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BANKS AND BANKING.

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A bank which, in the absence of instructions, surrenders to consignees bills of lading attached to drafts, on the mere acceptance of the drafts, is liable for a resulting loss 52

A bank receiving a sight draft from another bank, with directions to return without protest if not accepted, *held*, liable to the former bank where there was delay which it did not explain, during which the former bank paid the amount to the drawer on the faith of a letter from the drawee, stating that he had paid the draft 38

The cashier of a national bank in Boston: *held* to have no authority to certify checks, either by usage or otherwise *54

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BILLS, NOTES, AND CHECKS.

What law governs.

The indorsement of a note is a new, distinct contract, which is governed by the law of the place where it is made, without regard to the law of the place where the note was made 907

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By the law of Indiana, ordinary promissory notes are not governed by the law merchant 907

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An election by the holder to consider what passed on presentation of a bill as a nonacceptance is binding on him, as against other parties 494

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Notice to the indorser is necessary unless he knew the maker to be insolvent at the time of the indorsement	817
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The recitals, “shipped in good order and condition”; “quality, condition, and contents unknown”; “not accountable for breakage,”—are only evidence of external condition, and the shipper must show that internal injuries were caused by the negligence of the carrier 725

The memorandum that casks of plumbago were loose when shipped casts the burden upon the shipper to show that the loss of plumbago from the casks was not caused by such loose condition 1335

Where it appears that the vessel encountered an unusually violent storm, which fully accounted for the damage within an exception in the bill of lading, the burden is on the shipper to show carelessness or negligence on the part of the vessel, leading to the loss 1343

The assignee of a bill of lading is unaffected by a usage between the consignor and carrier in reference to delivery, contrary to the terms of the contract, of which he has no notice 1131

BONDS.

See, also, “Bail”; “Municipal Corporations”; “Principal and Surety”; “Railroad Companies.”

Upon a bond conditioned to pay certain installments, an action may be brought up on failure to pay the first installment 1146

A township bond containing the statement that it is to be converted into a county bond, on certain contingencies, is not negotiable, and is open to defenses in the hands of any holder 142

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1360

BOTTOMRY AND RESPONDENTIA.

No terms inserted in a bottomry by the master can make the owners responsible, beyond the 1254

value of ship and freight, for debts contracted
for repairs and supplies
Bond given for advances enforced, though the
claims to pay which the money was advanced 346
were not all in fact paid
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necessity for the pledge of the ship and freight 1254
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Construction and legal effect of the terms,
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established, they must control courses and
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what particular persons said

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Congress has power to authorize, as a regulation
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navigable stream
A bridge constructed across a navigable stream,
as authorized by act of congress and the local 341
legislature, cannot be en joined as a public
nuisance
The federal circuit court has jurisdiction of a
suit to restrain the building of a bridge across
a navigable stream only so far as to inquire 341
whether such building is in violation of the
constitution or laws of the United States
The history of the legislation of New York and
of the United States in regard to the New York 341
and Brooklyn bridge re viewed

A bridge company having an exclusive franchise to maintain a bridge may waive or abandon the same by its corporate act so as to bind its stockholders 412

CARRIERS.

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Printed conditions of a ticket inconsistent with a valid oral contract of carriage are not conclusive against the passenger 838

Punitive damages are recoverable where a husband and wife who have contracted for the exclusive use of a stateroom are forced to receive another male passenger therein 838

The disappointment and irritation of a husband, and the discomfort and suffering of his invalid wife, resulting from assigning them to separate staterooms, in violation of the contract of carriage, are elements of damage 838

Shipping receipts *held* to constitute through contracts, by which the carrier was liable for the proper transportation of the articles beyond the line of its own road *1131

A forwarding carrier who pays past freight charges, according to usage, may recover the amount from the consignee 609

Where such forwarding carrier has no connection with the previous carriers, it is not liable for damage to the goods while in its possession 609

A shipper of lard in the summer months takes the risk of damage occasioned by the excessively hot weather, unless some neglect or fault can be charged upon the vessel, contributing to the loss 1343

The fact that cases of goods were in good order when received, and broken when delivered, casts the burden on the carrier to show how the injury occurred 725

Evidence showing that the injury would not have resulted in the common course of events, with proper care, in the absence of explanation, proves it to have been caused by negligence 725

Shippers of merchandise, of large experience, in the absence of evidence to the contrary, are presumed to use the best method of packing the same for the particular kind of carriage 725

The carrier has the burden of showing due diligence and proper care to avoid the accident, and that it was unavoidable, to avail himself of the exceptions of "dangers of navigation" 581

Contracts limiting the common-law liability of the carrier are to be strictly construed in favor of the shipper 23

A notice stamped on the bill of lading, "Not responsible for rust, breakage," etc., and a statement by the receiving clerk to the same effect, do not make a specific contract limiting the carrier's liability 136

A person employed to construct glass cases and superintend their shipment can not bind the owner by a contract limiting the carrier's liability for loss from break age 136

Gross negligence in the stowage of glass cases will render the vessel liable, though liability for breakage was expressly excepted 136

Officers of a vessel, who know the contents of certain boxes to be glass cases, are guilty of gross negligence where they fail to observe every precaution necessary to insure their safe stowage and safe delivery 136

A contract releasing the carrier from damage from "leakage or decay, chafage or breakage, or from any other cause not the result of collision of trains," etc., *held* not to apply to loss by fire while the goods were stored in the carrier's warehouse 23

Carriers of live stock must provide accommodations whereby the stock can be safely and properly kept and cared for until a *1131 delivery can be made to the consignee according to the terms of the shipment

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A religious corporation created under Act Pa. April 6, 1781, takes the title as trustee for the heir at law of the testator, who devised certain lands to it in trust for uses that were void 329

The statute of mortmain (9 Geo. II. c. 39) has never been in force in Pennsylvania 329

CHARTER PARTIES.

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

The master cannot keep the goods shipped, and refuse to sign a bill of lading to the order of the shipper, irrespective of his orders from the charterers, or the contract between the shipper and his vendee 546

Under a charter stipulating that demur rage shall be paid day by day, and that the master shall sign bills of lading, the master must sign bills of lading, though demurrage is due and unpaid 477

In an action on the charter party, to compel the master to sign bills of lading, libelant can recover only the actual expenses incurred and rendered necessary by the master's refusal 477

The master of a vessel, who charters her for a specific term under an agreement to furnish her with all stores, is alone responsible for supplies furnished by one chargeable with notice of such charter party 905

Risk of loss by fire devolves on the charterers, where they covenant to return the vessel in like good condition, ordinary wear and dangers of the sea excepted 83

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Quaere as to the effect of provisions as to subsequently acquired property, as between incumbrances of different date	527
The parties may agree that the possession and use of the mortgaged chattels shall be retained by the mortgagor until condition broken	527
In Nevada a chattel mortgage is void as to creditors, unless immediate possession of the mortgaged property is taken and retained by the mortgagee	781
A mortgage is fraudulent and void, as to creditors, if the mortgagor is allowed to remain in possession of and sell and traffic with the goods as his own	781
A mortgage on a stock of goods can only be prima facie fraudulent as being out of the usual and ordinary course of business, and its validity may be established by proof	711

In Indiana an unrecorded chattel mort gage, where the property is not delivered to the mortgagee, is absolutely void, as against the assignee in bankruptcy of the mortgagor	711
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Until March 19, 1839, there was no law in Arkansas requiring chattel mortgages to be recorded. If recorded prior to that time, the record was not notice, but tended to give publicity and repel fraud	86
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To recover of the vessel moored along side, she must be shown to have been in fault	940
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Between steam and sail.

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1362

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Between steam vessels.

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A steamer will be *held* in fault for not taking the course indicated on her exchange of signals with another steamer, and the latter will not be held in default for keeping up her speed 451

That a steam propeller did not carry her mast light at proper elevation, and had no colored lights, will not prevent recovery, where the colliding steamer was traveling at great speed, and had no lookout, and her pilot would not 209

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Speed: Fogs.

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A steamer ascending a channel at 8½ miles an hour, and one descending at 14½ miles an hour, both condemned for excessive speed 427

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Steamboats on the Mississippi are in fault for running in a fog without sounding the whistle at intervals not exceeding two minutes 426

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Between bark becalmed without colored lights and steamer, where both were <i>held</i> in fault	1251
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Notice of time and place of taking is necessary under a joint commission, but if the opposite party fails to join, and the commission issues ex parte, notice is not necessary 86

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A joint commission to take a deposition must be executed by all the commissioners, though the commissioner named by the adverse party, after proceeding some length in the examination, withdrew, and refused to complete it 993

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Where the owners permitted a railroad using the vessel to appoint a steward, with authority to procure supplies, *held*, that they thereby consented that supplies might be procured in a foreign port on the vessel's credit 216

A suit in rem cannot be maintained here for repairs made to a Canadian vessel in Canada, where the local law gives no lien 68

Priority and enforcement.

An hypothecation of a vessel by her owner, to secure a pre-existing debt, which, in its origin, gave no lien on the vessel, gives no priority to such hypothecation over a prior maritime lien on the vessel 1242

The master's claim for advances for board of crew and purchase of supplies may be allowed out of the proceeds in the registry 604

Waiver: Discharge: Extinguishment.

A maritime lien is not waived or extinguished by giving credit for a limited time, nor by the acceptance of a note for the amount due 1150

The discount of the note by the lienor, which he subsequently takes up, does not extinguish the lien 1150

The acceptance of a note, indorsed by a third person, where the same is returned on not being paid at maturity, *held* no waiver of the lien 695

Liens under state laws.

The lien on a vessel arising in her home port is regulated exclusively by the local law 1146

Under the Maryland statute, there is a lien, enforceable in the federal courts, for material and labor used in repairing sails and tackle, but not for groceries 282

The remedy by proceedings in rem against vessels given by Laws Mich. 1864, p. 107, is an exercise of admiralty jurisdiction, and the act and the liens given there under are void 569

Liens under the New York statute for supplies *held* should be paid in the order of the filing of the libels, and not in the order of filing specifications 452

The departure of a river steamboat on her daily trip is a "leaving of the port." within Laws N. Y. 1862, c. 482, requiring the filing of specifications of lien within 12 days therefrom 601

MASTER AND SERVANT.

The master is liable for injuries to a servant from the negligence of an incompetent fellow servant, in whose employment the master did not use ordinary care 304

MECHANICS' LIENS.

A mortgage recorded before the filing of a mechanic's lien is entitled to priority 723

MINES.

A broad metalliferous zone having within its limits true fissure veins, plainly bounded, cannot be regarded as a single vein or lode, although such zone may itself have boundaries which can be traced 918

Under a location of a certain number of feet along the ledge, without any distinct claim of side ground, *held*, that the locator was entitled to hold 100 feet on each side of the ledge, under the mining law 918

Act May 10, 1872, § 3, confirms prior locations under the act of 1866, as to all lodes which have their apexes within the surface lines of the mining claims 918

The owner of contiguous claims may form one general system, adapted and intended to work them all, and work in furtherance of the system is work on all the claims intended to be developed by it 918

Work done anywhere within the surface lines on the surface, or below the surface, on any lode within the lines extended vertically, is work on the claim, within Rev. St. § 2324 918

Work done outside of a claim, for the purpose
of prospecting or developing it, is equally 918
available as work done within the boundaries
Forfeitures are odious in law, and must clearly 918
appear before courts will enforce them

MORTGAGES.

See, also, "Acknowledgment"; "Chattel Mortgages";
"Shipping."

The mortgagee may sue at law on his bond, and 836
in equity to foreclose, at the same time

Where the trustees of a railroad mortgage are in
such a position that they cannot alone properly 25
represent the bondholders, the latter may sue
to foreclose without showing a refusal by the
trustees to do so

A receiver will not be appointed unless it
clearly appears that the security is inadequate,
or there is imminent danger of the waste, 836
removal, or destruction of the mortgaged
property, or the rents and profits have been
expressly pledged

The exercise of this power depends upon sound
discretion, and is governed, to a great extent, by 836
the circumstances of each particular case

MUNICIPAL CORPORATIONS.

See, also, "Railroad Companies."

A by-law of Alexandria, D. C, requiring the
master to pay a poll tax for his journeyman, *held* 761
not repugnant to the general law of the land,
and authorized by the charter

Construction of the charter of Washing ton,
D. C, in relation to the nomination and 357
confirmation of officers

A person rejected by the board of alder men of
Washington, D. C, on the mayor's nomination,
cannot be reappointed by the mayor, in the 357
recess of the same board, to the same office for
which he was rejected by the board

The mere erection of a railroad bridge in a particular location in a town, after a controversy with the inhabitants, does not amount to a perpetual contract, precluding the company from changing the location of the bridge 412

Bonds made payable out of the state, without express authority of law, are not for that reason invalid, but such provision is not enforceable 1127

The recitals in a municipal bond issued to aid a plank-road company bind the city, in an action by a bona fide holder 1127

Holders of legal bonds received from a city in exchange for previous illegal obligations given for bona fide debts may recover thereon, if they had no part in the illegal issue, though they had notice of all the facts 48

Navigable Waters.

See "Bridges"; "Constitutional Law." 1376

NEGLIGENCE.

An unguarded railroad tunnel in a street *held* a nuisance, the continuance of which rendered the receivers of the road liable for damages for an injury of which it was the proximate cause 749

A child four years old is, in law, incapable of negligence; and the burden of showing contributory negligence on the part of his parents, imputable to him, is upon the one against whom damages are claimed for an injury caused by negligence 749

The mere fact that a child four years of age strayed a distance of more than two blocks from home, at play with other children, is not, of itself, evidence of contributory negligence on the part of its parents 749

A boy of eight years, who is permitted to play in the streets, will be deemed capable of contributory negligence 285

Where a boy was killed by attempting to jump on an engine moving through a street, *held*, that there was no liability, unless defendant could have avoided the accident by ordinary care 285

NEUTRALITY LAWS.

What equipments in our ports amount to a breach of neutrality 651

Equipment for war in a neutral port does not take place merely by alteration of two ports in repairing *he waist of a vessel previously armed 653
The carrying on from the United States of an expedition against a neutral power is an offense, though the association originated in another country 1274

It is unimportant whether the persons engaged in such a purpose engage the whole vessel to themselves, or depart from the United States as passengers 1274

Actual fitting out and arming in the United States is not necessary to subject to forfeiture a vessel in part prepared for hostilities therein *178

Proof that the vessel was fitted out and armed, or that there was an attempt to fit and arm her, with the unlawful intent to cruise against a neutral nation, is sufficient, without identifying the persons engaged therein *178

A vessel alleged to have been fitted out and armed in violation of the neutrality laws will be condemned, where the government's evidence raises a well-grounded suspicion, which claimants fail to explain *178

Evidence to acquit or condemn, in the case of a vessel arrested for breach of the neutrality laws, must, in the first instance, come from the vessel taken, the persons on board, and the examination on oath of the officers 651

On a libel for forfeiture of a vessel for a violation of neutrality laws (Act 1818), the *178

question of ownership of the vessel is not material

NEW TRIAL.

In detinue, a new trial will not be granted because the damages are excessive, as defendant may discharge the judgment by restoring the property 476

Affidavits of jurors cannot be received to show how the instructions of the court were received 476

NUISANCE.

The use of a steam railroad lawfully constructed, in the absence of any abuse, is not a public nuisance 332

The abuse of the use of a steam railroad, if general and common to all owners of adjacent property, cannot be enjoined at the suit of an individual owner 332

OATH.

A witness must be sworn in such a way as is binding on his conscience 120

The oath of a Chinaman, taken on the Bible, in the usual way, *held* sufficient, where, on examination, it appeared that he felt solemnly bound by it 120

PARTIES.

That the trustees of a railroad mortgage file a cross bill in a suit to foreclose another mortgage does not make a bondholder under the first mortgage a party to the suit by representation 25

One who purchases pendente lite the interest of a defendant in the subject-matter of a suit does not thereby become a necessary party to the suit, and if the court has no jurisdiction of him he cannot be compelled to come in as a party 1105

Parties, at law, or in equity, may waive process and appear 1334

PARTITION.

The court of common pleas in Ohio may take jurisdiction of a bill for partition in two counties, but the decree, to bind purchasers, must be recorded where the land lies 1334

PARTNERSHIP.

Persons who advance money for an enterprise run in another's name, with an option to share in the profits, or to receive back their money with interest, are not partners in the business 708

Persons assuming to act as a corporation, under a corporate name, without authority of law, are liable, as copartners, for the debts of the association 10

To charge a secret partner with debts of the firm, it must be shown that the debts were contracted in the name and business of the firm, or that he had an interest in the contract or profits 989

Where the purchaser of a note made by a firm did not know of any secret partners, and the note was made for the individual benefit of those whose names appeared thereon, *held*, that the secret partners were not liable 989

In an attempt to form a limited partner ship under the New York statute, the contribution by the special partner of a stock of goods, together with cash, instead of cash alone, results in a general partner ship 82

The bill of an unincorporated company should be prosecuted in the names of the original partners, and not in the name of the company 171

PARTY WALLS.

It is a condition annexed to the title of lots in the city of Washington, D. C, that the proprietor shall reimburse the adjoining owner a moiety of the charge of such part as he shall use of a partition wall built by him 315

The city surveyor must attend, when requested, and adjust the line of the front of the building, and his certificate is binding on the parties 315
The value of the half of such part used may be recovered in an action upon the case in assumpsit 315

PATENTS.

The commissioner of patents.

The statute, by defining the conditions under which the power conferred to issue patents shall be exercised, necessarily excluded all others 879

Patentability.

Merit or utility, however slight, will entitle the inventor to a patent 366

If a device is new, and accomplishes beneficial results, the court will not gauge by any nice standard the degree of inventive genius required 276

A discovery of a new principle, force, or law, operating, or which can be made to operate, on matter, will not entitle the discoverer to a patent 879

The discoverer can only secure exclusive control of such discovery through the means by which he has brought it into practical action, or their equivalent 879

Neither the natural functions of an animal upon which, or through which, a new force or principle may be designed to operate, nor any of the useful purposes to which it may be applied, can form any essential part of a patentable combination with it 879

New articles of manufacture are not patentable, unless their production involved the exercise of invention or discovery beyond what was necessary to construct the apparatus for their manufacture or production 384

A claim to the use of two deflecting plates, one on each side of a saw, sustained, as not being *1110

a mere duplication, although a single deflecting plate had before been used

A patent for abdominal supporters for well-formed persons *held* not anticipated on oral testimony of the construction of several supporters “of the same general character” for deformed patients 658

Two prior patents, which, taken together, would have made up the invention of the patentee, will not anticipate his invention, where neither of them alone shows the complete invention 1001

The construction of articles as experiments, never made public, and ultimately abandoned and lost, does not affect the right of a subsequent original inventor of substantially the same article to take out a patent therefore 1034

Who may obtain patent.

A patentee cannot take out a new patent for the same invention until his first patent is surrendered, repealed, or declared void 818

A verdict, in a suit on the second patent, in favor of the patentee, does not avoid the first patent 818

Priority of invention is not affected by the fact that a later inventor first perfected machines for manufacturing the patented product 540

The fact that a subsequent equivalent invention makes a more durable product will not affect the question of priority 540

Prior public use or sale.

The invention should not be known or used as the invention of any other person than the patentee before the application for a patent. (Act 1793, § 1.) 818

The commissioner has authority to examine and decide the question of prior public use or sale. (Act 1836, § 6.) 935

Public use while the inventor is practicing upon the invention with a view to improve it before applying for a patent does not invalidate the patent. (Act 1793.) 818

Abandonment: Laches.

The withdrawal of an application, and receiving back the \$20 fee, is an abandonment of the claim; and a new application will not relate back, so as to avoid the effect of a prior public use 935

An inventor is not prejudiced by a delay in applying for a patent, where he is diligently experimenting as to other forms of the same invention, and machinery to perfect it, especially as against one having notice of his claims 540

Appeals from commissioner's decision.

The commissioner is the sole judge of the circumstances under which he shall furnish information and suitable references to the applicant, to enable him to correct his application. No cause of appeal is furnished by a supposed omission of his duty in this particular 1000

Validity.

A patent wanting in any substantial statutory requisite is a nullity, and confers no right to the patentee 563

The patentee may embrace two improvements of the same machine in one patent 809

The patentee cannot embrace both the process and the product in the same claim 113

Extent of claim.

The patentee is not confined to his summary, but the whole specification and the drawings may be referred to, to ascertain the extent of the claim 809

Where a patent is for several improvements in a machine, and each is summed up in the 655

patent as the invention of the patentee, he is bound by his summary, and if any one of the improvements is found not to be new his patent is void

A claim for “the above-described new manufacture of * * *, by treating them substantially as hereinafter described,” *held* to be a claim for the process, and not the product
Repeal of patent.

A suit to repeal a patent, except in cases stated in Act 1836, § 16, and Act 1839, § 10. cannot be brought either in a state court, or the federal circuit court

Reissue: Disclaimer.

The principles governing the awarding and granting of reissues of patents, and the effect of the commissioner’s decision, considered

Claiming for a new article of manufacture, if by inadvertence and mistake, may be cured by a reissue for a combination and arrangement of parts

A second reissue may be granted under Act 1836

The presumption of law is that the commissioner has done his duty in granting a reissue, and the question is not open for re-examination, except on the ground of fraud

In the absence of fraud, the only mode of impeaching a reissue, on the ground that it is for a different invention, is by showing such difference on the face of the instrument

In an infringement suit, the question whether a reissue is for the same invention is one for the court, upon a comparison with the original. Matters of fact connected with the surrender and reissue are closed by the granting of the reissue

The recital in a reissue of a prior assignment, and the granting of the reissue to the assignee, make a prima facie case of title	276
The concurrence of a transferee of an interest for a given territory is not necessary to the validity of a reissue	244
The claims in the reissue may be broader than those in the original	873
A construction or mode of operating a machine, described or distinctly referred to, but not claimed, in the original, may be claimed in a reissue	825
The surrender of a patent for a reissue is a conclusive admission that the original patent has no validity to support an action for an infringement	563
Assignment.	
The assignment of a patent, or the right to a patent pending, <i>held</i> not to include the right to an extended term	937
A transferee of the patentee's interest for a state is entitled to the benefit of a reissue, if he ratifies the same, though he did not join in the surrender. Acceptance of the reissue, and an assignment of a part interest therein, is a ratification	244
Licenses.	
The contracts of a patentee to share his invention with third persons are interpreted and enforced in the same manner as other legal engagements	867
A license defined, and the instrument in question <i>held</i> to be merely a license	1325
The mere taking of a license does not estop the licensee denying the validity of the patent	494
Infringement—What constitutes.	
There is no infringement where defendant produces the same result by means substantially	809

different from the patented device; otherwise where the contrivances are substantially the same

Where several improvements are distinctly claimed in a patent, an action lies for the piracy of any one, although defendants have not used the whole of the improvements 655

The manufacture of certain articles capable of being used in making up certain parts of a patented combination, and with the intention that they should be so used, is not an infringement, where they are separately useful for numerous purposes 392

—Who liable.

One who purchases patented articles from a licensee, with knowledge of his having repudiated his contract with the patentee, is liable on a sale of such articles 658

—Remedy generally.

There is no right of action for an infringement occurring under the original and void patent, and before the reissue of a new patent 563

Equity will entertain jurisdiction of a suit for infringement of a patent to prevent a multiplicity of suits 909

—Preliminary injunction.

A jury trial of the alleged infringement is not a prerequisite to the granting of an injunction 909

Where the case is clear and without reasonable doubt, the court will grant an injunction without sending plaintiff to law to try his right 909

A verbal admission of infringement and a promise to desist is a strong circumstance against defendant 875

In the case of a simple mechanism, a bare inspection is sufficient on the question of infringement 875

The grant of a subsequent patent will not prevent the granting of an injunction where the infringement is clear	875
Defendants will be estopped by averments in their answer from setting up facts to the contrary by affidavits	875
When there is no danger of loss to plaintiff, and great loss will result to defendant, the case must be substantially free from doubt to justify an injunction	822
Whether defendant is fully responsible for any profits or damages which may be decreed against him is material	822
That defendant does not make or vend the patented machine, but only uses it, is also material	822
Where a motion for a new trial or an appeal taken by defendant cannot be considered as intended merely for delay, the court will await the final result before awarding an injunction	822
The court cannot ignore the rights of defendant claiming under an adverse patent because of irregularity in its issue, and assume it to be a nullity	494
Where the validity of a patent has not been adjudicated, exclusive possession and enjoyment for some time must be shown to entitle plaintiff to a preliminary injunction	494
And in such case the machine or patented thing must have been brought into use	494
Denied in the absence of proof of exclusive possession or public acquiescence, or of a trial at law	1065
Denied where the construction of the claim alleged by defendant had not been acquiesced in by the public, and the novelty of the device was shown to be doubtful	937

Denied, on defendant's giving security, where
 he was constructing a single machine only, and
 the validity of the patent and public
 acquiescence were denied 829

Granted where complainant's possession had
 been acquiesced in for a long time by the public,
 and for some time by defendant 871

Granted where the novelty was not disproved
 by the facts set up in defense, and complainant
 had been in exclusive possession of the
 monopoly for years 301

On a motion to dissolve an injunction,
 defendant will not be allowed to present facts
 showing an anticipation which he might have
 presented on the motion for the injunction 1231

—Procedure.

A mere licensee under a patent cannot sue, in
 equity, for the infringement of his rights under
 the patent, without joining with him, as plaintiff,
 the owner of the legal title 1325

Where suit is brought for the infringement of
 several patents for different improvements, not
 necessarily embodied in the construction and
 operation of any one machine, the bill must
 contain an explicit averment that the infringing
 machines contain all the improvements
 embraced in the several patents, or it will be
 bad for multifariousness 1311

A plea setting forth that the alleged selling, if
 any such was made by defendant, was made
 solely as agent, etc., of a person not named, *held*
 bad 852

Defendants allowed to strike out an admission
 in their answer of the making of certain articles
 as to which an injunction was sought 728

A licensee who has elected to put an end to
 his license, and denies the validity of the patent,
 658

cannot subsequently set up the license as a defense to a suit for infringement	
The owner of the entire right in the territory where the infringements had taken place	*1110
allowed to make a disclaimer after final hearing	
Costs not allowed to plaintiffs on a recovery where a disclaimer was not filed before suit brought	*1110
—Evidence.	
Proof showing the prior state of the art cannot be considered for purposes of anticipation when that issue is not raised by the pleadings	276
The opinions of experts are admissible to determine questions of mechanical difference	809
—Injunction and its violation.	
In a suit to recover the forfeiture and penalty imposed by Act Feb. 21, 1793, § 5, the court will also grant a perpetual injunction	873
Injunction will not be granted where the patent is recent, the specification obscure, and proof of infringement meager and unsatisfactory, but the court will retain the bill and require complainant to bring an action at law	1065
—Accounting: Damages.	
In the case of a patent for an ornamental chain as a new article of manufacture, the patentee is not limited to the advantage derived from the use of the peculiar features of the patented chain over what would have been derived from those open to the public	961
Damages cannot be trebled in a suit in equity. (Act July 4, 1836, § 14.)	909
Various particular inventions and patents.	
Boots and shoes. No. 127,090, for forming heel stiffeners, construed, and <i>held</i> not infringed	565
Braces. No. 35,856 (reissue No. 4,187), and No. 73,279, for improvements in bit stocks and braces, <i>held</i> valid and infringed	370

Braces. Reissue No. 6,350 (original No. 62,232), for improvement in stocks or braces for bits and other tools, <i>held</i> valid and infringed	369
Brush heads. No. 98,787, for improvement, <i>held</i> valid and infringed	1034, 1036
Car wheels. No. 110,779, for improvement in casting car wheels, construed	1276
Chains. Reissue No. 5,774 (original No. 147,045), for improvement in chains and chain links for necklaces, etc., <i>held</i> valid and infringed	959
Cigar molds. Reissue No. 6,662 (original No. 155,806), for improvement, <i>held</i> valid and infringed	366
Circular saws. No. 10,965, for clamps for circular saws, <i>held</i> valid and infringed	1108
Clothes wringers. Reissue No. 2,829 (original No. 21,029), for improvement, construed as limited by prior patents, and <i>held</i> not infringed	224
Clothes wringers. Reissue No. 5,223 (original No. 61,680), for improvement, construed, limited, and <i>held</i> not infringed	227
Egg beaters. No. 23,694, for improvement, construed, and <i>held</i> not infringed	604
Ether. No. 4,848, for an improvement in surgical operations by the use of ether, <i>held</i> invalid	879
Gas meter. No. 12,535, for benzole vapor apparatus, <i>held</i> valid and infringed	1001
Glass cutter. No. 91,150, for improved tool for cutting glass, <i>held</i> valid, and in fringed	589; contra, 592
Glue. Reissue No. 4,072, for improvement in manufacture, <i>held</i> invalid for lack of invention	384
Hook. Reissue No. 2,166 (original No. 21,879), for an improvement in self-mousing or snap hooks, <i>held</i> valid and infringed	276
India rubber shoes. Reissue No. 4,977 (original No. 111,962), for an improvement, construed, and <i>held</i> void for want of novelty	246

Lamps. No. 30,381 (reissue No. 6,844), for improvement, <i>held</i> invalid	309
Oils. No. 90,284, for improved manufacture of heavy hydrocarbon oils, construed	113
Padlocks. No. 35,030, for improvement, construed, and <i>held</i> not infringed	350
Petroleum. No. 49,502, for improved process for purifying, <i>held</i> valid and infringed	1215
Saw. No. 10,965, for improved machine for sawing thin boards, <i>held</i> valid and infringed	*1110
Seed drills. Nos. 30,685 and 31,819, for improvements, construed, and <i>held</i> not infringed	700
Sewing machines. Munson's claim for tucking gauge <i>held</i> anticipated by patent No. 11,615	1000
Springs. Reissue No. 4,202 (original No. 10,280), for an improvement in combined India rubber and steel springs, <i>held</i> valid and infringed	1232
Telegraph. Patents to Morse, Nos. 1,647 (reissues Nos. 79 and 117), and 4,453 (re issue No. 118), and 6,420, <i>held</i> to cover both the result and the process, and to be valid and infringed	871, 873
Whip sockets. Reissue No. 4,071 (original No. 52,439), for an improvement in whip sockets, construed, and <i>held</i> not infringed	72
Whip sockets. Reissue No. 5,713 (original No. 43,858), for attachments for fastening whip sockets to carriages, construed, and <i>held</i> not infringed	74
Wood-bending machine. No. 14,405 (reissue No. 1,312), for improvement, construed, and <i>held</i> valid	809, 825
Wood pulp. No. 21,161, for improvement in reducing wood to paper pulp, <i>held</i> valid and infringed	301

PAYMENT.

A receipt of payment by a note is not conclusive, but only prima facie evidence of payment 695

The receipt of a bond of a third person "in part pay" of a precedent debt is conclusive evidence of payment to that extent, although the obligor was insolvent when the receipt was given 956

The acceptance of a deed of land in payment of a debt bars an action for the debt; and, if the title be defective, the creditor must look to his warranty 365

Payment must be presumed as to installments due on a bond after 20 years, and may be presumed after 19 years and 10 months 317

PILOTS.

It is not the mere clearance for a port, but being actually bound into it, that imposes on a vessel the obligation to pay a pilot 1175

Pilots *held* not entitled to fees on tender and refusal of services to vessels passing through Boston harbor, bound to Lynn and Dorchester. (Rev. St. Mass. c. 32, §§ 1522.) 1175

The inference that no pilot was employed on board a vessel which refused libelant's offer of services may be drawn from the fact that the master admitted the correctness of libelant's claim, and no evidence of employment was given 1311

PLEADING AT LAW.

Proper form of declaration in assumpsit 1102

Facts stated in a defense do not amount to an estoppel unless pleaded as such 741

Form of plea of estoppel 741

A general plea of fraud is not admissible 1033

A plea which argumentatively denies a fact averred in the declaration is demurrable 929

A plea of payment referring to the instrument sued on, as a "supposed writing obligatory,"

1380

is nevertheless good, and those words may be rejected as surplusage 1033

A plea in abatement of another suit pending in the usual form need not allege that such suit was not discontinued before the plea was filed 1317

Certificate of counsel that, in his opinion, the plea is well founded, need not accompany a plea of abatement in the federal court 1317

Defendant may plead the statute of limitations at the first term after office judgment 748

In assault and battery, the plaintiff, being a mulatto, cannot, at the trial upon the general issue, be compelled to prove his freedom 1047

An averment of a contract of hiring "for a certain price" is supported by proof of an agreement to serve in consideration of a payment to a third person 283

An amendment making new parties will not be allowed 809

The court may refuse to allow an amendment by striking out the name of one of the plaintiffs in the suit 714

Amendments may be made at any time before judgment, and in some cases afterwards 1314

A misnomer may be amended after plea in abatement, the plea being the basis thereof 1314

Leave given defendant to amend, on payment of costs of the term, or a continuance, at plaintiff's option 284

PLEADING IN ADMIRALTY.

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

Claims for wages and for moneys advanced to the use of the ship may be united in an action in rem 31

A seaman claiming both wages and moneys advanced to the ship's use may join in a libel in rem with another seaman claiming wages only, but not in a libel in personam 31

Remedies in rem and in personam may ordinarily be sought in one suit, where the vessel and master or owner are conjointly liable; but, by the thirteenth admiralty rule, the supreme court has forbidden the vessel and owner to be joined in a libel for wages 31

Pleas or exceptions in admiralty need not embody the formalities required in pleading at common law or in equity, but they must set forth the matter in dispute in perspicuous and definite terms 1253

The allegations and proofs must coincide. The court cannot hear evidence not in accordance with the issues 878

Amendments to libels for forfeitures in admiralty, in substance or in form, are within the discretion of the court at any time *178

The court will allow amendments upon terms, even upon the hearing of an appeal 878

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Statement of, locality or place of business of the corporation complainant *held* not necessary 1222

Bill not sworn to, praying injunction and discovery under oath, *held* sufficient on demurrer 1222

Under a prayer for general relief, such relief may be given as the pleadings and proofs warrant, though complainant is not entitled to the relief specifically prayed for 692

Where a plaintiff in equity, instead of setting down the defendant's plea for argument, replies to it, he admits its sufficiency as a defense, if the facts it alleges shall be established 1105

Defendant, in his answer, cannot introduce new matter in the nature of a cross bill, and require plaintiff and others under whom he claims to answer it 762

A defect in suing respondents as a partnership, when in fact they are a corporation, may be cured by amendment 1276

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A pleading of a county, not subscribed by the proper district attorney, is not duly subscribed, and may be stricken out of the case. (Civ. Code Or. §§ 79, 103) 741

The statement of new matter in the answer must be concise, and must constitute a defense to the action. The ultimate facts, and not the evidence of them, must be stated. (Civ. Code Or. § 316.) 741

PRACTICE AT LAW.

The court will not enforce the private agreements of counsel 678

A bank will not be required, on motion, to produce books and papers, when it does not appear that a subpoena duces tecum, directed to the proper officers of the bank, would not suffice 53

A circuit court cannot compel compliance with an order to produce books or writings, but, in case of noncompliance, may give judgment as by default 53

Under peculiar circumstances, the court refused to stay proceedings in an action on a stay bond given in a state court, unless defendant instituted a plenary auxiliary suit in equity to restrain the prosecution of the action, so that a review might be had 59

The federal circuit courts have no power to grant a peremptory nonsuit, against the will of plaintiff 304

Upon a demurrer to evidence, every fact which can be reasonably inferred from the evidence is taken as admitted 304

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A cross action cannot be maintained which seeks a retrial of matters already adjudicated between the parties 1253

A party seeking to set aside proceedings against him must embody all objections presumably known to him at the time in one application 1314

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On a libel to recover possession of a vessel, where respondent appealed, the court refused leave to bond the vessel, but directed that the decree be executed unless the appeal was perfected in two days 954

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

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Persons employed to charter a vessel, according to specific directions, *held* to be special agents, without power to bind their principal to a different contract 62

A merchant, knowing that the supercargo of a vessel is the agent of several shippers, having separate interests, cannot take from him cargo of one shipper in payment of the debt of another 78

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PRINCIPAL AND SURETY.

A bond executed in blank by the surety, and subsequently filled in by the principal, is binding in the hands of an obligee without notice 1079

An agent's bond is not invalidated by being left blank in regard to the place of agency 1079

If an agent gives a trust deed to secure payment of a defalcation, the cancellation of the deed upon subsequent payment in full of that defalcation would not affect the agent's surety on a subsequent bond 1079

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In order for the surety to escape liability on the ground of existing irregularities and defalcations of the agent, it must be shown that these were known to the principal 1079

New sureties are not responsible for prior defalcations, unless the conditions of the new bond shall embrace them 1120

When a question arises between liabilities of sureties on different bonds of different dates, the general doctrine of the application of payment does not apply 1120

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A mortgage pledge or lien received by the surety to secure him may be enforced by the creditors, 783

where both principal and surety are insolvent,
and the latter has not been released
The surety is absolutely discharged by a change
in the terms of the contract without his consent, 352
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PRIZE.

The running of a neutral vessel into a blockaded
port, of which its owner had due notice,
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instructions of the owner, or her intentions

A neutral owner is concluded by the act of his
agent in charge, in allowing the vessel to be 1153,
employed by the enemy 1154

A transfer of property to a neutral by an enemy
in time of war, or in aid of a contemplated war,
is illegal, as in violation and fraud of vested *155
belligerent rights

If French privateers, duly commissioned, make
lawful captures on the high seas, sales by them 650
in our ports cannot be prevented

Admiralty has no jurisdiction of a libel for the
restoration of a vessel belonging to a subject of
a neutral nation, captured by an armed vessel of 942
another nation within five miles of Port Henry,
as taken within our territorial jurisdiction

Property seized as prize of war under the law
of nations is discharged from all latent liens or 1183
incumbrances

No equity of lien or claim, however urgent, held
by innocent third parties, is allowed to prevail,
in a prize court, against property seized while in 1153
use by a belligerent

One-eighth of the vessel being condemnable in
any event, the libelants have a right to enforce
their remedy against her as an entirety, whether 1154
they retain or remit the proceeds

A claim and answer in a prize suit cannot put in issue anything but the question of prize or no prize 1153

Collateral subjects can be controverted in prize cases only by means of pleadings and further proofs, specially authorized by the court after a decision on the first issue 1153

Case allowed to stand over for six months for additional proof, where no witnesses were sent in with the vessel, and no proof was made of violation of blockade 1308

The court will take judicial notice that a shipper from a certain neutral port is a person shown by its records to be actively engaged in running the blockade 446

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An armed merchant vessel, having no commission from the United States, though present at and co-operating in a capture, is not entitled to share in the proceeds. (Acts March 25, 1862; July 17, 1862.) 121

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RAILROAD COMPANIES.

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The fencing of a railroad in a city with gates at public crossings is a regulation for public safety, and any incidental inconvenience is merged in the superior interest of the public 332

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Construction of the charter of the Hannibal & St. Joseph Railroad Company, as to the taxation of its property 684

Act Mo. March 31, 1868, relating to the discharge of the state's mortgage on the Pacific Railroad, *held* not unconstitutional, as a special law, or as relating to more than one subject 1017

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Legislative authority to subscribe to railroad stock, and borrow money therefor, gives power to issue bonds to pay the subscription 407

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Bonds issued by a town to aid the Illinois Grand Trunk Railway, under Act Ill. March 25, 1869, *held* valid, in the hands of innocent purchasers, though issued by the supervisor and clerk, and though the election was held by the ordinary judges of election, instead of a moderator 64

Proper proceedings for the issue of railroad aid bonds, where proceedings were commenced under an old act (Laws N. Y. 1869, c. 907), and continued under a new one (Id. 1871, c. 925), passed during their pendency 1002

The objection that the petition for the issue of railroad bonds did not give the court jurisdiction, because of irrelevant conditions therein, *held*, could not be raised in an action on the bonds issued on the determination of such court 1002

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The bona fide purchaser for value, and before maturity, of negotiable railway aid bonds, issued under a special statute by the proper officers, which recite that they were issued pursuant to law, may recover thereon, though the conditions and limitations imposed by the statute were not in fact complied with 306

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REMOVAL OF CAUSES.

Right of removal.

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The removal act of March 2, 1867, although repealed by the Revised Statutes, is substantially re-enacted therein 449

Time for removal.

Under the constitution of the United States, causes may be removed to the federal courts from the state courts after as well as before judgment 1061

Lapse of terms, while a reply is wanting to complete the issues, does not bar removal by the party not in default. (Act 1875.) 261

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An action at law removed when at issue proceeds on the same pleadings after removal 40

The questions whether the removal is in violation of the constitution, and whether the case is one arising under the constitution, etc., may be raised at the trial 1061

REPLEVIN.

Replevin lies against any one in whose possession personal property unlawfully taken may be found, except law officers who have possession by virtue of legal process 1040

Where goods taken in execution are replevied by a third person, the court, upon return of the writ, will order a return of the property upon the usual returnohabendo bond 1046

Suit *held* discontinued by nonappearance of defendant at the return of the writ, through neglect of his attorney, and remstatement not allowed 523

Where the suit is discontinued through operation of law, the goods are no longer in the custody of the law, and defendant is not guilty of contempt in taking possession of them 523, 524

Possession for 20 years is prima facie evidence of good title 524

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RULES OF COURT.

Rules of practice adopted by the court do not control its discretion so as to deprive it of power to secure the trial of causes on their merits, on proper showing 1076

The rules of practice in state courts adopted by legislative act are rules of practice in the federal courts, by force of Rev. St. § 914, and the federal judges are deprived of discretion over them 1076

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The title does not pass where a person receives goods to be paid for at the invoice price when sold by him, with the right to return those unsold at their invoice price 109

Where the market in certain goods is subject to sudden and great fluctuations, an acceptance of a proposition by telegraph, after a delay of 24 hours, is not within a reasonable time 447

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On the sale of a machine ordered for a particular purpose, a warranty is implied that the machine is fit for such purpose, unless the seller, by express contract, relieves himself of responsibility 670

Under an agreement to rescind the contract, where the goods have been delivered, the contract is not completely rescinded until the redelivery of the goods 351

Unliquidated damages for breach of warranty
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against a note given for the purchase price
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Right to salvage compensation.

The property must have been in fact saved by 640
the parties who make the claim 1384

The officers and crew of public armed vessels
are entitled to salvage for personal services, but 962
at less rates than other persons

No claim for salvage can be maintained by the
crew of a vessel upon the ground that by their 326
services she is brought through a storm into
port, sound in hull

The passengers on a steamer injured in a
collision went aboard the other vessel, but the
officers and crew stayed about the wreck, in 161
small boats, and subsequently went aboard, and
saved the passengers' effects. *Held* not a salvage
service

Compensation for extraordinary exertion, for
saving passengers' effects, will not be decreed 161
where there is a presumption, against the
wrecked vessel, of fault, for the collision

On the surrender of a vessel in peril to the
master and crew of another, the contract with 640
her pilot is dissolved, and he may render salvage
services

Troops carried on a ship under contract with the
government, *held* entitled to salvage for staying 117
by vessel, and assisting in saving her from a total
wreck, after they might have escaped on coming
near shore

No salvage will be awarded for saving the United States mails, though the service is in itself meritorious	35
No distinction can be made between the boat and cargo	640
Salvage compensation may be awarded for services rendered to a vessel in distress, though she is in no imminent peril of loss	925
Salvage allowed upon recapture of a ransomed ship, where the ransom bill declared that the sum agreed upon should only be payable upon the arrival of the vessel at her port of destination, and she never arrived there	654
Towing an unmanageable vessel into smooth water, and there hanging her rudder, thus making it possible to navigate her, is a salvage service	391
The drawing of a boat off when aground is not a salvage service, where there was no peril	640
Pilotage services rendered to a vessel flying a signal of distress, whose officers and crew save one, were sick with fever, <i>held</i> entitled to salvage remuneration	669
A corporation organized to perform salvage services, employed by the owners of a vessel which had gone ashore in a fog, to relieve her from peril, <i>held</i> not entitled to salvage compensation, but to a reasonable compensation	777
Forfeiture of salvage.	
Embezzlement or a fraudulent concealment of any of the goods saved works a forfeiture of the salvage of the guilty party	962
The negligence or misconduct of the crew will not work a forfeiture of the share of the vessel, where the owner is innocent, and valuable salvage service is rendered, except in the case of wrecking vessels	962

Slight negligence in taking care of the property saved diminishes the amount of salvage, while gross negligence works a total forfeiture	962
Salvage claimed for saving passengers refused to owner of wrecking vessel because of its leaky condition, and to crew because of their intoxication at the time when their services were needed	962
The fraudulent employment by a salvor of an unnecessary number of assistants in order to magnify the importance of the services should cause a forfeiture of all compensation	925
The fraudulent conduct of the masters of both vessels, in appropriating and concealing part of the property saved, will not defeat the claim of the salvor crew	484
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Rules governing the rate of salvage	640
In fixing the amount, the number of salvors necessary to perform the services may be considered, but not a greater number actually employed	925
Other things being equal, the total award of salvage should vary with the degree of peril from which the property was saved	925
To constitute a derelict, the thing found must have been deserted or abandoned	640
The abandonment of a steamboat by the master to the care and protection of the master and crew of another vessel, for the purpose of procuring assistance and safety, is not a case of derelict	640

Vessel <i>held</i> derelict where the master and crew, thinking she had sunk, gave up pursuit of her, though, when they first left her in peril, they expected to return	1184
From 5 to 55 per cent, allowed for saving different portions of cargo of shipwrecked	962
40 per cent, awarded on cargo, 6 per cent, on specie, and 15 per cent, on surveyor's instruments, the specie and surveying instruments having been in no great danger	35
\$2,250 allowed for towing to Sandy Hook brig rigged with jury masts, discovered 175 miles from New York, valued, with cargo, at \$18,500	451
20 per cent, allowed salvors on a gross valuation of \$207,000	478
30 and 50 per cent, allowed on different Portions of cargo valued at \$56,093	1201
30 per cent, allowed on undamaged cargo, and 40 and 50 per cent. on damaged cargo, and all of certain other portions saved by diving	478
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Several libels filed against the cargo saved will be joined and considered as one suit for the purposes of awarding salvage	478
Salvage expenses are to be apportioned among vessel, cargo, and freight, in proportion to their values, where the labor was carried on with a view of saving both vessel and cargo	962

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Costs and charges must be paid by the property saved, and apportioned among the claimants according to their respective interests	1185
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Apportionment.	
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The agreement by the master, for a specific sum, to victual, man, and navigate the vessel under the direction of the owner, does not make him owner or part owner during the voyage	1185
Right to property or proceeds.	
Neither party is of right entitled to have a delivery of the property on bail, and the vessel owner is not in default in waiting for the regular termination of the salvage proceedings	1185
The court, after decreeing salvage, may refuse to restore the ship and cargo to the master, if the interests of the owners and consignees seem to call for such refusal	649
Money given, even in charity, by salvors having salvaged property in their possession, to officers	47

of the wrecked vessel, may be recovered by the owners and insurers

SEAL.

The seal of a notary must bear his name and show his official character 1268

SEAMEN.

Protection and relief.

Hospital money is to be charged on unforfeited wages only pro rata in proportion to the whole voyage 21

The contract of shipment.

Act July 20, 1790, relating to the wages of seamen with whom no agreement in writing is made, does not apply to seamen upon tugboats 375

The rate of wages for the previous year will be taken to be the measure of wages where the seaman shipped without an agreed rate 375

The vessel is liable for the wages and the care and cure of a seaman injured, while in the discharge of his duty, by the neglect or carelessness of an officer of the boat 1117

Where a sickness began after the seaman entered the service, though before he signed articles, he is entitled to his wages 1305

It is no objection to his claim that the sickness may have had its origin in some previous injury or infection, not occasioned by his own fault, provided he has acted in good faith, and without fraudulent misrepresentation or concealment 1305

Seamen who ship in a leaky vessel, to help pump on her homeward voyage, can not rightfully abandon her, even if the leak increases, if she was seaworthy when she left port 894

On a voyage of a leaky vessel from Cape Town to New York, *held*, that sailing for Pernambuco to take advantage of trade winds and smooth seas, and for repairs, was not a deviation 894

What deviation from the original voyage will justify seamen in demanding their discharge	721
A second mate, rightfully displaced from heading a boat in the whale fishery, is bound to perform other duty, and, upon his refusal to do so, may be punished for disobedience	814
A seaman shipping "by the run," or "by the voyage," is entitled to subsistence from the vessel while detained in an intermediate port by stress of weather, but he is not entitled to extra compensation	326
Conduct of master or mate in respect to seamen.	
A second mate who contumaciously refuses to perform duty may be removed from the cabin to the forecastle	814
The master may inflict corporal chastisement for insolence or disobedience to his reasonable commands	258
A saucy retort of the second mate <i>held</i> no justification for the master's violently assaulting and inflicting an injury upon him	814
A receipt for 25 cents "for assault and battery in full of all dues and demands," can only operate as a release where it appears that the settlement was fairly made	516
Wages—Right to.	
The master cannot bind the owners by an arbitrary increase of wages	1305
The law maritime will not sustain a suit for wages, by the legal representatives of a seaman, beyond the time of his death, when the engagement was by the month	1243
A seaman who ships for a voyage, concealing from the master a long-standing disease, which incapacitates him for labor, is not entitled to wages	929
The case of a French seaman will be determined by the marine law of France	721

Wages will be decreed on a libel by a French seaman against a French vessel which has changed her voyage from that for which he contracted	721
Where a seaman, on trial, shows want of fidelity or capacity, he may be disrated, and his wages reduced	515
An advancement to a position having a higher rate of pay entitles the seaman to such rate, though he shipped at a less rate	515
The owner is liable for the two months' wages under Act July 20, 1840, on a discharge by the United States consul in a foreign port without payment of three months' wages or an official entry upon the list of the crew and the shipping articles	437
—Remedies for recovery.	
An action will lie against a foreign vessel for wages of an American seaman	1157
Seamen on board a ship of war or vessel belonging to a sovereign independent state cannot libel the vessel for wages due	574
A seaman who has not contracted to look to the personal credit of the master has a lien for his wages, though he knew the master sailed her on shares	606
A contract to sail a vessel in partnership for a share of the earnings gives no right in rem for wages	406
The lien of the crew for wages cannot be affected by the assumption of a third person as master by consent of the owner	586
The pledge of freight to a third person cannot displace the seamen's lien for wages	586
The court has no power to require other seamen to come in and join as complainants in a libel for wages by one. (Act 1890, c. 56. § 6.)	1325

Where the master has admitted a balance due, and subsequently pleads payment, he has the burden of establishing it 1157

Section 6 of the act of 1790, with respect to the recovery of wages, applies only to the classes of vessels enumerated in section 1 1093

The proceedings by summons to the master (section 6) are cumulative and optional, and the party may resort to an attachment in the first instance 1093

Wages decreed upon the master's certificate that they were due, though the vessel was in port not earning freight 457

—Deductions: Extinguishment, etc.

Wages are not forfeitable for slight neglect or disobedience. There must be either 1386 habitual neglect or disobedience, or some act of a heinous and aggravated nature 15

A sailor deserting before the voyage is completed, and never attempting to regain the vessel, *held* to forfeit all wages under the maritime law 120

Disorderly and mutinous conduct in refusing to do duty *held* not to forfeit previously earned wages 894

It is not disorderly or mutinous conduct to apply in a body to the officers to put back to port, where a staunch vessel leaks four inches an hour 894

After application to put back to port, where the vessel was leaky, the voyage was continued on the master's promise to sight a certain port and put in, if necessary. *Held*, that his failure to sight such port did not justify the crew in refusing to do duty 894

A staunch vessel, with a full crew, which does not leak to exceed four inches an hour, *held* not unseaworthy 894

A disobedience in refusing to do duty under a claim of deviation, where the seaman was subsequently subdued to the authority of the ship, *held* no ground of forfeiture 894

If the shipping articles prohibit traffic by the seamen, under forfeiture of wages, yet the master may remit a forfeiture incurred thereby 15

Thorough repentance, apology, and subsequent exemplary diligence and obedience authorize the court to remit a forfeiture 15

Forfeiture by an offense applies only to wages previously earned 15

Wages advanced at the commencement of the voyage are not forfeitable by misconduct so as to be chargeable on wages subsequently earned. But money advanced on the voyage for clothes, etc., and not stipulated for, should be a charge on the unforfeited wages 21

A pardon by the master is a reinstatement of the right to wages 15

SEDUCTION.

An action upon the case will lie for seduction of plaintiff's daughter, whereby he lost her services 954

In such action plaintiff may give evidence that defendant promised to marry the daughter, as a means of seduction 954

SET-OFF AND COUNTERCLAIM.

Credit for commissions claimed by an insurance agent from the company cannot be allowed a guarantor of the agent's note in a suit at law. 1081

Such claim could only be made available in a suit in equity on an accounting

A counterclaim is substantially a cross action, and should contain nothing but the facts necessary to constitute it; and if any other defense is inserted therein it may be stricken out 1291

SHIPPING.

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

Public regulation.

A prosecution for a penalty under Act July 4, 1864, § 3, regulating the carriage of passengers on steamships, etc., must be by action of debt, and not a libel in rem 1176

Revenue laws are those laws only whose principal object is the raising of revenue, and not those under which revenue may incidentally arise 1176

The bond given for the return of the crew (Act Feb. 28, 1803) does not apply in the case of a vessel sold abroad which does not return to the United States 612

Such bond does not extend to cases where the seaman is lawfully separated from the ship, or is separated without fault of the master or owner 612

A forfeiture for obtaining an American register for a foreign vessel under a false and fraudulent statement is not defeated by a subsequent sale to a bona fide purchaser 607

Act July 18, 1866, is not an act relating to the customs, within the meaning Act March 2, 1867 608

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Title to vessel.

An individual part owner of a vessel has no power, because of such relation to the others, to bind them in relation to matters extra the necessary preservation of the property itself 615

The master.

Owners of a chartered vessel may dismiss the master before completion of the voyage, without showing cause 645

The master may contract for the employment of the vessel under circumstances of necessity 1254

In cases of necessity arising during the voyage, the master's acts are binding upon all parties 490

A master acting as general agent for his wife, who is part owner, has no interest in her share, whereby he may bind the vessel for the premium of a policy of insurance taken out in his own name 25

The master is agent of the cargo as well as the ship, where the vessel is found unable to proceed from a port of distress 1254

The master may hypothecate vessel and freight in a foreign port for advances necessary for repairing and provisioning the vessel, if such advances cannot be procured on the credit of the owner 1049

The taking of a draft on the consignees for the amount of the advances, which was afterwards protested for nonpayment, *held* a waiver of the lien, if any ever existed 1049

The master may sell a part or hypothecate the whole of cargo to raise funds for repairs 1254

A sale of the cargo in a port of distress to procure funds for repairs is unjustifiable where the master made no effort to procure funds by hypothecation of the vessel or other maritime contract 1116

In such case the shipper's damages are to be measured by the value of the cargo at the place of shipment, together with all expenses and interest from the time of shipment 1116

The fact that the master of a British vessel claimed a lien on her under the English law is 954

no ground for his refusal to deliver the vessel to her owners

A draft given for advances for repairs in a foreign port, expressed to be “for value received in disbursements and repairs of the brig H.,” with directions to charge the same to her account, is neither an hypothecation of the freight nor an assignment thereof 1049

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board for transportation in the lawful employment of the vessel 615

Liabilities of vessels or owners.

It need not be shown that supplies furnished on the order of the master in the usual course of business, and appropriated for the voyage, were absolutely necessary, or actually placed on board, in order to bind the owner 140

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The owners are not personally responsible for debts contracted by the master for repairs, beyond the value of the ship and freight 1254

The recording or nonrecording of a conveyance of a vessel does not affect the question of the personal liability of the owner 905

A master being a part owner in a vessel is liable in damages for issuing a fraudulent bill of lading to the assignee in good faith, which may be recovered against the vessel to the extent of his interest therein 615

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The presumption of freedom attaches to every resident of a free state, without regard to color; 335

and, on the same principle, in a slave state every colored man is presumed to be a slave	
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Construction of the fugitive slave law of 1850 and the jurisdiction and procedure thereunder	335
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A statute can be repealed only by an express provision of a subsequent law, or by necessary implication 770

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TAXATION.

A national bank located in New Jersey, which, for the convenience of persons in Philadelphia, keeps a clerk there to receive deposits, is not located in Philadelphia, so as to be liable to taxation 1238

The funds in the hands of an assignee in bankruptcy may be taxed by the state 493

Taxes on chattels are not a lien on the real property of the owner until after judgment on a suit to recover them 173

In Ohio there can be no forfeiture for nonpayment of taxes of delinquent lands which the county treasurer and collector has not returned under oath to the county auditor 438

The county auditor is required to make a record of such return, which record cannot be altered by parol evidence 438

Notice of sale as provided by the statute is an essential requisite to the validity of the sale 668

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The collection of a tax will not be enjoined where the deed issued upon a sale for taxes will not cloud the title 475

The omission to assess other property exempted from taxation under an unconstitutional statute does not render void a tax upon property of others liable to taxation, or give them a remedy by injunction 1067

A bank whose capital stock is assessed at full value, while all other property is assessed at less than half value, may obtain relief in equity by enjoining collection of the excess 60

Statutes in relation to the enforcement and collection of taxes must be strictly construed 475

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The owners of towboats are not liable as common carriers in respect to the employment of towage 1260

The master of the tug in performing a contract of towage is responsible for ordinary skill and diligence 126

Proper skill and caution is such skill and caution as persons of ordinary prudence, duly qualified for the business, and exercising an honest care of the interests confided to them, ordinarily use 314

A contract to tow a canal boat to a certain dock, and there leave her in a safe and suitable place to discharge her cargo, *held* performed by leaving the canal boat at the upper side of the pier, where, on a change of tide, she was crushed by floating ice 1308

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The tug is bound to know the channel and to keep the tow in the deepest water, and she must resort to sounding where the ordinary lights and landmarks are obscured 878

A tug employed to take a vessel out of a slip is bound to adopt a method of taking her out without injury 547

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The tug must exercise reasonable diligence and ordinary skill; and where the tow takes the chances of entering, in a storm, a harbor with a shifting channel, the tug is not liable, in the absence of negligence, where the tow grounds on a new shoal 893

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The tug is not bound to lay by a tow aground where it would endanger her own safety 893

The towing boat on the Mississippi river *held* in fault for attempting to run bridge piers in tempestuous weather with loaded barges in tow 581

Tug *held* not to have exercised ordinary skill and diligence in leaving Astoria on the ebb tide with a tow for Cape Disappointment 126

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A tug which strands a tow by negligence is liable for expenses of getting her off; and the court will not scrutinize very closely items of expense for lighterage, etc., where the master acted in good faith 256

Where a tow is brought into collision with a moored vessel, the presumption is against the tug 1319

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TRADE-MARKS AND TRADE-NAMES.

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A barrel of peculiar form, dimensions, and capacity, irrespective of any marks or brands impressed upon or connected with it, cannot become a lawful trade-mark, or a substantive part of a lawful trade-mark 715

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A treaty takes effect from its date when ratified,
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Sufficiency of complaint in action to recover
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TRIAL.

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

The party who has the burden of proof should
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to open and close

In an action of covenant plaintiff has the right *595
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The construction of a bill of sale is a question 1179
of law

The effect of bankruptcy and death of a party
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Whether an instrument is of itself a fraud in law
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The existence of a collateral understanding 322
different from the written instrument is a
question for the jury

A motion to direct a verdict for defendant must
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a question of law, the ruling on which is subject
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TROVER AND CONVERSION.

See, also, "Replevin."

An action cannot be maintained against a national bank for conversion of shares of its own capital stock 250

Reputed ownership by a debtor of goods in his possession, in fact belonging to an other, will not justify a creditor in attaching them 109

TRUSTS.

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

Where a judgment note is given by an agent for all moneys advanced to him by the principal, including the purchase price of property the title to which was taken in the agent's name, *held*, that a resulting trust could not be asserted therein 1149

Where the trustee mingles the trust fund with his own money, he is liable on its loss 692

A trustee who receives, in payment of a loan, confederate treasury notes at par which were worth only 30 cents on the dollar, is liable, unless he show that he acted under compulsion Parol understandings had with the testator cannot be set up to save the trustee from liability under the law 692

UNITED STATES.

Government moneys in the hands of the assistant quartermaster for disbursement, deposited by him with an assistant treasurer of the United States, still continue to be moneys of the United States, and such treasurer is not liable in assumpsit to the depositor therefore 767

USURY.

The purchase of a bond at a price which produces a greater than the legal rate of interest *595

is usurious, where the transaction is intended only as a cloak for usury

The maker, when transferring, as collateral security, bonds bearing an earlier date, may agree that interest shall run from their date according to their tenor 667

A mortgage of \$20,000, where a life insurance of \$80,000 was also taken from the lender, as security for a net loan of \$16,000, *held* usurious 703

A mortgage is infected with the usury in a note which it is given to secure 762

In Indiana, usury makes void the instrument infected with it 762

A mortgage given for a usurious debt cannot be enforced in Indiana, though it was taken without notice 762

A covenant absolutely to pay an usurious debt directly to the lender is not a covenant simply to indemnify the surety, though delivered to him; and under the Virginia law it is void *595

A confession of judgment for \$6,000 in favor of a person who procured satisfactions of that amount of judgments, on an advance of \$3,000, *held* should stand only as security for \$3,000 703

If the cause of action be usurious, no waiver of the objection by defendant in pais will avail plaintiff *595

The penalty prescribed by act June 3, 1864. § 30, for the taking of usury on loans and discounts by national banks, is the only penalty enforceable 1211

Where a renewal note at legal interest is given for a note discounted by a national bank at a usurious rate, the bank is entitled to recover the amount of the renewal note with interest, less the amount of usury reserved on the original discount credited as of that date 1207

Usury paid more than two years before the commencement of the suit cannot be recovered 1207
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VENDOR AND PURCHASER.

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

A conveyance of the grantor's interest in firm property, made subject to the payment of his share of the firm debts, which the grantees assumed, *held*, upon a condition subsequent, 1171
giving a right of re-entry for nonperformance, and a lien superior to subsequent mortgagees

The vendor's lien is waived by the taking of the obligation of a third person, or a mortgage upon 1171
the property sold or other property

The vendee cannot rescind on the ground of fraud unless he place the vendor in the 1038
condition he was in before the purchase

Where a deed is made under a defective power, the court will decree a conveyance on payment 1038
of the residue of the purchase money

Notice of a lien or incumbrance binds the purchaser if received before payment of the 86
purchase money

Where the existence of a mortgage is known and talked about in the neighborhood, and publicly proclaimed at execution sale, the 86
purchaser is *held* to notice thereof

One may protect himself as a bona fide purchaser by showing either that he paid 402
without notice, or took through some bona fide purchaser without notice

A recital in a recorded deed by one having no record title is not constructive notice 402

A recital in a recorded deed by one having no record title is not constructive notice 402

The record of a deed not acknowledged according to law is not constructive notice of its existence 885

Disqualification of the notary to acknowledge a deed, on the ground of interest, does not prevent the record being notice to subsequent incumbrancers 1202

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See, also, "Army and Navy": "Habeas Corpus"; "Insurance"; "Prize."

The United States, by their alliance with France during the Revolutionary War, *held* not to be considered parties to the capitulation made by the Marquis De Bouille with the inhabitants of Dominica 347

An alien enemy cannot sustain a suit in the federal courts 982

A draft drawn within the Confederate States, in a section not under the control of the federal forces, upon a person in a loyal state, is absolutely void as to all parties 679

Military commissions and their acts in the trial of persons not in the military service, during the Civil War, in states where the courts were undisturbed, were unconstitutional 380

The members of such commissions and the military officers are liable for an arrest and imprisonment ordered by them in such states, even though ratified and approved by the executive 380

The limitation imposed by Act March 3, 1863, is valid and binding on state tribunals, and the statute begins to run against a continuing imprisonment 380

The damages in such cases should be compensatory, and not exemplary 380

A person committing an offense in a place where the federal courts are closed by civil 1030

war, and arrested and tried in a place where the federal courts are open, cannot be tried by military commission

The crime of murdering the president of the United States in time of civil war is triable by a military commission 954

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An injunction against waste will not be granted where the title of complainant is denied by answer, or where he had no sufficient notice of the motion 867

WHARVES.

The master must ascertain that the depth of water in the dock is sufficient for the draught of his vessel. The wharfinger does not impliedly warrant the depth 1336

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A direction by the wharfinger who is consignee of the cargo to place the vessel in the dock is not equivalent to a notification that the water is deep enough at all times to float the vessel 1336

1390

WILLS.

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

Republished wills and codicils have the effect of new wills, and are to be proved in the same way 1072

A will of lands, in Rhode Island, cannot be admitted as evidence of a devise, unless it has been duly probated 680

Under a devise directly to the children of testator's brother and sister, the devisees take per capita, and not per stirpes 561

A devise of land to an individual required to pay specific legacies constitutes a charge on the land in the hand of a vendee 724

Under a devise to the children of A., to be divided among them when they arrive of age, all children living when the eldest arrives of age, though born after the death of testator, take a share, and the shares of those dying in the meantime fall into the general residuum 561

Will construed as an executory devise to W. in tail, after an estate for life in himself, remainder in fee to his children living at his death, which executory devise in tail is to take effect on the contingency of his dying without children living at the time of his death 1008

WITNESS.

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A bankrupt who indorsed a note before his bankruptcy, and who has obtained his certificate, is a good witness for the indorsee 1059

While parties to the record cannot be examined as witnesses, the name of a party for good cause shown may be stricken from the pleadings 1345

A witness cannot discharge himself of an objection to him on the ground of interest, by matter sworn by himself 1059

Defendant may testify in his own behalf as to matters embraced in the deposition of plaintiff's intestate, offered in evidence on continuance of the suit by his administrator. (Act March 3, 1865.) 982

A free black man, born of a white woman, *held* a competent witness against a white man 437

A subscribing witness who was called in to sign the paper as a witness, but did not see the parties execute or acknowledge it, may testify where they both told him that it was their agreement 993

A witness who cannot testify in a cause without criminating himself shall not be sworn 1266

An attorney at law cannot be compelled to disclose any fact the knowledge of which has been communicated to him by his client 1047

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In a railroad foreclosure suit, service of process of a state court, outside the state, on a bondholder, as defendant to a cross bill, is ineffectual 25

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