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#### Jurisdiction—In general

The admiralty jurisdiction of the federal courts is exclusive of the jurisdiction of the state courts. 304

A vessel seized in a state court on attachment cannot be arrested by a warrant from the admiralty court in a proceeding to enforce the lien of a material man, and consequently an action in rem will not lie therein. 679

Where contracts are made between owners of a vessel and carpenters and others to perform service on land, or within the body of a county, the admiralty has no jurisdiction. 327

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The admiralty court may, in its discretion, hear and determine a controversy between foreigners or remit the parties to their home forum. 703

Where the voyage of a foreign vessel is broken up, and the seamen are discharged in an American port, the district court will entertain jurisdiction of a libel in rem for their wages. 831

The protest of a foreign consul will not prevent the district court from taking jurisdiction of the case. 831

Admiralty has no jurisdiction of a libel in rem to enforce a bottomry bond given on cargo belonging to the United States. 901

Jurisdiction once acquired by possession of the res is not lost by its subsequent removal beyond the territorial jurisdiction of the court without consent of libelant. 902

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A contract for the carriage of a passenger, with stipulations as to the manner in which the vessel should be fitted up, and the number to be carried, is of admiralty jurisdiction in its entirety. 935

Admiralty has no jurisdiction in matters of accounting between part owners of a vessel. 524

Admiralty has jurisdiction of a contract, made between the master of a ship and a cooper, to put the cargo of the ship in landing order, the services being rendered partly on the ship and partly on the wharf, but before the delivery of the cargo. 728

—Torts

Admiralty will take jurisdiction of a libel for personal injuries by an American seaman serving 1288

on board a British vessel, where the voyage was terminated here, and the master was domiciled here.

The court will investigate the conduct of a master of a British vessel in procuring the intervention of a British consul in a foreign port, by which a seaman was imprisoned.

#### AFFREIGHTMENT

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

The ship is bound to weigh cargo whenever weighing is necessary to compute her freight.

Where freight is payable by weight, and no weight is specified in the bill of lading, the consignee is not bound by the weight stated by the invoice and entry presented at the custom house; and freight is payable only on the weight delivered.

Where freight is to be paid on lumber and timber at so much "per M., inch board measure," all timber pays freight, except the butts of sticks where the ends are not square.

The lien on the cargo for freight and demurrage is lost by its delivery to the consignee, and sale by him to a purchaser without notice.

The delivery of coal, with the expectation that freight will be paid at the time, is no waiver of the lien for freight, and the coal may be libeled therefor.

Unreasonable delay in the delivery of a cargo is no defense to a libel for the freight, without proof of damage to the defendant by reason of such delay.

A suit for freight is prematurely brought where no notice of unloading and of readiness to deliver is given the consignee, who refused the master's demand of freight before the goods were discharged.

After a vessel is stranded the master is obliged to take all possible care of the cargo. 566

The master of a vessel made leaky by an effort to remove her from a sand bar must first stop the leak and secure the cargo from the flow of water. 566

Where a ship was laden with tobacco in hogsheads and lard in barrels, and, without having encountered rough weather, lard was pumped from her on the voyage and the tobacco was damaged by lard running into it, *held* that the damage was due to causes other than perils of the sea. 34

Where powdered arsenic escaped from broken casks upon sacks of table salt, and, in discharging, all the sacks were so mixed together that the damaged could not be distinguished, and the whole was therefore sold as fertilizer, *held*, that the ship was liable for the difference between the price and the value of the salt as sound salt. 166

The shippers are not bound by a sale in a port of distress by the American consul, against the master's protest, of a portion of a cargo of wheat, on information that the inhabitants, on account of scarcity of food, would resist its loading. 569

A shipper whose property is sold for the ship's necessities has a right of contribution over against the other shippers. 965

The shipper need not prove negligence to recover for an injury, until evidence is given to show that the injury arose from excepted causes. 566

The splitting of the rudder post in a gale of no extraordinary violence is evidence of unseaworthiness. 261

The measure of damages for delay in delivering cargo is the difference in market value at the time of the actual delivery and the time when 989

by reasonable diligence it should have been delivered.

On a libel for damages for failure to deliver sovereigns shipped as freight under a bill of lading, their value is to be estimated in the 1302 currency of the country of the port of delivery and where the suit is brought.

Where the freight is payable in pounds sterling, it must be reckoned in currency according to our 1302 laws, which fix its legal value.

### ALIENS

An alien in the United States before 1802 may be admitted to the rights of citizenship without 522 proof of having resided, etc., five years.

A foreign mariner, residing in Alexandria five years, but sailing occasionally during that time 1283 in American vessels from that port, may be naturalized.

An alien enemy is not permitted to make a declaration preparatory to naturalization. 96

An alien enemy resident in the United States by license of the government may maintain a 910 personal action.

### APPEAL AND ERROR

A party may appeal from an interlocutory decree having the effect of a final decree, or may wait 52 until final decree is entered.

A salvage decree is not positively final unless all charges and expenses are ascertained, the salvage apportioned, and the rights of each salvor 52 definitely fixed.

All decrees in admiralty are deemed to be entered as of the term in which they are made. 52

Appeals in admiralty should be taken to the term of the circuit court next succeeding the term 805 of the district court at which the decree was rendered. (Rev. St § 635, is inapplicable.). 52.

The appeal in such case must be entered before the adjournment sine die of the district court, unless a different time is allowed by special order or general rule. 52

An appeal from a decree of the district court must be taken in open court before the adjournment sine die, unless a different period be prescribed by the court. 430

Appeal in admiralty *held* well taken, where notice was given in open court, and a written notice and bond in an approved amount were subsequently filed during the term, though such facts were not entered on the docket or minutes of the district court. 904

In the absence of rules specially prescribed, the practice of the court will govern as to notice of appeal and appeal bonds. 904

An appeal in a suit to confirm a land grant will be granted, on application made after the expiration of the term at which the decree was rendered. 290

Where an appeal bond was presented and approved, but no formal appeal prayed, *held*, that the court might afterwards allow the appeal nunc pro tunc. 208

Where the circuit court, on appeal by the claimant, decrees against him for a sum allowing of an appeal to the supreme court, which may be a supersedeas, the circuit court can enter no summary judgment against the sureties on the appeal bond until 10 days from its decree. 110

A commission to take testimony cannot be issued by the circuit court in an admiralty case after an appeal has been taken to the supreme court, until after the supreme court on motion has decided the question as to the admissibility of the evidence. 556



The decree of the district court, where no question of law is involved, is entitled to the same weight as a verdict in a suit at law, not 1027 to be disturbed unless it is contrary to the clear result of the evidence on the facts in issue.

### ARBITRATION AND AWARD

See, also, "Reference."

A submission to three referees does not 268 authorize an award by two only.

An award in a case of collision which decides the liability, but not the damages, is void because 268 not final.

### ARREST

See, also, "Bail"; "Criminal Law"; "Escape"; "Execution"; "Extradition"; "False Imprisonment"; "Malicious Prosecution."

A debtor who is about to remove from the state, without the consent of his creditors, and without an intention to return, is prima facie an absconding debtor. (Code Or. § 106.) 307

The legislature has power to authorize the arrest and imprisonment of such a debtor so as to enable his creditors to enforce the establishment 307 and collection of their debts by legal proceedings in the tribunals of this state.

A creditor who has caused the provisional arrest of an absconding debtor under Code Or. § 106, has until the time allowed for a return of an 307 execution against property to charge the body of such debtor in execution.

### ASSIGNMENT FOR BENEFIT OF CREDITORS

See, also, "Bankruptcy."

The validity of assignments for creditors with preferences will be determined in the federal 1153 courts by the law of the state.

### ASSUMPSIT

A person who performs valuable services as an officer of an association is entitled to 673 compensation therefor unless he waive it.

### ATTACHMENT

See, also, "Bankruptcy"; "Execution"; "Garnishment"; "Writs and Notice of Suits."

The goods of an intestate cannot be attached by his creditors, nor will a chancery attachment lie 1326 against the effects of a resident debtor.

A man who leaves a place to avoid service of process, requesting false information to be given of his movements, "conceals himself so 332 that process cannot be served upon him," within the meaning of the attachment law of Illinois.

It is not necessary that process be first issued, or that an attempt should first be made by the officer to find him; nor is it material that he is in 332 another county.

An attachment under Act Md. 1795, c. 56, is dissolved by the death of the principal defendant 1083 and the appearance of his administrator.

An attachment under such act against the property of a corporation aggregate is dissolved 178 by its appearance without bail.

### ATTORNEY AND CLIENT

An attorney employed by the lender to examine the title of property offered as security for a loan, though compensated by the borrower, is 995 responsible to the lender for the correctness of his opinion.

A certificate that the security is a good one is a warranty not only that the title shall be found good on litigation, but that it is free from any 995 palpable grave doubt or serious question of its validity.

An attorney has exclusive control of the conduct of his client's suit, and neither the client nor 239

his attorney in fact can sign a stipulation for a continuance.

Attorneys are now entitled, in the absence of contract, to recover a quantum meruit for professional services. 98

### AVERAGE

The voluntary stranding of a vessel, when required and designed for the common safety of the associated interests, constitutes a case of general contribution, though followed by her total loss. 569. 1306

Injuries to rails and bulwarks by falling masts, cut away in a storm, are to be considered in general average. 1306

Goods under deck do not contribute to the loss of goods carried on deck and sacrificed for the common safety. 1084

In a suit of contribution for loss of masts sacrificed for the common benefit of ship, cargo, and freight, *held*, that the master was a competent witness for the vessel owners. 1306

### BAIL

Special bail may be required in cases of tort as well as in cases of contract, and without affidavit as to the true amount of the debt or damage. 1207

The ad damnum in the writ and the sum demanded in the declaration are guides to the sheriff; but the amount may be reduced on motion on affidavit showing it to be unreasonable. 1207

Defendant will be held on bail, notwithstanding the discontinuance of an action for the same cause in the state court in which he was discharged on common bail, where the proceedings do not appear to be vexatious. 1088

If another suit is pending elsewhere for the same cause of action, special bail will be reduced to a nominal sum, or only common bail allowed. 1207

The merits of a controversy will not be examined, upon a question of bail, further than to ascertain if a reasonable cause of action is shown. 1088

A positive affidavit of debt does not preclude the court from inquiring into the cause of action. 673

On motion to reduce special bail the court will not decide the question of jurisdiction. 1207

A motion, made before the appearance day, to appear without bail, will not be heard if the defendant be not in actual custody. 649

### BANKRUPTCY

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

#### Operation and effect of bankruptcy laws, and of proceedings thereunder

Proceedings pending in a state court to wind up a partnership and the appointment of a receiver will not prevent the bankrupt court taking jurisdiction of a petition by one partner to have the firm declared bankrupt. 298

Where the appointment of a receiver in supplemental proceedings was not formally made, as required by law; prior to the filing of the petition in bankruptcy, *held*, that the bankrupt's property was not vested in the receiver. 296

The district court has jurisdiction to adjudge bankrupt a corporation previously dissolved by a state court, but proceedings must be commenced within six months after the dissolution. 34

Where a bankrupt is under arrest under process from a state court, he should make application to that court before coming into the court of bankruptcy to obtain his release. 690

A judgment upon a debt contracted by fraud is not affected by a discharge in bankruptcy (Act 1320

1867, § 33), and the bankrupt is not exempt from arrest on an execution issued thereon.

A judgment against the bankrupt by default in a state court, recovered upon a complaint which showed that the debt was contracted by fraud, is conclusive upon that question. 1320

It seems that in a state where a feme covert may be sued upon her contracts she may be declared a bankrupt. 521

#### **Jurisdiction of courts**

A petition in bankruptcy filed in the Southern district against a debtor who resides and carries on business in the Northern district of New York will be dismissed for want of jurisdiction. 1018

A suit by an assignee to set aside a fraudulent conveyance, after the discharge, of property concealed prior thereto, is not a suit to annul the discharge, and may therefore be brought in the circuit court. 174

#### **Register—Powers and duties**

The register may on his own motion order the bankrupt's schedules to be amended. 823

The objection of the bankrupt to the granting of an order for examination before the first meeting raises an issue of law which the register must adjourn into court. (Act 1867, § 4.). 1313

But the argument of the question before the register waives the right to such adjournment, and it cannot be made after decision by the register. 1313

#### **Commencement of proceedings—Voluntary bankruptcy**

A dissolution of a partnership will not prevent the bankrupt court taking jurisdiction, so long as any unfinished business, debts, credits, or assets remain. 298

After dissolution of a partnership by decree of court, one partner cannot maintain a petition 594

to have the members of the firm adjudged bankrupt.

On a petition by one partner against the firm, acts of bankruptcy need not be alleged. 298

On a petition by a partner for a separate decree he need not set forth the partnership accounts in detail, but he must allege his share of the partnership property. 300

The signing of a petition by an attorney who was not admitted to practice in the district court is no ground of dismissing the proceedings. 620

Preferences, concealment of property, or other acts done in contravention of sections 2 and 4, Act 1841, cannot be set up in opposition to the decree of bankruptcy. 1000

—**Involuntary bankruptcy**

A petition in bankruptcy will not lie against a railroad company. 751

A petition to have a corporation adjudged a bankrupt may be maintained by any creditor, under Rev. St § 5122. 770

Act June 22, 1874, § 12, in relation to the number and amount of creditors required to join in the petition, applies to corporations. (Reversing 770.). 783

The application of a creditor for an adjudication upon the petition of another creditor cannot be made after the return or adjourned day. 684

A creditor whose debt is provable in bankruptcy, though not due, may maintain a petition. 913

When an indorser's liability becomes fixed it is a debt which may be made the foundation of involuntary proceedings. 222

A voluntary agreement between certain persons, to which the debtor is in no wise a party, to make a contribution to him, does not create an indebtedness to him. 773

The petition will be dismissed where the debtor has counterclaims against the petitioning creditor, of such a nature as are provable in bankruptcy, sufficient to reduce his claim below \$250. 841

A petition against a corporation which does not show that the corporation is either a moneyed, business, or commercial corporation is insufficient. 783

The corporation, after appearing and answering, cannot afterwards object that the petition does not allege that it is a moneyed, business, or commercial corporation. \*773

The intent of the debtor in suspending payment of commercial paper should be alleged as a fact. 799

The sufficiency of an averment as to the suspension of payment of commercial paper cannot be raised by demurrer. 799

A demurrer is not the proper mode of objecting to irrelevant or immaterial allegations or the mingling in one plea of distinct defenses, but a motion to strike out. 913

Distinct defenses to the petition should be separately pleaded. 913

One defense to the petition may include both the debt and the act of bankruptcy. 913

A denial of the allegations in the petition respecting the insolvency of respondent is a sufficient answer thereto. 913

A plea of tender can under no circumstances be a defense to the petition. 913

1357

Full and complete proof of insolvency is not required, but proof tending to show insolvency casts the burden on the debtor to explain the evidence. 773

A debtor is insolvent if his property, put up on reasonable notice for sale, where it exists under the circumstances of the case, will not bring cash enough to pay his debts. 773

The act of payment by an insolvent debtor is, of itself, sufficient evidence of the intent to prefer, casting the burden upon the debtor to show that he was not aware of his insolvency. 773

#### **Acts of bankruptcy**

A debtor who is solvent may pay any or all of his debts, although proceedings in bankruptcy are pending against him. 773

A payment by an insolvent debtor is an act of bankruptcy, although it is made in the usual course of business. 773

The collection, under legal process, by the receiver of a dissolved corporation, appointed more than six months before the commencement of bankruptcy proceedings, of a claim due the corporation, is not an act of bankruptcy. 34

An averment that N., "being a merchant," etc., is a sufficient averment that he is a merchant. 222

Fraudulent suspension and nonpayment need be averred only when the act of bankruptcy charged is that specified in section 39, cl. 9, Act 1867. 222

"Commercial paper" as used in the bankruptcy act denotes bills of exchange, promissory notes, and negotiable bank checks, which are governed by what is known as the "law merchant". 222

The bonds and coupons of a railroad company are not commercial paper within the meaning of the bankrupt act. 751

#### **Schedule**

A claim of the bankrupt for damages on a contract for the sale of goods must be stated in his schedule. 821

The bankrupt must state in his schedules whether or not any note has been given, or any judgment rendered, for every debt, and whether or not any person is liable with the debtor as a partner or joint contractor. 823



What is a sufficient statement of those facts is a matter of discretion with the register. 823

The use of dots or contractions in the schedules to indicate a repetition of words previously used is forbidden by rule 14 of the general orders in bankruptcy. 823

An order requiring the bankrupt's schedules to be amended must specify particularly in what respects amendment is required. 823

### **Adjudication**

The adjudication in a voluntary case will not be postponed until the register has certified the petition and schedules to be correct. 1315

An ex parte adjudication obtained by the bankrupt on the filing of amendments by him after objections to the form of his proceedings will be vacated. 514

Where a decree of bankruptcy is awarded against a member of a firm, the partnership is thereby dissolved and the partnership effects are vested in the assignee and the solvent partner as tenants in common. 300

The amendment of June 22, 1874, did not annul or disturb judgments rendered or adjudications made or in force at the time it took effect. 517

### **Meeting of creditors: Notice**

Without a special order of court the register has no power to inquire into the rights of creditors to vote at a first meeting, except for the purpose of postponing proof of claims until the choice of an assignee. 282

### **Assignee—Election, appointment, and removal**

A claim of the bankrupt for damages on a contract for the sale of goods must be wholly disregarded on proceedings for the choice of an assignee. 821

A secured creditor may vote for assignee on so much of his debt as is unsecured, where the 1184

security applies only to a specific portion of his debt.

The surrender of a fraudulent preference can only be made to the assignee, and pending his appointment and qualification the proof of debt 1094 must be postponed and the offer of the preferred creditor to vote for assignee be denied.

The managing officers of a corporation, when bona fide creditors, have the same rights to vote 309 for assignee as any other claimant.

In examining their claims the register should not be called upon to decide upon doubtful proofs. 359

Interest may be added to the claim to the day of the adjudication where the debt was due before such day, but interest is to be deducted from 821 such time where the debt is not payable until thereafter.

The register should ordinarily demand the same degree of proof before admitting a creditor to vote for assignee, as is required in a trial at law or a hearing in equity. 359

An opposition to the appointment of a particular assignee, made at the first meeting, will be considered as continuing at adjourned meetings, 416 where it does not appear to have been withdrawn.

On proceedings for the choice of assignee the register must receive evidence from the bankrupt impeaching the consideration of a draft proved as a debt. 821

An additional assignee may be appointed to act in conjunction with the one previously appointed, upon a petition to the court showing sufficient reasons for so doing. 920

An assignee will be removed if requested by a vote of a majority of those who have proved their debts; otherwise, if a majority vote against removal. 156

### Assignment

All property and rights of property of the bankrupt at the date of adjudication pass to the assignee for distribution among creditors. (Act 1842.). 74

Property coming to a voluntary bankrupt by descent or distribution between the filing of his petition and the adjudication passes to the assignee as assets. (Act 1842.). 74

The assignee takes the property and rights of property of the bankrupt subject to all rights and equities of third persons attached thereto in the bankrupt's hands. 74

Where the bankrupt, after filing his petition and before adjudication, became entitled to property as heir of one to whom he was indebted, *held*, that the assignee should receive the same diminished by the amount of such debt. (Act 1842.). 74

The assignment relates back to the date of filing the petition, and property subsequently acquired does not pass thereunder, regardless of 1315 amendments to the petition or schedules afterwards attached. (Act 1867, § 14.).

### Property of bankrupt—What constitutes

Where the bankrupt has only a usufruct in property, not capable of being transferred by sale except with the owner's permission, such usufruct does not pass to the assignee in bankruptcy. 593

Where income is devised, to cease on the insolvency or bankruptcy of the devisee and then to go to his wife or children, or in default thereof to accumulate in augmentation of the principal fund, the devisee, on his bankruptcy, has no interest which the assignee can reach. 188

The principal of a bankrupt factor may recover from the assignee any goods remaining unsold, 497

or any proceeds of sale of such goods which the assignee has sold or which can be specifically distinguished from the property of the bankrupt. A continuing partner, having authority to collect debts due the firm, debited a debtor with the amount, and continued his account. *Held*, on his bankruptcy, that the balance due did not belong to the new firm. 931

Plaintiff, in separate suits against partners, purchased firm property sold under executions issued on judgments obtained therein. *Held*, that neither he nor his assignee was entitled to hold the property as against the assignee in bankruptcy of the firm. 842

—Custody and control

A mere possibility of waste or misapplication of the bankrupt's estate by assignee in insolvency against whom an adverse decree is sought will not justify an injunction. 238

If the assignees are satisfied that property received by them did not belong to the bankrupt, they should return it immediately; but if they are in doubt, the claimant must seek his remedy in the state courts. 281

Where the owner of yarn in possession of a bankrupt at the time of his bankruptcy, for manufacture into cloth, obtains a judgment in trover against the assignee therefor, his claim is entitled to no priority over the assignee's claims for expenses and commissions. 520

In the case of the bankruptcy of an individual partner the bankruptcy court will not take possession of the firm property unless necessary to make a final settlement of all claims. 1148

Where one partner becomes bankrupt, his assignee can take that portion of the partnership assets, only, which would belong to the bankrupt after payment of all the partnership debts. 1148

—Exemptions

A house built on the separate property of a member of a bankrupt firm, with funds of the firm, and occupied by the partner as his home, 1218 *held*, subject to exemption under the Michigan laws.

A wagon and team are not exempt under Civ. Code Or. § 279, unless it is necessary to a trade, occupation, or profession in which the bankrupt habitually earns his living. 1112

The business of mere buying and selling or directing or employing the labors of others is not a trade, occupation, or profession within the statute. 1112

If the bankrupt has selected his furniture under the state law, there can be no second allowance. If he has selected real estate, the assignees may, 281 in their discretion, make an additional allowance of furniture, etc., not exceeding \$500 in value.

A debtor is entitled to the full benefit of the exemptions allowed by the bankrupt act, even though an execution had become a perfected 924 lien upon his property before the filing of the petition.

—Liens

A written agreement for the entry of judgment, filed in court, in a suit in which defendant's property was attached, *held* to constitute an 1148 equitable lien against the property in the hands of his assignee, on his subsequent bankruptcy.

A judgment obtained by default by a creditor, on a debt not yet payable, will be set aside at the 1278 suit of the assignee.

An execution in the hands of the sheriff in New York before voluntary petition filed, though not levied, binds leviable personal property as 1004 against the assignee.

The institution in the state court of a suit to foreclose a mortgage on the bankrupt's property after petition filed is not a contempt. 688

An injunction issued to stay a mortgage foreclosure in the state court will be dissolved where it appears that the property is of no value beyond the admitted incum-brances. 688

Injunction restraining proceedings on execution under judgment against bankrupt dissolved, where the assignee took no measures to recover the property levied upon and the bankrupt declared that the property did not belong to him. 637

**—Sale**

A sale at auction by the assignee is subject to the approval of the court. 600

**Proof of debts—What is provable**

A receiver of a bankrupt corporation can prove a debt against a bankrupt in a bankrupt court in another state. 452

A creditor paying a judgment obtained against him by the assignee for the value of goods received by way of preference, without actual fraud, may then prove his claim. 49

A debt contracted in whole or in part for spirituous liquors in violation of a law of the state is not provable. 973

The statute of limitations of the state where the bankrupt resides applies to proof of debts; and it continues to run against them after the adjudication. 174

In Wisconsin a demand barred by the statute of limitations is not provable against the estate of a bankrupt. 294

A note given by the firm as an accommodation to a partner to raise his share of the firm's capital may be proven against the firm, but securities pledged by the individual partner must first be applied to its payment. 313

Where a firm failing without assets resumed business under the name of one of its members as “agent,” and again failed, *held*, that the debts contracted under the former name were not entitled to share in assets of the second failure. (Reversing 254.). 255

The costs and interest in the case of a debt put into a judgment may be proved with the debt. 714

—Secured debts

A creditor receiving a negotiable bond from his debtor as security for a loan cannot set up want of title in the debtor and prove its whole debt without surrendering the bond. 316

One owning a debt secured by an insurance policy on the life of the bankrupt is entitled to prove the amount of the debt less the surrender value of the policy. 90

Where such creditor proved the debt, less partial payments and the surrender value of the policy, but kept the policy alive until the bankrupt’s death, *held*, that out of the insurance money the creditor must refund to the assignee the part payments and the premiums paid by the bankrupt after the filing of the petition. 92

—Procedure

It is not the duty of the register to notify the bankrupt or his attorney of the filing of proof of any claim before the first meeting of creditors. 1313

An application to contest a claim against bankrupt’s estate will be allowed upon a petition and affidavits stating fully and in detail the grounds upon which such application is based. 920

Creditors may impeach for fraud or irregularity a judgment obtained against the bankrupt before petition filed, where the judgment debt is offered for proof. 714

A secured creditor proving his claim as unsecured will be allowed to amend, after receipt 1184

of dividend, only in the case of mistake or ignorance, in the absence of fraud, where all persons can be placed in statu quo.

**Payment of debts: Priority: Dividends**

The claim of lessors of a bankrupt lessee for the amount of taxes paid by them, which the lessee had covenanted to pay, is not entitled to preference. (Act 1867, § 28.) 1110

Motion to vacate an order for a dividend may be made on proper papers and notice. 158

**Examination of bankrupt, etc**

A creditor who has proved his claim may apply for an examination of the bankrupt before the first meeting of creditors. 1313

On the application of a creditor who asserts that his debt has been created in a fiduciary capacity the court will direct the debtor to produce, even before time for a decree, all books and papers having relation to the debt. 1111

A bankrupt is bound to appear and submit to an examination when ordered, without being paid witness' fees. 632

The assignee is not required to pay witness' fees of a claimant on examination before a register. 975

The bankrupt may decline to answer a question as to the disposal of his property which is broad enough to cover the time subsequent to the filing of the petition, the answer to which might subject him to criminal punishment. (Act 1867, § 44.) 1319

A bankrupt, on examination by a creditor, is entitled to explain any matters as to which he has been examined, and to this end may be questioned by his counsel. He is not bound to pay the register's fees for such testimony. 464

The register has discretionary power to allow a bankrupt under examination to consult with his counsel. 1315



The register has no power to decide on the validity of objections to questions asked the bankrupt or on the admissibility of the questions. The certificate of a register on certifying a question must show the preceding question where necessary for a decision by the court.

The question whether an examination is so far completed as to be admissible in evidence is not one which can properly be certified to the court for decision by the register taking the examination.

**Costs: Pees: Disbursements**

A claimant of a nonprovable debt will be required to pay the costs of proceedings to reject the same.

The costs, upon the petition for a discharge of involuntary bankrupts, the hearing, etc, must be paid out of the funds in the assignee's hands.

A petitioner in involuntary proceedings may have an allowance for counsel fees and expenses incurred in procuring the adjudication.

But other creditors are not liable to contribute thereto.

There is no authority under the bankrupt law to allow a counsel fee to the bankrupt's attorney out of the assets.

Counsel fees will not in general be allowed to the assignee where the services were rendered prior to his appointment.

A charge for professional services by the son of one of two joint assignees disallowed, as tending to abuses.

The assignee must apply to the court for authority to incur expenses for professional services and clerk hire.

The assignee's accounts for professional and clerical services not duly authorized must be

allowed by the court on separate application, on which the assignee is subject to examination.

Services rendered by attorneys in opposing involuntary petitions are not allowable as services to the assignee. Such services are rendered to the bankrupt and are provable against his estate. 157

Marshals are not entitled to per diem service for holding, constructively, possession of bankrupt property. 932

Marshal allowed \$2.50 per day as a disbursement paid a guard to watch the property. 932

The oath of the marshal is not conclusive as to the necessity of expenses charged in his account. 932

#### **Discharge—Proceedings to obtain**

A discharge cannot be granted where the bankrupt dies pending the proceedings, so that he cannot comply with section 29, Act 1867. 601

A creditor whose debt was contracted before January 1, 1869, should not be allowed to vote on the question of a bankrupt's discharge as to debts contracted since January 1, 1869. 1230

The debt of a surety of the bankrupt against whom a judgment is rendered after January 1, 1869, is "contracted" after such date, within the meaning of section 33, Act 1867. 1230

#### **—Proceedings in opposition**

In the absence of all fraud the original adjudication must be considered as final and conclusive upon all the creditors, and cannot be disputed upon the question of granting a discharge. 760

Where the person to whom a debt of a fiduciary character is due from the bankrupt does not object to the discharge on that ground, other creditors cannot object. 1112

A debt proved in the firm name of A., B., C. & Co. cannot be the foundation of proceedings in 1019  
opposition by B., C. & Co.

Specifications in opposition filed by other than  
the attorneys appointed by the creditor, where 1019  
there has been no lawful substitution, will be  
overruled.

The burden of proof is upon the opposing  
creditor to establish the grounds of opposition. 633

The burden is on the creditor to prove that a  
debt included in the schedule and not proved 757  
was false or fictitious.

**—Acts barring**

A discharge cannot be granted to a bankrupt who  
owes debts in a fiduciary capacity, though he also 1112  
owe other debts not of a fiduciary character.

It is no objection to a discharge that the bankrupt  
requested his creditors to file the petition in 760  
bankruptcy, he having committed an act of  
bankruptcy.

A discharge will be refused where the consent  
of one creditor was purchased, though after the 1014  
required number had consented to the discharge.  
(Act 1867, § 29.).

The including of a false or fictitious debt in the  
schedule will prevent a discharge, though the 757  
debt is not proved. 1360

A bankrupt is guilty of concealment in not  
including in his schedule property conveyed to 516  
him in fraud of the creditors of the grantor.

The failure to schedule property in which the  
bankrupt did not at the time know that he had a  
substantial interest will not prevent a discharge. 1110  
There must be an intention to conceal the  
property.

A livery stable keeper who boards horses is a  
merchant or tradesman required to keep books 574  
of account.

A person engaged in soliciting freight, who also occasionally buys and sells grain for gain, is a merchant and trader required to keep books of account. 516

One engaged for a year prior to bankruptcy in buying and selling furniture on his own account, and having a shop where his goods are displayed, is a merchant or tradesman who is required to keep proper books of account. 96

What are proper books of account to be kept by merchants or tradesmen is a question of evidence in each case. 96

Memorandum books from which the tradesman cannot tell the amount of his business or the particulars and consideration of his principal debts are not proper books of account. 96

The mutilation of books of account by the bankrupt may be explained. 297

—Scope and effect

A discharge granted to one partner on his separate bankruptcy does not release him from partnership debts. 298

A debt due by a factor for the value of goods consigned to him to be sold on commission and remittance made in thirty days is not such a debt contracted in a fiduciary capacity as will be excepted from the operation of a discharge. 929

**Prohibited or fraudulent transfers**

The validity of an act which took place prior to December, 1873, is to be tried according to the law of 1867. (Act June 22, 1874, § 12.). 930

A fraudulent preference cannot be committed by the mere neglect of an insolvent debtor to go into bankruptcy. 1278

A payment made within four months of the petition in bankruptcy may be recovered back if the creditor had reasonable cause to believe that it was made to give him a preference, though he 1003

had no reasonable cause to believe the debtor then to be insolvent.

A mortgage of an entire stock in trade for advances of money which the mortgagor assured the mortgagee were to be used in his business, 957 but which were actually used to prefer creditors, *held* valid.

An exchange of \$500 worth of wheat for a wagon and team, with a view of claiming them as exempt, *held* void, and the title to the wheat 1112 vested in the assignee.

A chattel mortgage accepted by creditors after receiving information of the insolvency of the 1018 debtor will be held fraudulent.

Assignment of stock in trade and notes of hand to a creditor within six weeks of filing of petition 328 *held* void, under section 35, Act 1867.

The bankrupt, in building a house on land which he had fraudulently conveyed to his wife, procured lumber on the representation that it was his property from one who, after discovering 575 the true condition, took a mortgage thereon. *Held*, that the mortgage was void as to the assignee in bankruptcy.

The testimony of the parties to an alleged preferential transaction as to their intention is 930 entitled to little weight against the proof of the transaction itself.

**Suits and proceedings in relation to the estate**  
District courts have jurisdiction, under Rev. St. § 4979, of a suit by or against an assignee, 684 whenever he is a necessary and proper party, although other persons may be joined.

A suit in equity cannot be maintained by an assignee to obtain possession of a vessel alleged 791 to belong to the estate of the bankrupt. The remedy is at law.

Neither will an injunction be allowed in such case upon the petition of the assignee to restrain the person in possession of such vessel from removing it beyond the jurisdiction of the court. The remedy is replevin. 791

As to limitation of actions by or against assignees. 416

The fact that the assignee did not discover his right to certain property of the bankrupt until after the expiration of two years from the time an action accrued to him therefor does not remove the bar prescribed by Act 1867, § 2. 2417

The bar prescribed by section 2 applies to causes of action which had accrued to the bankrupt before his bankruptcy as well as to those which accrued to the assignee after the bankruptcy. 417

A suit to set aside a fraudulent conveyance, made after discharge, of property concealed prior thereto, may be brought by the assignee within two years from the discovery of the fraud. 174

A receiver, appointed in supplementary proceedings prior to the filing of a petition in bankruptcy against the debtor, may sue the assignee in bankruptcy and a prior voluntary assignee to set aside an assignment to the latter as void in fact and under the statute. 684

A conveyance alleged to be fraudulent as to creditors will not be set aside at suit of the assignee, when there are no provable debts. 174

The assignee may sue to recover property standing in the name of one of the partners, purchased with firm funds, and conveyed to him in fraud of the bankrupt act. 1300

A defendant cannot, under the bankrupt law of 1800, set off a debt due to him from a partnership against a claim by the assignee of one of the firm who became bankrupt. 931

**Review**

An appeal will not lie to the circuit court from an adjudication of bankruptcy. 521

A proceeding to have a debtor adjudged a bankrupt cannot be reviewed until after final judgment. 780

Where there has been a trial by jury on the issue of bankruptcy the proceeding can be reviewed only upon a writ of error. 780

A stay of proceedings in the district court is in the discretion of the circuit court, and will not be granted where the debtor will not be seriously prejudiced by their continuation. 780

**Arrangement with, creditors: Composition**

The pendency of a petition to review an order refusing a discharge does not deprive the court of jurisdiction to entertain proceedings for a composition. 575

The mere fact that a bankrupt has been refused a discharge on a specification of objection is not an absolute bar to a composition. A composition is not a discharge. 575

Privileged creditors, whose claims will be paid in full to the extent of \$50, there being sufficient assets for the payment of them, should he be permitted to vote for a composition only on the excess of their debts over \$50. 715

In confirming a composition the court ordered the bankrupt to pay the expenses and disbursements of a creditor in successfully opposing a prior application for a discharge. 575

A creditor *held* not precluded by an unchallenged statement in the list of liabilities that his debt is amply secured by a deed of trust from subsequently claiming the percentage agreed to be paid on a final deficit ascertained long after the composition was carried out. 1093

**Repealing and amending acts**

The act of June 22, 1874, must be considered as supplementary and amendatory to the provisions of the Revised Statutes on the subject of bankruptcy. 783

The original act of 1867 and all the acts amendatory thereof, except June 22, 1874, were superseded by the title "Bankruptcy" of the Revised Statutes and repealed by section 5596. 770

### BANKS AND BANKING

A corporation engaged in loaning its own money upon note and mortgage is not a banking corporation. 764

Obligations contracted by a banking association organized under an unconstitutional law are not enforceable against the directors and stockholders, the transactions being illegal and the parties particeps criminis. 8

When banks receiving paper from other banks for collection are entitled, as against the real owners, to hold the same to secure a general balance due from the transmitting bank. \*57

A bank receiving a note for collection is not liable in damages for failing to demand payment on Saturday where the last day of grace falls on Sunday, where its known and established method of business in such case was not to demand payment until Monday. 1305

Form of execution issued by president of Bank of Columbia under Act Md. 1793, c. 30, § 14. 633

### BILLS, NOTES, AND CHECKS

what law governs

The place where notes were negotiated, and not that where they were signed and indorsed, *held* to be the place of the contract. 834

#### Acceptance

A statement of sales by a consignee with authority to draw for the amount *held* an acceptance of a bill subsequently drawn by the 608



agent of the owner, whose authority was not revoked by the bankruptcy in the meantime of the principal abroad without notice.

An action for money had and received or money paid will not lie by the acceptor of a bill of exchange who has not paid it. 1176

### **Validity**

An assignment of a sheriff's certificate of sale of real property is a sufficient consideration for a promissory note. 972

### **Interpretation**

The following instrument: "St Louis, May 10, 1861. At sight pay to the order of S., P. & Co., \$4,000. value received, and charge the same to the account of L., P. & Co. To the Marine Bank of Chicago, Ill."—is a bill of exchange, and not a check. 686

### **Indorsement and transfer**

If a person who is not a party to a promissory note indorses his name upon it in blank, with intent to give it credit the plaintiff may write over it an engagement to pay it in case of the insolvency of the maker. 602

An action will lie by the holder against an indorser of a promissory note, where the indorsement was made upon a blank paper and subsequently filled up by the maker as intended by the indorser. 1344

Notes of third parties to himself, passed by a borrower to a lender with his own note, are good in the lender's hands, though originally without consideration. The makers can protect themselves as sureties only by positive notice to the lender of the want of consideration and that the paper was to be used as a security only. 154

### **Demand: Notice: Protest**

If the maker of a draft had a well-founded expectation that if presented within a reasonable 686

time it would be honored, the holder must use due diligence in presenting it, and give him notice of its dishonor.

An indorser who promised to pay in case of the insolvency of the maker is entitled to the usual demand and notice. 602

Insolvency of the maker, in Virginia, dispenses with suit and demand and notice. 603

A foreign bill of exchange must be regularly protested, after a demand and refusal of payment. 834

Where the holder retains a draft drawn on a bank for more than a month without presentation, and waits three weeks longer to protest it, he cannot recover of the drawer. 686

Want of notice of nonacceptance is not excused by an understanding between plaintiff and defendant that the bill should not be sent on for acceptance. 211

#### **Payment**

A draft drawn on a bank is payable in current coin and not in depreciated bank notes. 686

#### **Release or discharge of indorser**

The indorser is discharged where the holder, on request, does not sue the maker, who was at the time solvent. (Act Va. Dec. 23, 1794.). 1344

#### **Actions**

The payee of a note signed in a firm name may sue one partner alone thereon. (1 Rev. St N. C. 1067 c. 31, § 39.).

Under an indorsement in blank the holder of a bill for collection may bring suit in his own name. 834

A person paying a note while lying in a bank under protest cannot maintain a suit thereon in the name of the bank. 1305

The holder of a note need not proceed against the maker before suing the indorser, where the maker is insolvent. 1344

Under the Oregon Code a partial failure of consideration is not a defense to an action upon a promissory note, but must be pleaded as a counterclaim. 972

A count, upon a promise to pay the debt of another in a certain event, must aver a consideration. 602. 603

An averment that defendant put his name on the back of a note with intent to give it a credit and to induce the plaintiff to accept the same, and that the note so indorsed was delivered to the plaintiff for a full and valuable consideration, is a sufficient averment of a consideration for the promise. 602. 603

A plea that the defendant paid the note to the assignor before he had notice of the assignment cannot be sustained against the assignee. 1323 1362

Words of surplusage, not descriptive of the bill, but of the place where it is payable, *held* no variance. 834

Where the declaration avers a protest for nonacceptance as well as for nonpayment, and the action is brought on the protest for nonpayment, the nonacceptance need not be proved. 211

In an action by the payee of a promissory note the plaintiff has a right, at the trial, before offering the note in evidence, to strike out the names of the indorsers. 694

In an action by the indorser against the bankrupt drawer of a bill of exchange it is sufficient to account for its nonproduction that it was lodged with the commissioners in bankruptcy. 1022

The burden of proof that a promissory note was given or indorsed without consideration is upon the party alleging it. 972

### BILLS OF LADING

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

The words "in good order and condition" extend only to apparent external condition, and the carrier may show that the package, etc., was secretly defective. 635. 810

But such words are sufficient to throw the burden upon the carrier to show secret defects to relieve himself from liability. 810

Under a bill of lading excepting leakage, the carrier is not liable for a loss of wine by leakage caused by a latent defect in the cask. 635

Under a bill of lading for a certain quantity of coal deliverable to M. or his assigns, "he or they paying freight for the same at" so much per ton, no freight is due until all the coal is delivered. 706

The innocent holders of bills of lading for the denvery of cargo to order on payment of freight as per charter, where the charter contained no clause specially binding the cargo for its performance, are not liable for demurrage in loading. 708

An indorsement, as follows, by the master of a chartered ship on a bill of lading: "Signed under protest,"—prevents assignees of the bill from claiming as bona fide holders. 259

Where there are no exceptions in a bill of lading, the carrier has the burden of explaining the cause of injury to the goods, which were received in good order. 303

### BONDS

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

The statement in a bond issued by a railroad company to raise money to construct its road that payment is guaranteed by a contract of lease with another company *held* binding upon the latter, where the statement was made at its request. 744

A creditor, receiving a negotiable bond from his debtor as security for a loan, without notice of his want of title, acquires a valid title to the same as against the true owner. 316

It is not a breach of a condition of a bond given to the United States for moneys to be advanced that the officer to whom the bond was given has accepted, but has not paid, orders drawn upon him by the persons to whom, by the terms of the condition, the advances were to be made. 1176

#### BOTTOMRY AND RESPONDENTIA

A case of necessity alone authorizes a master to pledge his vessel by giving a bottomry bond. 1339

The master cannot give a valid bottomry on the vessel for money borrowed for repairs, when the owners are present at the place where the repairs are made, or when he has funds of the owners for such purpose which he has not used. 1339

One part owner cannot take from the master a bottomry bond on the share of another part owner, for repairs done to the vessel. 1339

The owner of a ship may bottomry her abroad, without regard to the necessities of the ship or his inability to procure funds in other ways or the receipt of the consideration before the vessel went to sea. 1073

The credit of a bottomry lender given in aid of the vessel or owner in a foreign port is a sufficient consideration to support the bond. 1073

The holder of a bottomry bond given by the master as such, who is also owner, has the same rights and privileges as if the bond was given in the character of owner. 1073

A bottomry bond good in part and bad in part will be sustained by the court so far as it is good. 965

In case of extortion the court may moderate the premium. 965

In a suit in rem on a bottomry bond, underwriters to whom an abandonment is made, which has not been accepted, are not admissible as claimants. 965

The decree in bottomry is to consider the sum lent and the premium as a principal, and to allow common interest on that sum for the delay of payment after it is due. 965

The court will marshal the assets so as to make the proper priorities in favor of shippers, against the property of the owner and master. 965

Where a vessel is libeled and sold on a bottomry bond, the fund in court is not subject, as against the bondholder, to any claim for a general average loss subsequent to the date of the bond. 742

### BRIDGES

The establishment of a ferry is not an infringement of the exclusive right given by charter to maintain a bridge across a navigable stream. 1234

### CARRIER

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

Where a passenger's contract contains stipulations as to the manner of fitting up the vessel and the number of passengers to be carried, the passenger may consider it as broken on a failure to comply with any part. 935

An undertaking to carry a passenger in the steerage of a steamship from San Francisco to Portland includes the furnishing of the passenger with a berth, unless there is a fair understanding to the contrary. 812

The contract of passage by vessel entitles a female passenger to protection against all boisterous, obscene, or improper behavior. 236

Common carriers of passengers are bound to use extraordinary care and diligence, and are excused only by reason of force or pure accident. 812

Where boxes of tin are so stowed in the steerage room that the rolling of the vessel caused one to fall upon a steerage passenger sitting beside the pile, *held*, that the vessel was liable. 812

Where a vessel is discharging and taking on cargo at a wharf, a delivery of goods thereon, by the direction of the master, for transportation, is a delivery to such vessel, and her responsibility commences from that time. 760

A delivery to a vessel chartered by the agent of a steamer unable to reach her regular port to convey passengers and freight to her, is equivalent to a delivery to the steamer. 760

A person who obtained possession of a note by fraud changed its time of payment and, impersonating the maker, sent it by express to the payee bank for discount, and received through the express company the proceeds, addressed to the maker. *Held*, that the express company was not liable to the bank. 431

The carrier is not bound to part with the possession of the goods or to make actual delivery until freight is paid, though the goods must be first discharged from the vessel and an opportunity given to examine them. 724

Neither party can require of the other, as of right, that goods under one bill of lading shall be delivered in parcels, on the freight of such parcels being separately paid. 724

A common carrier is not, under all circumstances, entitled to know the contents of packages tendered for carriage, and a mere 1236

failure to ascertain whether the package contains anything dangerous, there being no reasonable ground for suspicion, does not of itself constitute negligence.

The carrier is wholly responsible for the seaworthiness of his boat and its fitness for the particular service in which it is employed. 349

A carrier is guilty of negligence in towing two loaded barges around a point where the channel is narrow and the water shallow, where one barge could have passed in safely. 349

Damage to ribbons from discoloring *held* caused by dampness when packed, where the various coverings were in perfect condition when delivered. 759

#### CHARTER PARTIES

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

Under a charter of a vessel from B. to New York, now loading at K., and "to proceed thence direct to load on this charter," *held*, that the charterer was not liable for delay caused by seizure by a military officer to perform necessary services for a military post. 728. 734

Lumber cargo furnished was "roughedged" instead of "re-sawn," as required by the charter. The master received it under protest, and provided in the bill of lading for freight "as per charter party, with additional claim as per protest." *Held*, that freight was payable in the same amount as would have been earned if the lumber had been re-sawn. 258

Where the owner mans and victuals the ship and is responsible for the conduct of the master, he has a lien for the cargo for freight, though it be a gross sum. \*1033

Where the charterer refused to load the ship on the return voyage, the master may take cargo \*1033



from others, which will be bound only for the freight agreed upon by the master, and not under the terms of the charter party.

A person who advances money to purchase a cargo under an agreement with the charterer that he shall have a lien thereon as security, the bills of lading being assigned to him, is the owner,\*1033 and the goods are not liable beyond the freight agreed by the master, irrespective of the terms of the charter party.

The vessel owners are answerable in damages for refusal of the master to stow all of the cargo in the hold, resulting in the inability of the vessel 1268 to carry the limit of passengers stipulated in the charter.

The measure of damages for failure of the vessel to proceed to the port of loading is the increased freight and charges which the charterer has been 512 obliged to pay to have the goods carried.

Loss of profits are allowed as damages only in exceptional cases. 512

### CHATTEL MORTGAGES

In Indiana a parol agreement that the mortgagor of a stock of goods shall have possession and sell them in the usual course of his business, 918 and apply the proceeds to the payment of the debt, does not render the mortgage fraudulent and void as to creditors.

A mortgage of a stock in trade to secure an antecedent debt is void as to creditors, where 468 not accompanied by possession, though it is duly recorded under Act Md. 1729, c. 8, § 5.

The district court in bankruptcy will follow the state decisions declaring a mortgage void as to 653 creditors becoming such between the giving and filing of the mortgage.

To defeat the title of the grantee in an absolute bill of sale third persons cannot avail themselves 523

of a collateral agreement between the parties by which the title is defeasible on certain conditions.

### CIVIL RIGHTS

A corporation is included within the word “person” in Act April 20, 1871. 393

### CLERK OF COURT

Clerk of circuit court of District of Columbia *held* not liable for the act of his deputy in making an erroneous indorsement on an execution. 1296

### COLLISION

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

#### Nature of liability—Contributive fault

A vessel wrongfully or carelessly placing herself in the course of another, so as to render collision inevitable, is liable therefor. 77

The inability of a steamer to reverse her engine at once where she is running at full speed is not a fault. 370

A deck hand on board a vessel cannot recover from another vessel damages for personal injuries received in a collision between the two vessels caused by the fault of his vessel. 366

The want of proper lights is immaterial where their absence did not occasion or contribute to the disaster. 366

#### Rules of navigation.

City ordinances concerning vessels are binding only as police regulations. They cannot change the demands of maritime law. 1059

#### Between sail vessels

A vessel sailing free attempted to pass so close to a vessel closehauled that a mistake of the latter in luffing caused the collision. The latter had no lookout. *Held*, that the damages should be divided. (Reversing 889.). 891

A vessel hove to and making both headway and leeway is a vessel closehauled. 736

Where a vessel sailing free alleges that the collision with a vessel closehauled was caused by the fault of the latter in changing her course, she has the burden of establishing such fact. 889

**Between steam and sail**

Steamers are bound to give way to sailing vessels when practicable, but are not required to insure the latter against their own negligence or misconduct. 77

A sail vessel navigating near a steamer must take all reasonable precaution to protect herself and avoid injuring the steamer. She cannot impose on the steamer the duty of guarantying her against collision. 45

A sail vessel going free on meeting a steamer must keep her course. The steamer may take such reasonable course as she chooses to avoid the collision. 884

A steamer well be *held* liable for an erroneous change of helm in ignorance of the true course and position of an approaching vessel, where she failed to slacken or to stop and reverse to ascertain such position. 351

A sailing vessel suing a steamer must show that the collision was not produced by her own fault,—particularly that she did not change her course without clear necessity. 77

Where the circumstances of a collision between steamer and sail indicate great negligence somewhere, the presumption is that it was the steamer's, it being her duty to keep out of the way. 105

A steamer running 17 miles an hour colliding with a schooner closehauled which displayed the regulation lights is presumably at fault. 351

**Between steam vessels**

Where a steamer coming from behind a tug and tow must necessarily cross their course, and chooses to do so in front instead of behind them, and a collision results, the burden is on her to excuse herself. 120

Where two steamers on the same route are rounding the same point, they cannot be considered crossing courses where the faster boat attempts to cross the bows of the other. 564. 562.

#### **Overtaking vessels**

The overtaking vessel must select a time and place in which she can safely pass, if the other does nothing to thwart her endeavor. 564

An overtaking steamer passing a tug and tow at the entrance of the East river is bound to guard against the known effects of the tide. 120

#### **Vessels moored, etc**

A vessel lying at a wharf in the Chicago river which allows her anchor to hang at the hawse pipe with its flukes below the surface, where it sinks a colliding boat, will be *held* at fault, irrespective of the city ordinances. 1059

#### **Tugs and tows**

A tug is chargeable with fault in having a towing cleat so loose as to require her to stop and ease it on passing other steamers. 370

The tow will be *held* liable for a collision where the tug is the agent of the boats and a collision is caused by her being overtaken. 1059

#### **River and harbor navigation**

A large ocean steamer leaving a narrow slip crowded with other craft by using her own propeller must use the utmost care and maintain adequate lookouts and complete control over her movements. If this is impracticable she must employ a tug. 17

An alleged custom of steamers coming down the East river above Corlear's Hook with the ebb 164

tide to keep off and allow steamers ascending on the New York shore the benefit of the eddies *held* not established.

**Speed: Fogs**

A contract with the government to carry mails within certain times will not justify a highly dangerous rate of speed. 351

A steamer approaching another on a crossing course has a right to presume that the latter will keep on, if she has the right of way and is not in fault in running at full speed. 370

A speed of eight knots an hour on meeting a sailing vessel beating through a narrow channel 300 feet wide is excessive. 366

A speed of 17 miles an hour in a track frequented by sail vessels, in a fog so thick that a vessel cannot be seen in time to be avoided, is conclusive evidence of fault. 351

**Lights: Signals, etc**

A whale ship which had been twice refitted at San Francisco after Act April 29, 1864, was passed, *held* in fault for not carrying colored lights, though her master never heard of the act. 736

A vessel having the right of way in the nighttime, and not having the statute lights, is presumed to be in fault in respect to a collision with a vessel that should have seen her and given way. 736

The vessel bound to give way is likewise in fault if by diligence and attention her lookout might have discovered the vessel that had not proper lights. 736

A sailing vessel discovering a steamer approaching at night will be *held* in fault for a collision if she does not exhibit a light. 1184

A schooner pilot boat, when off pilot ground, is subject to the provision of Rev. St. § 4234, requiring sailing vessels to show a torch to an approaching steamer. 108

A steamer must exhibit proper lights to a sailing vessel in order to charge the latter with fault for not showing a lighted torch. 108

**Lookouts, officers, etc**

The officer in charge of the navigation of a vessel is not a competent lookout. 351. 1184

The pilot house is not a proper place for a lookout. 351. 1184

The absence of a competent lookout casts the burden upon the vessel of showing that it did not contribute to the collision. 351

**Particular instances of collision**

Between steamer going up the East river on the New York side and steamer coming down, where the former was *held* in fault for failure to port her helm. 164

Between steamer with a proper lookout and schooner having no proper green light, where the former was *held* not in fault for the results of maneuvers which seemed proper at the time. 108

Between steamer and schooner which changed her course only in extremis, where the former was *held* solely in fault, having no lookout but the quartermaster at the wheel, in the pilot house. 105

Between steamer in the East river and schooner, immediately after going about, which was *held* in fault for not beating out her tack. 1

Between schooner sailing free and steamer, at night, where the latter was *held* solely in fault for not keeping out of the way. 554

Between steamer and schooner, where the former was *held* in fault for attempting to pass between the injured vessel and another vessel. 643

Between steamer and schooner in New York Bay, where the former was *held* in fault for attempting to cross the schooner's bows, and the 461

luffing of the schooner was *held* to be a fault in extremis.

Between two steamers approaching nearly end on, where both were *held* in fault, one for starboarding instead of stopping and backing, and the other for defective screens to her lights. 381

Between rival steamers making same dock from opposite courses, where one was *held* in fault for not sooner checking her headway. 362

Between ferry and tow of tug on crossing courses, where the latter, having the right of way, was *held* in fault for stopping to ease up on a loose cleat. 370

Between Long Island Sound steamers rounding the Battery, where the one which left her pier first was considered the overtaking steamer by reason of the longer course taken by her. 564

Between schooner anchored in North river about 100 yards from the dock at Thirteenth street, New York, without lookout, and tow landing at dock, where former was *held* in fault for anchoring in such place. 683

Between vessel at anchor and vessel getting under way, where both were *held* liable, the former for failure to have a watch, and the latter for not notifying the former of her intention. 717

Between a steamer backing across a ferry slip below the end of her pier and a ferryboat coming into the slip, where both were *held* in fault, the former for want of a lookout, and the latter for not stopping when danger was apparent. 1293

A bark *held* not in fault where a canal boat moored beside her was sunk by coming in contact with her fender. 136

### Procedure

The testimony of persons on board a vessel as to whether she was well managed is entitled to more weight than that of witnesses on board 366

another vessel who had no particular opportunities to judge of the matter.

Loose declarations or admissions by members of the crew immediately after collision are entitled to but little weight as against their deliberate testimony. 77

Libel dismissed where libelant omitted to call a material witness and the witness testifying in his behalf made statements manifestly incorrect. 135

**Rule of damages**

The measure of damages is compensation for the entire loss. If the injury is reparable the measure is the sum necessary to restore the vessel to her previous condition. In case of total loss market price is the criterion. 81

Market value as proved cannot be reduced by showing that the actual value is less because of age or imperfect build. 81

The value of a vessel is not necessarily her purchase price with repairs added. 386

The loss of a vessel abandoned under a reasonable apprehension that the lives of the crew would be endangered by trying to save her will be assessed as a total loss, though the other vessel similarly damaged was saved. 736

Where the injured vessel is left helpless in the track of navigation and is injured by a passing vessel, the vessel in fault for the first collision is liable for damages for the second collision. 644

The measure of damages for cargo lost in a collision is its value at the port of shipment, with expenses of lading and transportation to the place of collision, with interest from the time of collision. 555.

Damages are recoverable for the necessary detention of the vessel while undergoing repairs, where it appears that the vessel could have been profitably chartered or employed. 380



Interest is allowable on the cost of repairs from the time when payment therefor was actually made. 380

Mode of arriving at value of vessel sunk by a collision. 386

The owner of a vessel whose cargo is damaged by collision cannot sue for the damage in his own name, unless he has paid the same or become liable to pay it. 81

#### **Division of damages**

Where both vessels are in fault the damages and costs are divided. 717

#### **Compositions**

See "Bankruptcy."

#### **CONFLICT OF LAWS**

The rule that a contract shall be judged by the law of the place in which it is made is not applicable to real estate, which can be conveyed only according to the law of the place in which it is situated. 403

A promissory note made in Oregon and payable in Scotland is to be considered as if made in Scotland, and a mortgage upon real estate in Oregon to secure its payment is to be tested by the laws of Oregon. 763. 764

#### **CONGRESS**

Attendance upon congress as a member of that body does not confer such privilege as to entitle a party to postponement of a trial as of right. 296

The senate may punish for contempts of its authority in cases of which it has jurisdiction. 471

An inquiry by the senate as to the violation of a rule of secrecy in relation to pending treaties is within its jurisdiction, and it may punish for contempt of such rule. 471

The senate has a right to hold secret sessions whenever in its judgment the proceedings shall require secrecy, and may pronounce judgment in 471

secret session for a contempt which took place in secret session.

A commitment for contempt by the senate or house of representatives cannot be inquired into by any other body or court, either by habeas corpus or otherwise. 471

The warrant of commitment need not set forth the particular facts which constitute the alleged contempt. 471

### CONSTITUTIONAL LAW

A state statute abolishing the writ of fi. fa. to enforce judgments against a particular city, and limiting the judgment to fixing the amount of the demand, impairs the obligation of previous contracts and is inoperative as to them. 114

A state statute levying a uniform tax of 10 cents per acre per annum on all lands in certain counties for levee purposes, and directing a sale without notice of all lands on which the tax was not paid by a certain day, *held* not unconstitutional. 792

The power to regulate commerce among the several states is paramount in the federal government, and cannot be restricted by a state. 1026

The assessment of a vessel owned in a city, by the city assessor, for city taxes, is not a "duty of tonnage" within the meaning of Const. U. S. art. 1, § 10, cl. 1. 342

### Contempt

See "Congress."

### CONTINUANCE

In cases pending under Act March 3, 1851, the court will extend some indulgence to the district attorney to give him reasonable time to prepare for trial. 1045

The fact that the circuit and district courts are simultaneously in session is not sufficient cause for the continuance of a land case. 1046

Supplemental affidavits will not be received on a motion for a continuance. 458

The party obtaining a continuance must pay the costs of the term. 1336

## CONTRACTS

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

A promise, in writing, made under a supposed previous legal liability which did not exist, is void for want of consideration. 606

An agreement between part owners of a patent that the patented device should not be sold for less than a certain profit is not void as in restraint of trade. 1198

A contract lawful when made, whose performance is subsequently made unlawful, must be considered as at an end, without prejudice to either party. 583

Where a subsequent contract expressly rescinds a prior agreement, the rescission of the subsequent contract does not revive the earlier one. 515

The nature, validity, and construction of contracts are governed by the *lex loci*: but the form of action, the course of judicial proceedings, and the time for commencing the action, by the *lex fori*. 234

An instrument cannot be construed with reference to a foreign statute, unless the intent of the parties to be governed by such statute is evident from the instrument itself without the aid of extrinsic evidence. 1090

One not a party to a written instrument, but who is the person to be benefited by the performance of its stipulations, *held* entitled to maintain an action against the promisor thereon. 744

Delay in performing the contract to raise a vessel gives no ground of action when due to the 146

breaking of a bulkhead in the dry dock used, unless the delay is unreasonable.

The defense that the contract is void as against public policy is available under a plea of the general issue. 863

### COPYRIGHT

The title of a copyrighted publication, separate from the publication which it is used to designate, is not within the protection of the copyright. 871

The purchaser on an unconditional sale of an uncopyrighted painting has a right to reproduce the same by chromo, lithograph, etc., without obtaining the consent of the author. 1273

An author who renews the copyright for his own benefit cannot sue for infringement one who originally published the work under an agreement with him that he should have the copyright forever. 1001

A bill to restrain the infringement of a copyright which does not allege the performance of the acts required to be performed by the author to obtain a copyright (Rev. St § 4956) is insufficient. 1211

### CORPORATIONS

See, also, "Banks and Banking"; "Counties"; "Insurance"; "Marine Insurance"; "Municipal Corporations"; "Railroad Companies"; "Receivers."

An unrestricted charter power to make a grant or concession enables the corporation to make it on conditions. 142

A corporation can waive a right and can be estopped from saying that it has not waived it. 59

If it is necessary on paying money to a corporation to give it notice of the purpose of the payment, the giving of such notice to its treasurer and managing agent at its office is sufficient. 59

A corporation cannot be called to account by stockholders or creditors for an error of judgment in choosing between remedies deemed equally effective. 42

A court of equity will enjoin the unlawful use of the name of one corporation by another. 38. 42

A bondholder of a corporation, having a lien on its lands, may sue to enjoin another corporation from using the corporate name to wrongfully obtain such lands. 38. 42

A stockholder or creditor cannot maintain a suit for injury to the corporate rights, unless the bill shows that the corporation refused to protect or redress the same. 42

An agreement by a corporation to prefer its bondholders in the disposition of one-half the proceeds of its lands, which may be sold before the bonds are due, gives the bondholders no lien on them. 38

A corporation of another state may, on the ground of comity, hold lands taken in payment of, or as security for, a debt. 151

A foreign corporation has the right to hold and occupy, as lessee or otherwise, such property as is necessary or convenient for the transaction of its business. 362

A statute provision requiring foreign corporations to file a copy of their charters within 30 days after commencing business, and providing a penalty against the officers for failure so to do, does not make such filing a condition to continuing business. 403

A contract of loan by a foreign corporation with an inhabitant of Oregon, made through a resident agent, subject to approval at the home office, is made in Oregon, and is void if the corporation has not complied with the state laws in relation to doing business therein. 763

A corporation can be sued only in the state where its business is done. 358

### COSTS

A plea of set-off is not an action within the Arkansas administration laws, so as to deprive a party of costs. 1291

Where plaintiffs, suing as executors, dismiss their bill because not competent to sue as such in the jurisdiction, a lawyer's fee will be taxed against them. 1323 1367

Failure to tender an amount of freight admitted to be due gives libelant a right to costs, though no more is recovered. 264

On a libel in rem against cargo for freight and demurrage, where freight was previously offered and was paid into court after suit brought, where libelant fails to recover demurrage, he is liable for costs. 708

A factor setting up title to proceeds in admiralty as general owner, where he has in equity merely a lien, will be denied costs. 969

The indorser of a note is liable for costs in an action against him, where the maker paid the note after suit brought. 910

In a suit for infringement of a patent, the expenses of making or procuring models cannot be included among the taxable costs, nor can they be classed as "exemplifications" under Act Feb. 26, 1853. 1115

Both before and since the act of February 26, 1853, in the First circuit the prevailing party has been allowed for travel and attendance. 186

Where both parties appeal, and the decree is affirmed, no costs of appeal will be allowed to either. 1184

Security for costs cannot be given in the clerk's office. 606

### Counties

See "Municipal Corporations"; "Railroad Companies."

## COURTS

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

### Comparative authority of federal and state courts: Process

Where the jurisdiction of courts over a subject-matter is concurrent, that tribunal which is first in possession of jurisdiction exercises it, to the exclusion of all others. 1263

The United States court has jurisdiction as a court of equity, concurrent with the orphans' court, to compel an executor to settle his accounts and give security, but it cannot interfere with a suit already begun in the orphans' court for the same purpose. 1186

In a suit in the federal court brought by aliens, for the construction of a will, an injunction was issued to restrain the executor from distributing the estate. 1186

The jurisdiction of a federal court is not affected by the fact that a party has acquired property for the express purpose of maintaining suit therein. 42

### Federal courts—Grounds of jurisdiction

The federal court has jurisdiction of a bill filed by defendant in a judgment rendered therein against an assignee of plaintiff, to set aside such judgment for fraud, though both parties are citizens of the same state. 523

A bill will lie in the circuit court to enjoin enforcement of a fraudulent judgment obtained by an assignee in bankruptcy against an alleged debtor of the bankrupt, though all parties are citizens of the same state. 469

The fact that a state statute has provided a remedy at law against a fraudulent judgment does not preclude the judgment debtor from a 469

resort to the equity courts of the United States for relief against it.

An alien may sue in a federal court for the construction of a will, and, as incidental thereto, 1186 the settlement and distribution of the estate.

It seems that a bill for specific performance of a contract to convey a patent for an invention is not a case “arising under the laws of the United States.”. 2

The federal courts have no power to effect a constructive service of process on nonresidents. 1257

The voluntary appearance of nonresident defendants who are citizens of the same state with complainants will not give the court jurisdiction. 1257

A bill charging one of several defendants with failure to perform his contract to transfer a patent; and alleging that the other defendants, knowing this fact, bought machines of him, states a severable cause of action and is maintainable against him, where there is diversity of citizenship, though some of the other defendants are citizens of the same state with plaintiff. 2

Where a corporation of another state sues in a federal court, an allegation of its citizenship is not necessary. 141

A person having an interest, though not a party to the suit, may intervene to assert his rights, without reference to the citizenship of the parties. 844

Nonresident stockholders of a resident corporation may sue in the circuit court to restrain the collection of an illegal taxation of 1010 their stock by the state, making the corporation defendant.

Though under the state law there must be a judicial decree before land can be sold for taxes, 672



a nonresident may sue in the federal court to restrain the collection of an illegal tax.

The federal court has no jurisdiction of an action against the maker of a promissory note made payable to one who indorsed the same for his accommodation, where such facts appear from the complaint, unless it appear that the indorser is a citizen of a state other than that of defendant's residence. 292

The fact that the title was acquired for the purpose of enabling plaintiff to bring the suit is no objection to the jurisdiction. 858

—Circuit courts

The circuit courts do not have exclusive jurisdiction of actions against national banks under Rev. St. § 5198. 118

The federal circuit court has no jurisdiction of a suit by a state against one of its own citizens. 347

The circuit court in Indiana has no jurisdiction over a corporation of Michigan, and the circuit court in the latter state would have no jurisdiction to restrain a right respecting a title to land set up under authority of the state of Indiana. 358

—District courts

The jurisdiction of the district court in cases of marine insurance is not exclusive. 66

Under a libel in personam to recover damages for collision, no jurisdiction can be obtained over a nonresident of the district by means of an attachment against his property. 64

The supreme court acquired no power to change, by its rules, the jurisdiction of the federal courts in respect to nonresidents of the district, by virtue either of the act of 1792 or that of 1842. 64

The district court, when sitting as a court of bankruptcy, should not decline jurisdiction of a case within its jurisdiction, as such, on the 317

ground that the claim might have been presented in the district or circuit court sitting in equity.

The district court in equity has no jurisdiction over a citizen of another state, neither found within nor having property within the district, 1006 to relieve from a preference in fraud of the bankrupt act at the suit of an assignee in bankruptcy appointed in the district. 1368

The recovery of a judgment in the state court and its collection in fraud of the bankrupt act will not give the court jurisdiction upon service of process upon the attorney in such suit. 1006

#### —Administration, of state laws

The construction placed upon a state statute by its highest judicial tribunal will be followed by the federal circuit court. 637. 1011

A federal court will follow a state decision as to the validity or construction of a state statute not in conflict with the constitution or laws of the United States, though such decision is contrary to a prior decision of the federal court itself. 8

State statutes govern in the federal courts when they fix the right or title in litigation, but are not allowed to interfere with the processes or modes of procedure of the federal courts. 69

The local law in respect to real estate, whether statutory or established by judicial decisions, governs in the federal courts. 98

The federal courts are not bound to follow the construction put upon a state statute by an inferior state court. 1284

#### Territorial courts

A territorial court, being a court of the United States, is to be regarded as co-ordinate with the courts organized under the constitution. 894

### CREDITORS' BILL

The pendency of a general creditors' bill in a state court, accompanied by the usual orders of 1255

injunction, where the suit is merely for obtaining judgment, will not prevent a creditor who is not a party from suing defendant in the federal court.

### CRIMINAL LAW

See, also, "Bail"; "Extradition"; "Witness."

A territorial court is a United States court within the meaning of Act May 12, 1864, relating to imprisonment. 894

In cases of imprisonment under Act May 12, 1864, § 1, no special process of commitment is necessary. 894

### CUSTOM AND USAGE

A local custom is established only by such general knowledge and recognition as to raise a presumption that the parties contracted in silent reference thereto. 1084

### CUSTOMS DUTIES

#### Customs laws

Construction of reciprocity treaty of 1854 with Great Britain. 707

Where but one permit to land the baggage of all the passengers on a vessel is granted, but one fee can be charged, and the exaction of a fee for every five passengers, though customary, is illegal, and may be recovered back. 613

#### Invoice: Entry: Appraisal

Under the act of 1799 a foreign manufacturer might invoice goods made by him at the actual cost of the raw material, the value of labor employed, and the expense of transportation to the port of shipment. 266

A commission must in all cases be added to the invoice value, though none is in fact paid and the importers of such article do not customarily pay any commission. (Act Aug. 30, 1842.). 301

#### Payment: Protest

No written protest against the illegal exaction of fees for permits for landing baggage of 613

passengers is necessary to entitle the vessel owner to recover it back.

An objection in a protest on tie payment of duties on commission that the merchant “pays no such commission” *held* insufficient. 301

#### **Actions for duties paid**

The merchant, in his suit to recover duties paid under protest, must be confined to such grounds of objection to the payment thereof as his protest contains. 301

#### **Violation of law: Forfeiture**

A forfeiture is incurred if either a false manifest is presented, or if none is presented immediately on the arrival of the vessel. (Act March 2, 1821, § 1.) The customs officer has no power to waive the requirement of the law. 707

On an information for forfeiture for undervaluation, the importer may show the selling price at the place of importation and the market price at the Place of manufacture. 709

The opinion of the appraisers as to the foreign cost or market value is only *prima facie* evidence. 709

The weight of an affidavit of value, annexed to the invoice as required by law, is for the jury. 709

#### **Bonding: Warehousing**

A charge for half storage cannot be made against an importer for keeping goods in his own vessel under the entry “Vessel as warehouse.”. 607

#### **Customs officers**

A collector is personally liable for the illegal acts of his deputy in exacting fees not authorized by law, though he has paid them over to the government. 613

### **DAMAGES**

See, also, “Collision.”

Disfigurement of the person caused by an injury is a proper subject of damages, but in estimating 812

them it is proper to consider the condition and circumstances of the party disfigured.

### DEED

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

In Tennessee registration of the deed is necessary to pass the legal estate to the grantee. 1341 1336.

such registration vests the legal estate in the grantee as of the date of the deed, and relates 1337 back to that time.

Where a deed excepted from its operation a parcel conveyed by another deed, the exception is not void for uncertainty, if the parcel in the 420 deed mentioned is described with definite boundaries.

An act required deeds to be recorded by the register of probate, but by a subsequent law the records were transferred to the register of deeds. 151 *Held*, that the latter was the proper person to certify copies.

The execution of a deed can only be proved by the subscribing witnesses. To prove the execution by authentication before a judge, his 1336 certificate must show where and in what capacity he acted.

### DEMURRAGE

Delay of a chartered vessel in arriving because she was not at the port where she was represented to be in the charter party excuses the charterer from liability for demurrage for time 205 lost in loading, which would not have been lost 1369 if she had proceeded promptly from the port named.

Where a vessel was chartered to carry coal from the charterer's mines, with lay days "as customary in loading," cargo to be "received as customary," 205 and the vessel, according to the custom, waited

her turn at the charterer's dock, but was further detained by his delay to furnish coal for the preceding vessels, *held*, that he was liable for the latter delay.

The owner of the cargo *held* not liable for the delay of the boat in waiting her regular turn at the wharf for unloading. 706

### DEPOSITION

A party taking out a commission to take evidence in relation to pedigree is not bound to name the witnesses he intends to examine. 1153

Where an application was made for a commission to examine a witness in the East Indies, it appearing that no one was known who could be named as commissioner except the wife of the witness, she was named as commissioner. 435

A magistrate who is a partner of the active counsel of a party to a patent-interference proceeding is incompetent to take depositions therein. 194

A deposition taken before the mayor of a city who usually certifies his acts under his official seal must be so certified, or his authority otherwise proved. 1347

It is no objection to a deposition taken by *dedimus* that it is in the handwriting of counsel for the opposite party. 182

Where a motion to suppress a deposition as taken after publication had passed was not pressed on counsel's consenting to strike out certain interrogatories, *held*, that such a motion would not prevail at final hearing. 1306

The circuit court of the District of Columbia will not permit a deposition taken *de bene esse* to be read, if the witness resides within 100 miles, although out of the District. 1108

A deposition taken and filed by the defendant may be read in evidence by the plaintiff, upon 1108

proof that the witness is beyond the jurisdiction of the court.

In a joint action against two, the defendant served was the only one named in the caption of a deposition. *Held*, that it was admissible against the other, who was subsequently served. 1084

#### DISTRICT ATTORNEYS

District attorneys are not entitled to commissions upon the amount of recovery obtained by them in favor of the United States, but only upon the amount collected or realized. (Act March 3, 1863, § 11.). 943

Amount allowed district attorney for attending an examination to procure remission of a forfeiture under Act March 2, 1799, § 50. 943

#### DISTRICT OF COLUMBIA

The commissioners were authorized to sell the public lots in Washington, D. C, in April, 1797. 692  
A certificate in fee from the commissioners of Washington is not evidence of possession. 694

#### DOWER

Dower will be assigned in equity, where there has been a parol partition by tenants in common, and damages will be awarded from the time of the demand, if the husband died seised. 495

#### EJECTMENT

Plaintiff may recover less but not more than he declares for. 1337

In ejectment for a lot in Washington, D. C., it is not necessary to show a grant from the state of Maryland. 692

It may be shown, to defeat a title under a patent from the government, that the government did not possess the title at the time of the grant. 1331

Where plaintiff claims under an adverse possession, but does not set out the statute or the nature of his title, defendant may show that 1041

he is within an exception of the statute without pleading it.

### EMBARGO AND NONINTER-COURSE

By Act March 1, 1809, c. 91, § 19, and Act June 28, 1809, c. 9, § 2, the embargo acts were as to 830 future cases repealed.

The president's proclamation of August 9, 1809, was without legal operation, and did not revive 830 the nonintercourse act of March 1, 1809, c. 91.

Construction of acts of April 18, 1818, May 15, 1820, and March 1, 1823, interdicting trade in 755 British vessels.

An embargo does not render the performance of a contract, the execution of which it prevents, 583 unlawful, but only suspends its execution.

A forfeiture of a vessel imposed by the embargo laws cannot be enforced after she has arrived within the jurisdiction of a foreign power. The 1179 remedy then is for the penalty of double the value of vessel and cargo.

### EMINENT DOMAIN

The legislature may constitutionally authorize the fee of private property to be taken for a boom, to be built and operated by an incorporated 1328 company over which, and its charges, legislative control is reserved.

Measure of damages for property appropriated 1328 for boom purposes.

### EQUITY

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

Equity has jurisdiction to restrain an act as a nuisance only where complainant's right is clear, and there is danger of irreparable injury, or 1181 where the injunction is necessary to prevent multiplicity of suits or suppress interminable or oppressive litigation.



While equity will not interpose in behalf of parties in particeps criminis, it will interpose to recover the property of one on behalf of his creditors. 577

If a policy when drawn and received does not correctly express a previously concluded agreement for insurance, which it was designed by both parties to execute, equity will reform it, though the mistake arose from ignorance of law. 664

If an agent in effecting insurance declared the interest in a wrong person through fraudulent design, equity will not relieve the principal; otherwise, where there was an honest mistake. 664

Equity has power to reform and cancel an insurance policy issued by mistake for a greater length of time than was intended by the parties. 340

A suit in equity may be maintained on an insurance policy in which several parties claim adverse interests. 47

A bill will not lie to restrain an execution issued on a judgment at law, on grounds which might have been urged as a defense at law. 111

### ESTATES

A tenant for life of real estate is bound, as between himself and the reversioner, to pay taxes thereon, and he cannot set up against the latter a title under a tax sale for taxes due during his tenancy. 1300

An owner of the reversion to real estate cannot recover in ejectment upon the ground that the owner of the life estate has forfeited his estate by the commission of waste. 1300

By the law of New York (1 Rev. St. p. 739. § 145) a tenant for life does not, by conveying in fee, forfeit his life estate. 1300

The vested estates interests, and rights saved by 1 Rev. St N. Y. p. 750, § 11, are such as vested by a forfeiture incurred before the statute took 1300

effect and a conveyance in fee made by a tenant for life after the statute took effect does not work a forfeiture of his life estate.

### ESTOPPEL

The owner of an undivided interest in a patent by an agreement with the patentee to discontinue manufacturing the patented machine for a share 1198 in the profits to be made by the patentee, *held* estopped to contest the validity of the patent.

### EVIDENCE

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

#### Presumptions: Burden of proof

The legal presumption is that every one is of sound mind, until the contrary is affirmatively 247 proved.

#### Best and secondary

Plaintiff cannot give evidence of defendant's acknowledgment of the receipt of goods mentioned in an account, delivered to defendant, 182 without first giving notice to produce the account.

The affidavit of the party is sufficient to prove 182 loss of papers so as to admit secondary evidence.

Secondary evidence may be given of the contents of a note which had been placed in the hands of an attorney for collection and could not be found 1305 on diligent search after his death.

#### Declarations and admissions

The declarations of the assignor, made after the assignment of a chose in action, will not be 1026 received to defeat the action brought in his name.

Evidence of a statement made by defendant to a witness, of the contents of a letter of the 1003 defendant, not called for, is competent.

A paper sworn to and filed by an officer of a corporation is competent evidence against it but 773 is not conclusive.

On an issue as to whether a person whose life was insured died by his own hand, declarations of a third person, since deceased, were admitted. 133

### **Opinions**

Mere opinions of physicians that ill health subsequent to an injury was caused by it are to be received with caution. 183

### **Documentary**

A certified copy of the record of an instrument which is required by law to be recorded is evidence. The keeper of the records is the proper person to certify. 151

A copy, from the records, of a deed of personal property, which derives no validity from being recorded, is not competent evidence. 821

Letters acknowledging in general terms a balance due are not admissible to verify an account which is itself inadmissible. 926

An account taken from the books of a merchant's clerk, who is dead, is not admissible in an action thereon, unless such books were original books of entry kept by the clerk, who could have proved, if living, the items; and his handwriting must be proved. 926

### **Parol evidence**

In an action by the assignee of a bond against the assignor upon a written assignment, plaintiff cannot show a parol guaranty of payment. 628

### **EXCEPTIONS, BILL OF**

Exceptions to be incorporated in a bill should be so taken and notified at the trial. If this is done, the court may allow them to be subsequently reduced to form and filed nunc pro tunc. 231

### **EXECUTION**

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

After judgment rendered on a prison-bonds bond, defendant may be taken in custody on the 921

original ca. sa., after the expiration of a year from the date of the bond.

Exemplification of records of Maryland and Virginia for purposes of obtaining executions 1234 under Act Feb. 27, 1801, § 13.

A sheriff who has made a valid levy on property subsequently wrongfully removal by another may take forcible possession of it, wherever he finds it. 1231

The person executing a bond of indemnity to the sheriff is a trespasser if the act of the sheriff be illegal. 1231

A sale by a marshal after his removal from office under a levy made before such removal will be set aside, though the marshal had no notice of his removal. 920

#### EXECUTORS AND ADMINISTRATORS

Letters of administration with the will annexed, granted in the District of Columbia while there was an executor acting under letters testamentary granted in Maryland, are void. 1346

An executor's compensation is, within the limits of 5 and 10 per cent, on the inventory, a matter lying within the discretion of the judge of the orphans' court. 180

The executor or administrator cannot be allowed for board and clothing of infant heirs. 1330

Executor *held* chargeable, on the balance found due, only from the date of the decree, where he acted in good faith but misapprehended his duty. 311

Where a suit for an accounting was rendered necessary, the executor is chargeable with costs, though complainant's demand was greatly reduced. 311 1371

A claim by the executor as a creditor of the estate cannot be controverted by other creditors before the orphans' cour. 180

The creditors of an insolvent estate are entitled to contest the settlement of the executor's account before the orphans' court, and to appeal from its decision. 180

A sale of lands in Ohio by an administrator, to pay debts, under order of the proper court, will not be set aside, as against innocent purchasers, after 30 years, merely because the heirs and devisees were infant. 126

Notice must be given to heirs where their interests are to be affected by a proceeding. 1330

If a suit is brought originally against an administrator, and he die pendente lite, the administrator de bonis non may be compelled to appear to defend the sui. 921

An heir may sue out a writ of error to reverse a judgment rendered by the circuit court against the estate in favor of the executor. 1330

A judgment against executors in Indiana does not authorize an execution against the lands of the deceased. 522

Act Md. 1798, c. 101, giving preferences to judgment creditors does not embrace foreign judgments. 430

The legatee is entitled to the profits made on an unlawful investment of the legacy by the executor in bank stock. 311

An executor invested a legacy in bank stock and when called upon for its amount sold the stock and paid over the proceeds. *Held*, that the executor was not liable for conversion in selling the stock. 311

### EXEMPTIONS

See, also, "Bankruptcy."

In Indiana a judgment for the costs of the opposite party is not a debt growing out of a contract, express or implied, and as against such costs the statute does not allow exemptions. 924

## EXTRADITION

A fugitive extradited from another state may be held for trial, even if the arrest under the rendition proceedings was without legal authority. 84

The lowest grade of inexcusable homicide is within the generic term "murder," as used in the treaty of 1842 with Great Britain, and the tribunal where the fugitive is found will not inquire into the grade of guilt. 1016

Where a judge had ordered a warrant of extradition to issue, the secretary of state, upon a review of the case, refused to issue the warrant, and the accused was discharged. 1016

## FACTORS AND BROKERS

See, also, "Principal and Agent."

A consignee, by the terms of his agency, may be the agent of the consignor until the consigned goods are sold, and when they are sold become, as between him and the consignor, the purchaser of and principal debtor for the goods sold. 497

In the absence of an agreement or instructions, or an established usage to insure the principal's goods, the factor is not required to insure them. 592

A parol agreement by a factor to see to his own insurance will not render him liable for the loss of the principal's goods by fire where they were not insured. 592

If a consignee writes a letter to his consignor and fully informs him what he has done, the silence of the consignor, after a reasonable time, is an approval of his conduct. 318

In making the disclosure the consignee is not bound to relate facts of a general nature which he may reasonably presume the consignor has knowledge of. 318

The owner's right to dispose of property shipped to a factor under a general consignment as 969

security for advances, commissions, and expenses, is subject only to the factor's lien therefor.

A factor accepting a bill drawn against a consignment of goods already placed in the hands of a third person to be delivered to him, 6  
has a property in the goods, and may replevin them from an attaching creditor of the consignor.

#### FALSE IMPRISONMENT

See, also, "Malicious Prosecution."

The action will not lie where the affidavit on which plaintiff's arrest was procured was 307  
sufficient on its face.

In an action for false imprisonment, the question of probable cause is only material in mitigation 307  
of damages.

#### FERRY

See, also, "Bridges."

An exclusive ferry franchise granted by charter in 1730 *held* not infringed by the use of a 137  
ferryboat for transporting railroad cars only.

#### FISHERIES.

The mackerel fishery and the cod fishery are "trades," for which the vessel must procure a 509  
license, under Act 1793, c. 8, § 32. 506.

Since Act 1828, c. 119, the mackerel fishery cannot be lawfully carried on under a license for 509  
the cod fishery, in pursuance of Act 1793, c. 8, §32. 506.

A vessel licensed for the fisheries does not violate Rev. St. § 4337, by touching at a foreign 558  
port for supplies on the way to the fishing grounds.

The preparation of a vessel with intent to employ her in seal fisheries in violation of Rev. St. § 558  
1956, is not an offense unless seals are actually killed.

#### FORCIBLE ENTRY AND DETAINER

Quære: whether the circuit court, after setting aside on certiorari the proceedings in a case of forcible entry and detainer, could order a trial de novo. 224

### FORFEITURE

See, also, "Customs Duties"; "Fisheries"; "Informers"; "Internal Revenue"; "Shipping."

The place of seizure, and not the place of committing the offense, gives the court jurisdiction in cases of forfeiture in rem. 572

The collector must restore the property to the petitioner without order of court, where the secretary of the treasury remits the forfeiture under Act March 3, 1797, § 13, before the libel or information is filed; otherwise, where the remission is made after the proceedings are commenced. 1062

The secretary may revoke the warrant of remission after it has been communicated to the claimant and until the property is actually delivered. 1062

But where the remission is on condition, the secretary cannot revoke the remission after the condition is performed; and a revocation is not operative until the claimant has notice thereof. 1062

### FRAUDS, STATUTE OF

The statute of frauds, which requires that a declaration of trust of lands should be in writing, can be pleaded only by him who has the legal estate and is sought to be charged with the trust. 695

### FRAUDULENT CONVEYANCES

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

If the parties to a sale and purchase of property intend thereby to defraud creditors, the fact that a full consideration was paid will not make it valid. 1231



Where a purchaser has notice before obtaining possession and paying the consideration that the transfer is fraudulent, the contract will be set aside at intervention of the creditors of the seller. 1231

### GARNISHMENT

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

A garnishee who received the goods of the defendant under a deed of trust fraudulent in law as to some of the creditors, if he acted bona fide is entitled to a reasonable compensation for taking care of the goods and selling them. 467

### GIFTS

Under an act "for the relief of the widow and 'children of" H., by which moneys were directed to be paid to them, *Held*, that such moneys were not a trust for the creditors of H. 616

### GRANT

See, also, "Public Lands."

The oldest grant is evidence of title at law, and can only be defeated by producing an older entry coupled with a grant. 1337

The power of the Mexican government to grant lands in California did not cease until the actual conquest of the country; and rights under grants made during the war will be respected, and are not affected by treaty stipulations. 1047

Construction of the statute of limitations of California in relation to Mexican titles and land grants. 1041

A grant made by an alcaide of San Francisco after the transfer of California to the United States is a Mexican title, within the meaning of the proviso to section 6 of the California statute of limitations. 1041

A claim to a Mexican grant of abandoned mission lands not sustained on evidence which showed suspicious conduct. 1079

Claim to Mexican land grant *Held* entitled to confirmation. 287, 487. 933

### GUARANTY.

The creditor must first enforce his remedies against the principal debtor or show that any pursuit of him would prove fruitless, before resorting to the guarantor. 1122

### HABEAS CORPUS

The state courts have no power to release a person held under the authority of the United States; nor can the federal courts release a person held under the authority of a state. 322

Where the averments in an indictment gave the district court jurisdiction, and a trial verdict, sentence, and imprisonment followed, error in the proceedings cannot be reviewed in the circuit court by habeas corpus. 1217

A state judge, on proper affidavit, may issue a writ of habeas corpus and inquire into the cause of detention of a person in possession of another under a claim as a fugitive from labor from another state. 322

When it appears, by the return to the habeas corpus, that the fugitives are in the legal custody of the master, and the facts of the return are not denied, there is an end to the jurisdiction of the state judge... 322

Where the return to the writ is denied, the master must prove that his custody is legal, or the state court may release them. 322

But the master may subsequently arrest them, and prove them to be his slave. 322

### Homestead

See "Bankruptcy."

### HUSBAND AND WIFE

An antenuptial contract between the parties themselves without a trustee, whereby all property then owned or subsequently acquired \*22

by either is to be in common during the lives of both and to go to the survivor until death, then to be divided among the heirs of each, is an executory, not an executed, agreement.

The brothers of a husband are not within the influence of an antenuptial agreement made between the parties to the marriage without the intervention of a trustee, and constituting a marriage settlement. They are mere volunteers, who cannot maintain a bill to enforce performance of the agreement. \*22

The nature of an obligation by a married woman is not changed by the fact that she joins with her husband therein. 420

### INFANCY

A conveyance of land by a minor is voidable, not void. Where he disaffirms on coming of age by conveying to another, the latter, though taking with notice of the prior deed, is entitled to a decree quieting his title, without restoring the consideration for the voidable conveyance. 14

### INFORMERS

It is not the one who gives information which leads to the seizure, but the person who gives information of the cause which leads to the condemnation, who is entitled to the informer's share. 712

The amount of the informer's percentage is to be calculated upon the gross proceeds of the forfeiture, without deducting costs, under Acts June 30, 1864, § 179, July 13, 1866, and the regulations of the secretary of August 4, 1866. 720

Where the value of the property forfeited under the internal revenue laws is less than \$250 the government's share is to be applied to the costs of the prosecution. (Act March 2, 1799, § 91.). 720

### INJUNCTION

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

An action by an individual abutting proprietor to restrain the construction of a street railway cannot be maintained without showing special damages. 858

Transactions set forth in a supplemental bill being of the same character as those set forth in the original bill, *held*, that an injunction previously issued should be extended to include them. 1206

A plaintiff, in moving for an attachment against a defendant for contempt in not obeying an injunction, must state in his affidavits the specific acts of omission or commission which constitute the alleged contempt. 1205

Interrogatories which defendant is required to answer must be limited to the particular offenses alleged, and must not inquire into matters not specifically charged, or those charged on information and belief and not established by direct evidence. 1205

The proper mode of proof on issues or interrogatories filed in contempt proceedings is by testimony taken orally before a master. 1205

### INSOLVENCY

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

On the trial of the issues upon allegations filed against an insolvent under Act. March 3, 1803, the persons filing the same must show that they are creditors. 127

Such allegations cannot be amended after the jury is sworn, by inserting the name of another creditor. 127

A discharge from commitment on a *casa* under the insolvent act of June 24, 1812, is no discharge of the debt, and plaintiff may resort to his judgment lien. 922

A discharged insolvent debtor cannot sue in his own name on a cause of action accrued before his discharge; neither can his administrator. 33

## INSURANCE

See, also, "Marine Insurance."

The neglect of the insured's agent to give notice of the loss of the property before the insurance was effected will not vitiate the policy, where he had nothing to do in effecting the insurance. 1339

An insurance policy obtained in New York by a citizen of Massachusetts and subsequently assigned to his wife, who assigned it to a third party, is governed, as between the original parties, by the New York law; but as to the wife's power to assign, by the Massachusetts law. 47  
A material departure from the representations prevents recovery, although the fire was not caused by the departure. 231

The best test of a material variation in the representations is that it increases the risk so as to require larger premium. 231

Overvaluation and misrepresentation of the value of the subject-matter of insurance, although they afford no conclusive proof of fraud, afford a very strong presumption thereof. 532

The interest of a tenant in a wooden building which his lease gives him a right to remove is an absolute interest, within the meaning of an application for insurance. 193

A provision for the forfeiture of a life policy on failure to pay interest on premium notes is valid and not in conflict with another clause declaring the policy nonforfeitable for failure to pay any premium after the first. 15

A clause in a policy of reinsurance, "Loss, if any, payable at the same time and pro rata with the insured," merely gives the company the benefit of any defenses the first insurer may have. 452

A steamer, insured against loss or damage by fire, was damaged by a collision so that the water rose to her furnaces and forced the fire out and set her on fire, and after burning some time she sank. *Held*, that the insurers were liable only for such loss as naturally and necessarily resulted from the fire. 447

Under a policy conditioned to be void it assured should "die by his own hand there can be no recovery, in case of suicide, if the assured was capable of understanding the physical nature and consequences of his act, as distinguished from its moral nature and quality. 247

A denial of liability and a refusal to pay the loss on the ground that it is not within the terms of the policy is a waiver of proofs of loss and a provision that no suit shall be brought until after 60 days after proofs are furnished. 447

Ex parte affidavits furnished to the company as proofs of death are inadmissible to establish a controverted fact as to the mode of death. 133

The failure of a reinsuring company to object to the form or substance of copies of proofs of loss furnished by the insuring company is a waiver of the objection that they were not furnished in time. 452

If a party fails, through mistake, to obtain such a policy as he is entitled to by an existing valid contract, equity will relieve, though the mistake arose from ignorance of law. 664

Circumstances stated under which a policy will be canceled even after a loss has occurred. 340

The appointment of a fire insurance agent and the extent of his agency may, in the absence of a written appointment, be proved by evidence of his acts and the company's recognition thereof. 231

A local usage among insurance companies, not including defendant company, to pay agents the 1280

commuted value of premiums during the whole existence of the policy, *held* inadmissible to explain a contract fixing an agent's compensation. The insurance company is not responsible for the act of its regular agent in instituting criminal proceedings against an insured suspected of setting the insured property on fire, unless his act was authorized or ratified by it. 306

If either party must suffer by the fault of an insurance agent, it must be his principal. 231

### INTEREST

See, also, "Usury."

Interest is not allowable on demurrage. 105

Under a bond payable at the expiration of five years, with interest thereon until paid at 8 per cent., interest to be paid semiannually, *held*, that the principal would bear interest at 8 per cent. until paid, and the semiannual installments at the legal rate. 404

On a note payable on demand, with 10 per cent. interest until paid, the interest is to be computed from date. 1291

Arrears of ground rent bear interest from the time they become payable. 98

1374

### INTERNAL REVENUE

See, also, "Informers."

Taxation of the business of bankers and brokers under Acts June 30, 1864, and March 3, 1865. 375

Payments made in compromise by the executor with claimants under a will are not subject to a tax as "legacies" or "distributive shares" of intestate's estate. 990

The "gross receipts" of a steamboat include receipts for the use of berths and staterooms as well as for the carriage of passengers. (Act 1864, § 103, amended Act 1866, § 9.). 87

By the act consolidating the New York Central and Hudson River Railroads, any liability of the 148

former for a tax on dividends is enforceable from the property of the new corporation.

Stock certificates issued by a” railroad company to represent earnings invested in construction and equipment are not taxable as “scrip dividends.” \*148

Congress has the right to compel distillers to affix certain patented meters to their stills as a condition precedent to carrying on their business. 490

The government having prescribed the terms upon which a person can engage in the business of distilling, a person having accepted those terms and entered upon the business cannot afterwards question their binding force. 490

A collector with whom money has been deposited by a distiller to pay for patented meters is a mere stakeholder, and the distiller cannot recover such deposit. 490

A manufacturer of vinegar *held* not a distiller (Act March 2, 1867, § 16), though he used a patent apparatus in which a mash, fermented in the same way as for the production of whisky, was used. 726

A rectifier purchasing, from one authorized as a distiller only, over 20 gallons of spirits, not of the seller’s own manufacture, is liable to the penalty prescribed by Rev. St. § 3319. 158

The surety on a distiller’s bond is “liable”, though the same is approved in violation of the provisions of Act July 20, 1868, § 7, that prior liens on the property must first be released. 862

Certificate of probable cause of seizure denied for want of jurisdiction, where the seizure had been abandoned, a new seizure made, and judgment rendered for defendant on appeal to the circuit court. 268

## JOINT TENANCY



One joint tenant, his executor or trustee, may receive the whole rent or appoint a bailiff to collect it. 98

## JUDGE

See, also, "Courts."

The district judge of the Eastern district of New York has authority to hold the circuit court for the Southern district of New York. 226

A decree signed by a district judge after he has tendered a conditional resignation, but before it has been accepted by the government, is valid. 373

## JUDGMENT

### Validity

Where a court has jurisdiction of the res in a proceeding in rem, the record of its decree cannot be collaterally attacked for errors and irregularities appearing therein. 902

The service of summons by a party to the action is an irregularity that is cured by entry of judgment, and will not avail when the judgment is attacked in a collateral proceeding. 927

When the jurisdiction of a court depends upon a fact which the court is required to ascertain in its decision, such decision is final until reversed in a direct proceeding for that purpose. 902

The recitals in a judgment or decree by a competent court that defendants have been legally summoned are prima facie evidence thereof. 420

Where the court has no power to render a personal judgment against a married woman such a Judgment may be attacked collaterally, though the court in other respects may have jurisdiction over her person and the subject-matter. 420

The sale of a fraudulent judgment at an auction sale of the effects of the bankrupt debtor does not confer upon the innocent purchaser the right to enforce it. 469

### Operation and effect

The legal title to land which the owner has agreed to convey, by a contract duly recorded, remains in him, and his interest is bound by a judgment against him. 718

Act Va. Dec. 19. 1792, § 5. limiting the time of issuing writs of sci. fa. in certain cases, is an act of limitations, and must be pleaded. 604

Such act does not apply to a case where an execution has issued and been returned. 604

St. 13 Edw. I. c. 45, which gives a sci. fa. to revive judgments in personal actions, *held* still in force in Virginia. 604

Judgments may be kept alive by taking out a fi. fa. within a year and a day, to lie in the office, and so from year to year. 906

To maintain the plea of res judicata the judgment must be final. If it is open to appeal, the plea is bad. 118

A charterer who sets up a neglect of duty by the shipowner merely to repel a claim for demurrage is not thereby prevented from maintaining a cross libel for damages sustained by such neglect. 205

### Relief against: Opening: Vacating

A bill in equity will be sustained to set aside a judgment upon a policy of insurance, upon the ground of such newly-discovered evidence of fraud and felony on the part of the original plaintiff as would it pleaded, have been a perfect defense to the previous action. 532

A bill to set aside and declare void a decree for fraud or otherwise can only be maintained in the court in which it was rendered. 844

A motion to open a decree in admiralty entered by default must be made within 10 days after entry; otherwise it must be denied. 373

The motion must be accompanied by the proposed answer or a statement of the ground 373

of defense, to enable the court to judge of its merits.

When a judgment will be set aside, with permission to amend the declaration to conform to a state of facts not before known to exist. 135

#### **Of different jurisdictions**

The judgment of the state court will be considered by the federal courts, sitting within the territorial limits of the state in which the same is rendered, as a domestic judgment. 927

### **JUDICIAL SALES**

Where the purchaser of a vessel at judicial sale obtained possession of her without authority before confirmation and expended labor on her, after which a resale was ordered, *held*, that he could not maintain a libel for his services. 76

A court of equity which decrees a sale of real estate has authority, in Washington county, D. C., to cause the purchaser under its decree to be put in possession by a writ of injunction, and, if that be disobeyed, by a writ of habere facias possessionem. 695

### **JURY**

Jurors escaping from their room may be fined for their contempt. 606

Jurors living at a distance, and not receiving mileage at adjournment, are entitled to a per diem for those days during which the jury stands adjourned, as well as for those to which it stands adjourned and on which the jurors appear and answer to their names. 1144

### **JUSTICES OF THE PEACE**

A justice of the peace in Washington, D. C., may require a common prostitute to give security for her good behavior, and he has jurisdiction in a suit upon the bond in a penalty not exceeding \$20. 1312

A woman sued for a small debt *held* bound to appear and answer, on notice by an officer of the time and place. 717

An appeal does not lie from a judgment in the District of Columbia for \$5. 928

### LANDLORD AND TENANT

A renting at \$60 a year, payable monthly, is not for a specific term. 280

To warrant recovery of double rent for holding over, the lease must be for a specific term. 280

Rent payable in foreign coin is computed at so much of the current coin as, at the rate of exchange, will equal in value the foreign coin in the country where issued. 98

To recover arrears of ground rent the landlord may proceed by distress, re-entry, ejectment, and action of covenant. These remedies are cumulative, and one does not suspend the other. 98

A covenant in a lease requiring the tenant to occupy the premises for a specific purpose, as an express office, does not impose on the landlord, and exempt the tenant from, all the risks incident to such business not resulting from the wrongful acts or negligence of the tenant. 1236

A covenant to surrender the premises at the expiration of the term in as good condition as the reasonable wear thereof will permit, damages by the elements excepted, does not protect the tenant from liability for waste resulting from accidents occurring without his fault. 1236

Such a lessee is liable for injury caused by the explosion of nitroglycerin packed in cans in a wooden case, received by it as an express company without knowledge of its contents. 1236

But such lessee is not liable for injury to adjoining premises by the explosion, as it is not guilty of negligence. 1236

A tenancy from year to year is not a tenancy at will. 1249

A tenant at will who commits voluntary waste is liable, not as a tenant, but as a trespasser; but for mere permissive waste he is not liable. 1249

The California practice act (section 250), giving an action to the person aggrieved against a tenant who may commit waste, includes permissive waste. 1249

An allegation that the defendants held certain premises as tenants thereof to the plaintiffs under a demise to them for a certain rent imports a tenancy for a term. 1249

When waste is committed by a stranger during the term of the tenant, an action on the case may be maintained therefor, either against the tenant who suffered the waste or the stranger who committed it. 1249

### Liens

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

### LIMITATION OF ACTIONS

See, also, "Maritime Liens."

An action in New York on a promissory note made in Massachusetts is barred by the New York statute, though it would not be barred by the Massachusetts statute. 234

A federal court applies the statute of limitations of the state in which it sits, and adopts the same rules in regard to it as prevail in the state courts. 234

To obtain the benefit of the statute of limitations under a plea of seven years' possession in Tennessee, the claimant must have color of title. 1338

Discovery of fraud, in the meaning of the statute of limitations, is not to be imputed to a county simply because it was known to its officer who committed it. 523

Act N. C. 1715, c. 48, § 9, limiting time for filing claims against decedents' estates, *held* suspended by Act 1777, c. 2, § 101, disabling British subjects from suing in state courts, until enforcement of treaty of peace by Act 1787. 618

A case may be taken out of the statute of limitations of California by a written acknowledgment and promise to pay signed by the party, or by a part payment. 1020

Expression of a willingness to pay a barred debt if a certain set-off is allowed is not an acknowledgment. 182

The statute of limitations of California must be pleaded in equity suits as in suits at law. 420

It is a good rejoinder to plaintiffs reply to the plea of limitation that defendant was beyond seas during the time covered by the plea, that defendant was within the jurisdiction for four days during such time, to plaintiff's knowledge. 1306

### LITERARY PROPERTY

See, also, "Copyright."

While the author on communicating the contents of his manuscript may restrict its use as he pleases, an unqualified publication by printing and offering copies for sale is a dedication to the public. 1273

### LOTTERIES

If the business of selling lottery tickets is lawful, a municipal corporation cannot restrain it; if unlawful, it cannot license it. 179

### MALICIOUS PROSECUTION

An action for malicious prosecution is the proper remedy for an arrest on an affidavit false in fact which is sufficient on its face. 307

### MANDAMUS

A federal circuit court which has rendered judgment upon a municipal bond may, by mandamus, compel a special levy of taxes to 1252

pay it, where the general levy do not provide sufficient revenues.

### MARINE INSURANCE

See, also, "Average"; "Collision."

An agent who procures insurance with knowledge of the underwriters that he is acting as such is entitled to a policy insuring him as agent, or for whom it concerns. 664

The rule that words of exception in any instrument are to be construed most strongly against the party for whose benefit they are intended applies to policies of insurance. 1056

But this rule of interpretation is subservient to another,—“Verba intentioni, non è contra, debent inservire”.

The words in a policy for a year: “Excluding during the term all ports or places in \* \* \* from July 15 to October 15, 1839,”—*held* a suspension of the risk during such time as the vessel should be at the excepted ports. 1056

The insured cannot set up a parol title in himself to the whole of the ship when the ship’s papers for the voyage prove a joint ownership in himself and the master. 629. 630

The insurers are liable as for a total loss, on the abandonment of the vessel, arrested in a port in which she was detained by head winds, and proceeded against under the embargo laws passed the day after she cleared. 583

Where an insured vessel is damaged by collision, the owner may at his election proceed either against the underwriters in contract or against the offending vessel in tort. 66

The measure of recovery from the underwriters is the amount necessary to restore the vessel to her previous condition, without deduction for new materials. 66

A recovery of damages against the vessel in fault is no bar to a further recovery from the underwriters of any excess in the cost of repairs over the amount previously recovered. 66

Reinsurers, having paid to the insurer their proportions of a loss insured against, may maintain a libel in rem in their own names to recover of the carrier the amounts so paid, with interest, where the owner had been fully satisfied for the loss by the original insurer. 568

Where the language of a policy was equally applicable to either of two charters, and parol evidence was admitted to explain it, and the insured recovered, *held*, that reinsurers on an open policy were liable for the amount of such recovery. (Reversing 540.) \*547

A party reinsured is entitled to full indemnity for his entire loss and the costs and expenses reasonably incurred to protect himself and entitle him to recover over against the reinsurers. 160

Quære, whether notice to reinsurers of the commencement of a suit against the first insurers is indispensable in order to make them liable for the costs and expenses thereof. 160

Reinsurers may make the same defenses and take the same objections as the original insurers might in a suit on the first Policy. 160

#### MARITIME LAW

See, also, "Admiralty."

Independent of the act of 1845, the maritime law has the same application to cases upon the Lakes as it has to those upon tide waters, both as to jurisdiction and the forms of procedure and practice. 1220

#### MARITIME LIENS

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



### The right to a lien

A steamboat temporarily disabled from making her regular daily trips is not subject to any lien for the contract price of another steamboat employed to take her place. 153

Admiralty has jurisdiction in rem for supplies furnished to foreign ships in our ports, and to our ships in foreign ports or in the ports of other states. 9. 327

The home port of a vessel is the place where the law requires her to be registered, not necessarily the place where she was built. 1220

Necessary supplies furnished in a foreign port, on the credit of the vessel, by an agent whose principal resided in the home port, *held* to create a lien. 21

Necessary coal furnished a steamer in a port foreign to the residence of her charterers, who were owners pro hac vice, on the order of the master, who had no funds, *held* to create a lien. 21

To create a lien for supplies the proofs must show an apparent necessity for obtaining the same on the vessel's credit. The sufficiency of this proof must rest in the sound judgment of the court. 21

A general discussion of the right to a lien for wages of a person employed thereon, and a waiver of liens by delay to enforce them, by Woodbury, C. J. 958

### Priority and enforcement

Where there are several privileged debts against a vessel, those which are in the same rank of privilege are to be paid concurrently. But debts occupying a higher rank of privilege are fully paid before any allowance is made to those holding a lower rank of privilege. 1084

Seamen's wages for the last voyage are preferred, in a decree against the vessel, to all other claims 1084

after the expenses necessary to procure a condemnation, and such charges as accrue after the vessel is brought into port, as wharfage, etc. The wages of seamen have a priority over a claim for collision, against the proceeds of their vessel, whether such wages were earned prior or subsequent to the collision. 801

As between a material man who fitted a vessel for a voyage and one who refitted her in a port of distress, the latter has the prior lien. 690

The claims of a material man and of a seaman or engineer of a ferry steamer are superior to that of a mortgagee. 304

As between supply men who all obtain decrees before the sale of the vessel, he who first obtained the seizure of the vessel is entitled to priority over others who afterwards filed intervening libels. 1295

A lien given under the general maritime law for labor and materials in the building of a vessel may be enforced by process in rem, even before the vessel is launched. 1220

But the libel in such case must show the vessel to be of a size and build fitted for maritime employment, and intended for navigation upon the lakes or high seas. 1220

A libel to enforce a lien on a vessel must distinctly state the facts or law under which it arises or is claimed. 1220

**Waiver: Discharge: Extinguishment**

That the master and owners are personally liable for supplies furnished does not destroy the lien. 9  
A party may trust to the credit of the ship, master, and owner.

A note or bill of exchange taken of an owner or master will not be a discharge of a lien. 327

A lien for materials furnished to a vessel built in Massachusetts is not lost by the creditors' taking 987

the debtor's negotiable promissory note, which is produced at the hearing and offered to be canceled.

The taking by a material man of an order on the consignee for freight to be earned on the voyage is no waiver of his lien. 690

A lien for advances for supplies is waived by the taking of a bill of exchange for the amount indorsed by third persons to whom the ship is delivered as security. 626

The assignment of his claim by a material man does not defeat the admiralty lien. 304

The lien of a material man is not lost by commencing a suit in personam in the state court and attaching the vessel therein. 1350

Giving credit for a fixed time for supplies does not extinguish the lien; neither does allowing the ship to leave the port without payment. 9

A claim by an engineer for overdue and unpaid wages does not necessarily become stale in 20 months. 304

The lien of a material man is not lost by delay in commencing a suit in rem, if the ownership of the vessel remains unchanged, or if there be only a colorable transfer; but as against bona fide purchasers for valuable consideration, there must be reasonable diligence in enforcing it. 1350

A lien is lost by a delay to institute proceedings for three years, where there had been a change of ownership. 958

**Liens under state laws**

A material man has a lien against a domestic vessel under Code Va. 1873, c. 148, § 5, and Act Va. Jan. 26, 1877. 304

By the rule now in force (1867) the federal courts have no power to enforce liens resting on local law alone. 158

The sale of a vessel under a state statute does not divest a prior admiralty lien. 502

### MARSHAL

Notice of removal from office is not necessary to effect such removal. 920

Fees of marshal for "a service," "aid," commitment and discharge, for keeping prisoners, etc. 1104

A marshal who traveled 160 miles to serve a witness residing in an air line within 100 miles from the place of trial will be allowed mileage for 100 miles only. 1115

The marshal is not entitled to fees for serving a rule to plead. 1115

The marshal is entitled to a reasonable charge for dockage of a vessel which was on a marine railway when seized, and could not be removed without danger of sinking. 460

If a marshal levies on the property of a third person, pursuant to instructions, without any abuse of his authority, he is liable only for the injury actually sustained. 946

In such case the rule of damages is the value of the goods, with interest from the time of taking them; or, if they are articles of merchandise, from the expiration of the usual term of credit on sales. 946

If an auction sale has become necessary in consequence of the levy, the plaintiff will be entitled to recover the expenses of such sale; also the amount of the premium for insurance against fire effected on the goods. But he is not entitled to recover for money paid counsel, or other expenses incurred in prosecuting the suit. 946

### MORTGAGES

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

A proceeding under the jurisprudence of Louisiana to cause the erasure of a mortgage is properly instituted in the court of the parish where the premises lie. 118

The debt of a mortgagee cannot be considered as extinguished to the extent of the value of property wrongfully carried off by him, as a debt cannot be merged in a tort. 1022

The lien of a senior incumbrancer, and his right to enforce the same, are not affected by a sale in proceedings on a junior incumbrance to which he was not made a party. 1022

In a foreclosure suit, the court, before answer filed, will not enjoin the mortgagor in possession from receiving the rents and profits, nor appoint a receiver. 655

After a foreclosure by a mortgagee he is still entitled to recover the balance of the debt due him beyond the value of the mortgaged premises at the time of the foreclosure. 689

### MUNICIPAL CORPORATIONS

See, also, "Railroad Companies."

The corporation of "Washington has power to pass a by-law to prevent free colored persons from going at large later than 10 P. M. without a pass. 187

Under statutes prohibiting the construction of railroads in city streets without the assent of the corporate authorities, the city may prescribe conditions under which assent will be given. 953

Where the conditions that the company shall build a depot in a certain place, and grade the streets and keep them in repair, are not performed, *held*, that the city might remove the tracks. 953

A city has the right to enter upon a street or tunnel under it or to use the water in front of plaintiff's lot for the construction of public 362

improvements, being liable in such case only for negligence.

A town *held* liable for injuries to the occupants of a vehicle who were thrown into an uncovered and unguarded cellar extending into the highway. The grant of power to create a debt by bond carries with it the power and obligation to levy sufficient taxes to pay the same.

Where the corporation by general levy has not provided sufficient revenues to meet the debt, the court may by mandamus compel a special levy.

The refusal of county supervisors to put a judgment on the tax list renders them liable, in an action for damages, only for a counsel fee and costs,—and this even though a mandamus has issued.

Stock owned by a municipal corporation may be taken in execution and sold under a *fi. fa.* issued out of a federal circuit court.

Property of a municipal corporation necessary to the exercise of its functions, such as markets, prisons, etc., cannot be sold on execution against it.

A municipal corporation cannot by its own act, independent of legislative authority, make a thing which is not necessary to the exercise of its functions a permanent source of revenue so as to exempt it from execution.

A so-called “market bazaar,” owned by a city for the sale of merchandise, excluding fresh meats, vegetables, etc., and rented out for a term of years, is not such a market as is protected from execution.

Markets are places for the sale of perishable comestibles for daily consumption, and which, by their very nature, require sanitary regulations, and thus fall within the police power.

As a general rule; a public place is inalienable except by the sovereign. 114

The leasing by the city of New Orleans of a portion of the batture in front of the city for 10 years for a market bazaar is a withdrawal thereof from public use. 114

### NAVIGABLE WATERS

See, also, "Admiralty"; "Constitutional Law"; "Riparian Rights"; "Waters and Water Courses."

The provision in the ordinance of 1787 that certain navigable waters "shall be common highways, and forever free," etc., does not prevent the improvement of the navigation by a state, and the charge of a reasonable toll for increased facilities. 1026

No state can obstruct a navigable stream which extends to other states, or is connected with a river or lake which falls into the sea. 1026

A riparian proprietor owning a sawmill on a navigable river has no right to erect a solid pier of masonry within the navigable channel for a boom for the protection of his logs. 405

A riparian proprietor who, without legislative authority, erects a pier within the navigable channel of a river and fails to keep it lighted at night, in consequence of which a vessel is injured by collision therewith, will be *held* liable. 405

### NE EXEAT

A ne exeat will not lie, under the laws of Virginia, to restrain a garnishee from going out of the District of Columbia. 1324

A ne exeat will be granted to restrain an administratrix from removing from the jurisdiction with the effects of deceased before final settlement of her accounts, if her sureties reside out of the jurisdiction. 1326

### NEW TRIAL

Courts have a legal right to grant new trials in actions for torts, on the ground of excessive damages, and may grant any number until the ends of justice are answered. 1145

A verdict in an action on the case will not be set aside for excessive damages, unless it appear that the jury erred in computation, or departed from the rule of law, or made deductions from the evidence plainly not warranted. 1030

The court will not grant a new trial because one of the jurors was brother-in-law of the plaintiff. 820

A new trial will not be granted to enable a party impeached on the trial to produce sustaining witnesses. 901

An attorney was employed by the assignee of a bankrupt patentee when a suit for infringement was on the trial list, and the patent was declared invalid. *Held*, that a rehearing would not be granted because of want of preparation, where the validity of the patent could be tested in other pending suits. 496

Evidence must be not only in fact newly discovered and not cumulative, but the party must have used due diligence to discover it before the trial, to induce the court to grant a new trial. 1030

### NOTARIES

A seal of a notary may be an impression made by the seal on paper, without wax or any other tenacious substance. 834

### PARTIES

Persons or corporations interested must be made parties, especially where the object of the bill cannot be attained without seriously affecting the interests of such persons or corporations. 358

Persons having adverse and conflicting interests cannot be joined as coplaintiffs, in a suit in equity. 1262



In a suit in equity for a demand due to a partnership, all the partners must be joined, 1257 either as complainants or defendants.

A bondholder of a corporation who sues to prevent another party from wrongfully using the corporate name must join the corporation as plaintiff, but if it refused to be so joined, may make it a defendant. 38

A mortgagee of a vessel has a right to intervene in an admiralty suit, for the protection of his interest. 642

### PARTNERSHIP

See, also, "Bankruptcy."

A partnership in purchasing and selling lands is governed by the same principles as ordinary partnerships. 641

Under a partnership to deal in lands, the profits to be equally divided after reimbursement of advances by one partner, *held*, that at the close of the business where the speculation resulted in a loss, the land would be sold and the loss equally divided. 641

A check upon a bank drawn in the name of one partner cannot be charged to the firm if not drawn by its authority, although used in the business of the firm. 1303

The indorsement of a firm, made by a partner to raise money for his benefit, binds the other partners, when the firm books disclose the entire transaction and they make no objection to it. 313

Where the proceeds of a firm note indorsed by a partner were credited on the firm books and were received by the firm, it is liable thereon, though they were subsequently used by the partner individually. 313

A dormant partner is not liable on a note given in the individual name of the other for goods put 1028

into the business, conducted in the latter's name, where the payee did not know the relation.

The representatives of a deceased partner are not necessary parties to a bill by the survivor to set aside, for fraud, an assignment of a mortgage given in payment of a debt due the firm, and to recover such debt. 976

## PATENTS

### Patentability

The word "utility" is used in contradiction to what is frivolous or mischievous. 979

The propulsive effect of the vortical motion of water, in a reaction wheel, operating by its centrifugal force, and so directed by mechanism as to operate in the appropriate direction, is patentable. 1138

A prior discovery and use of a patented thing by a stranger will destroy the validity of the patent, however limited such use may be, provided it be not intentionally secret and concealed. 958. 1283

The fact that the thing was given up and disused by the original inventor will not affect the case. 958

To constitute a prior invention the party alleged to have produced it must have proceeded so far as to have reduced his idea to practice, and embodied it in some distinct form. 1198

Machines which never proved satisfactory on trial, and have been laid aside for years, are properly held to be unsuccessful and abandoned experiments. 1096

The first inventor need not have constructed a practical machine, though a subsequent inventor has done so; nor must he have reduced the invention to practice, otherwise than by filing specifications and drawings and furnishing a model. 72

A structure which might have suggested ideas or led to experiments resulting in discovery is not an anticipation. 1163

In the manufacture of hoop skirts the use of strands of twisted cord to sustain the hoops *held* a patentable invention, where the result was a better and cheaper article, though a similar use of such cords was known in rope ladders and other constructions. 9

The substitution of a coiled or lengthened indicator pipe for a straight pipe in a boiler to regulate and control the supply of water *held* not patentable. 500

A patent for an apparatus in which the alkaline solutions for forming carbonic acid gas were kept separate until required to extinguish a fire, when they could be readily mingled, *held* void, on it appearing that similar apparatus had been employed in soda fountains for the supply of beverages. 394

Perfecting machinery by superior skill in the mechanical arrangement and construction of the parts is not invention. 1198

The identity or diversity of two machines depends, not on the employment of the same elements of powers of mechanics, but upon the producing of the given effect by the same mode of operation or the same combination of powers. 581

Duplication of parts producing a new and useful result may be patentable. 1138

A design must possess originality and beauty to be patentable. Mere mechanical skill is insufficient. 374

The adaptation of old devices or forms to new purposes, however convenient, useful, or beautiful they may be in their new role, is not invention. 374

**Who may obtain patent**

A discoverer of the application of a law of nature to produce a particular result is entitled to a patent where he devises machinery to make it operative. 1138

A trial of a machine in public, which proves the capacity of the machine to effect what its inventor proposed, entitles him to the merit of having produced a complete invention, and cannot be regarded as a mere experiment, entitling a subsequent inventor to a patent for the same invention. 394

That a subsequent inventor invents the same thing before the first inventor has applied for a patent, but after he has a successful machine in operation, does not affect the first inventor's right. 204

**Prior description or foreign patent**

A prior description in a printed publication will not invalidate the patent if not sufficiently full and precise to enable a mechanic to construct the patented device. 1163

The description of an invention contained in a rejected application has not the effect of a publication. 394

**Abandonment: Laches**

One who made an invention in 1846 and filed his application in 1851, and was attempting to perfect the machine in the meantime, *held* entitled to a patent, as against, another who invented the same thing in 1849 and applied for a patent in 1852. 72

**Application and issue: Interference**

On the withdrawal of the application and receiving back the \$20, the commissioner's decision becomes final. 620

Renewal of application not permitted after 10 years, on affidavit that the applicant had no knowledge of its withdrawal by his attorney. 620

Rules of the patent office made in pursuance of Act March 3, 1839, § 12, in relation-to-taking testimony in contested cases, are binding upon both the parties and the commissioner. 624

An affidavit in support of a motion for an extension of time for the hearing, on the ground of inability to procure the attendance of witnesses, is entirely insufficient when it does not state the names, competency, or materiality of the witnesses. 795

The question of extending the time for the hearing lies within the discretion of the commissioner, which will be presumed to have been soundly exercised. 795

An interference is properly declared where the object of both parties is to guard against danger from the use of camphene in common glass lamps by placing a metallic lining in the bowl. 197

**Appeals from commissioner's decision**

A reversal because some of the depositions considered were taken before a disqualified magistrate does not require the commissioner to issue a patent, but he may grant a rehearing and order the depositions taken anew. 197

**Validity**

The patent is to be construed liberally to sustain it. 1163

A patent, while it remains in full force and unrepealed, estops the patentee from taking a patent for the same invention, and the time of its exclusive right begins to run from that period. 578

A patent broader than the invention is void in toto. 581

The claim of an old device as new and original, as a part of a combination, is fatal to the patent. 1163

A patent will not be void because of an error in the Christian name of one of the patentees, 394

provided it contains a description of him by which he can be identified.

The description of one patentee, whose Christian name was wrongly given, as a joint inventor with another, *held* sufficient to identify him. 394

The specification must fully disclose the secret, and give the best method known to the inventor. 979

The patent is invalid where the invention is not described with reasonable certainty and precision. 1163

Matters not disclosed in the specification do not invalidate the patent unless they appear to have been concealed for the purpose of deceiving the public. 1107

If the description clearly indicates the method of the use of the thing claimed, and its relations to the other mechanical elements operating with it, a claim for a combination of part of them is good, although it may not embrace some that are essential to the operative efficiency of the combination. 1096

It is a question of fact for the jury whether the specification is sufficiently definite and certain to enable a competent workman to construct the machine therefrom. 979

A disclaimer at the trial, of a thing actually claimed in the patent, is not effectual to sustain it. 1159

#### **Extent of claim**

In the construction of a patent the whole instrument embracing the specification and drawing is to be taken together. 1163

It will not be presumed, against the validity of a patent, that the patentee was ignorant of a well-known mechanical arrangement, and intended to claim it as new. 1163

A claim of a process of manufacture of hats from braid, "in sewing the edges together with 285

horsehair," *held* not necessarily limited to the use of horsehair.

**Reissue: Disclaimer**

The only ground on which the allowance of a reissued patent is open to objection is that the commissioner has exceeded his authority, in 1096 granting a reissue for an invention different from the one embraced in the original patent.

Differences in the description and claims of the old and new specifications are not the tests of substantial diversity. It is only necessary that 1096 the identity of the subject-matter of the original patent be preserved.

Drawings and models filed with the original specification are proper subjects for 1096 consideration in determining an alleged discrepancy.

The omission in a reissued patent of an element of a combination claimed in the original 1096 constitutes no tenable objection to the reissue.

**Assignment**

A patent may be assigned in whole or in part. 1135

A contract may be made to convey a future invention, as well as a past one and for any 2 improvement or maturing of a past one.

An assignment of an extension of a patent by the patentee's sole executrix, who signed herself as "administratrix," pursuant to a contract of the patentee, but without the sanction of the probate 50 court or the assent of a legatee, *held* good in equity as against one who, after the assignment was recorded, purchased the patent from an administrator c. t. a.

**Infringement—What constitutes**

Machinery complained of, if the same in 1135 principle as the plaintiffs, is an infringement.

The principle of a machine is the particular means of producing a given result by a mechanical contrivance. 1163

That is a substantial identity which comprehends the application of the principle of the invention. 979

What constitutes substantial identity in principle. 1163

Use of substantially the same devices to produce the same results and certain additional results is an infringement. 159

Where the chief efficacy of a machine arises from the use of equivalents to the patented machine, it is an infringement, though it be simpler, cheaper, and better. 579

Where a patent is for improvements on known machinery and a combination of mechanical powers, it is an infringement to adopt any of the improvements or any of the parts of the combination. 1135

There is no infringement by the use of processes which the patentee has withheld from the public. 979

A patent for a wire fence cannot be construed to include window guards. 162

A box-cover fastening formed by making a hole in the rim of the cover to fit over a protuberance on the surface of the box infringes a patent for a fastening formed by a protuberance on both cover and box. 1158

**—Who liable**

Persons purchasing a newly-invented machine from another than the inventor, before application for a patent, are protected by the statute. (5 Stat. 354.) 283

**—Remedy generally**

The federal circuit courts have jurisdiction in equity under the act of 1836, irrespective of any right to, or demand for, an injunction. 28

Such courts have jurisdiction in equity, under the act of 1836, of a suit for infringement where 28



discovery and accounting are prayed, though the bill shows that the patent has expired.

In the absence of legislation by congress, a state statute of limitations is applicable to an action on 1134 the case for infringement.

—Contra. 1127

—Preliminary injunction

The object of the writ is to prevent irreparable mischief, not to give complainant the means of 1159 coercing a compromise on his own terms.

The obtaining of a verdict in a suit at law against defendant, or the exclusive use for a number of 831 years, is good ground for granting an injunction.

The recovery of judgment against other parties is ground of granting an injunction, though it was 837 rendered by agreement, and the patent has since been reissued.

Where a prior adjudication in favor of the patent is relied upon, defendant may show that the title was not fairly in controversy, or that some 1117 material fact was then unknown or apposite argument overlooked.

The considerations which will induce the court to renew the discussion, must be such as would 1117 have induced the court to set aside the verdict.

An injunction will be denied except in clear cases, or where the answer or affidavit is 1159 equivocal and evasive.

Where complainant can be compensated in damages, an injunction will not be granted 1159 during the last few weeks of a patent.

On a motion for an injunction the court is not bound to decide doubtful and difficult questions 1159 of law or disputed questions of fact.

An answer containing a positive denial cannot be 1159 treated merely as an affidavit.

A clerk of defendant who purchases his rights 1206 pending the motion for an injunction does not

stand before the court as an independent infringer.

Granted, where plaintiff's right and the infringement are clear upon the face of the papers, but denied in case of reasonable doubt. 619

Granted, on proof of undisturbed possession and user for a reasonable length of time, by complainant, of the patent right. 837

Denied, except in a clear case where defendant claims to have acted under a patent, with plaintiff's knowledge, for a long time, and has made large investments. 331

Denied, where verdicts at law have been obtained on such inconsistent and contradictory Page dictory claims as to leave complainant's title so doubtful that the court cannot tell what is an infringement. 1159

Denied, where the evidence shows that there would be as much probability of doing irreparable mischief as of preventing it by granting the injunction. 331

Denied, where the patent has not been judicially established or acquiesced in by the public, unless plaintiff's right is free from doubt, and the violation of right by defendant is equally clear. 331

Denied, where defendant's machine was patented to him after the granting of a preliminary injunction against him in a prior suit. The granting or dissolving of the injunction rests in the sound discretion of the court. 691 831

An injunction will not be dissolved as a matter of course on the coming in of the answer denying the equity of the bill, if the complainant has adduced auxiliary evidence of his right. 837

An injunction will not be dissolved merely on an answer denying the validity of the patent, but, if requested, plaintiff will be required to bring a suit at law to test the title. 840

—Procedure

A patentee, in the absence of a legal assignment and transfer of his interest in the invention, may maintain a suit for infringement, irrespective of his private agreements with third persons. 1107

The legal owner is a necessary party to a suit for infringement, where his license of the exclusive use to another provided that he was to have half the damages recovered for violations. 331

The decree of a probate court appointing an administrator cannot be impeached in a suit upon a patent granted to him as the representative of the inventor. 394

In a suit upon such patent, the heir or equitable owner is a necessary party. 394

An assignee of an exclusive territorial right to make, use, and sell the patented article may maintain a suit in equity. 619

An officer of a corporation owning an infringing patent who, in its behalf, executes a license to defendant to use, for a fixed rental, the corporation's infringing machines, is a proper party defendant to an injunction suit. 204

Where an infringing machine contains all the improvements embraced in four patents for improvements in such machine, the bill for infringement may be founded upon all the patents. 459

Plaintiff who relies upon a verdict and judgment at law establishing his title must aver it in his bill for an injunction. 1117

Sufficiency of averment of the issue of letters patent. 285

A simple averment that the title to the patent in suit is vested in plaintiff is sufficient. Plaintiff need not set forth a deduction of title. 459

An averment that defendant has made the thing  
“in imitation of the patent” is a sufficient 1135  
allegation of infringement.

A declaration in a suit for infringement is not  
demurrable because ambiguous in setting out a  
claim which may be construed to include one 285  
or both of two inventions, if there is nothing in  
the pleadings to show that the patentee is not  
entitled to claim both.

A declaration averring that defendant “put on  
sale and offered for sale, and sold or contracted 285  
to sell,” the patented articles, is bad on demurrer.  
Where the claim of an old device as new and  
original in a patent for a combination is made in  
good faith, the patentee, when apprised of the 1163  
fact, must enter a disclaimer within a reasonable  
time, or he cannot recover.

The charge of infringement is admitted where no  
answer is made thereto. 1114

The answer at law, and the answer and notice  
on which, in chancery, an issue is asked to be  
formed and tried at law, must set out the names 840  
of the persons who used the patented article, and  
the places where so used.

Where the evidence on a bill for an injunction  
is conflicting, the court will direct an issue to be  
tried by a jury, or refer the matter to a master 1127  
to examine defendant’s device, take additional  
testimony, and report.

The interpretation of the specification is for the  
court. 1138

It is the province of the court to determine what  
constitutes novelty and utility, and of the jury to 1163  
determine from the evidence adduced whether  
the invention is new and useful.

—Evidence

The patent is prima facie evidence of the novelty  
and utility of the invention. 1163

The burden of proof of infringement is upon plaintiff. 1163

The burden is on defendant to establish, by satisfactory evidence, the prior use of the patented invention. 1158

Failure to produce, as witnesses, workmen in the inventor's shop, at a time (previous to his application) when, it is claimed, a machine embodying the invention was put in actual use, raises no unfavorable presumption, as publicity might take away his right. 72

Rejected specifications and drawings are admissible after the invention is perfected to ascertain the date of the invention, the design of the inventor, and the principle, intended functions, and mode of operation of the mechanism. 394

Copies of assignments of a patent, duly certified, are prima facie evidence of the genuineness of the originals on file. 1135

A prior patent of which no notice has been given cannot be considered on the question of novelty. 579

Evidence which does not clearly establish the priority of a completed and useful machine over that of the patentee is unavailing to show anticipation. 1096

Testimony of the actual construction, by the assistance of witness, of a perfect device identical with the patented device, and prior thereto, *held* sufficient proof of anticipation, though it did not appear that such device was ever used. 1126

—Accounting: Damages.

Plaintiff is entitled either to the damages sustained by him or the profits made by defendant during the time he used the patented device. 979

Only the actual profits from the making, using, or selling of the invention by defendant are to be considered in estimating damages. 1153

Where defendant did not know of plaintiff's right at the time of the infringement, compensatory damages only will be given. 1122

Where the infringement is characterized by a disposition to affect the interest of the patentee, counsel fees and vindictive damages may be assessed. 1122

#### Various particular inventions and patents

Burring machine. Patent to Parkhurst for improvement *held* valid and infringed. 1198

Camera, No. 12,700 (reissue No. 1,049), for plate holder for cameras, *held* valid and infringed. 820

Cheese safes. Design patent *held* void for want of invention. 374

Fire extinguisher. Reissue No. 4,994 (original No. 88,844), for improvement, *held* void for want of novelty. 394

Hats. Patent to Noe of July 20, 1832, for sewing edges of braid together with horsehair, *held* valid. 283. 283.

Hydraulic power. Patent to Parker of October 19, 1829, for improvement, *held* valid and infringed. 1127. 1163

Knob latches. Reissue No. 3,909, for improvement in reversible knob latches, *held* valid. 433

Pavements. No. 11,491 (reissues Nos. 1,583 and 2,748), for improved wooden pavements, construed, and *held* not infringed. 211

Planing machine. Woodworth's patent *held* valid and infringed. 639

Pumps. Reissue No. 6,962, for improved apparatus for cleaning privies, *held* valid. 590

Pumps. No. 73,938, for improved apparatus for cleaning privies, *held* valid and infringed. 589

Pumps. No. 141,587, for improvement in pump valves, <i>held</i> valid and infringed.	589
Pumps. No. 155,670, for improvement in pumps for emptying cesspools, <i>held</i> valid and infringed.	589
Rails. Patent awarded to O'Reilly for invention of splice plate.	795
Sewing machines. Reissue No. 1,562 (original No. 11,971), for improvement in relation to shuttle driver, construed, and <i>held</i> valid.	1096
Umbrella cases. No. 149,480, for improved machine for fixing metallic rings to umbrella cases, <i>held</i> valid.	579
Water wheel. Patent to Parker of October 19, 1829, for a percussion and reaction water wheel, construed, and <i>held</i> valid and infringed.	1135
Wire fences. No. 6,106, for an improvement, <i>held</i> not infringed.	162
<b>Unlawful marking of articles as patented</b>	
The word "Patent" affixed to an article imports to all who see it that the article is then patented.	199
Flour may be a patentable article, and an action will lie to recover the penalty for marking it "Patented" when it is unpatented. (Rev. St. § 4901.).	647
In an action by the informer for a penalty for marking an unpatented article as patented, the United States need not be joined as plaintiff.	647
To recover the penalty plaintiff must show that defendant, having no patent, so marked the articles with intent to deceive the public.	199
Marking an unpatented article "Newell's Patent, 1852," is affixing the word "Patent" within the meaning of the act.	199
Although one who marks an unpatented article as patented may expect to receive a patent, the offense is complete if he intended to make the public believe that the article was then patented.	199

If the word "Patent" is affixed to articles with the intention of procuring a patent, and withholding them from observation and sale until the same is granted, the act is innocent. 199

If an unpatented article is marked as patented, with intent to deceive, the offense is complete, without showing that the article was sold. If the marking was with innocent purpose, there is no offense, though the article is sold. 199

A count charging defendants with putting the word "Patent" on a lamp is sustained by proof that they put it on the cap of the lamp. 199

### PAYMENT

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

The delivery and receipt of a promissory note of the debtor or a third person does not constitute payment, unless it appear that the creditor expressly agreed to take the note as payment. 913

In Massachusetts a negotiable note or bill of the debtor given for a pre-existing debt is prima facie evidence of payment. 1028 987.

Such presumption may be rebutted by circumstances showing that such was not the intention of the parties. 1028 987.

The taking of negotiable notes from the debtor *held* no extinguishment of a mortgage which had been given to one partner to secure a debt due the firm. 857

Where notes of a third person are taken from a debtor upon an agreement that they shall be considered in payment, if collectible, the creditor is bound to use ordinary means and diligence to collect them. 913

An indorsement on an account of "Rec'd payment," after accepting the negotiable note of one of two debtors, *held* prima facie evidence of payment. 1044



The court may apply payments to items not liens, if there has been no special application by the parties. 702

Money in controversy, held by a nominal party solely as trustee for another person not a party to the record, may be ordered to be paid into court at the instance of the party in interest. 492

Where the holder of money, being an officer of the government, had ceased to be such during the pendency of the suit, the court should order the money to be paid into court. 492

### PILOTS

The territory of Washington has power to pass pilot laws. Such power is recognized as concurrent in the states by Act Aug. 7, 1794. 1068

Act Aug. 30, 1852, providing for the employment of pilots on vessels propelled in whole or in part by steam, engaged in carrying passengers on any of the bays, lakes, or other navigable waters of the United States, so far as it goes, supersedes all state laws regulating the employment of pilots on such vessels. 1068

In case of conflict the presumption is that congress intended to abrogate state laws on the subject. 1068

A warrant to act as pilot, appearing on its face to have been regularly issued, cannot be questioned collaterally, and justifies the master of the ship in dealing with the holder as a lawfully constituted pilot. 1068

State pilot laws have sufficient effect beyond the state boundaries to fix the compensation of pilots. 16

An offer to take on board a pilot tendering services, accompanied with refusal to pay off-shore pilotage, is a refusal to take the pilot, within the meaning of the New York statute, 16

though another pilot is subsequently taken and in-shore pilotage paid.

### PLEADING AT LAW

The writing sued upon must be set forth in the pleading according to its tenor or legal effect 628  
A writing merely referred to and annexed as an exhibit will be stricken out on motion as impertinent and irrelevant. 1383

Where a contract contains various substantive and independent stipulations, and there is a breach of more than one of such stipulations, 628 there arise distinct causes of action which should be pleaded separately.

An allegation that the defendant failed to furnish transportation to laborers furnished the defendant by plaintiff, to his damage so many 28 dollars, is not uncertain, but only nominal damage can be recovered under it.

A plea which amounts to the general issue, or does not answer the whole charge or count, is 1145 bad.

To a plea of the statute of limitations interposed by an administrator at the trial term plaintiff can 601 make only one replication.

A demurrer taken "to the complaint" must be overruled if either count therein is good. 1249

The plaintiff is bound to give oyer of his letters of administration whenever demanded, before 327 the expiration of the rule to plead.

After oyer prayed and demurrer by the defendant, the plaintiff is not bound to give oyer 602 at a subsequent term.

A defense which has been stricken out of the case may be given in evidence as an admission. 773

The court will not give leave to amend a demurrer unless it goes to the merits of the case. 602

### PLEADING IN ADMIRALTY

A decree may be made against a defendant named in the body of the libel though he is not named in the prayer for relief. 29

In a libel for seaman's wages, the allegations of the hiring, voyage, etc., must be drawn accurately and with reasonable certainty. 825

Where misconduct is relied on to defeat the claim of wages, it should be stated with reasonable certainty as to time, place, circumstances, and degree. 825

Where inconsistent allegations in the answer are not excepted to, the one most strongly against claimants will be taken to be the one really made. 635  
The court will permit amendment instante in respect to defects of form first objected to at the hearing. It may also in its discretion permit amendments to the merits at any time before final decree. 29

### PLEADING IN EQUITY

A bill in equity, although it charge a felony, may be sustained by proof; but the defendant is not bound to make a discovery thereof. 532

It is no objection to a bill filed to set aside an assignment of a mortgage given in payment of a debt, and to recover a debt, that it does not contain an offer to reassign the mortgage. 976

A general answer is sufficient for general allegations. Defendant will be required to answer specifically only specific interrogatories. 1255

A responsive answer containing a positive denial cannot be overcome by the uncorroborated testimony of a single witness. 1153

Satisfactory proof may be made by circumstances alone, or partly by circumstances and partly by direct testimony, or entirely by the latter. 1153

A plea is not good as to matter apparent on the face of the bill, where the objection is available by demurrer. 469

Exceptions to an answer for insufficiency may be filed after exceptions for impertinence. 1303

Where want of jurisdiction appears upon the face of the bill, the objection should be taken by demurrer. 469

An objection to a bill describing complainant as an assignee, that he is not legally such assignee, must be taken by plea, not by demurrer. 174

A demurrer for want of equity will not lie where the bill is sufficient in substance, but for some technical reason (as the lapse of time or want of jurisdiction) the relief sought is not attainable by the suit. 174

A demurrer for want of facts constituting a cause of action is unknown to chancery practice, and is, at most, a general demurrer for want of equity. 174

Where a defendant in equity has filed several pleas without leave of the court, he will be put to his election as to which he will stand upon. 469

Leave to file an amended answer presents only cumulative evidence will not be granted after a jury trial has been had on an issue made on the bill and answer. 161

### PRACTICE AT LAW

If the writ is against two defendants and one only is taken, the cause is discontinued, unless alias capias is issued against the other and continued by pluries, etc., until the trial term. 179

The plaintiff is not obliged to join in demurrer to the evidence unless the demurrer expressly admits every fact which the jury might reasonably infer from the testimony. But if demurrer be joined, the court will infer what the jury might infer. 1344

Bad pleas filed by a party given leave to amend may be stricken out on motion. 1145

A judgment in ejectment by default for want of a plea, without a rule to plead, and thus putting defendant in default, is irregular. 1294

### PRACTICE IN ADMIRALTY

A libelant has the right, at any stage of the cause, voluntarily to discontinue the same on payment of costs. 815

A vessel, discharged from arrest upon giving bond or stipulation, returns to her owner forever discharged from the lien which was the foundation of the proceedings against her, and the court has no power to order her rearrest. 642

In proceedings in rem, upon a bond for the appraised value given jointly and severally, if one of the obligors dies, the court will proceed against the survivors, or, at the option of the plaintiffs, against the representative of the deceased also. 573

An agreement for a reference before answer filed suspends the necessity of answer. If the reference is set aside, claimant may answer without terms. 268

It is in the discretion of an admiralty court to stay proceedings under a libel until libelant, being out of the jurisdiction, shall enter appearance to a cross libel. 205

On a libel against a cargo for freight and demurrage, where it is in the hands of a purchaser without notice, freed from the lien, and the consignee appears and admits the claim, the court will turn the proceedings into an action in personam. 700

On a libel by a bottomry holder, where both the mortgagee and owner appear and claim the proceeds, the court may decree distribution between the claimants, or require them to formally litigate their claims. 1073

In such proceeding the owner may set up in defense to the claim of the mortgagee that the mortgage is void for usury. 1073

1384

Where a factor having a lien and a person claiming a derivative title under the owner contest the right to the proceeds, the court will decide upon the equities of all concerned. 969

Where the amount involved in an admiralty suit is not sufficient to permit a review by the supreme court of the judgment of the circuit court, a general finding of facts and law by the latter court is sufficient, under Act Feb. 16, 1875. Findings of a commissioner on the merits, when his authority is limited by the order of reference to matters of fact and evidence, cannot be brought up by exceptions to his report. The remedy is a motion to reject the report or for a rehearing on the merits. 724

81

A rehearing in admiralty cannot be had after the end of the term. 52

A petition for review, filed after the term at which the decree was rendered, and after it had been executed, will be entertained by the court, when actual fraud is charged, and the libellant is without fault, and would otherwise be without remedy. 391

The court will not, on mere motion at a subsequent term, set aside a decree made at the hearing. 804

Quaere: whether a libel of review in the nature of a bill of review in equity will lie in admiralty. 52

Sales in admiralty must be confirmed by the court before the purchaser takes the property. 76

The court will not, upon a summary application of a claimant, inquire into damages caused him by an unfounded arrest of his ship. 815

Nor will it assume power to coerce parties into issues not raised in the pleadings filed in the cause. 815

### PRACTICE IN EQUITY

A party takes no notice of the filing of a plea or demurrer unless notice thereof is entered in the order book, as required by equity rule 4. 42

The petition for leave to file a supplemental bill need not embrace the averments intended to be inserted therein; but it must show the ground upon which the relief is asked. 1203

All that the court inquires into, on such a petition, is to see whether probable cause exists for granting the leave, and whether the petition states facts or circumstances which, if properly pleaded, would sustain a supplemental bill. 1203

Leave to file a supplemental bill making a new party and containing new matter against the original party granted, on petition alleging that such new party had become interested in the subject-matter since filing the original bill. 1203

### PRINCIPAL AND AGENT

See, also, "Factors and Brokers."

An agreement by a manufacturer to pay the consul general for a foreign government a commission upon all orders for goods placed with the promisor by the purchasing agent of the government is void as against public policy. 863

### PRIZE

Property seized by an armed vessel of the United States empowered to make prizes while afloat in an enemy port, on board of an enemy vessel, is lawful prize under the law of nations. 723

A resident of South Carolina, after she proclaimed her independence and hostile measures were taken by the general government to restore its authority, cannot claim restitution 1187

of a vessel captured as prize of war during such hostilities.

But where the voyage was begun before hostilities were commenced, mariners not hostile 1197 are entitled to wages out of the proceeds.

Vessel owned by residents of states in rebellion, though loyal citizens, condemned as enemy 347 property. 346.

Enemy property captured by a public vessel in an enemy port, although, when seized, stored in a warehouse on land, near the water, *held*, under the facts in this case, to be lawful prize. 723

It is immaterial by whom the vessel was seized if she was subject to capture and condemnation for being engaged in an unlawful trade. 910

The federal district court may enforce the decrees of the court of appeals under the articles of confederation, in prize causes, against the proceeds of prizes condemned in that court. 680

Vessel condemned as enemy property, having been appraised by a naval survey, and appropriated, at that valuation, to the use of the United States at the place of capture. Appraised value ordered to be distributed. 867

Vessel ostensibly bound to Port Royal, then in the possession of the United States forces, condemned for an attempt to break the blockade of other ports. 526

Vessel captured with contraband cargo near enemy's coast, and 150 miles off her course as designated on her papers, condemned. 505

Vessel and cargo condemned as enemy property. 49. 649

Vessel and cargo condemned for an attempt to violate the blockade 225, 910, 912, 1298, 1299 573

Vessel and cargo condemned as enemy property, and for a violation of the blockade.

## PUBLIC LANDS



See, also, "Grants."

The Connecticut Reserve, ceded to the United States after the adoption of the ordinance of 1787, is subject thereto equally as other parts of the territory northwest of the Ohio river. 1026

In the absence of proof that the title to land in California is obtained directly from the government, the legal presumption is that the title is in the United States. 1331

The general gift of 500,000 acres to California by Act Sept 4, 1841, became a particular gift of specific lands, on the location by the state of lands subject thereto, vesting a title in the state from the date of such location. 1331

#### QUIETING TITLE—REMOVAL OF CLOUD

The federal courts have jurisdiction of a proceeding under a state statute for the confirmation of sales of land by sheriffs and other public officers whose object is to quiet title to lands. 916

#### RAILROAD COMPANIES

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

The constitutional provision that charters of railroad companies "may be altered or renewed by the legislature at any time after their passage" becomes a part of every subsequent charter and all contracts made by the companies. 404

A railroad charter which requires the assent of city authorities to the construction of the road within the city, and authorizes them to regulate the time and manner of using the same, enables the railroad company to agree that the city authorities shall retain the right to regulate the kind of power used in moving the cars. 14

Where patents under a land grant were to be issued pro tanto on the completion of every 20 consecutive miles of road, and to be subject to the disposal of the company for construction 413

purposes, *held* that the company had a complete title under the patents, and not one in trust.  
A statute authorizing a city to subscribe to railroad stock “as fully as any individual” gives no authority to issue bonds in payment of a subscription. 594

County bonds issued to a consolidated company, upon a subscription to one of the roads previous to the consolidation, are illegal and invalid, though issued to the original company and its charter permits consolidation. 484

The fact that the bonds recite that they are issued in pursuance of law will not affect the case. 484

A bona fide purchaser of county railway aid bonds which recite that they are issued under an order of the proper court, pursuant to legislative authority, is not affected with constructive notice of facts recited in such order contrary to the recitals of the bonds. 227

Under a statute providing that certificates or bonds issued for stock subscriptions shall be transferable only on the books of the city, interest coupons attached to the bonds are not transferable in any other manner. 594

Where a statute gives authority to make bonds transferable as shall be directed by the city, the issuance of bonds raises a presumption that their form was duly authorized. 594

### Real Property

See “Deed”: “Ejectment”; “Estates”; “Grant”; “Public Lands.”

### RECEIVERS

The peril of a fund in litigation is cause for the interference of the court to secure and protect it by the appointment of a receiver. 1206

### Reference

See “Arbitration and Award.”

## RELEASE AND DISCHARGE

The release of one of two or more joint or joint and several debtors does not operate as a release of all of them, where it only extends to the individual liability of the party released to the creditors, and does not affect his liability to his joint debtors for contribution or otherwise. 1090

## REMOVAL OF CAUSES

### Right of removal

A defendant, though a citizen of the state where the suit is brought, may remove the case from the state to the federal court. (Act March 3, 1875). 876

An action by the collector of internal revenue against the deputy collector on his official bond may be removed from the state court into the federal court, under Act March 3, 1875. 829

Code Va. §§ 19-36, requiring foreign insurance companies doing business in the state to keep an agent there to receive service of legal process, does not prevent such company removing a cause to the federal court. 22

Where an appeal from an appraisal of private lands taken by an incorporated company under the right of eminent domain assumes the shape of a suit docketed and pending as an action at law for the trial of the question of the value of the land, it is a suit of such a nature as may be removed. 1328

On a bill of foreclosure filed by a bondholder of a railroad company, the cause may be removed on petition of the company, its officers, and the mortgage trustees, without joining the codefendants. 876

The existence of judgment creditors and the fact that one of them has filed a cross bill, does not affect the right of removal. 876

Seizure of res by a state court does not affect the case, for that is necessarily transferred with the case. 876

Collateral issues connected with the res in the state court do not destroy the right of removal, provided the parties are within the statute. 876

The right of removal must be determined on the case made by the complaint, unaided by the answers; hence disclaimer by defendants who are residents of the same state with plaintiff will not enable a nonresident defendant to remove. 87

Disclaimer by defendants residing in the same state with plaintiff will not enable a nonresident defendant to remove on the ground of local prejudice; for all the defendants must be nonresidents and must join in the petition. 87

Subdivisions 2 and 3. Rev. St. § 639, relating to prejudice and local influence, are not repealed by implication by the act of 1875. 87

#### **Time for removal**

Under the Code of Iowa, equity suits are not triable at the appearance term, and such suits may be removed to the federal circuit court at the second term. (Act March 3, 1875, § 3.). 1024

Under that Code, the same rule as to the time of removal applies to suits to foreclose mortgages,—at least when there is no rule of court requiring such suits to be tried at the appearance term. 1024

#### **Proceedings to obtain**

The joinder of codefendants in the petition is not necessary where the controversy is wholly between petitioner and complainant. 876

It is not necessary that the petition for removal be verified by affidavit. 876

The petition and bond may be filed in the state court during vacation, and may be sufficient though there was no action upon them. 876

When the petition and bond are filed in the state court during vacation, the jurisdiction of that court ceases; it does not remain until the court can act upon them in term time; and it is not for the state court to decide whether a proper case is made. 876

It is not essential that the record be certified by the judge of the state court; the attestation of the clerk under the seal of the court is sufficient. 876

Irregularities in the removal do not vitiate it, nor authorize the federal court to remand or dismiss it. If it has jurisdiction, it should retain it. 876

**Effect of removal: Subsequent proceedings**

An injunction issued by a state court is dissolved by the removal of the cause into the federal court. 392

No attachment of property in a state court will hold the same after removal, where the attachment was not the original process in the suit, but, pursuant to a state statute, was issued after summons, as a separate process. (Act Sept. 24, 1789.). 69

A cause to which a state is a party will be remanded, as being beyond the jurisdiction of the federal court. 82

**REPLEVIN**

Replevin of property distrained for taxes in Washington, D. C. 833

An action of replevin discontinued at a previous term will not be reinstated. 180

**Riparian Rights**

See "Navigable Waters."

**SALE**

It seems that, by the law of Massachusetts, a purchase of goods with an intent not to pay for them is voidable by the seller, and so is a sale made upon the faith of any willful misrepresentation. 1119

A seller of imported goods on long credit who takes notes for the price, delivering the shipping papers to the buyer, who warehouses them in his own name, has no right of stoppage. 1119

Where such buyer sells to another, giving an order on the warehouseman which is duly accepted by him, he has no lien or right over them. 1119

If the seller states under seal that he has bargained, sold, and delivered the property to the purchaser, he is estopped to deny the delivery, and the instrument is evidence of property in the purchaser. 27

A customer ordering goods of a manufacturer, knowing the latter's usage in respect to filling orders in turn, as received cannot maintain suit for breach of contract, unless he establishes some right superior to that arising under the usage. 71

A seller who accepts a note or bill in satisfaction of the debt cannot sue on the original cause of action, if there was no fraud or unfairness in the transaction. 1176

A seller who takes negotiable paper from the buyer, without any agreement that it shall be received in payment, may sue on the original cause of action if he is in a position to return the paper. 1176

## SALVAGE

### Jurisdiction

A court of admiralty will entertain a suit for salvage as to property within its jurisdiction, where the only question is as to the rate of reward, though all the parties are foreigners. 703

### Right to salvage compensation

An anchor lost in a harbor *held* not derelict as to a wrecker who went in search thereof with 698

knowledge that the owner would take means to recover it.

Services of tug in picking up canal boat which had broken from a tow in New York harbor in heavy weather, *held* entitled to salvage remuneration. 736

A fireman who, at some risk, jumped on board the canal boat to make a line fast, should receive a share equal to that of the master of the tug. 736

The towing to a safer place of a dismasted and rudderless bark, without an anchor, and transmitting information to the owners, *held* a salvage service. 321

The rescuing of a vessel from pirates is a salvage service. 1271

The cutting of an anchored vessel's cable to avoid collision with an abandoned vessel drifting in a field of ice *held* a salvage service, rendering the latter liable to the extent of paying for the anchor and cable lost. \*214

Soon after the crew of a vessel were abandoned by the master near the home port, the vessel was stranded, and the crew got her off with considerable difficulty and danger. *Held*, that they were not salvors. 651

The keeper of a lighthouse is under no obligation to render salvage services gratuitously. 908

A person whose oxen are used in a salvage service does not thereby become a salvor. 908

**Contracts for salvage services**

Contract to pay \$10,000 for getting out cargo and raising hull of vessel scuttled to extinguish a fire, worth \$28,000, *Held* reasonable. 893

**Forfeiture of salvage**

Embezzlement by salvors works an absolute forfeiture of all salvage; but embezzlement by other parties does not forfeit the right of innocent salvors. 214

Salvors are bound to take reasonable care to prevent plundering by others. Slight negligence in this respect may diminish the award, and gross negligence works an entire forfeiture. 214

Refusal of salvors to interrupt their work of saving cargo to save an anchor and chain and rigging at the request of the master *held* not misconduct. 387

Salvage on cotton saved from a burnt and stranded vessel *held* should not be reduced for neglect of salvors to remove 46 bales undiscovered, where such bales were subsequently saved by others. 387

**Amount**

\$400 allowed a tug on a total value of \$1,600 for picking up canal boat which had broken from tow in New York harbor in heavy weather. 736

\$400 held a reasonable compensation for towing a vessel with cargo of cotton on fire, aground in a harbor, to a suitable place to scuttle her. 893

\$2,000 awarded a vessel worth \$20,000 for two hours' towing of a disabled steamer worth \$60,000 where a tug sent for was met on the way, and the weather was fair. 945

\$3,300 awarded schooner, valued, with cargo, at \$8,500, for 24 hours' towage services rendered a disabled bark worth, with cargo, \$70,000. 321

\$6,000 awarded an Atlantic liner worth, with cargo, \$800,000, for towing into New York harbor vessel worth, with cargo, \$85,000, found 90 miles from Sandy Hook in disabled condition. 561

\$16,000 awarded in the case of cargo, valued at \$700,000, of a disabled vessel towed to port 730 miles by another vessel belonging to the same owners. 950

From 20 to 50 per cent. allowed on different parts of cargo of cotton saved from burnt and stranded vessel. 387



45 per cent. allowed on net proceeds of cargo 434  
valued at \$5,500 saved by wreckers 333.

Two-fifths of net proceeds of vessel and cargo 1271  
allowed for rescuing it from Malay pirates. 1387

### **Remedies for recovery**

Under the 19th admiralty rule a proceeding in  
rem cannot be joined with a proceeding in 458  
personam for salvage of the same goods.

Retention of possession by salvors is not 214  
necessary to their lien.

### **Apportionment**

All the property saved comes into one general  
fund, though salvage services were performed 908  
by different persons at different times in saving  
different kinds of property.

### **Right to property or proceeds**

The surplus proceeds after paying salvage awards  
will be retained a reasonable time to permit 893  
owners or underwriters to file claims.

The proceeds will be withheld from the master  
where he has been guilty of fraud, 333  
embezzlement, or reckless conduct.

Circumstances surrounding disappearance of box  
containing \$10,000 in gold *Held* not sufficient to 333  
justify withholding proceeds from master.

## **SEAMEN**

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

### **The contract of shipment**

A mariner may show that the shipping articles  
do not truly describe the voyage for which he 993  
contracted, and may recover accordingly.

A mariner may recover the value of privileges 1121  
granted him supplementary to the ship's articles.

Where two distinct contracts, for service on two  
distinct voyages, are made at the same time, and 993  
one only is reduced to writing, the other may be  
proved by parol.

A contract for a voyage to different ports in the Pacific and back to the United States, or for a period of 18 months, is not fulfilled on the ship's part by lapse of the term, where the seaman is left abroad in a hospital, without means or opportunity to return. 29

Under what circumstances a dismissal of a seaman from duty may be justifiable. 825

An attempt by a seaman to commit rape upon a female passenger in a foreign port, and her refusal to remain on board unless he is discharged, justify his immediate dismissal. 236

Discharge of a seaman in a foreign port without his consent or the approval of the American consul places on the master the burden of showing just and sufficient reasons. 236

The master cannot justify the discharge of a seaman in a foreign port on the ground that he was a dangerous man, except by showing that the danger of bringing him back would be such as might easily affect a mind of ordinary firmness. 250

A fireman on board a steamer is a seaman. 339

A seaman falling sick during the voyage is entitled to be cured at the vessel's expense. 250

A seaman injured while in the service of the ship is entitled to medical treatment at the expense of the ship. 339

The right of a seaman to be maintained and cured, at the ship's expense, of a disability incurred in her service, continues no longer than his right to wages under his contract. 29

Before the owner can claim that the vessel is exempt from charges for medical advice and attendance under the act of July 20, 1790, he must show that a medicine chest was provided. 250

The vessel is liable for the hospital expenses and wages of a seaman injured in discharge of his 339

duty, who leaves the ship for its convenience and on the judgment of its officers.

**Conduct of master or mate in respect seamen**

The mate is entitled to command in the absence of the master, and if a seaman be wrongfully dismissed by him the owners are liable therefor, as the act of their agent. 825

Master *held* not answerable in damages for punishing a disobedient seaman who refused to do duty. 1013

**Wages—Right to**

The rule that freight is the mother of wages does not apply to a fishing or sealing voyage. 558

When a voyage is broken up or lost by the act or fault of the master or owner, the seamen are nevertheless entitled to their wages for the full voyage or the time which it would probably require to complete it. 558

Where a ship was abandoned and set fire to at sea by order of the master, *Held*, that the crew were not entitled to any wages, though the ship was insured and certain articles were saved. 269

Seamen in a fishing adventure are entitled to compensation for the neglect of the master in procuring salt, resulting in breaking up the voyage before the close of the season. 977

Where a ship is sold abroad and employed for a new voyage, breaking up the old one, a seaman previously left in hospital at another port is not bound to rejoin her, but is entitled to actual damages for breach of the shipping contract. 29

If a sick seaman is sent to a hospital in a foreign port, and the ship leaves without his rejoining her, he is not absent without leave so as to stop his wages. 29

A seaman discharged abroad without sufficient cause is entitled to wages to the termination of the voyage. 250

Where an American seaman is discharged by the master in a foreign port, he may recover, in a libel for wages, the three months' advance authorized by Act 1803, c. 6[illegible] if the same be not paid to the consul abroad, to be distributed according to the act. 825

The onus probandi is on the master to show that the advance was paid. 825

It is no objection to the recovery of the three months' advance that the name of the seaman is omitted as an American citizen in the list of the crew, certified from the collector's office, under Act 1796, c. 36, § 4, if he is named as an American citizen on the master's list of the crew. 825

—Remedies for recovery

Persons shipping as sealers on board a vessel engaged in the sealing business are mariners, and have a lien for wages. 558

An assignment by a mariner of his wages confers upon his assignee no right to maintain a suit in rem against the vessel for the recovery of the wages assigned. 1290

It seems that there is no lien for services of one employed for general duties on a vessel engaged in carrying and laying stone in Quincy river and Massachusetts Bay. 958

Vessel employed in carrying and laying stone in Quincy river and Massachusetts Bay, chartered by the master with the knowledge of a person employed thereon for general duties, *held* not liable to him for wages, especially after a delay of three years and change of ownership. 958

A foreign seaman who had shipped to this country and was offered passage home cannot sue here for wages, where the master had given security for his return. 942

Where shipping articles are not produced on due notice, libellant's statement of their contents is prima facie evidence thereof. 868

But a call for the articles at the time of trial is not a sufficient requirement, unless it be made to appear they are then in presence of the court, or directly within the control of the master or owner. 868

A request for the production of the shipping articles, made in the libel, *held* not sufficient notice under the circumstances. 868

The claimants, on proving a reasonable excuse for not producing the shipping articles on trial, may contradict by parol evidence the statement of their contents by the mariner. 868

The rule allowing seamen to libel without giving security must be modified in cases where they have been paid off before a shipping commission. 280

—Deductions: Extinguishment, etc

A deduction of wages not allowed where seamen failed to stay by a fishing vessel until she was unloaded and cleaned, though such, was the local usage, where the seamen were not asked to stay by the vessel. 651

A master punishing the misconduct of a seaman by imprisonment cannot deduct from his wages the prison expenses. 250

A refusal to do duty, at a moment of high excitement from punishment inflicted, if not followed by obstinate perseverance, is not a forfeiture of wages. 825

Permitting the first mate who had assaulted the master to continue in office for a few days until a convenient place was reached to disrate him is not a condonation. 652

Where the owners have not been injured by misconduct of a seaman, and he has been 652

sufficiently punished therefor by imprisonment, a deduction will not be made.

Cook *held* not guilty of embezzlement in selling the ship's slush, the evidence showing an agreement with the master for such privilege. 1121

Sufficiency of evidence to convict a seaman of desertion carrying a forfeiture of wages. 868

If the log book states a desertion, it may be repelled by proof of the falsity of the entry, or its being made by mistake. 825

Habitual drunkenness, if it goes to establish general incapacity to perform duty, is a ground of forfeiture of wages; otherwise it goes only to diminish compensation for the voyage. 825

The crew are not authorized to jettison any part of the cargo without the master's order. 250

#### SET-OFF AND COUNTERCLAIM

A joint and several note in the hands of an assignee may be set off in an action by one of the makers. 1291

The demands of plaintiff and defendant must be specific and mutual, and there must exist a simultaneous right of action at the institution of suit, to enable one to set off against the other. 1291

#### SHIPPING

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

#### Public regulation

The penalty of \$500 for not depositing the ship's register with the consul on arrival in a foreign port (Act 1803, c. 62, § 2), must be sued for within two years (Act 1790, c. 36, §31). 1259

An action of debt in the name of the consul is the proper remedy. 1259

Any voluntary arrival in a foreign port in the course of the voyage, although for advices only, 1259 is within the act.

A vessel licensed for the fisheries, which brings merchandise from a foreign port with the knowledge or consent of her officers, is engaged 526 in other trade, and is liable to forfeiture under Act Feb. 18, 1793, § 32.

A single act of unlawful trading will work a forfeiture, though the vessel continue her 526 licensed business.

A seizure must be alleged in order to give the 571 court jurisdiction.

A steam tug employed in towing rafts and lumber on a river exclusively within the state is 571 not a common carrier, nor liable to seizure for not having been inspected.

The passenger act of March 3, 1855, construed 1283 in a charge to a grand jury.

#### **Title to vessel**

An agent or broker who purchases a vessel, taking a bill of sale in his own name to secure repayment of money advanced by him to pay 1073 the price and interest and commissions, is a mortgagee, not the owner, of the vessel.

A sale of a steamboat with all appurtenances includes a new ash pan previously purchased and 37 delivered to the vendor, but not yet placed on board.

The execution of valid and legal papers conveying title to a vessel is prima facie evidence 230 of a consideration.

Under a contract for the sale of a vessel, where the title is to pass upon the performance of a condition at a future day, the vendee to have 817 possession in the meantime, the vendor is entitled to possession, where the condition is not performed.

In a suit for possession of a vessel it is not necessary to go into all the equities, but only to ascertain the legal title. 817

Possession taken by a joint and equal owner of a vessel while she was improperly left by the other owner without an attendant will not be interfered with by the court. 523

Admiralty has power to decree a sale, in case of a dispute between owners of equal moieties, as to the employment of the vessel. 524

Admiralty has no power to decree a sale at the instance of minority owners, except, perhaps, as the result of the failure of the owners of the majority interest to give security for the safe return of the vessel. 524

Admiralty cannot require majority owners to give a bond to the minority owners to cover indebtedness of the vessel to them, or to indemnify them against loss in her future employment. 524

One part owner of a vessel has not a lien on the share of another part owner for a balance which may be due to him. 1339

### **The master**

The master and co-owner of a whaling ship who has contracted for a cruise of four seasons at a certain lay, and is wrongfully deprived of his command at the end of three seasons, may have an action against his co-owners for damages for his removal. 1269

The measure of damages in such a case is the probable value of his lay for the unemployed season. 1269

1389

A clause of the shipping articles prohibiting the bringing on board ship of distilled spirits is not broken by carrying Madeira wine on freight. 1269

Every contract of the master within the scope of his authority as master, by the general maritime 1084



law, binds the vessel, and gives the creditor a lien upon it for his security.

The master may sell part of the cargo or hypothecate it for necessary repairs, though he has money of the shippers on board; otherwise, 965 where he has sufficient funds of the vessel owners.

The master is liable for goods carried on deck without consent of the owner, and lost by 1084 dangers of the seas.

The master of a ship has a lien on the freight for all advances made abroad for the ship's use. 965

Evidence *held* to show no misconduct on the master's part sufficient to forfeit wages. 279

#### **Employment of vessel**

There is no established custom of trade between Portland and Boston authorizing the carrying of 1084 goods on deck without the consent of the owner.

Where a disabled ship, having reached a harbor of safety, might have been repaired in a neighboring port, but the master employed a tug to tow her to her destination, *held*, that no part 261 of the towage expense was chargeable to cargo.

The judgment of the master was not conclusive on cargo owners.

#### **Liabilities of vessels or owners**

The obligation of the ship in the case of a contract for the conveyance of goods or persons results directly from the contract, and not from 935 the performance, and the liability of both vessel and owner attach at the same time.

The obligation of the vessel in the case of a contract for repairs and supplies does not arise until the repairs or supplies are furnished, and 935 for a breach of the contract the vessel is not liable.

Damages for a breach of a charter party are a lien on the vessel, and where the demand is satisfied 1073

by the mortgagee, who takes an assignment of the claim, he may claim proceeds in court for repayment.

Both vessel and owners are liable for damages resulting from breach of a passenger's contract. 935

### **Limiting liability**

The right to proceed for limitation of liability cannot be exercised after final hearing in an action in rem to recover on claims in respect to which limitation of liability is sought. \*144

Proceedings to limit liability in respect to a collision may be instituted, even after the giving of a stipulation in an action in rem for the full value of the vessel, for the benefit of all demands arising from the collision. 144

On a petition to limit the liability of owners of a boat set on fire and sunk by a collision, the value of the boat is arrived at by taking the value of the wreck when raised, and deducting therefrom the expenses of raising. 440

The value of repairs subsequently made and fire insurance moneys received by the owner cannot be added. 436. 440

The valuation of the boat in a stipulation for value given in suits brought against her after she was repaired is immaterial. 436

The outfits of a whaler are a part of the appurtenances of the ship in estimating value. 736

Page There is no freight pending in a whaling voyage. 736

The injunction granted in a proceeding to limit the liability of a shipowner restraining the prosecution of suits pending against the shipowner should not prohibit the collection of the taxable costs in such suits. 439

The costs and expenses of the proceeding are first to be paid out of the fund. 439

The petitioner is entitled to a docket fee for each creditor who comes in and proves his claim. But he has no preference for his costs over the costs of the creditor. 439

### SLAVERY

Action for harboring or concealing fugitive slaves under Act Feb. 12, 1793. 657. 678

The master of fugitives from labor may arrest them wherever they may be found, if he can do so without a breach of the peace, and take them back to the state from whence they fled. 322

Liability of master of vessel under Act Va. Jan. 25, 1798, for taking slave out of state without consent of owner. 1109

The remedy on a contract for the sale of slaves did not survive the abolition of slavery by the thirteenth amendment to the constitution. \*846

Evidence *held* sufficient to justify condemnation of vessel for being engaged in the slave trade. 817

### STATUTES

Statutes partly in conflict with the constitution will be held void only in part. 409

An act entitled "An act to tax and regulate" certain named foreign corporations cannot contain any provision in relation to any other foreign corporation. (Const. Or. art. 4, § 20.). 764

Where the meaning of a statute is plain, there is nothing open for construction. It is only where the meaning is doubtful that the court can indulge conjecture as to the legislative intent. 616

Every part of a statute must be viewed in connection with the whole to effect harmony and give a sensible and intelligent effect to each. 616

The title of the act may be resorted to to explain and show the general purport and the inducement which led to its enactment. 616

It belongs to the judiciary, and not to the legislative, power to determine the extent and 618

operation of laws after they are made, and an attempt by the legislature to determine retroactively whether one act operated to repeal or suspend a prior one is void.

A later act which declares that a previous act did not repeal by implication a still earlier inconsistent act is ineffectual, as an invasion of judicial authority. 618

A later statute repeals an earlier one if inconsistent therewith, or if it covers the same subject and in general terms repeals all other laws within its purview. 618

In the case of inconsistent acts passed on consecutive days, a joint resolution passed on the later day directing that the earlier act be not published until some days later shows the legislative intention that the earlier act should not be repealed, where publication is necessary to put the act in force. 404

The doctrine that a statute is impliedly repealed by a subsequent act revising the whole matter of the first does not apply when the revisory statute itself prescribes its operation upon the previous act. When that is done no other effect can be given to the revisory act. 1331

The specification in an amendatory act of its retroactive effect excludes all unspecified cases. 930

The Revised Statutes must be regarded as passed on December 1, 1873, and all other acts of the same session of congress passed that date are to be treated as subsequent acts repealing the Revised Statutes, so far as they are inconsistent therewith. 783

## TAXATION

Right of exemption from taxation of certain railroads under Act Dec. 25, 1852, § 12. 1226

Personal property not listed for taxation, as required by law, may be assessed against the 342

apparent owner by possession or muniment of title.

The assessment of taxes on a vessel and the warrant may be against the vessel by name. 342

Under Laws Mo. 1852-53, p. 13, the state board of equalization cannot act as an original assessing body and make an assessment de novo of railroad taxes, but it is only authorized to equalize the aggregate valuation of the county boards. 1347

An assessment de novo by the state board will not vitiate the entire tax, but will leave the final valuation as fixed by the county boards. 1347

The nature and extent of the jurisdiction of equity to restrain the collection of taxes considered. 1226 1223.

A party coming into court to restrain the collection of taxes must have paid or tendered the part admitted to be due. A willingness to pay or payment into court is not sufficient. 1226

A distinction, on principle and policy, suggested between enjoining local or municipal taxes and taxes levied by the state for purposes of general revenue. 1226

A mere error of judgment on the part of assessing officers as to the valuation of property, in the absence of fraud, is not subject to judicial revision. 1347

The payment of illegal taxes under protest to relieve the party from an accumulation of penalties, which could only be enforced by judicial proceedings, is voluntary, and cannot be recovered back. 530

A tax paid under protest, and with notice that the person intends to bring a suit to test its validity, may be recovered back where it is illegal. 412

In a sale of land for taxes, any material act which the law requires, or which may prejudice the rights of the owner, will be fatal to the title of the purchaser. 612

A payment of the money received on the sale into the county treasury instead of the state, or the treasury of the county instead of the treasury of the township, cannot affect the title. 612

The purchase by a deputy of the sheriff who made the tax sale, where he took no part therein, does not render it void. 792

The purchase by a clerk of the chancery court, in whose office the deed must be filed, does not render the sale void. 792

Upon a petition to confirm a tax sale, the purchaser must show every fact necessary to give jurisdiction and authority to the officer making the sale, and a strict compliance with the statute. 916

The purchaser under decree of the court *held* entitled to redeem from a tax sale. 695

Redemption of land sold under Act Miss. Nov. 27, 1875, for levee taxes. 792

### TOWAGE

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

The tug must take proper measures to guard against the effect of the tide and the passing of other tugs. 649

Where a vessel to be towed is known to the tug to be a bad steerer, the tug will be liable for injuries to other vessels in the tow caused thereby. 800

A tug which silently acquiesces in the slackening of a bow line by a tow alongside is responsible for resulting damages. 649

Tug held liable for grounding of tow in Hell Gate, resulting from maneuvers rendered necessary by failure of the pilot to observe in 163

proper time that a schooner preceding the tug and tow had lost the wind.

Towboat *held* not liable for sinking of canal boat in tier of boats towed astern, where she was old and weak, and no notice of danger was given the towboat. 897

A tow of nine loaded canal boats *held* too heavy for a tug on the Chicago river. 1059

Injuries to tow *held*, on the evidence, incident to the navigation by hawser. 1296

### TRADE-MARKS AND TRADE-NAMES

The essence of the wrong in the infringement of a trade-mark consists in the sale of the goods of one person as those of another. 871

Where it did not appear whether the public was actually deceived or in danger of being deceived, the cause was referred to a master ascertain such fact. 871

The right to a recorded trade-mark is limited to its use in connection with the articles particularly described in the filed statement. 882

Plaintiff recorded the word "Heliotype" as used in connection with a print made by a patented process called "Heliotype." *Held*, that its use on a print not made by such process was not an infringement. 882

Relief by search warrant under Act Aug. 14, 1876, §7, denied for lack of definiteness in the affidavit and proof of the applicant's right or title. 587

### TREATIES

Construction of the decision of the commissioners under article 4 of the treaty of Ghent. 751

### TRESPASS

A person holding goods under a respondents bond, with an assignment of the bill of lading, may recover damages for their unlawful taking in 946

the full value of the goods, irrespective of the amount of his debt.

Trespass et armis for shooting plaintiff's slave will lie without a per quod servitium amisit. 98

In trespass to land, plats are not a part of the pleadings, but are evidence merely. 1083

Plaintiff cannot recover damages for erecting a fence and obstructing his windows, unless he was in possession at the time of erecting the fence. 694

Under a plea of not guilty and notice of "defense on warrant," defendant may give his title in evidence in justification. 1083

### TRIAL

See, also, "Appeal"; "Continuance"; "Evidence"; "Exceptions, Bill of"; "Judgment"; "Jury"; "New Trial"; "Practice"; "Witness." 1391

Witnesses may be removed while others are examined. 1339

If the jury send a written request for instructions to the court, when not in session, the court, after notice to the counsel, will reply in writing, if it deems it safe and proper to do so. 318

It is not error to allow the plaintiff to remit an excess of interest found in the verdict, and then affirm the verdict, so amended. 1003

### TROVER AND CONVERSION

In trover for slaves plaintiff may recover damages beyond the value of the property converted. 27

### TRUSTS

A conveyance by husband and wife of the wife's land in exchange for lands conveyed to the husband raises a resulting trust in her favor, in the absence of evidence that she assented to the conveyance to her husband. 221

The holder of the legal title to land will in equity be charged as trustee, where it was acquired by 420



fraud or under such circumstances as to render it inequitable for him to retain it.

Under a devise "to my executor herein named in trust," *held*, that the executor's relation to the trust estate was the same as if he had not been named as executor in the will. 1263

A residuary legatee who took real estate subject to the payment, in three years after testator's death, of a certain sum to another, in trust for testator's children, *held* not an express trustee, and the claim was barred after 30 years. 693

A power in a trust deed to sell and reinvest on the same limitations and trusts does not include by implication the power to mortgage. 1284

A trustee, unless expressly authorized, cannot issue negotiable paper executed in his trust character so as to bind the trust estate. 1284

A statutory provision giving the court power to authorize a trustee to sell or convey the corpus of the trust estate does not confer power to authorize the trustee to mortgage it. 1284

A trustee who fails to execute a direction to sell property and invest the proceeds in productive funds is liable for interest. 209

A receipt given by one just arrived at full age for a certain sum as his share of an estate under a trust deed is no bar in equity to his demanding interest and dividends due on the fund. 209

Nature and extent of the jurisdiction of the courts of probate of Connecticut over the administration of testamentary trusts. 1263

A court of equity has jurisdiction over a controversy between a cestui que trust and his trustee in relation to accounts for services and disbursements in the management of the trust. 1263

The settlement by a probate court of the accounts of a testamentary trustee must, in order to bind the cestui que trust, be made upon due 1263

previous notice to him of the time and place of settlement.

On the death of trustees in a deed of trust leaving infant heirs, the court, on application of the owner of the property conveyed in trust, will order the guardian of said heirs, duly appointed, to execute a deed releasing to the said owner the property so conveyed. 819

### UNITED STATES

The small island called "Pope's Folly," in the Bay of Passamaquoddy, is within the jurisdiction of the United States. 751

Quære: whether, if congress, after authorizing the construction of a bridge according to certain plans, arbitrarily changes the plans while the bridge is in course of construction, there is any breach of contract which will render the United States liable for the expenses necessary to make the change. 123

Where congress directed a change in the conditions previously prescribed by it for the construction of a bridge, and authorized the bridge company to sue the United States for the necessary cost and expenditures to be incurred in making the change, *held*, that this did not authorize the recovery of damages for which the bridge company became liable to a material man for a breach of contract rendered necessary by the change. 123

### USURY

The discounting of an indorsed note received in a fair transaction, at a rate exceeding the lawful rate of interest, is a usurious transaction. \*179

If the interest is, by the agreement, payable annually, it is not usury to add it to the principal at the end of the year, and take a new note for the whole, bearing interest. 656

It is not usury for a broker who has advanced money to purchase a vessel to charge legal interest and commissions. 1073

The difference in value of notes of a Western bank and those of Eastern banks may be covered by a contract, without usury. 834

There is no usury in charging exchange on a bill drawn in Indiana payable in New York. 834

A purchase of a bill at any discount or premium, not done to cover usury, is not usurious. 834

It is usury to take 2 1/2 per cent, commission besides the usual bank discount on a draft at 45 days. 183

### VENDOR AND PURCHASER

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

A deed made in pursuance of a recorded contract does not relate back so as to cut off intervening equities and convey the title as of date of contract. 718

A person who takes a conveyance upon the assumption that a former mortgage to his grantor has been merged in a subsequent recorded conveyance of the fee, does so at his peril. 766

The union of the mortgage and the fee in the mortgagee does not merge the estates, where the mortgagee transfers the mortgage before dealing with the property, although the transfer is not recorded. 770

The failure to observe a statutory requirement that a transfer of a mortgage shall be recorded would not render such mortgage void as against one taking another mortgage. 770

A mortgagee is a bona fide purchaser, though the mortgage was given to secure a pre-existing debt. 1281

A purchaser for valuable consideration and without notice from one who has obtained the legal title to land by fraud will be protected. 420

Knowledge of an adverse claim will prevent a grantee being a bona fide purchaser, though he pays full value and supposes he is getting a good title. 420

A valid mortgage in the hands of a bona fide assignee is preferred to a subsequent one, although the assignment is not recorded, unless the statute requires such record; but, as between bona fide assignees of the same mortgage, the assignment first recorded will have priority. 766

When the vendor was not vested with a legal title his vendee cannot be considered an innocent purchaser without notice. 515

A recorded deed misdescribing the premises by transposing the township and range numbers, where not applicable to any other land in the county, *held* constructive notice to a purchaser. 1281

#### VENUE IN CIVIL CASES

Where the absence of a venue in one count may be supplied by necessary inference from the venue in others, the count is not bad. 285

#### WAR

Where property sold during the Civil War was to be paid for in Confederate notes, the seller cannot sue thereon, nor on a note given to secure the payment, though it did not specify the currency. 304

#### WASTE

A mortgagee, by obtaining an injunction an action of waste against a person who had commenced the removal of a building from the premises, cannot be held liable where it is blown down by the wind. 1325

In an action of waste in the removal of a building, evidence of its cost is relevant to enable the jury to test the worth of opinions of witnesses as to its value. 1325

#### WHARVES

A municipality in the exercise of its police powers may control the landing of boats, by designating the place where they shall receive or discharge freight or passengers, and charge a reasonable compensation therefor. 409

A city may charge reasonable compensation, proportioned to the tonnage of the vessel, for the use of its wharves, where there is ample space elsewhere to land in the harbor. 408. 409

A tax imposed upon every boat or vessel "which may land or anchor at or in front of any landing, wharf, or pier" within the city limits, is unconstitutional. 412

There is no lien for wharfage when there is a personal agreement between the wharfinger and shipowner as to the rate of wharfage. 158

#### WILLS

On appeal from the sentence of the orphans' court sustaining a will, the circuit court of the District of Columbia cannot inquire into the validity of any particular legacy. 127

A legacy to or for the use or support of a minister of the Gospel, as such, or to or for the use or support of a religious denomination, is void by the bill of rights of Maryland. 130

Under the statute of Indiana, a will made and recorded in any other state, according to the laws of such state, is valid to pass lands or other property in Indiana; and a copy duly certified from such record is made evidence. 522

In determining the soundness of a testator's mind the court will look rather to the facts on which witnesses have formed their opinions than to the opinions themselves, but will not entirely disregard the opinions. 127

The influence of the general doctrines of the church of which testator was a member is not 127

such undue influence as will justify the avoidance of his will.

A devise "in aid of the erection of a new Catholic church in Georgetown" is void for uncertainty. 130

A devise of income, to cease on the insolvency or bankruptcy of the devisee, and then to go to his wife or children, is valid. 188

The cardinal rule of construction is to follow the testator's intention as collected from all the provisions of the will. 240

If the testator uses words having a technical meaning, that meaning is presumed to be his own, unless a different meaning is fairly deducible from the context. 240

Under a gift of the residuum to testator's wife "provided that she has no lawful issue," followed by a gift of all his property to her, "by her freely to be possessed and enjoyed," *held*, that the wife took only a life estate. 998

Under a devise to A. for life, remainder to her son B. and to his children in fee simple, but, in case B. die without children, to her son C. and to his children in fee simple, *held*, that B. took a fee tail with remainder to C. on an indefinite failure of issue of B. 1213

Under a devise to S. "and to his male heir, \*\*\* and to his heirs and assigns forever," and, in case of the death of S. without male heir, to O. in fee, *held*, that S. took an estate tail, with remainder to O. on indefinite failure of the issue of S. 859

As to the effect of the domicile of testator in the construction of his will. \*963

#### WITNESS

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

An agent is competent to prove his own authority as agent. 1084

A bookkeeper who has given a credit to A. instead of B., by mistake, is a competent witness 1304 to prove the mistake without a release.

In a libel against a vessel for a forfeiture the master under whom the alleged illegal act was done is inadmissible as a witness for the claimant. 509

Sufficiency of release to make a party competent in favor of an executor. 673

Quære: whether a free colored man is a competent witness in a cause between white persons. 698

The drawer of an inland bill of exchange is not a competent witness; in an action against the acceptor, to prove an usurious consideration. 183

The wife of a party to an interference in the patent office is incompetent to testify in his behalf. 194

A party who has read the cross-examination of his adversary's witness, in support of his case, cannot thereafter object to his competency. 868

The attorney is only privileged as to information derived from his client, as such, not that acquired while acting as attorney for the client. 587

A witness cannot be asked a collateral question not relevant to the matter in issue, barely to test his credibility. 581

In a patent-interference case, a witness who, on direct examination, refers to and partly describes a device of his own, cannot refuse, on cross-examination, to give a further description, on the ground of exposing his private affairs. 194

The exclusion on cross-examination of a question intended to affect the witness' credibility cannot be sustained on the ground that counsel should have so stated when the objection was made. 194

A witness produced to testify to the credibility of another may not be asked to specify persons. 1303

Proper questions to be asked a witness called to testify as to the credibility of another. 1303

An order to commit a witness for not recognizing in a criminal case to appear and testify, or for a contempt of court, need not be in writing and sealed. 1104

A party testifying in his own behalf is not entitled to travel and attendance as a witness. 186

If a witness be summoned in several suits brought by the same plaintiff against different defendants, he is entitled to his attendance and mileage in each case. 1115

General rule adopted giving a witness summoned in several cases fees and mileage for but one case, charged equally among all. 1122

#### WRITS AND NOTICE OF SUITS

A suitor in a federal circuit court in Pennsylvania, residing without the circuit, is privileged from service of a summons. 1137

Service of a cross libel, for damages under an independent stipulation, upon the proctor of the original libelant, who is out of the jurisdiction, is ineffectual. 125

If a person declines to receive from an officer a paper presented for service, the officer may deposit it in any convenient place in the presence of the party, and the service will be good. 420

The words "party to the action," as used in Rev. St. Minn. § 47, p. 456 relating to service of process, apply only to parties to the record. 927

After service on the right party, the writ, return, and bill may be amended by correcting an error in defendant's corporate name. 282

The recitals of service in certificates of service of a summons and complaint read: "A true—of this writ attached to a certified copy of complaint," and "A true—of the complaint attached to a true copy of the summons." *held* 420



that the omission in one was supplied by the statement in the other.

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