen. | |
| The imprisonment of a seaman in a foreign jail at the instance of the master is only justified by extreme necessity., | 384 |
| A master who causes a seaman to be imprisoned on shore must, before leaving port, ascertain if he is willing to return to duty | 725 |
| Wages—Right to. | |
| The right of a seaman to wages is not founded in the articles, but in the service | 499 |
| The right in respect to wages depends upon the law of the flag; without regard to the nationality of the seamen themselves | 448 |
| Where the ship is captured by a belligerent and condemned, the seamen lose their wages, | 348 |

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| though the owner receives full insurance on the freight | |
| Where the owner of a wrecked vessel takes the business of salvage out of the hands of the seamen, and furnishes them no subsistence, they may recover wages from the remnants | 1070 |
| Seamen saving remnants of their wrecked vessel to the amount of their wages are entitled to wages as such, though no freight be earned | 1070 |
| A seaman left in a foreign port because the master desired to be rid of him held entitled to wages to the end of the voyage, and expenses | 960 |
| A seaman rightfully imprisoned on shore for misconduct, but wrongfully left behind, may claim wages for the time he was imprisoned | 725 |
| Where the voyage is broken up without cause, and without the Seaman's consent, he may recover wages for the whole voyage stipulated, deducting his earnings meanwhile | 725 |
| Seamen on a vessel forfeited as fitted out for the slave trade are entitled to wages if ignorant of the criminal purpose of the voyage | 949 |
| The fact that a coasting vessel has no license does not affect the right to wages if the seamen are ignorant thereof | 945 |
| The wages of a mariner who ships during war should not be lessened because a peace takes place while the vessel is at her outward port | 7 |
| —Remedies for recovery. | |
| Seamen on a small licensed coasting vessel employed in taking paving stones from Marshfield and Scituate Beaches to Boston have a lien for their wages | 945 |
| There is no rule prescribing the time for proceedings to enforce the lien for wages | 936 |

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| Forbearance by seamen to libel their vessel at a port where they are discharged before the end of the voyage is not a waiver of their lien as against a subsequent bonafide purchaser | 936 |
| A sheriff's sale of a steamboat will not discharge the lien for Seaman's wages of the owner's minor son, who for two years had been permitted to receive his own wages, and control his own actions | 111 |
| A libel for wages brought before the wages are due must be dismissed, if duly excepted to on that ground, though the right is perfected in the meantime | 860 |
| Ordinarily, 15 days is a reasonable time for unloading, and a suit for wages brought on the fourteenth day must be dismissed as premature | 860 |
| Wages are due immediately on voluntary discharge, and if not paid within 10 days thereafter, the seamen may sue in rem | 946 |
| A receipt by a seaman in full of all demands is no bar to a claim for which he has not received compensation | 1000 |
| The master and owners of a whaling ship are not liable to be sued jointly for a Seaman's lay | 1092 |
| In a libel in rem for wages, the defense of stale claim will not avail a purchaser who retains part of the purchase money, and defends in the interest of the vendor | 1329 |
| A plea of misconduct in defense of a suit for wages must allege the facts with due certainty of time, place, and other circumstances; otherwise it will be rejected | 337 |
| A mere offer of the master to pay wages, to avoid a libel, is not an admission that the wages are due | 860 |

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| Ship's articles, with the signature of the sailor, are prima facie evidence of his having been on board the vessel | 555 |
| The log-book entry is legal evidence of the time of the Seaman's coming on board and leaving the vessel. (Act 1790.) | 555 |
| —Deductions: Extinguishment, etc. | |
| Damages can be recovered for misconduct only when they are the direct and immediate results of the Seaman's acts or omissions | 337 |
| The crew were ordered to contribute for a loss by embezzlement where strangers assisted in loading the cargo, but the fault could not be fixed | 749 |
| The vessel owner cannot retain wages as a contribution for injuries from a collision, alleged to have been caused by their negligence, until after the legal liability is established | 750 |
| The costs and charges of an imprisonment for violation of the laws of the country may be deducted from the Seaman's wages | 384 |
| The master cannot deduct from the wages of seamen of a wrecked British vessel expenses of their board and transportation home | 340 |
| Drunkenness of the mate in ports, when not on board, is no bar to wages, unless his duties were interfered with | 1111 |
| Allowance by the master of full wages, and giving a draft therefor, imports that any grounds of complaint for intoxication were forgiven | 1111 |
| Rebellious conduct will not justify total forfeiture when resulting from sudden irritation aroused by inconsiderate treatment | 914 |
| Misconduct will not be punished by an absolute forfeiture of wages and effects on | 725 |

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| board unless continued or repeated or of a highly aggravated character | |
| Receiving a seaman on board after the time appointed does not remit the penalty for his neglect to render himself | 555 |
| Gross deviation from the chartered voyage will not justify seamen in taking possession at sea | 949 |
| Seasonable ground of suspicion that the vessel is about to engage in the slave trade does not justify the seamen in taking possession of her at sea or in a foreign port and bringing her home; and by so doing they forfeit all wages | 949 |
| Willful derangement of the engine by an engineer, in order to compel the boat to stop Pago at a certain port, at which he desired to leave, will work a forfeiture of wages | 450 |
| Where a seaman employed by the month leaves before his month is up, Ms entire unpaid wages are forfeited | 450 |
| There can be no desertion after the voyage is ended by mooring the vessel in her last port of discharge, though the seamen are bound by the shipping articles to remain till delivery of the cargo | 860 |
| The prescribed entry in the log book is indispensable to subject a seaman to the forfeiture of his wages for desertion. (Act July 20, 1790.) 384, 555, | 860 |
| But such entry is not incontrovertible. | 555 |
| Seamen do not forfeit wages by a departure from the vessel before termination of the voyage, where it is involuntary or with reasonable cause, or with apparent assent of the master | 384 |
| Cruelty of the master will justify leaving the vessel only where it is apparent that the | 384 |

seaman could not remain without extreme danger to his personal safety

SEIZURE.

See, also, "Prize."

A certificate of probable cause cannot be granted where there has been neither claim nor trial, nor decree, nor anything to which an appeal could lie 535

Restitution and acceptance held a mutual release, barring a claim for damages for unlawful seizure 535

Reasonable ground for a seizure is a defense to a libel for damages 535

The court will entertain the question of damages, as well as costs, at the same time with the principal question of the legality of the arrest of the vessel 535

SHIPPING.

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

Public regulation.

A vessel built in Canada, and owned in the United States, is not a vessel of the United States, entitled to registry 997

Under the act of July 18, 1866, § 24, the forfeiture of a vessel for fraudulently obtaining a certificate of registry is absolute 968

A sale to a corporation organized and existing under the laws of a foreign country is a sale "to a subject or citizen of a foreign prince or state" (Act Dec. 31, 1792, § 16), regardless of the citizenship of the shareholders 726

A sale upon credit, and upon the condition that the purchaser shall not use the vessel 726

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| until the purchase money is all paid, and that on default the seller may retake the vessel, is a sale within the registry laws. | |
| The navigation of a vessel under an American register after her sale to a foreign subject is a violation of section 27 of the registry act | 726 |
| If documents by which registry of a vessel has been obtained are identified and come from the possession of the government, the signatures need not be proved | 968 |
| The provisions of section 2 of the passenger act of March 3, 1855, do not apply to steamships | 596 |
| An unlicensed engineer cannot recover wages for services on a steam vessel engaged 1387 in carrying passengers on the waters of the United States | 726 |
| Title to vessel. | |
| Part owners of a vessel are not partners, and each may maintain a separate action against the ship's husband for his proportion of the freight; and this though he be one of the part owners | 488 |
| Minority owner held entitled to security for the return of the vessel, though he did not dissent from the voyage until the vessel was nearly ready for sea, where he had previously refused to share expenses of the outfit | 711 |
| A part owner of a vessel, dissenting from a voyage and receiving a stipulation from the other owners for the vessel's safe return, is not entitled to compensation for the use of his part of the vessel during the voyage | 709 |
| The master. | |
| Where the master of a fishing vessel is to fit her out and cure the fish himself, giving the owner part of the catch, and paying all bills | 1266 |

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| from the proceeds of the remainder before division with the crew, he is owner pro hac vice, and responsible for the "small generals" | |
| The vessel owners are liable for torts of the master when they involve a breach of the passenger's contract and are done while acting within the scope of his employment | 141 |
| Where, in a port of necessity, the master puts his vessel in charge of the charterer's agent for payment of disbursements, he is bound to produce his accounts when applying for money, according to the usage of the port | 1169 |
| Where, in such case, funds were provided by the charterer's agent, but the master broke off negotiations, and employed someone else, held, that the charterer could recover the agreed commission | 1169 |
| The master may sell a perishable cargo where the consignee refuses to receive it, and it cannot readily be stored in a place suitable to preserve it; and he need not wait the expiration of lay days | 740 |
| A master claiming the gratuitous privilege of taking his wife and child on the voyage must show a distinct understanding to that effect | 837 |
| An error of the master in regard to provisions, making it necessary to return to port for an additional supply, held not so gross as to take away his right to wages. | 837 |
| Liabilities of vessels or owners. | |
| The ship is liable in rem upon the master's contract of affreightment, though it is let to him by charter-party, where the shipper is ignorant of that fact | 11 |
| A vessel illegally seized by an American consul in a foreign port, and sent home, is liable for wages of the crew and pilotage | 740 |

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| Employes on vessels cannot recover for injuries caused by the mere negligence of the officers or other employes | 561 |
| A shipowner who provides a seaworthy vessel, properly equipped, and commanded by competent officers, has discharged his duty towards the subordinates, and cannot be held liable for mere neglect of officers | 561 |
| The share of a part owner in a vessel or the proceeds of a voyage is not under a lien in law to pay another part owner for his extra advances | 353 |
| The giving of credit to one part owner and the taking of his separate note, where the other owners settle with him on the basis thereof, bars recovery against them by the creditor | 353 |
| SLAVERY. | |
| A devise to emancipated slaves by their former master is valid in Mississippi | 1096 |
| The act of congress relating to the reclamation of fugitive slaves is valid | 881 |
| The writ de homine replegiando is applicable to the trial of the question of slavery | 881 |
| No process is usual or necessary for seizing a fugitive slave, to take him before a magistrate, under the act of congress of 1793 | 881 |
| There is no right of trial by jury of the question of slavery when a fugitive is brought before a magistrate under the act of congress | 881 |
| In a suit for freedom, the court will not question jurors, as they are called up to be sworn, as to their prepossessions in favor of freedom | 1106 |
| Slaves carried by their owner from Mississippi to Ohio, with intent that they should become free, acquired freedom, and did not lose it | 1096 |

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| by returning to Mississippi with their former master for temporary purposes | |
| There is no presumption from lapse of time in favor of persons who rely on the proviso in the Virginia law in relation to persons bringing their slaves into Virginia. | 1106 |
| Right to freedom of slaves brought into the District of Columbia | 949 |
| Evidence of an importation contrary to Act Md. 1796, c. 67 | 732 |
| The proprietor of a stage who allows a slave to depart in his stage without consent of the owner is liable for damages for his running away | 580 |
| Color is prima facie evidence of slavery | 580 |
| Stage owners held liable for damages in suffering a slave to go off in their coach by means of a false certificate of freedom | 586 |
| SPECIFIC PERFORMANCE. | |
| A person who seeks performance of an award respecting realty must show a readiness to perform all the award on his part | 326 |
| A delay of two years in making payment held not to bar specific performance where the vendee had made valuable improvements without objection from the vendor, who sustained no damage which interest would not compensate | 1065 |
| After long delay and laches, equity will not decree specific performance of an award respecting realty where there has been a material change of circumstance and injury to the other party | 326 |
| Where the property had decreased half in value, the court refused, after a delay of many years, to decree specific performance, but | 167 |

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| ordered a rescission of the contract and repayment of the amount paid | |
| Bill for reconveyance of an estate upon an agreement and subsequent award dismissed under the circumstances, the bill being brought against purchasers after a considerable lapse of time, the original vendee having died insolvent | 326 |
| A bill for specific performance of an agreement to deliver a contract of insurance cannot be maintained after the lapse of 10 years | 759 |
| On a bill against the purchaser of the legal title a notice to defendant, relied on by plaintiff, must be averred and proved | 326 |

STATUTES.

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| The publication of the second edition of the Revised Statutes under Act March 2, 1388 1877, did not affect any statute passed subsequently to December 1, 1873 | 289 |
| An act whose subject is disposing of insolvent debtors' property may properly include a provision that the assignment in insolvency shall discharge prior attachments | 1229 |
| A prohibition of amendments by mere reference to the title of an act does not prevent repeals by implication | 1229 |

SUBROGATION.

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| The security given by the maker of a note to the indorser may, after both are insolvent and the surety's liability has become fixed, be recovered by the holder and applied in payment | 1094 |
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TAXATION.

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| See, also, "Internal Revenue." | |
| A statute providing that the rate per cent, of the tax in each municipality shall be in | 377 |

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| proportion to the indebtedness of each is not in conflict with a constitutional provision that taxation shall be equal and uniform throughout the state | |
| Act Ark. T. Oct. 26, 1825, in relation to the mode of collecting taxes, held inapplicable to nonresidents | 144 |
| Where fees were improperly received by a sheriff acting as a tax collector, held that penalties were recoverable | 144 |
| A collector must make a demand on the owner of land for taxes before judgment can be rendered against the land | 1251 |
| An Auditor's tax deed is prima facie good, and is a title deducible of record, within the meaning of the Illinois statute of March 3, 1845, § 11 | 1146 |
| In Illinois, an Auditor's tax deed, coupled with seven years' possession and payment of taxes, gives good title | 1146 |
| A tax sale and conveyance in pursuance thereof (in Virginia) vests the purchaser with the title of the person assessed with the taxes at the beginning of the tax year, notwithstanding irregularities in the proceedings, if they do not appear on the face thereof | 343 |
| The deed, when regular, is prima facie evidence that the proceedings were regular, and that the title passed | 343 |
| The deed need not recite that the land was assessed on the commissioner's book | 343 |
| A recital that the land was returned delinquent for the nonpayment of the taxes is sufficient as a recital of the assessment | 343 |
| Torts | |
| See "Admiralty"; "Collision." | |

TOWAGE.

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

The master of the tug is bound to know the sailing qualities of a vessel which he has several times before towed into the harbor, and to know the condition of the harbor; and he is responsible for the manner in which he enters it 713

Tug held liable for damages to ship towed stern foremost from pier in East river, and drifting into pier on opposite shore, where the ship's hands failed to catch the line thrown from the tug 540

Tug held not liable for collision of tow with dock 85

TRADE-MARKS AND TRADENAMES.

Trade-marks are an entirety, and are incapable of exclusive use at different places by more than one independent proprietor 605

The right to a trade-mark is forfeited by its deceptive use to designate a spurious article 605

Voluntary relinquishment of the original mark for a new device forfeits the right to the old mark 605

Disregard of territorial limits allotted by license and misuse of the trade-mark forfeits the right 605

A resemblance sufficient only to deceive ordinary purchasers is sufficient to constitute infringement 605

An accounting for past profits will not be decreed where there has been laches in bringing suit, and long acquiescence in the adverse use of the mark by others 605

TRESPASS.

In trespass, any matter done by virtue of a warrant must be specially pleaded 892

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| In a suit for trespass to personal property, plaintiff must show what property was injured, and that defendant participated therein | 190 |
| In an action of trespass vi et armis, plaintiff cannot recover for any injury done to real property | 190 |

TRIAL.

See, also, "Appeal"; "Continuance"; "Evidence"; "Judgment"; "New Trial"; "Practice"; "Reference"; "Witness."

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| No paper can be read in evidence without leave of the court; and, if the court is equally divided as to its admissibility, it is rejected | 1339 |
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TROVER AND CONVERSION.

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| To establish a conversion, there must be proof of wrongful possession, or of exclusion of the owner's right, or of unauthorized and injurious use, or of wrongful detention after demand | 510 |
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| A jury may, as part of the damages, give interest on the value of property converted. | 1125 |
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TRUSTS.

See, also, "Charities"; "Executors and Administrators"; "Guardian and Ward"; "Wills."

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| A person acquiring the legal estate in property as the agent of another, or upon a trust and confidence that he will acquire it for the benefit of another, will be required to account therefor in equity | 645 |
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| Such a trust is not within the statute of frauds, and it need not be manifested by a writing | 645 |
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| An attorney employed to foreclose a mortgage, who purchases at the sale, will be held to be a trustee for the client, at his option, unless it satisfactorily appears that he was in no wise injured or prejudiced thereby | 645 |
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Lapse of time is no absolute bar to a suit for relief in the case of a constructive trust. Page
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UNITED STATES.

Quaere: Whether the United States can compulsorily be made a defendant to a foreclosure bill, where it holds a lien on the property 1320

USE AND OCCUPATION.

Partial eviction does not bar an action for use and occupation 145

USURY.

See, also, "Banks and Banking."

A purchase of a bill in the market, like a commodity, at any price, is not usurious. But an unaccepted bill is not so purchased. 264

When paper is the basis of exchange, it must be shown as influencing the rate of exchange 264

A discount of a bill upon which exchange is charged, to take up a prior bill, is not usurious unless the agreement was made at the discount of the first bill 264

Where the rate of exchange charged is only colorable, it is usurious 264

In Ohio, usury avoids the contract only for the excess 264

Where a statute forbids a corporation taking over a certain amount of interest, all money taken over such amount must be credited to the debtor on the principal 757

The New York act of 1850 providing that no corporation shall interpose the defense of usury does not extend to suits against accommodation indorsers for corporations. 757

VENDOR AND PURCHASER.

See, also, "Bankruptcy"; "Boundaries"; "Deed"; "Fraudulent Conveyances"; "Grant"; "Sale"; "Specific Performance."

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| The vendor of land contracted to be sold is a trustee for the purchaser | 167 |
| Where a contract for the sale of land is void, or cannot be enforced by reason of laches on the part of the vendee the land will descend to the heirs of the vendor | 167 |
| The registry of a deed or paper not duly or legally recorded is not constructive notice | 326 |
| A creditor obtaining judgment against the vendor, after the latter has received the purchase money, but before he makes a deed, will be enjoined, at suit of the vendee, from levying on the land | 349 |
| A material false representation by the vendor or his agent vitiates the sale, though not known to be false when made | 1016 |
| Where a sale is rescinded after several years, for fraud, each of the several equitable owners is liable to refund only the money he received, and not that received by the others, or paid to an agent since insolvent | 1016 |
| Fraud practiced by one of several owners, or by one having a bond for a deed from some of the owners, is ground for rescission of the whole sale, where the owners take the benefit of the price obtained by the fraud , | 1016 |
| A sale will not be rescinded for mistake alone if the party had full opportunity to examine the land, and did examine it | 1016 |
| That the purchaser examined the land will not prevent a rescission, if falsehood was practiced, whereby he was led to make only a slight and general examination | 1016 |
| A contract for the sale of land, providing for the right of annulment, on failure of any of the payments, by giving notice and paying the | 167 |

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| money received into a certain, bank, can be annulled in no other way, except by consent | |
| WAR. | |
| See, also, "Prize." | |
| No treasury agent could receive after June 30, 1865, any captured or abandoned property, unless theretofore surrendered by Confederate agents or officers | 295 |
| Property surrendered by the military authorities of the Confederate government could not be released by any state or provost court | 295 |
| A treasury agent acting under color of the captured and abandoned property act, or under a mistaken sense of duty, cannot be held personally responsible | 295 |
| The order of the secretary of war, dated May 13, 1863, directing commanders of departments to prohibit the sale of livestock for exportation, and to cause live stock so sold to be appraised and appropriated by the government, was unauthorized and illegal | 1108 |
| Fowls are not live stock within the meaning of such orders | 1108 |

WAREHOUSEMEN.

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| The indorsement or assignment of warehouse receipts is regarded as equivalent to the delivery of the article | 325 |
| The warehouseman is estopped to deny that he has the articles mentioned in his receipt, in an action by an indorsee or assignee, who has purchased the paper in good faith | 325 |

Waters and Water Courses.

See "Navigable Waters."

WILLS.

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

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| Where a will of personalty is defectively executed, it must appear that testator intended it to operate as his will, or that he was prevented from completing it by being overtaken by sickness or other casualty | 151 |
| No defect in the execution of a will conveying land can be supplied by parol proof. | 151 |
| A bequest to the Educational Society of Virginia, an unincorporated association, "for the benefit of the theological students at the Protestant Episcopal Theological Seminary of Virginia, * * * \$1,000, the interest only to be annually expended" is void under tie Maryland law | 1283 |
| "Issue," in a will penned with great regard to technical words, includes all direct descendants, and is not limited to children. | 1200 |
| A devise over, if the parties first taking should all die, "without leaving any issue of the body of either of at," at the death of the last survivor, "or if such issue should all die before attaining the age of 21 years," is too remote | 1200 |
| The words, "I will, in the first place, that my just debts be charge," charge the realty with 8 the payment of debts | 1390 |
| WITNESS. | |
| See, also, "Bankruptcy"; "Costs"; "Deposition." | |
| One who had sold an interest in an invention, but was to be paid something if it was successful, held disqualified | 843 |
| An owner of a vessel who has settled with his co-owner may testify against a passenger in a suit for passage money, where his co-owner has released him | 1080 |

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| An indorser of a promissory note is a competent witness for the maker in an action by the indorsee | 1047 |
| In a suit on a bottomry bond, the master is competent to prove that the supplies for which it was given were furnished and were necessary | 1309 |
| In a suit for Seaman's wages, the master, made a party, but not served with process, held incompetent | 555 |
| Mere mistake by a witness, without willful or corrupt falsehood, should not discredit him | 843 |
| A witness cannot be impeached by proving that at other times he made contradictory statements, unless he be first interrogated as to such statements | 219 |
| But such rule does not apply where an ex parte deposition was read, of the taking of which no notice was given | 219 |

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