

INDEX.

{The references are to pages. The asterisk (*) indicates that the case has been reversed.}

19FED.CAS.

19FED.CAS.—86

19FED.CAS.—87

Page

ABATEMENT AND REVIVAL.

A suit in personam in a state court, by the consignee against the vessel owner for nondelivery, cannot be pleaded in abatement to a suit in rem in admiralty for the same cause. 1333

ACKNOWLEDGMENT

The superintendent of the city of Washington, D. C., *held* authorized to take the acknowledgment of deeds of land within the city. 130

An acknowledgment of a power of attorney authorizing a person to appear for a creditor in bankruptcy proceedings is not necessary. 1211

ACTION

A person cannot sue on bills of exchange in the circuit court in Massachusetts, as beneficiary heir and administrator of the estate of the deceased indorsee under the law of France, without taking out letters of administration in the state. 598

The joinder of counts on a bill of exchange as indorsee with counts as beneficiary heir and administrator *held* bad. 598

An action for damages for assault and battery against the master of a vessel cannot be joined in the same libel with an action for seamen's wages. 1262

Adjoining Landowners

See, "Boundaries"; "Mines."

ADMIRALTY

See, also, "Affreightment"; "Average" "Bills of Lading"; "Bottomry and Respondentia"; "Charter Parties"; "Collision"; "Demurrage"; "Marine Insurance"; "Maritime Liens"; "Pleading in Admiralty"; "Practice in Admiralty"; "Salvage"; "Seamen"; "Shipping"; "Towage"; "Wharves."

Jurisdiction—In general

A sentence of a foreign court of competent jurisdiction, acting in rem, is conclusive in respect to the matter on which it directly decides. 373

Our courts cannot question the condemnation by a foreign prize court, sitting within the territory of its sovereign, of a res sub potestate of said sovereign. 631

—Waters and places

The admiralty jurisdiction does not extend to matters of contract or tort arising in commerce on tide water wholly between ports in the same state. 901

Admiralty has no jurisdiction of a suit to recover damages resulting from negligent towage upon the Hudson river on a voyage from Albany to New York, whether founded upon contract or in tort. 901, 903

Admiralty has jurisdiction, in a case of loss in the course of water transit, of goods shipped from Chicago to Erie by the Lakes, and thence by land to an inland point, under a contract for through transportation. 532

—Persons and property

A warship of a neutral nation is not liable to arrest by process from a local court for a wrongful collision, within our territorial jurisdiction, with an American merchant vessel. 786

	Page
Admiralty will take jurisdiction of a suit by a British master against a British vessel for wages, where the voyage is ended and justice can be done.	5
—Rights and controversies	
A contract is not within the admiralty jurisdiction unless it is to be performed upon the sea, or has relation to a maritime service.	307
A contract of a special nature is not cognizable in the admiralty merely because the consideration of the contract is maritime service. The whole contract must, in its essence, be maritime, or for compensation for maritime services.	891
Admiralty has jurisdiction of a suit by a father for wages earned by his minor son by maritime services.	891
A contract under which money is advanced to purchase a ship, and her bill of sale deposited with the lender by way of security, with a power of attorney to him to sell the ship for his reimbursement, is not cognizable in admiralty.	307
Such contract gives no interest or lien to the vessel, but only a naked power to sell.	307
Admiralty will not take cognizance of a libel for a breach of a contract to purchase a cargo for a vessel with her funds, although such contract is contained in a charter party stipulating for the carriage of the cargo.	77
An executory contract for transportation by, or for lie service of, a vessel is not a maritime contract, and does not create a lien on the vessel, and admiralty has no jurisdiction thereof.	1
Admiralty has no jurisdiction of a contract for repairs to a vessel made on land where the	1349

	Page
owners were represented on the spot by a consignee who has funds.	
—Torts	
Marine torts, over which admiralty has jurisdiction, are unlawful acts, injurious to others, independent of contract, happening or being committed upon the sea or tide water.	474
Admiralty has jurisdiction of a suit by a father for the tortious abduction of his minor son on a voyage on the high seas, in the nature of an action per quod servitium amisit.	891
Admiralty has jurisdiction of a suit by the father for consequential damages resulting from an assault and battery of his minor child on the high seas, though death resulted therefrom.	894
Procedure	
Exception to the jurisdiction of the court, in civil action brought by a private suitor against an armed ship of a friendly power, is properly taken by suggestion filed in the United States by the United States attorney.	786
ADVERSE POSSESSION	
See, also, "Real Property."	
The possession of the disseisor does not extend beyond the particular part occupied, and the legal possession of the owner revives the moment the intruder quits such part.	1203
The sale by one intruder to another without an exact definition of the property conveyed, will not aid the purchaser in establishing a continued adverse possession.	1203
The possession of part of a tract of land cannot be joined to the possession of another part so as to make up the 21 years.	1203
The successive possession of different intruders upon the same part of a tract cannot	1203

	Page
be added together by the last intruder, so as to make up the 21 years.	
The limitation under the Pennsylvania statute begins to run from the time of an actual, adverse possession, and not before.	1203
AFFREIGHTMENT	
See, also, "Admiralty"; "Bills of Lading"; "Carriers"; "Charter Parties"; "Demurrage"; "Shipping."	
Where a vessel is compelled to lie in a foreign port for five months waiting for means to procure repairs, the voyage is in effect broken up, and the vessel owner should transship the cargo if able to do so.	428
The disabling of the master and mate by sickness from attending to the duties of the ship will not exonerate the owner from responsibility.	428
Where freight is paid in advance and the voyage is not performed, the shipowner cannot without an express stipulation to this effect, retain it; but the shipper may recover it back.	730
The person who received cargo from a vessel <i>held</i> liable for the freight, though he gave a note for the amount to an assignee of the bill of lading, from whom he purchased it, who failed to pay the same.	478
A delivery of goods on the wharf, without notice to the consignee or a valid excuse therefor, is not a good delivery.	410
The vessel has the burden of showing that notice was given to the consignee of the place where the vessel was to discharge.	1333
A master who has wrongfully omitted to sign bills of lading, and sailed without learning the names of the consignees, cannot avail himself of this ignorance as an excuse for not giving notice of the landing of the goods.	410

	Page
The master is in fault where he refused to sign bills of lading, stating that he will call upon the consignor in relation to their stipulations, sailed without doing so.	410
Where merchandise carried on deck without the shippers consent suffers damage by any accident that would not have happened to it equally under deck, the master and owners must bear the loss.	412
The burden is shipowner to prove that the shipper agreed that the goods might be carried on deck.	410, 412
The fact that a vessel is not a common carrier does not relieve her from the warranty implied in a contract of affreightment, that she is sound, stanch, and seaworthy.	807
When the underwriters have paid the loss, a suit may be maintained in the name of the insured for their benefit against the vessel through whose fault the loss occurred.	807
ALIENS	
A married woman may be admitted to be naturalized.	580
ALTERATION OF INSTRUMENTS	
Under the plea of non est factum, an erasure in a deed must be shown to have been made before its execution by the party asserting its validity.	1303
APPEAL AND ERROR	
No appeal lies from a decree in a patent case which provides for a reference to a master to state an account until the coming in of the master's report.	1166
A writ of error coram nobis lies to set aside an erroneous execution.	523
On review by writ of error, facts not stated in the bill of exceptions will not be noticed.	149

Appearance

See "Courts."

Arrest

See "Bail"; "Execution"; "Extradition."

ASSIGNMENT FOR BENEFIT OF CREDITORS

Query, whether one partner can, without the assent of the others, make a general assignment for creditors. 60

An insolvent debtor may lawfully prefer one creditor to another. 60

It seems that an assignment for the benefit of such creditors as should release their claims within 60 days is valid. 60

Where an assignment is made for the benefit of such creditors as should release their debts within 60 days, a mere offer to release is unavailing. 60

Acceptance of the trust by the trustee, who was also a creditor, will not entitle him to the benefit of the trust, if he has failed to execute the release in time. 60

ASSISTANCE, WRIT OF

The writ will be granted where defendant refuses to surrender under a decree. 1248

ASSUMPSIT

Plaintiff may recover on a general indebitatus assumpsit for work and labor done under a special agreement. 727

Assumpsit will lie for the value of work done under an agreement under seal, where plaintiff has been prevented by defendant from finishing the job. 1295

Assumpsit will not lie for work and labor done in the lifetime of defendant's intestate under a special contract for payment by the conveyance of land, without showing fraud in the making of such contract. 1241

ATTACHMENT

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

In a judgment upon an attachment, interest
cannot be added. 1234

The remedy for maliciously suing out an
attachment is not confined to an action on the
attachment bond. 1294

To sustain an action for maliciously suing
out an attachment, plaintiff must show malice,
want of probable cause, and damage. 1294

ATTORNEY AND CLIENT

An attorney employed to collect a claim, after
entry of judgment, satisfied the same on
receiving a less amount, which he failed to pay
over. *Held*, that the satisfaction would be set
aside on condition of the indorsement on the
judgment of the amount paid. 634

The proctor may proceed with the suit for
seaman's wages to recover costs, where it is
settled without his knowledge on payment
only of the wages due. 800

A contract for a contingent compensation of
1½ per cent, for collecting and distributing an
estate of \$800,000, *held* not unconscionable. 875

AVERAGE

A foreign adjustment of a loss cannot
determine what is a general average. 370

A loss occurring by accidental collision with
a foreign vessel, which by the law of the
country where it takes place is apportioned
between the vessels, is not by our law deemed
a general average. 370

The wages, provisions, and other expenses
of the voyage to a port of necessity, for the
purpose of making repairs, constitute a general
average. 1173

	Page
The fact that there is no cargo on board will not prevent the application of the principle.	1173
Salvage charges are to be deemed a general average only when incurred for the benefit of all concerned.	370
The cutting away of masts and rigging in a gale is a general average, and where the cargo is owned by the owner of the vessel, the amount of its contribution may be deducted from the loss on the vessel.	1180

BAIL

See, also, "Principal and Surety."	
A recognizance of bail taken out of court is only de bene esse, and plaintiff may object to the sufficiency of the bail on return of the writ and recognizance.	905
A motion to quash the bail bond, under the statute of Illinois, may be made at any time during the return term, as well after as before judgment.	1095
An affidavit which states positively as to the indebtedment, without detailing the source of the knowledge, is sufficient.	1095
Upon surrender of the debtor upon a ca. sa., the court will not, without motion, order him to be committed in execution.	314

BAILMENT

See, also, "Carriers"; "Pledge."	
A direction to remit, by mail or some responsible person, the proceeds of notes sent for collection, is complied with by sending the money by a trustworthy youth 18 years old, who had transacted business for himself for two years; and the collector is not responsible where the youth's pocket-book containing such money is stolen.	125

BANKRUPTCY

Page

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

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

The bankrupt act of March 2, 1867, was operative from the date of its passage, though proceedings thereunder were necessarily postponed until the appointment of officers and the adoption of rules. 280

The bankruptcy court has power to enjoin parties from proceeding to judgment and execution in a state court during the pendency of the proceedings in bankruptcy. 194

The bankruptcy of one debtor in a joint judgment does not prevent the plaintiff from proceeding against the other defendant, though enjoined from enforcing execution against the bankrupt. 194

A state court attachment is dissolved from the date of the filing of the petition, where an order of adjudication is subsequently granted. 1291

The jurisdiction of the bankrupt court is not affected by the fact that an assignment for the benefit of creditors under the state law had been made prior to the adjudication. 987

Jurisdiction of an insolvent banking corporation in the hands of a receiver of a state court is obtained by service of an order to show cause on its cashier on the day before a judgment of dissolution is entered. 822

The bankruptcy court will not interfere to prevent imprisonment on a judgment based upon a fraud of the bankrupt, or a debt contracted in fraud, except to enable such court to exercise its proper authority and jurisdiction. 395,
750

	Page
A sale of the bankrupt's property in proceedings to foreclose a mortgage commenced in the state court after petition in voluntary proceedings was filed, with knowledge thereof, and without obtaining permission of the bankrupt court, is a nullity.	463
Jurisdiction of courts	
Where all the partners do not join in the petition, a nonresident partner cannot join in a petition filed in a district in which he neither resided nor carried on business.	1242
A court has jurisdiction of a petition by a resident partner of a firm doing business in another state, in which the other partners reside, to have the firm and each partner thereof adjudged a bankrupt, where it is alleged that they are unable to pay the partnership debts in full, and that the other partners had refused to join in the petition.	151
Register—Powers and duties	
The register has power to make the order, under section 26, requiring the bankrupt or a witness to appear and be examined.	715
Questions which are not upon any point or matter which has arisen in the course of any proceedings before the register cannot be certified for the opinion of the court. (Act 1867, § 6, subd. 1.)	74
Commencement of proceedings—Voluntary bankruptcy	
An averment that petitioner "is a copartner in the firm of C. P. & Co., a copartnership composed of said petitioner" and certain persons named, is a sufficient averment of a subsisting copartnership.	151
A general reference to an assignment for creditors, where a copy is given, is sufficient.	874

	Page
A creditor objecting that the petitioner does not set forth a list of his creditors, with their residences and the amounts due, must point out the omission.	874
—Involuntary bankruptcy	
An insane person may be made a bankrupt for an act of bankruptcy committed while sane.	1248
The service of an order to show cause on the cashier of a bank, who was acting as clerk under a receiver appointed by the state court, <i>held</i> sufficient to give jurisdiction.	822
A firm cannot be adjudicated bankrupt upon a petition omitting one partner, nor can such petition be amended at the hearing.	745
The petition may be filed by any creditor whose debt is provable under the act, though not at the time due and payable.	445
A creditor, having once joined in a petition, cannot withdraw.	494
In estimating the number and amount of creditors on a petition against a partner, partnership creditors and debts must be considered.	1312
In the computation as to the requisite proportion in number, all creditors under \$250 are to be excluded.	494
An attachment by creditors is an unequivocal dissent from an agreement for extension of credit, and creditors who signed on the agreement that it was not to be binding unless joined in by all creditors are released therefrom.	1199
The fact that the petition was not filed by the requisite number of creditors is immaterial, where a sufficient number joined therein before the trial.	230

	Page
An averment that petitioners “believe” that they constitute one-fourth in number and one-third in amount of the creditors is sufficient.	230
All the creditors joining in a petition need not file proofs of debts.	494
The specific acts of bankruptcy relied on by the petitioners must be set forth in their petition, and evidence of no others will be received under it.	1199
A paper simply denying the acts of bankruptcy charged, and demanding a trial by jury, is a proper response to a rule upon the debtor to show cause why he should not be declared a bankrupt.	445
The burden is upon the debtor to disprove the facts set forth in the petition for an adjudication.	1314
Acts of bankruptcy	
A general assignment for the benefit of creditors, made by an insolvent debtor, is an act of bankruptcy.	280
A general assignment under a state in solvent law for the benefit of creditors, made when a creditor is about to obtain a judgment, is a conveyance with intent to delay, defraud, and hinder the creditor.	280
Such assignment is also a conveyance to defeat or delay the operation of the bankrupt act.	280
A transfer of property made in payment for advances made at the time is not an act of bankruptcy.	661
The making of a transfer when insolvent of property agreed to be conveyed when solvent, as security for advances then made, is not an act of bankruptcy.	1199

	Page
A prior agreement that the proceeds of all overdrafts shall be the property of the bank prevents a subsequent transfer of securities made in pursuance thereof from being an act of bankruptcy; otherwise, with an agreement to turn over the title as a future act.	12
Certifying a check, in reliance upon the promise of the maker to make his account good during the day, creates the relation of debtor and creditor, and the payment of such a debt after insolvency is an act of bankruptcy.	12
An indorsement of a bill of lading to a third person, to protect the property from attachment and save it for the benefit of all the creditors, is not an act of bankruptcy.	1199
An agreement on the maturity of a note given in the course of business that it may lay over for that day is only, a forbearance to sue, and does not destroy its character as commercial paper.	230
Where the debtor, 8 days after the maturity of a note, is served with an injunction restraining him from making any disposition or transfer of his property, nonresumption of payment within 14 days cannot be alleged as an act of bankruptcy.	1246
An application to the state court to have increased the security of assignees under a general assignment will not estop the creditor from claiming that the assignment was an act of bankruptcy.	280
Schedule	
The bankrupt may, by order of court, amend his schedules after the hearing on specification in opposition to his discharge.	1289
Adjudication	

	Page
The question of jurisdiction depending upon averments in the petition in a voluntary proceeding cannot be raised on an application by creditors to set aside the adjudication of bankruptcy.	151
Meeting of creditors: Notice	
A meeting to prove debts and choose as assignee should be organized at the hour designated in the notice, and kept open until an assignee is chosen, or it is ascertained that no choice can be made.	436
Creditors whose names were omitted from the schedule on the erroneous supposition that their debts were barred by the statute of limitations, and brought in by amended schedules, are entitled to notice, and a new warrant should issue.	263
In such case, where an assignee has already been chosen, notice of an application to remove him should be given, to enable all creditors to be heard.	263
Assignee—Election, appointment, and removal	
On the bankruptcy of a firm, creditors who have proved a debt against a partner cannot participate in the election of the assignee.	436
A creditor may change his vote as often as he sees fit, until he has signed the certificate of choice of assignee.	415
Where a majority of creditors proving claims by attorney voted for one person, and a majority of those proving in person voted for another person, as assignee, <i>held</i> , that there was no election, and the court appointed an assignee.	1087
The appointment of an assignee by the register after an informal vote or expression of choice,	65

	Page
although not objected to at the time, will be set aside as irregular.	
The election of assignee will not be sent back because of a corrupt vote, where the result would not be changed by excluding the vote.	415
A new election will be ordered where the assignee was a director of the bank to which the bankrupt had shortly before confessed judgment.	1211
The objection to the appointment of the assignee on the ground that he is related to the bankrupt is well taken.	1211
Mismanagement and neglect as ground of removal of assignee.	1313
A failure to inform creditors in regard to their rights and the condition of the assets where the suppression of facts was made in the interest of one class of creditors, is good cause of removal.	231
Register directed to employ counsel to represent the estate of the bankrupt at the hearing of the order to show cause why the assignee should not be removed.	1313
—Rights, duties, and liabilities	
Power of assignee of bankrupt corporation to call in subscriptions to stock.	17
The right to enforce the liability of stockholders for unpaid subscriptions passes to the assignee.	27
The assignee must disclose to the creditors, upon inquiry, all facts relating to the condition and assets of the bankrupt's estate.	231
Misconduct of the assignee in respect to the estate is a proper subject for examination on application by him for a discharge.	35

	Page
A creditor raising an issue of fraud should distinctly state and verify the facts, and should give security for costs.	35
Assignment	
The assignment takes effect by operation of law from the commencement of the proceedings, uncontrolled by any mistake by the register in stating the time from which the deed should operate.	661
Property of bankrupt—What constitutes	
Where the bankrupt bank acted as agent of another for clearing-house purposes, <i>held</i> , that deposits made by the latter from time to time on its account were not a trust fund, and would pass to the assignee.	433
A person in whose name the bankrupt causes notes to be sued will be considered a trustee of the bankrupt.	255
—Custody and control	
The assignee is entitled to the possession of goods of the bankrupt levied upon by a sheriff after the date of filing the petition in bankruptcy.	169
A vessel in charge of the marshal as an agent of the assignee in bankruptcy is not subject to seizure on admiralty process on a libel for collision which occurred before the institution of the bankruptcy proceedings.	211
An assignee who refuses to deliver mortgaged chattels to the mortgagee has no lien for rent, thereafter accruing, of the place in which they were kept.	629
The bankrupt will be required to account for a deficit in his assets shown by his books, or pay the amount to the assignee.	126
—Exemptions	

	Page
The bankrupt is entitled to a homestead exemption in property occupied by him as a homestead, even though he had previously waived his homestead rights in favor of a particular creditor.	918
The waiver of a homestead exemption only applies to persons claiming under the instrument in which it is made, and does not inure to the benefit of the assignee or other creditors.	918
The homestead of a debtor in Michigan is protected, though he has absconded, where his family still resides thereon.	1247
The bankrupt is not entitled to a homestead exemption in property taken in exchange for goods transferred in fraud of creditors.	1248
The bankrupt is not deprived of his right to an exemption out of property for a homestead because of having conveyed it in fraud of his creditors.	194
Where the equity of redemption (in Illinois) exceeds \$1,000, the assignee must sell the property and pay over such amount to the bankrupt.	918
Under Code Va. c. 183, §§ 1, 5, 16, 17, the homestead exemption is good against the lien of an execution on personal property, and will be allowed by the bankruptcy court.	94
Under the Colorado law a merchant is entitled to a horse as a "working animal," but not to a buggy.	35
A merchant is not entitled to an exemption of goods as "stock in trade," under the Colorado law.	35
An exemption cannot be allowed, under Act 1867, § 14, to an individual partner out of the partnership estate.	1314

	Page
A register has no authority to set off exempt property to the bankrupt, nor to direct the assignee in the matter.	35
In setting apart for the use of the bankrupt exempt property, the assignee is not obliged to designate articles on which there is no lien.	1291
Where the schedule of exempt property is not filed within 20 days after the assignment, creditors are not bound to except to it within 20 days after it is filed.	35
An ex parte order approving the schedule of exemptions, made on the day it is filed, is irregular, and will be set aside at any time during the pendency of the proceedings, if the creditor acts with diligence after notice.	35
—Liens	
In cases unaffected by fraud, the assignee takes subject to all equities binding upon the bankrupt.	1138
Execution liens under judgments for just debts, obtained against the active and unjustifiable opposition of the debtor, will be upheld against the assignee.	852
An attachment of the bankrupt's goods under process in a state court, within four months of the bankruptcy proceedings, is defeated by section 14, Act 1867.	168
An attachment by trustee process, being a lien, under the Vermont laws, on the funds in the hands of the trustee, although without notice to the principal debtor, is a lien under mesne process, saved by the bankrupt act.	72
Costs accrued under an attachment prior to the filing of the petition, which is dissolved by the order of the adjudication, are not a valid lien on the property unless incurred at defendant's request.	1291

	Page
A chattel mortgage, though not filed for record until the day before the petition was filed, <i>held</i> a valid lien as against the assignee.	261
An agreement to give a chattel mortgage to secure rent, and to renew it, and that it shall be a continuing lien, gives the mortgagee no priority over other creditors, where the mortgage is void for failure to observe technical requirements.	852
Though the vendor of land had recovered judgment on notes given by the bankrupt for the purchase price, <i>held</i> , that his equitable lien on the land would be upheld by the bankruptcy court, and the property could not be set aside as exempt.	220
Where the pledge of property to secure a debt is not prohibited by the bankruptcy act, the rights of the parties will be determined under the general rules in equity.	94
A lien on a vessel for damages arising out of a collision before the proceedings in bankruptcy were instituted can be enforced thereafter only through the bankruptcy court.	211
—Sale	
An ex parte order approving a report of sales, made on the day it is filed, is irregular and will be set aside at any time during the pendency of the proceedings, if the creditor acts with reasonable diligence after notice.	35
Proof of debts—What is provable	
The bankrupt court may pass upon the legality of a claim, though it has no jurisdiction to enforce a penalty imposed by the state law on account of an act making such claim illegal.	745
The rule in Illinois, that, where a debt is usurious, the creditor forfeits all the interest, will be enforced in the bankrupt court.	1286

	Page
A contract of employment with a corporation is ipso facto dissolved by the filing of a petition in bankruptcy, and the employè may have his damages assessed, and prove the amount.	942
A firm note proved against, the estate of continuing partners, who agreed to pay the firm debts, may be proved for any balance due against the estate of the retiring partner.	68
A partner who has purchased his copartner's interest in the business, on the agreement of the latter to pay the firm debts and save the continuing partner harmless thereon, cannot prove anything against the estate of the retiring partner, where he has not paid any part of the firm debt.	435
A person who undertakes to buy up all claims against the bankrupt, to stay the proceedings, may prove such claims without prejudice where his purpose failed.	67
—Secured debts	
A creditor accepting a chattel mortgage with reasonable cause to believe his debtor insolvent, and such act being declared an act of bankruptcy, cannot, by relinquishing his mortgage, become entitled to prove his debt.	1340
Debts of creditors disallowed on the ground of their having taken a mortgage to secure them within four months of the adjudication.	465
—Set-off	
A bank has the right to set off, against a deposit account of the bankrupt, a draft of the bankrupt maturing after his failure.	383
—Procedure	
Depositions to prove claims must contain the averments required by Rev. St. § 5077, and	1080

	Page
must be made by the party authorized, and conform substantially to the prescribed forms. A judgment in favor of the bankrupt, in a suit commenced by him before the bankruptcy, but tried after the adjudication therein, where the defendant offered no evidence in support of a claim set up in defense as a distinct cause of action, is not an estoppel against proof of the claim by defendant in bankruptcy.	212
—Allowance or rejection of claim	
A judgment regularly obtained will not be set aside on the ground that the creditor had reasonable cause to believe the debtor insolvent, where the debtor did nothing to aid in procuring the judgment.	1316
Payment of debts: Priority: Dividends	
A purchaser of a mortgage given to indemnify a surety, who has knowledge of the trust, and is himself a creditor under it, has no priority over other creditors.	629
A mortgage given to indemnify a surety will be <i>held</i> by the court to inure to the benefit of the creditors to whom the surety became bound.	629
The surety who has paid a bond for duties is not entitled to the same rights and privilege of priority that are given to the United States.	948
An employ ¹ / ₂ is not allowed priority in payment of wages for an unexpired term of employment, where he was wrongfully discharged.	405
A claim for money loaned to pay wages or operatives is not privileged.	4
The rule in regard to distribution of assets of a firm does not apply where the partners are alone individually declared bankrupt.	68
Examination of bankrupt, etc	

	Page
The bankrupt or witness may be examined fully, substantially as under a reference upon a creditors' bill, or in proceedings supplementary to execution.	715
Costs: Fees: Disbursements	
Compensation for services of attorney and counsel of receiver of insolvent corporation allowed so far as they benefited the estate.	834
Compensation for services of attorney and counsel of receiver of insolvent corporation in resisting proceedings by assignee to recover the property not allowed.	834
Counsel for the debtor will not be allowed a fee for contesting the adjudication, where there was no question as to the insolvency of the debtor.	1087
A debt must be proved or allowed before the costs made prior to the commencement of the proceedings in bankruptcy can be allowed.	1289
Where the original debt has been proved and allowed, costs of an attachment made in good faith before the commencement of the bankruptcy proceedings may be proved as a general debt against the estate.	1289
Property subject to a lien is chargeable with the cost of keeping and selling it, and the assignee's fees, but not for attorney's fees in contesting the lien.	35
The sheriff is entitled to reasonable compensation for levies and services under executions issued before bankruptcy proceedings commenced.	860
The assignee is chargeable personally with costs where he petitions to have dissolved an attachment which covers property already set apart by him as exempt.	1291

	Page
The compensation of the register who has received a surrender of the bankrupt's property, and subsequently returned it on a composition by the bankrupt, is to be fixed by the court.	1082
Allowance of bill of expenses and charges rendered by an assignee for various disbursements and services.	121
Discharge—Proceedings to obtain	
In cases commenced before the passage of the act of June 22, 1874, both voluntary and involuntary bankrupts may be discharged, without reference to the amount of their assets or the number of creditors assenting.	237
The assent of a majority in number of creditors, whose debts were contracted since January 1, 1869, and in amount of such debts, is the only assent required.	668
The liability of the principal to the surety must be considered as having been contracted when the instrument was signed, and not when the surety made payment.	237
In the case of a renewal note, the bankrupt may show when the debt originated; and if before January 1, 1869, it should be classed as a debt contracted before that date.	237
The existence of the proper number of creditors filing assent may be proved on the hearing, where the record does not disclose the fact.	668
The failure of the assignee to make a return of "No assets" will not cure the laches of the bankrupt in applying for a discharge.	1132
—Proceedings in opposition	
Creditors of debts contracted before January 1, 1869, cannot oppose a discharge as to debts contracted since that date.	668

	Page
The application for a discharge in a voluntary proceeding may be opposed on the ground of want of jurisdiction by reason of the absence of jurisdictional averments in the petition.	151
Incompetency of witnesses, for interest, in proceedings by the bankrupt to obtain a discharge under the act of 1841.	255
—Acts barring	
A preference may be given which will subject the debtor to proceedings in bankruptcy, and yet be no bar to his discharge.	661
A fraudulent preference, under section 29, Act 1867, which will bar a discharge, is not the same as a fraudulent preference under sections 35 and 39.	264
Only those preferences which are forbidden and made void by section 35, Act 1867, and the clause of section 39 which refers to preferences in contemplation of becoming bankrupt, are considered grounds for withholding the bankrupt's discharge.	661
A voluntary conveyance by an insolvent in the ordinary course of business will not justify an inference that the transfer was made in contemplation of bankruptcy, without proof of facts justifying an inference that it was made with intent to defeat the act.	50
A voluntary payment or transfer by an insolvent debtor, made with the bona fide intention and expectation of preventing bankruptcy, is not an unlawful preference.	50
A general assignment for creditors without preferences, made 16 days before voluntary proceedings commenced, and when a creditor was about to obtain a judgment, in the absence of actual fraud, will not bar a discharge.	630

	Page
Payments made in the course of business by debtors who were insolvent when they commenced business, and not in contemplation of bankruptcy, will not bar a discharge.	264
A discharge will not be refused for neglect of the assignee to have the deed recorded, where he knew that no property passed under the assignment, and he duly qualified.	661
The omission to schedule judgments obtained on notes of the bankrupt, sued on in the name of the third person, where fraudulently done, will defeat a discharge.	255
The failure to schedule corporate stock standing in the name of another, in which the bankrupt had no interest, and the transfer of the same, made without collusion or fraud, will not prevent a discharge.	155
The omission to schedule property purchased by the bankrupt's wife on execution sales (with her separate funds) by judgment creditors will not bar a discharge.	956
The omission to include worthless debts in the schedule will not bar a discharge.	50
A discharge will be refused for failure to keep proper books of account, where a large part of the cash account is kept on slips of paper, and not recorded on the account book.	264
—Scope and effect	
The discharge does not affect debts created by fraud.	395
A discharge on voluntary proceedings by a member of a firm, to which the other members were not parties, will not discharge firm debts.	886
—Vacating: Setting aside	

	Page
A suit to set aside a discharge must be brought within two years from its date	588
Prohibited or fraudulent transfers	
A general assignment for the benefit of creditors without preferences is necessarily a fraud under the bankrupt law.	847
To constitute a conveyance "in contemplation of bankruptcy," it is not necessary that the transferee should know of his debtor's insolvency, or should co-operate with him to obtain priority of payment. (Act 1841.)	85
A conveyance of property to a creditor, where the debtor owned claims to a greater amount than its value, <i>held</i> to have been made in contemplation of bankruptcy.	85
Where a bank, which acted as agent of another bank for clearing-house purposes, paid to the latter, which had knowledge of its insolvency, deposits which had been made on its general account to meet checks in the clearing house, <i>held</i> , that such payment might be recovered by the assignee as an illegal preference.	433
A gift by an insolvent debtor to his wife, living with him, of furniture and other personal property in the house, is void as against creditors.	627
Judgment notes given for moneys advanced at the time are valid, and judgments entered up within a short time before filing the petition will not be set aside.	716
A mortgage given to secure credit for supplies and materials used in fitting up an establishment <i>held</i> not fraudulent.	1138
A conveyance made within four months of the bankruptcy, in pursuance of an agreement made when the bankrupt was solvent, and	1090

	Page
on an adequate consideration, will not be set aside.	
The substitution and registry of a chattel mortgage, correcting a mistake in a prior unrecorded mortgage, is not an illegal preference, but simply an exchange of securities. 862,	863
Suits and proceedings in relation to the estate	
The assignee succeeds to the right of creditors, and may maintain a suit to set aside a deed for fraud, actual or constructive, though it be not one mentioned in section 35, Act 1867.	1251
The assignee is the proper party plaintiff to impeach a deed given by the bankrupt, though only one class of creditors is interested to set it aside.	1251
Where, under the state law, a chattel mortgage is void as to creditors, the property passes to the assignee, and he may enforce the creditors' rights.	847, 852
The assignee may sue in the circuit court on a note of which the bankrupt is payee. (Act 1841.)	1347
The circuit court has jurisdiction of an action against a resident of the district brought by an assignee appointed in another state.	1091
The two-years limitation (Rev. St. § 5057) applies to suits by assignees to collect the debts and assets of the estate, as well as to suits relating co specific property.	18
The two-years limitation applies to an action by the assignee to enforce against stockholders the payment of their unpaid shelves.	18
The statute in such case begins to run from the date of the assignment to the assignee, and not of the date of the assignment.	18

	Page
The two-years limitation does not begin to run, in a case where the bankrupt and debtor conceal the cause of action, from the moment when the assignee's title accrued; otherwise, as to a subsequent concealment.	1347
The lapse of 50 years after an assignment in bankruptcy <i>held</i> a bar to proceedings to discover assets not disposed of by the assignee.	695
Where a discharge is granted after opposition on specifications held not to have been proved, the court will not direct the assignee, who had previously commenced suit in the state court, to discontinue it, on the ground that the allegations in the bill of complaint were the same as those of the specifications in opposition to the discharge.	155
A bill to set aside a conveyance made by a bankrupt for the benefit of his wife and children, alleging that he was much embarrassed at the time, <i>held</i> good on demurrer, though it did not aver that he was then insolvent.	1251
A bill by the assignee to set aside a chattel mortgage, a sale thereunder, and an assignment for creditors as fraudulent against creditors, and to recover the property, <i>held</i> not multifarious.	847
The action of the bankrupt court in making an assessment upon stockholders of the bankrupt corporation cannot be collaterally assailed in suits to enforce collection of the assessment.	27
An injunction against the sale on execution of property which the assignee sues to recover will not be dissolved on an answer and affidavit denying the merits of the bill.	841

	Page
On a petition by the assignee for the possession of property which the bankrupt had given to his wife when insolvent, an affidavit that the property is in possession of the wife is not a sufficient answer.	627
Review	
The circuit court has jurisdiction to review an order of the district court upon a trial before it without a jury, adjudicating the petitioner a bankrupt. (Act 1867, § 2.).	620
Where all the evidence is preserved by bill of exceptions and certified to the circuit court, the correctness of the order of the district court can be reviewed.	620
The decision of the district court respecting a claim of a creditor can only be reviewed by an appeal taken as prescribed by sections 8 and 24, Act 1867, and rule 26.	790
An appeal from the rejection of a claim will be dismissed for failure to file the statement and enter the appeal within the 10 days as required by sections 8 and 24. Act 1867, and rule 26. 790,	791
Arrangement with creditors: Composition	
One member of a firm which has been adjudicated bankrupt may submit a proposition of composition to the creditors of the firm and his individual creditors.	987
Trustees, to whom the assignee is directed to make conveyances under the register's direction, "subject to the approval of the court," have no standing in court until such approval is obtained.	1197
Amending and repealing acts	
A decree of adjudication rendered prior to the passage of the amendatory act of June 22, 1874, is unaffected thereby.	581

BANKS AND BANKING

A national bank may take a pledge of chattels as security for money lent. 785

The district court is “a court of record of competent jurisdiction,” within Rev. St § 5234, permitting a receiver of a national bank to compromise doubtful claims on the order of such a court. 815

An order for the composition of a claim, when the claim is not a “bad or doubtful debt,” is invalid, and a composition made under such an order is ineffectual. 1322

A receiver of a national bank is an officer of the United States, and the district court has jurisdiction of a common-law action brought by him to collect a claim due the estate. 836

The Bank of Washington may prevent a transfer of stock on its books until a debt of the holder to the bank is paid. 671

BILLS, NOTES, AND CHECKS**What law governs**

The indorsement of a bill of exchange is a new contract, and the liability thereon is governed by the law of the place where it is made. 967

Acceptance

A promise to accept a bill when drawn, shown to a third person, who, upon the faith thereof, takes the bill, when drawn, for a pre-existing debt, is in law an acceptance. 19

Interpretation

Where a note is given in Indiana payable in New York, with interest and the rate of exchange, the rate of exchange will be the time the note becomes due. 1322

Indorsement and transfer

	Page
Bills drawn for an illegal consideration, or for one that has failed, cannot be enforced in the hands of a purchaser with notice.	277
A negotiable note or bill, taken as collateral security for an antecedent debt, is subject to equities existing between the maker and the payee or any previous holder.	1270
The holder of a note given for a fraudulent consideration will be held to strict proof that he paid value.	1270
An indorsee of a note given in payment for a horse, in the sale of which there was a fraudulent concealment of the animal's unsound condition, is not an innocent holder for value, where he owned an interest in the horse, and the seller was his agent.	68
A transferee of a draft, having knowledge that the acceptance was procured by fraud, cannot rely upon statements of the acceptor made to the one who negotiated it and repeated to him.	842
Bills, delivered after the death of the drawer to a person who had made advances upon their faith to the drawer, who had them in his possession for the purpose of raising the money for the drawer, may be enforced against his representatives.	277
A purchaser for value of an accommodation bill, though with notice of its character, is entitled to recover from the party for whose benefit it was issued.	277
Possession by the original indorser of bills of exchange, bearing uncanceled indorsements to others, <i>held</i> prima facie evidence of ownership.	597
The surrender of notes by the payees to a subsequent indorser <i>held</i> a sufficient	694

	Page
consideration to support his promise to pay the same.	
Demand: Notice: Protest	
On a demand of the maker the note must be produced.	38
An indorser who, with knowledge that no notice of nonpayment was given him, promises to pay the note, waives such notice.	295
A notice by mail of a protest of a foreign bill, deposited in a mail bag of a vessel belonging to a nation at the time at war with another, <i>held</i> insufficient, where not followed by a duplicate notice.	504
Actions	
The payment, by the maker, of a judgment in favor of the assignee of a note, obtained in a suit against him alone, will not protect him from liability to the payees, in a prior suit by them to set aside the transfer and recover the note, where he failed to give them notice of the second suit.	1250
In an action upon a promissory note, proof of the partnership of the plaintiffs <i>held</i> not necessary, under the rule of court, where defendants failed to file an affidavit denying their signatures.	1265
In an action against an accommodation acceptor by a transferee, where the defense is that the acceptance was procured by fraud, a receipt by the drawer expressing a consideration for the transfer is inadmissible to show that the indorsee paid value.	842
BILLS OF LADING	
See, also, "Admiralty": "Affreightment"; "Carriers"; "Charter Parties"; "Demurrage"; "Shipping."	
Where plate glass is shipped under a bill of lading excepting liability for breakage, and the	224

Page

cases as delivered are found to contain broken glass, the burden is upon the shipper to prove negligence.

Where the charterer has the whole control of the vessel, the owner may contradict a bill of lading, where the shipper proceeds against the vessel for the fault Of the master. 418

Bonds

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

BOTTOMRY AND RESPONDENTIA

Bottomry bonds are not to be construed strictly, but liberally, so as to carry into effect the intention of the parties. 1022

A bottomry bond, executed by the master for supplies previously furnished upon the personal responsibility of the owner, is void. 884

The holder of a bottomry bond will not lose his money, where the nonperformance of the voyage has not been occasioned by the enumerated perils, but has arisen from the fault or misconduct of the master or owner. 1022

In cases of bottomry, a loss, not strictly total, cannot be turned into a technical total loss, by abandonment, so as to excuse the borrower from payment, even although the expense of repairing the ship exceeds her value. 1022

The lien on the bottomry of a foreign vessel *held* lost by three months' delay to enforce the same, where the vessel was in the meantime sold on an attachment in the state court to bona fide purchasers. 307

BOUNDARIES

See, also, "Mines."

The admissions of parties are competent on the question of boundary. 937

BRIDGES

Page

The state of New Jersey, by its contract with the Delaware & Raritan Canal Company, did not disable itself from afterwards authorizing the bridging of the Raritan river 188

CARRIERS

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

A passenger traveling on a railroad ticket at a reduced rate, entitling him to a continuous trip between two points, has no right to stop over at an intermediate station. 637

The failure of the stage driver to act with skill and prudence will render the proprietor liable, though the accident was caused by the recklessness of the driver of a rival stage line. 79

The proprietor of a steamboat is liable for personal injuries maliciously inflicted upon a passenger by its clerk while collecting fares, arising out of a dispute in regard to payment, irrespective of the merits of such dispute, though the act of the clerk was not authorized by such proprietor. 141

Exemplary damages will be given where an injury is caused by great recklessness of the carrier's servants. 79, 80

The carrier may, by contract with the shipper, secure to itself, in case of damage or loss for which it is liable, the benefit of any insurance to be effected by the shipper. 532

In such case, the payment of a loss by the insurer to the shipper does not give the insurer any right of action against the carriers. 532

The receipt of a lighterman, given upon the count or weighing of the officers of the vessel, is not conclusive as to the delivery of all the cargo shipped. 297

Page

A lighterman, who has given a full receipt for cargo where only part was delivered, and elects to pay the loss to his employer, may maintain an action against the carrier in his own name. 297

CHARTER PARTIES

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

Under a charter for a series of voyages between certain ports from May 2, 1874, to November 1, 1874, the charterer is not bound to furnish a cargo on October 19th, unless there is reasonable cause to believe that the voyage could be completed by November 1st. 911,
911

Where a vessel is chartered for a voyage out and return at a monthly rate, payable three days after her return, a shipper of a portion of the outward cargo, who takes a bill of lading providing for payment of freight "as per charter party," *held* not liable to the vessel for freight. (Reversing 249.) 250

Where the charter specifies lay days for loading the charterer is not bound to furnish a cargo, except at his own convenience, during such lay days. 911

The charterer of a vessel who ships an article new in commerce, whose dangerous character is unknown, either to him or the owner, is liable for injury to other cargo coming in contact therewith, and the increased expenditure in discharging caused by its peculiar character. 646, 652

CHATTEL MORTGAGES

See, also, "Bankruptcy."

A mortgage covering a stock in trade and all renewals thereof, and other property, though 261

	Page
void as to the stock in trade, may still be valid as to the other property.	
A mortgage not filed in the county of the mortgagor's residence is void as to creditors, under Laws N. Y. 1833, c. 279, § 2.	852
After the filing of the original, and once refiling of a copy, of a mortgage on a canal boat, no further filing is necessary to make the mortgage a continuing security, under Act N. Y. April 28, 1564.	586
A person who has knowledge of the giving or a mortgage is bound to ascertain whether the same has been paid, and cannot rely upon a statement to that effect by the person in charge of the record books.	586
A statement in renewal of a mortgage given to secure rent, that "the interests of the parties remain unchanged, except so far as the same have been altered by payment of rent accrued," <i>held</i> insufficient under Laws N. Y. 1833, c. 279, § 3.	852
A description, in the renewal statement, of the property by reference to a prior mortgage on file, and the schedule thereto attached, and all other goods and chattels in a certain building, <i>held</i> insufficient.	852

1360

Civil Rights

See "Conflict of Laws."

CLERK OF COURT

The clerk is entitled to commissions upon money deposited in a bank under a decree of the court, and subject to its order (Act 1793, c. 20 § 2) as "money deposited in court."	1283
--	------

The clerk has no right to commissions on money subject to the decree of the court, unless it is in the court's registry, or has passed through his hands. (Act Feb. 26, 1853.)	875
--	-----

COLLISION

See, also, "Admiralty"; "Pleading in Admiralty"; "Practice in Admiralty"; "Towage."

Between sail vessels

A vessel sailing free must give way to one closehauled, regardless of the tack she is on. 1008

Where it is doubtful which vessel has the wind free, the one on the port tack must give way in time. 1008

Between steam and sail

The sail vessel must keep her course, whether closehauled or free, and the steamer must adopt such precautions as will avoid a collision. 1036

A sail vessel which fails to keep her course is presumptively at fault, and the steamer will be *held* responsible only for a fair exertion of the power of the vessel to avoid a collision. 1036

The steamer is not liable where the collision was caused by an improper change in the course of the sail vessel, where she used all means in her power to avoid the collision after such change of course. 1094

The sail vessel must avoid the steamer where the latter cannot give way without peril. 691

Vessels moored, etc

Where a vessel is moved in a dock in Boston harbor in which other vessels are lying, she must give notice to the wharfinger, so that proper precautions may be taken by the other vessels. 635

A vessel lying wholly inside a dock in Boston harbor need not have her yards braced up. 635

A vessel lying in a slip in the port of New York must brace up her yards, or top-lift them during the night. 531

	Page
In the case of a collision, in the daytime, in ordinary weather, with a vessel moored in a proper place, the presumption is against the moving vessel.	635
A vessel moored in a channel near a landing <i>held</i> in fault for failure to give the usual fog signals during a heavy fog and snowstorm.	1067
Tugs and tows	
Boats in tow, exclusively under the control of a steam tug, are to be considered vessels under steam.	178
A tug, which stops on meeting a steamer, in consequence of which her tow spreads put with the effect of the tide, will be <i>held</i> in fault where the collision would not have happened if she had kept on.	178
Lights: Signals, etc	
A bark under shortened sail with helm lashed three-quarters to port, drifting about a mile an hour in a thick fog, is a vessel under way, and bound to use a fog horn instead of a bell.	*180, *184
Lookouts, officers, etc	
A propeller towing alongside a float loaded with railroad cars, extending 40 feet in front of her pilot house, must have a lookout on the front part of the float.	183
A vessel navigating at night without a specially detailed lookout will be <i>held</i> presumptively at fault for a collision.	1008
A usage of coasting schooners to consider all hands on deck at night as lookouts will not be sanctioned.	1008
Particular instances of collision	
Between schooners at sea on a dark night, where it was <i>held</i> that neither was in fault, and the libel was dismissed.	418

	Page
Between ship sailing within two points of closehauled on the starboard tack, and schooner sailing nearly before the wind with booms to starboard, where the former was <i>held</i> in fault for not holding her course.	1323
Between steamer and schooner, where former was <i>held</i> in fault for not keeping away.	1036
Between steamer and bark, approaching on nearly parallel courses, where the steamer ported in time, and the bark was <i>held</i> solely in fault for starboarding.	76
Between ferryboat and sloop, where both were <i>held</i> in fault, the former for want of lookout, and the latter for absence of colored light.	5
Between steamer and schooner at night, which were in plain view for miles, where the steamer failed to sustain the burden of proof that she was not in fault.	1334
Between bark drifting under shortened sail in a thick fog, and steamer running seven miles an hour, where the former was <i>held</i> not in fault for sounding the bell rather than the fog horn, and the latter was <i>held</i> liable for all damages.	*180, *184
Between steamboat backing into berth, and shin with yards squared, where both were <i>held</i> in fault,—the former for not having out a line to steady her, and the latter for leaving her yards squared at night.	531
Between vessel moored at bank of river and one of two passing steamers, where the outer steamer, having plenty of room, was <i>held</i> solely in fault for crowding.	1078
Between schooner at anchor with sails up in puffy wind, in channel 1,500 feet wide, and steamer running 12 miles an hour, where the	798

	Page
latter was <i>held</i> solely in fault for not giving schooner a wider bert.	
Between vessels at anchor, when one attempted to move which had previously dragged her anchor, and was <i>held</i> solely in fault for not sooner discovering the dragging, and for attempting to move under the circumstances.	405
Between steamer and tows of a tug, where the latter was <i>held</i> in fault for not carrying lights, and in not signaling the steamer sooner.	868
Between a barge and ship in tow of steamers meeting in the East river, where the ship was <i>held</i> in fault for starboarding her helm.	188
Between the rear boats in tow spread out by the stopping of the tug on a flood tide, and a steamer which passed to the port side after the tug had blown two whistles, where the latter was <i>held</i> , solely in fault.	178
Procedure	
The libel must state the courses of the vessels, their speed, and specific acts of negligence by respondents.	1205
Where the tow injured in a collision libels both the colliding vessel and her tug, the former may take advantage of the negligence of the tug in not carrying lights, though not set up in her answer.	868
The testimony of those on board as to the relative positions of the vessels is entitled to greater weight than that of mere onlookers.	1094
Where a decree for libelant was reversed by the supreme court, which held both vessels to be in fault, claimant, who had failed to allege in his answer that he had sustained any damages by the collision, was allowed to amend his answer in that respect.	186

	Page
Rule of damages	
Where the sum allowed for repairs will put the vessel in as good and serviceable a condition as she was before the collision, a further allowance for depreciation in value is improper.	400
Where a vessel is lost at sea, proof of her value at the time and place of her loss may, in ordinary cases, be made by evidence of her value at her last port of departure, or at the place of her destination.	183
COMMON LAW	
The ancient doctrine of the common law, that a private wrong is merged in a felony, is not applicable in this country.	894
Compositions	
See "Bankruptcy."	
COMPOUNDING FELONY	
A mortgage to secure a just debt, given to avoid a threatened criminal prosecution, is not void, as executed to compound a felony.	800
COMPROMISE	
See, also, "Bankruptcy"; "Payment"; "Release and Discharge."	
A compromise agreement, under which a bill for infringement of a patent was dismissed, settling all claims to infringement set forth in the bill, <i>held</i> no estoppel to a suit for an infringement of a reissued patent subsequently granted.	582
CONFLICT OF LAWS	
The validity, nature, and interpretation of contracts is governed by the law of the place where they are to be performed, unless they are void by the law of the place where they are made.	29, 1022

	Page
Civil incapacities and disqualifications under the law of the domicile are not regarded in other countries, as to acts done or rights acquired within another jurisdiction, where no such disqualifications are acknowledged.	950
A person who is a slave by the law of his domicile may maintain an action in his own name, in a country where slavery is not allowed, for a personal tort committed within that jurisdiction.	950

CONSTITUTIONAL LAW

Congress has constitutional power to grant to telegraph companies organized under state laws the right to construct and use lines of telegraph along any of the military or post roads of the United States.	199
A provision of a state statute, giving an exclusive right to a telegraph company to erect and use lines of telegraph within certain counties, <i>held</i> to be in conflict with Act July 24, 1866, in relation to the construction of telegraph lines.	199
A state statute, authorizing the bridging of a navigable stream within the state, is not in conflict with the constitutional power of congress to regulate foreign and interstate commerce, unless in conflict with a special enactment.	188
The provision of Act March 2, 1867, § 2, relating to the seizure of books, papers, and invoices in cases of alleged fraud on the revenue, <i>held</i> not unconstitutional.	815
The legislature has power to alter the terms of a municipal charter, in respect to service of process in suits on municipal bonds previously issued.	254

	Page
In passing a statute of limitations, the legislature must allow a reasonable time within which to prosecute existing causes of action, and the question of reasonable time is for the court.	227
An act (Act Wis. April 3. 1872) limiting to one year suits on municipal bonds, issued before its passage, for negotiation in a foreign market, is unconstitutional, as fixing an unreasonable time.	227

CONTEMPT

The federal court has no power to punish for contempt in publishing in a newspaper an article tending to prejudice or affect the rights of parties to a suit on trial in such court. (Act March 7, 1831.).	1205
An application to compel an officer of the court to pay over money due from him in his official capacity is a proceeding as for a contempt, and the court has jurisdiction, under Act March 2, 1831.	727
In such proceeding the sworn answers of the officer are evidence in his favor.	727

CONTRACTS

See, also, "Assumpsit"; "Sale"; "Vendor and Purchaser."	
A contract made in fraud of the law, or against public policy, is void.	546, 550
An agreement between two or more persons not to bid at a sheriff's sale against each other, and that one shall purchase for the benefit of all, is void.	546, 550
A contract payable in gold coin is valid and enforceable.	944
Where a statute contains both a prohibition and a penalty, a contract or transaction contrary thereto is absolutely illegal and void,	745

	Page
unless it appears, upon a consideration of the whole act, that the legislature did not so intend.	
A party cannot recover upon a contract prohibited by statute, although the statute contain no express declaration that the contract shall be void.	711
A promise to do what is forbidden by law, or a promise made in consideration of an act done in violation of law, is void.	1237
The infliction of a penalty for doing an act is an implied prohibition of it.	1237
A party, in order to establish the illegality of a written contract legal on its face, cannot show orally a simultaneous contract alleged to be illegal.	1077
A contract for the sale and delivery of grain, which the party did not have and did not intend to have, is nevertheless valid, and the purchaser cannot show that the parties intended that the "difference" should be settled in cash.	1077
The act of March 2, 1799, § 61, fixing the value of foreign coins, does not apply to contracts between private parties, as in the case of an insurance of a cargo invoiced in rupees.	514
The obligee may designate any reasonable place for the performance, where the obligation is silent in that respect and no place can be inferred from the collateral facts proved by parol.	123
Delays in repairing a vessel caused by the masters unfounded objections to certain work, will not subject the contractor to damages.	803
The sum of \$10,000 stipulated as liquidated damages for breach of a contract of	942

employment of a person as superintendent of a factory, *held* a penalty.

COPYRIGHT

A person employed to compile a book for a certain sum, and credited as author on the title page, the employer giving some suggestions as to character and form and taking a conveyance of the copyright, has the sole interest in the additional term allowed to authors. 652

A usage among booksellers, to consider the second term as passing with the first, does not control the rights of the author, who was not a bookseller, nor shown to be conversant with such usage. 652

A contract in respect to copyright between publisher and author will be construed liberally in favor of the author. 652

The copyright acts do not give any relief in the federal circuit court which could not before be had, either in law or equity, in the state or federal courts. 652

The allowance of a jury, to settle at law the question of infringement arising in a suit in equity, is not a right, but rests in the sound discretion of the court. 652

CORPORATIONS

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

A subscription to stock is not invalidated by a statutory amendment transferring from the stockholders to the directors the power to increase the stock, and an increase made in pursuance thereof. 29

The soliciting of subscriptions to the capital stock of a foreign corporation is not an act or agreement intended to be rendered 29

	Page
inoperative by Act Ind. June 17, 1852, requiring certain acts as a condition of doing business in the state.	
Statements made by the agents of a company at the time of soliciting subscriptions cannot change the stockholder's liability on his subscription.	29
Ignorance of the condition of the company at the time the subscription was made is no defense to a suit by the assignee in bankruptcy for an assessment.	29
A stockholder is estopped, by retention of his stock and participation in profits, from repudiating his subscription for irregularities in the increase of the capital stock.	29
An agreement between the incorporators of a company and its directors for the issue of full-paid stock for property conveyed to the company, in the absence of fraud, is binding.	429
The grant of authority to increase stock at the discretion of the stockholders does not give the directors power to make such increase.	27
The requisite assent of the stockholders may be shown by their conduct and acquiescence. No formal assent is necessary.	27
A vote by directors of a corporation authorizing its officers to make a lease of its property does not compel them to take such action, and confers no rights upon the prospective lessee.	968
Resolutions of directors, authorizing a lease of the corporation's property, which have never been drawn in question by the board, are valid although they precede the completion of the organization by filing the articles of association with the proper state officer.	968

	Page
<p> Holders of newly-issued stock, if in a majority, may revoke a delegated authority to officers to lease the property of the corporation. </p>	968
<p> An order that an annual meeting be called in December, and on such day in that month as the board should determine, is not valid, under a by-law fixing the month of June, "or at such other time as the directors may order." </p>	968
<p> The regularity of corporate elections and the title to corporate offices may be inquired into by a court of equity, when necessary to complete justice in a pending suit. </p>	968
<p> Under a charter authorizing a corporation to make by-laws for the management of its property, the regulation of its affairs, and the transfer of its stock, and providing that stock shall be transferable in such, manner as shall be prescribed by the bylaws, the company has the power to provide that no transfer of stock shall be made upon its books until after the payment of all indebtedness to the company due from the person in whose name the stock stands on its books. </p>	135
<p> The facts essential to the exercise of jurisdiction in proceedings for the voluntary dissolution of corporations, under 2 Rev. St. N. Y. 466, must appear upon the record of the court, to sustain a decree of dissolution. </p>	197

COSTS

<p> Costs will be decreed a libellant, though no debt is recovered, where he was misled into bringing suit by the misconduct of defendant. </p>	395
<p> In a suit in admiralty for a personal tort, a compromise between the parties before decree will bar a further suit by libellant's proctor to obtain the costs. </p>	380

	Page
A notice by the proctor to respondent that, in case of a compromise, he will be held liable for the costs, is ineffectual.	380
Charges properly allowed against a fund in the administrator's hands upon which a decree of the court had acted.	875
Where two become bail jointly and severally, and two writs of sci. fa. are issued, and one of the bail surrenders the principal, he must pay the costs upon both writs.	170
Plaintiff is not entitled to costs in a suit for infringement of a patent, where he recovers a verdict for infringement of valid claims, while other claims are rejected as void for want of novelty.	97
Members of a partnership, summoned as trustee, who answer severally and are discharged, are entitled to several costs of travel and attendance, but not for counsel fees.	298
A disclaimer by plaintiff, subsequent to a verdict for him in a suit for infringement of a patent, does not deprive him of costs.	97
A corporation aggregate, whose president and treasurer reside within the District of Columbia, cannot be compelled to give security for costs as nonresidents.	1131

COUNTIES

See, also, "Municipal Corporations"; "Railroad Companies."

After the issue of an execution against a county, under Act Pa. 1834, the commissioners cannot draw any warrant or make any payment until the judgment is satisfied.

There is no appropriation of any part of a common fund until the commissioners, by

Page

their warrant on the treasurer, indicate the specific object to which it is to be applied. A decree for the assessment and collection of a tax to pay judgments on county bonds will be enforced directly against the taxpayers, on bill filed by the judgment creditors, where the county officers are unable to collect such taxes at law. 1092

COURTS

See, also “Admiralty”; “Bankruptcy”; “Clerk of Court”; “Equity”; “Justices of the Peace”; “Maritime Liens”; “Removal of Causes.”;

In general

An assertion of a rule of law by an appellate court, although obiter dictum, binds an inferior court. 901

Federal courts—Jurisdiction, in general

The remedy given by the state law on the administration bond will not prevent the federal courts taking jurisdiction in equity in favor of the legatees and distributees for their portion of the decedent’s estate. 1254

A person who has the right under an act of congress to sue in the federal court cannot be compelled by an act of the state legislature first to obtain leave of a state court. 462

The jurisdiction of the federal court is not exhausted by the rendition of a judgment. It may enforce its collection, and for this purpose adopt the process of the state courts. 946

—Grounds of jurisdiction

The circuit court has no jurisdiction, in a suit between citizens of the same state, to enforce performance of an agreement to transfer letters patent. 285

	Page
The federal circuit court has no jurisdiction of a suit between two aliens. To give jurisdiction, one of the parties must be a citizen of a state.	384, 1278
In a suit by an alien, defendant must be described as a citizen of some particular state.	609
A corporation of a foreign country, though having an office and transacting business in this country, will be considered an alien.	384
Where plaintiff has the legal title to coupons, he can sue upon them, although he bought them merely with the object of bringing suit upon them in the federal court, and intending to pay over a portion of the recovery to some other person.	262
The right of a stockholder to sue in the federal courts to restrain the corporation and its officers from illegal acts cannot be defeated by the fact that part of defendants are interested with them.	976
Coupons payable to bearer are promissory notes, within Act March 3, 1875, § 1, and the holder is not an assignee, but acquires his title by delivery.	262
—Circuit courts	
The court has jurisdiction in debt on a bond for the penalty of \$1,000, though it appears that less than the jurisdictional amount is claimed.	1096
Suits may be brought in the circuit courts of the United States, by assignees in bankruptcy, without reference to the amount or value in controversy.	18
The circuit court has jurisdiction of a common-law or equity suit by an assignee in bankruptcy appointed in another district, in a case of diverse citizenship, where the amount in dispute exceeds \$500.	22

	Page
Defendant must either be an inhabitant of, or be found within, the district in which the suit was commenced at the time of serving the writ.	609
A nonresident citizen of the United States, having no local habitation, cannot be sued in the circuit court by an alien, although he has attachable property within the district, if he is not found therein.	609
The circuit court has no jurisdiction of a suit against a corporation of another state commenced by service of process within the district upon an officer thereof. (Act 1789, § 11.).	965
The requirement that a civil suit against an inhabitant of the United States must be brought in the district of which he is an inhabitant, or in which he is found when the writ is served, cannot be changed by state law. (Act 1789, § 11.).	965
A state law, permitting service of process on an agent of a foreign corporation doing business in the-state, cannot give the federal court jurisdiction by such service	965
The circuit court has jurisdiction of a suit by a nonresident, where some of defendants reside in the state where the suit is brought, and other defendants reside in other states, where the latter appear and submit to the jurisdiction. (Act Feb. 28, 1839, § 11.).	976
A circuit court has cognizance of a bill of review founded on newly discovered evidence, pending an appeal to the supreme court from the decree sought to be reviewed.	992
The court may permit such a bill to be filed as an amendment by adding new matter and parties to the original record.	992

	Page
—District courts	
The district court of the Northern district of New York is placed in the same relation to the circuit court as that of the Southern district, and an appeal lies from it to the circuit court of the Southern district to the same extent. (Act April 9. 1814.).	1073
The district court of the Eastern district of New York has jurisdiction of a case of, collision at sea, though the vessel proceeded against was attached in the waters of the county of New York.	184
Act May 15, 1820, § 4, prescribing the mode of relief against a treasury warrant of distress, confers a power upon the court, and not upon the judge as an individual.	1073
The decision of the district judge, awarding a perpetual injunction against a treasury warrant of distress, is a final decree within Act March 3, 1803, and appealable to the circuit court.	1073
—Administration of state laws	
The state court's construction of a state law is binding upon the federal courts in suits depending thereon, notwithstanding a different construction previously made by the supreme court of the United States.	1335
The federal court will adhere to its prior decision construing a state statute, notwithstanding a subsequently conflicting decision by the state court, where there is nothing to prevent a review of the case by the supreme court.	262
	1364
—Procedure	
The practice of the state courts is not controlling on the federal courts, unless adopted by some law of the United States, or	959

rule of court made in pursuance of an act of congress.

COVENANTS

See, also, "Landlord and Tenant"; "Vendor and Purchaser."

The inchoate, right of dower is not an incumbrance, within the meaning of a covenant against incumbrances. 1218

The heir is not bound by a warranty which did not bind his ancestor. 568

The warranty of the ancestor does not bind the heir, where the right does not vest before the fall of the warranty. 568

CREDITORS' BILL

After the appointment of a receiver under a creditors' bill, another creditor can acquire no rights by levying an attachment upon property of the judgment debtor. 222

Criminal Law

See "Bail"; "Common Law"; "Extradition" "Habeas Corpus."

CUSTOM AND USAGE

The party alleging that it was the custom of the merchants in the particular trade to contract in reference to the value of foreign coins, as fixed by the act of congress, has the burden of showing a general and well established custom, or that the parties contracted in reference to it. 514

CUSTOMS DUTIES

Customs laws

An ambiguity in the language of a tariff act, or a doubtful classification of articles, will be resolved in favor of the importer. 1234

Where two provisions in a customs law are repugnant, the last one will prevail. 1234

Liability to duty

	Page
Duties accrue when the goods are imported, though brought in as prize.	1331
The release of duties on goods captured by an armed vessel <i>held</i> not to apply to a vessel captured before, but not condemned until after, passage of Act Aug. 2, 1813, c. 48.	1331
What constitutes an importation.	258
Goods removed from a bonded warehouse, and carried without the jurisdiction of the United States, and returned, are subject to duty, though not actually landed at a foreign port.	253
Invoice: Entry: Appraisal	
The date of an invoice is prima facie evidence, as against the purchaser making the entry, of the time of their purchase, and conclusive until a mistake in the date is proved.	677, 681
An accepted order for goods to be manufactured, although a purchase in the usage of trade as between the parties, is not a purchase under section 16, Act Aug. 30, 1842.	681
677,	
Payment: Protest	
Under a protest against paying a given duty on "rosewood furniture," the rates levied on furniture in the same entry made only in part or not at all of rosewood cannot be considered.	1209
A protest "against paying 40 per cent. on rosewood furniture, believing it should pay 30 per cent. as, cabinet furniture," will not embrace furniture composed so largely of other woods as not to come under the commercial designation of "rosewood" furniture.	986
Actions for duties paid	

	Page
An irregularity relied on as a ground of recovering back duties paid must be specifically set forth in the protest.	677, 681
In a suit to recover back duties, the court may allow a bill of particulars to be served after the expiration of 30 days after notice of appearance of defendant, and may allow a defective bill of particulars to be amended. (Rev. St. § 955.).	1131
Violation of law: Forfeiture	
Property stolen from a friendly foreign sovereign, and smuggled into the United States, is not subject to forfeiture for illegal importation.	1336
Under Act 1799, § 28, the reception by one vessel of goods unladen from another without a permit subjects the receiving vessel to forfeiture, irrespective of a fraudulent intent on the part of her officers.	884
The fact that efforts were made to find an officer, which were unsuccessful on account of the lateness of the hour, and that the master was impatient to proceed, furnish no legal excuse.	884
A proceeding under Act March 3, 1797, for the remission of a forfeiture, cannot be maintained until the forfeiture suit has proceeded to judgment.	1336
In a proceeding for the remission of a forfeiture, the judge has jurisdiction to determine whether the case presented to him falls within the statute.	1336
A United States district attorney may, upon the authorization of the government, appear in behalf of a person seeking the remission of a forfeiture.	1336

When the United States take steps to remit a forfeiture for illegal importation, the collector may show cause against the remission. 1336

Bonding: "Warehousing"

The federal circuit court has no jurisdiction to restrain prosecution of a suit in the district court on a redelivery bond given under Act May 28, 1830, § 4, or to determine in advance the amount legally recoverable thereon. 1232

The federal circuit court cannot, at the suit of obligors in a redelivery bond, compel an election between two suits pending in the district court.—one on such bond, and the other to condemn the goods as forfeited for fraud or undervaluation in their invoice. 1232

DAMAGES

See, also, "Contracts"; "Collision" "Patents."

The damage recoverable for wrongfully flooding a lower mine is the loss of legitimate earnings, which plaintiff must clearly prove. 1298

Damages recoverable for injuries to goods while in the hands of a carrier *held* to be the difference in market value between the sound and damaged goods at the place of delivery, together with the expenses of appraisers and wardens, called under the custom of the place to ascertain the amount. 134

In assumpsit against a consignee for proceeds of goods sold, interest is allowable from the time of demand. 1018

1365

DEED

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

A plat annexed to a grant cannot be recurred to for the purpose of destroying its validity. 921

A deed of land executed by husband and wife, but containing no words of grant by the 1218

	Page
wife, does not convey her estate in the land nor her dower.	
The parties to a deed are estopped to deny the consideration stated therein.	1218
DEMURRAGE	
The shipmaster cannot report himself "ready to receive cargo," before he is permitted by the revenue laws of the port to receive it.	682
Where the consignee requires that the cargo be taken to a particular place, he will be <i>held</i> liable for any delay caused at that place, for which the vessel cannot be shown to be directly chargeable.	492
DEPOSITION	
Notice given to the attorney at law of a motion for a commission is sufficient.	1205
The circuit court, having full power when sitting as a court of law to issue commissions to take testimony abroad, will not entertain any proceedings for such a purpose on its equity side.	366
Place of taking testimony, under special circumstances, where witness resides in a different place from the examiner.	1302
A deposition taken before a mayor, without a seal, may be received as prima facie evidence of the right to take it.	1318
A judge who takes a deposition under the act of congress must certify that the witness was cautioned and sworn to testify the whole truth, and that notice was given to the adverse party.	211
A deposition taken under the judiciary act of 1789, § 30, cannot be read in evidence, unless the judge certifies that it was reduced to writing either by himself or by the witness in his presence.	387

	Page
The magistrate who takes the deposition under the act of congress need not certify that he was not of counsel with either party.	409
The caption of the deposition must name all parties in the suit.	409
That a witness who lives in another state, more than 100 miles from the place of trial, has been in the city during the sessions of the court, is no objection to reading his deposition, where his presence was not known to the party.	387
Depositions taken de bene esse cannot be read in evidence, unless the party offering them shows that the witnesses were subpoenaed and could not attend.	176
A party offering in evidence a deposition taken de bene esse must prove that he has used due diligence to procure the attendance of the witness.	387
DESCENT AND DISTRIBUTION	
The heir is liable, to the extent of assets received from his ancestor, for the contracts or liabilities of the ancestor, and suit may be maintained against him after the administration of the estate is closed, where the claims subsequently accrued.	23
The heir is liable, to the extent of assets received from the estate, for an assessment on stock held by his ancestor, made after the close of the administration of the estate.	23
One-half of the real estate of testator, in Virginia, <i>held</i> liable for his debts, though not charged by the will.	1330
A court of equity, in Virginia, can decree a sale of one moiety of the fee simple of the debtor's lands in the hands of the heir at law.	1330

Page

The United States has not priority, under Act March 3, 1797, over the allowance to the widow of a deceased debtor, under the state law. 1126

DOMICILE

See, also, "Courts"; "Prize"; "Removal of Causes"; "War."

A residence in a state, continuing for only a few months, in a business which might be abandoned at any time, where the person's family resided in his native state, in which he spent a considerable part of his time, *held* not to constitute a domicile, for the purpose of jurisdiction of the federal courts. 1276

DOWER

Dower is not allowable of an estate of which the husband is trustee only. 1218

A release of dower, executed by the wife alone, long after the conveyance of land by her husband, and for a new consideration, is not, in Massachusetts, an extinguishment of the dower. 1218

In the case of improvements by the purchaser, dower will be assigned according to the value of the estate at the time of the assignment, if no improvements had been made. 1218

The increase in value arising from the general growth of the country or other general causes, and not that arising from improvements made by the purchaser, will be considered. 1218

A mortgage is not an alienation, so as to preclude dower from attaching to improvements thereafter made. 1228

DURESS

A contract will not be avoided on account of duress by imprisonment, unless the imprisonment was unlawful, and the contract 800

Page
was made during the imprisonment, and in
consideration of release therefrom.
A threat of criminal prosecution is not such
duress as will avoid a contract. (Code Ga. 800
2637.).

EASEMENTS

A mill privilege in a city *held* to have been
lost by the change of site and cutting a new
race, where the right of the public to the 675
streets intervened.

No prescription runs against a public right,
nor is possession and use for 20 years 675
evidence of a grant from the United States.

EJECTMENT

No evidence other than of an entry can be
received to impeach the validity of a state 921
grant.

EMBARGO AND NONINTER-COURSE

Construction of laws of July 1, 1812, July 5, 258
1812, and January 27, 1813. 1366

The proclamation of August 9, 1809,
interdicting commerce with Great Britain, 1289
held not legal.

EQUITY

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

A court of equity has no right to interfere
with the strict legal rights of the United States 1232
under the revenue laws.

A bill for the discovery of assets lies in equity,
notwithstanding the remedy at law. 1254

A bill in equity lies for dower. 1218

Where the remedy at law involves a large
number of actions, and questions of values 888
and accounts practically impossible for a jury
to settle, such remedy is inadequate.

	Page
Equity has jurisdiction, on the ground of an inadequate remedy at law, of a bill asking a disclosure and an account of sales under the disposal of a copyright alleged to belong to complainant, and praying an injunction against further sales.	652
The federal circuit court has jurisdiction of a bill by nonresident creditors to restrain railroad commissioners from actions injurious to their rights, before such officers have taken positive action.	625
Equity has jurisdiction of a suit by an assignee in bankruptcy, representing creditors, to set aside the deed of the bankrupt for fraud, actual or constructive.	1251
Equity has jurisdiction, at the instance of stockholders, to restrain the corporation and its managing officers from acts tending to the destruction of its franchises, from violations of its charter, and prejudicial acts, amounting to a breach of trust.	976
Where the board of directors are themselves the wrongdoers, or they refuse to prosecute, to restrain, or to redress the wrong, stockholders may file the bill.	976
It no benefit or advantage whatever appears to be gained by proceedings in equity, rather than at law, the bill will be dismissed without prejudice, in order that the rights of the parties may be adjusted at law.	652
The statute of limitations binds courts of equity as well as law, in cases of concurrent jurisdiction, and sometimes, by way of analogy, binds equitable estates.	1254
Lapse of time may be applied to bar an equity which would not be barred under the statute of limitations.	573

	Page
The objection that there is an adequate remedy at law may be taken under the answer and at the hearing, as well as by demurrer.	652
The objection that plaintiff has an adequate remedy at law cannot be first made at the hearing.	1090

ESTATES

The issue of a female slave, born during the pendency of a particular estate, are property of the remainder-man.	1294
Where estates subject to mill privileges are subsequently united in ownership, and are again conveyed, any change in privileges, claimed to have been made by such conveyances, must distinctly appear.	291

ESTOPPEL

A decision against a county, in a suit by it against a railroad company to restrain the negotiation of railway aid bonds issued by the company, will estop the county from setting up against subsequent purchasers any grounds of illegality which might have been set up in the bill.	1266
Where the duly authorized agent expresses himself as satisfied with work done, and with the account rendered therefor, the owner is estopped to object either to the price or the workmanship.	805

EVIDENCE

See, also, "Appeal"; "Deposition"; "Trial"; "Witness." Best and secondary	
Parol evidence of the contents of record books which were lost is inadmissible, where abstracts of such books were made and are in existence.	940

	Page
A copy of a deed of land from the official record book is admissible, without accounting for the original.	130
The entries of the division and allotment of the lands of the original proprietors in the city of Washington, D. C., may be given in evidence, without accounting for the original certificate of division and allotment.	130
Notarial copy of a note <i>held</i> admissible.	38
Documentary	
In a suit against sureties of contractors for army supplies, <i>held</i> that a letter from the war department, not authenticated, claiming advances made to the principals, was inadmissible, and the admission by the principal of its correctness was not binding on defendants.	149
Parol evidence	
Where the terms of the instrument, in the light of all the circumstances, do not convey a clear meaning, parol evidence is admissible to show the meaning.	445
Where the language is susceptible of more than one meaning, and it is uncertain which the parties intended, parol evidence is admissible to show the surrounding circumstances.	445
Where the language of an instrument is applicable to several persons, or to several species of goods, parol evidence is admissible of extrinsic circumstances tending to show what persons or what things were intended.	123
Parol proof of a consideration, additional to and different from that recited, may be given, where it does not appear that the intention of the parties was to state in the instrument all the consideration passing between them.	445

	Page
Where parties have attempted to put their agreement in writing, and have expressed a clear meaning, parol evidence is inadmissible to contradict or vary it.	445
Weight and sufficiency	
The intent with which certain acts are done may be inferred from the facts, connected with the circumstances.	550

EXECUTION

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

Where an execution is countermanded at defendant's request and for his accommodation, plaintiff may have a new execution after a year and a day, without a sci. fa.	517
---	-----

At common law an equity of redemption is not subject to sale on execution or by attachment.	550
The writs of execution from United States courts, in states divided into more than one district, run all over the state.	1296, 1297

Confession of judgment, to operate as a supersedeas, must be in the very words of St Md. 1791, c. 67.	803
---	-----

1367

EXECUTORS AND ADMINISTRATORS

The state court will grant administration on property belonging or debts due to persons residing abroad, to enable them to be collected in the state.	598
---	-----

An American administrator is chargeable here, as such, for assets received from an administrator abroad.	1254
--	------

An administrator, who is also guardian for legatees and distributees, who receives assets from a foreign administrator, will be deemed to have received them as administrator, and to have retained them as such, where he fails to	1254
---	------

	Page
inventory or account for them, or procure any settlement in the probate court.	
The sureties of the administrator are liable in the same manner as their principal for assets so received, until some act or admission establishing a retainer as guardian.	1254
The settlement of an administrator's account in the probate court, procured by fraud, is not conclusive.	1254
A contingent claim which has not accrued prior to the close of the administration of an estate is not barred by the Illinois statutory two-years limitation of time to exhibit claims against a decedent's estate.	23
A sale directed to be made by the executor may be made by the administrator with the will annexed, where the executor fails to qualify. (Code Miss. 1871, § 1194.).	361, 362
An executor, empowered by will to sell real estate in the best mode in his judgment, for the interest of the estate, cannot delegate such power.	66
As to the validity of an executor's sale of land in Ohio.	540
An application may be made by an executor or administrator to the court of common pleas in Ohio, by attorney, for the sale of real estate.	540
Where proceedings for the sale of real estate have been carried on by an attorney, the sanction of the executor or administrator will be presumed, unless the contrary appear.	540
A sale by an administrator, at which he purchases, may be set aside at the discretion of the persons interested, though there be no fraud.	1318
Executors or administrators appointed in other states may sue in Ohio.	1318

	Page
A grant of letters duly certified is sufficient authority to sue in Ohio.	1318
The statute of limitations of Rhode Island, of suits brought against executors and administrators, is a good bar in equity as well as at law.	1254
The limitation, in Rhode Island, to three years, of suits against executors and administrators, in the case of a suit brought to recover for the default of the original executor after his death, begins to run from the time the last administration is taken out.	1254
A plea by an administrator, to an action of debt, that the estate is insolvent, is not a good plea in bar.	407
The possession of property, under a disposition of it by deed in the lifetime of deceased, will not, in law, constitute the possessor executor de son tort.	365

Exemptions

See "Bankruptcy."

EXTRADITION

Authority from the Swedish government to emigrate to the United States precludes it from subsequently demanding the surrender of the person as a deserting seaman under the treaty of 1827, art. 14.	91
--	----

FACTORS AND BROKERS

The consignee of goods waives any personal claim against the owner for advances where he agrees to "hold for reimbursement on the amount and net proceeds of said goods which are only considered answerable for said amount advanced."	123
A consignee upon whom bills are drawn on a shipment must sell the goods to meet payment of such bills.	1202

Page

In assumpsit against a consignee of goods,
“to sell the same and render a reasonable
account,” damages for not remitting when
exchange was favorable cannot be recovered. 1018

FIXTURES

The main millwheel and gearing of a factory,
attached to the factory and necessary for its
operation, are fixtures and real estate, to
which the right of dower attaches. 1228

FORCIBLE ENTRY AND DETAINER

Actual possession is necessary to enable a
person to maintain the action. 729

The landlord cannot maintain a suit against a
third person for expelling his tenant. 729

FORFEITURE

See, also, “Customs Duties”; “Internal Revenue”;
“Shipping.”

A purchase of goods which have become
forfeited to the United States will not purge
the forfeiture, when the purchase has been
made under a full knowledge of the facts, or
of such facts as were sufficient to put the party
on inquiry. 885

FRAUDS STATUTE OF

A promise founded on a new consideration,
made to one who owes a third person, to pay
the debt, is not within the statute. 445

Actual possession under a parol agreement for
a conveyance, and performance, takes the case
out of the statute. 1090

FRAUDULENT CONVEYANCES

See, also, “Bankruptcy.”

Want of possession of real estate is not, as it
is of personalty, a presumption of fraud. 467

A subsequent purchaser of land, made
defendant to a bill to set aside a conveyance
by the debtor as fraudulent, as against 1251

	Page
creditors, must be charged to have had knowledge of the fraud.	
A deed made by one in failing circumstances to a partner, in consideration of partnership funds advanced to the grantor without authority by another partner, <i>held</i> not fraudulent as to his creditors.	959

GARNISHMENT

See, also, "Attachment"

Property pledged, and on which the party has a lien, is not liable to be attached by a trustee process.	600
---	-----

Property held by an assignee under a fraudulent assignment may be reached by garnishee process.	223
---	-----

A citizen of Maine is not liable to be sued in Massachusetts, under its trustee attachment process, as a trustee of another citizen of Maine, though he pass half his time in Massachusetts.	368
--	-----

An executor is not liable to be charged as the trustee of a legatee in a foreign attachment.	600
--	-----

Executors cannot be charged as garnishees in a suit against legatees before probate of the will.	600
--	-----

A garnishee may set off against the debtor's claim any claim he has against the debtor which could be set off in a suit at law brought by the debtor himself.	600
---	-----

The persons sued as trustees must clearly admit the possession of goods, effects, or credits of the debtors before they can be held to be trustees on their disclosures.	600
--	-----

Where the garnishees assert an adverse title to the property in a third person, they are not bound to make disclosures as to their disposal of it.	600
--	-----

Page

The statements in the trustees' answer, made on a belief of facts derived from other sources of information, are to be taken as true. 600

GRANT

See, also, "Public Lands."

The governor's act (in North Carolina) in signing and affixing the state seal to a land grant makes it operative, without signature by the secretary of state. 500

Validity of North Carolina land grants made after the cession act. 940

Claim to Mexican land grants confirmed upon the evidence. 590, 593-595

A Mexican land grant, made July 7, 1846, the date of the actual conquest of California, *held* entitled to respect, where the title was ordered to issue June 11, 1846. *595

Irregularities or fraud in procuring a grant do not render it void, but only voidable, and it is good as between third persons. 921

GUARDIAN AND WARD

The rights and duties of guardians are strictly local. 1234

The authority conferred on a guardian in another state will give him no right to the minor's property in Louisiana which is already in the possession of a legal tutrix. 1234

HABEAS CORPUS

Where it appears that at least two offenses, in an indictment containing four counts, were well joined, and the petitioner, who pleaded guilty, was sentenced to two years imprisonment on each count he will not be discharged on habeas corpus before the expiration of four years, on the ground that the court had no authority to render cumulative judgments. 359

Homestead

See "Bankruptcy."

HUSBAND AND WIFE

A deed of property by a feme sole to a trustee for her separate use, made pending a treaty of marriage, if without the knowledge of the husband is void as to him. 1243

An antenuptial settlement by the husband upon the wife, though not recorded, will protect the goods from the husband's creditors. 645

A postnuptial settlement made by a stranger unless expressly dissented from by her husband. 600

A postnuptial settlement, made by the husband upon his wife for a valuable consideration, or voluntary, if not indebted at the time, or not disproportionate to his means, is valid. 600

In a postnuptial settlement, a power of appointment and to create new trust may be reserved to the wife toties quoties. 600

The furniture, etc., and house of a wife living separate from her husband will be presumed to have been purchased with her own funds, where she has an ample separate estate. 600

At common law a will by a married woman disposing of her freehold estate is void. 600

INDIANS

Lands patented to the Indian reservees, under the treaty with the Miami Indians of June 5, 1854, are liable to be taxed by the state authority after the title has passed from the Indian reservee to a citizen. 78

INJUNCTION

See, also, "Patents."

	Page
An injunction will not be granted to restrain waste and trespass unless complainant show that there are no facts to warrant its denial.	291
An injunction will not be granted to prevent the diversion of water from its natural coarse unless serious damage, actually incurred or impending, be shown.	675
An injunction to stay proceedings in 92 suits in ejectment, where the parties, etc., were the same in each suit until one or more could be tried denied, as a court of law could furnish an adequate relief by a consolidation rule.	366
Injunctions cannot be granted in the federal courts without notice.	291
In ordinary cases the injunction will be dissolved, of course, where the answer denies the whole merits; and, on the motion, plaintiff will not be allowed to contradict the answer.	1013
The continuance or dissolution of a special injunction, after the coming in of the answer, depends upon the sound discretion of the court.	1013
The answer must positively deny the material facts of the bill, and the denial must be grounded on personal knowledge, not merely on information and belief in order to support an application to dissolve a special injunction.	1013
In cases of irreparable mischief, the dissolution of an injunction rests in the sound discretion of the court, whether applied for before or after answer.	1013
Affidavits may, after answer, be read by the plaintiff to support the injunction, as well as by the defendant to repel it; and this, although the answer contradicts the substantial facts of the bill, and the affidavits of the plaintiff are in contradiction of the answer.	1013

Page

The members of the board of public works of a city are bound by an injunction against the city, of which they have notice though it is not served upon them, and they are not parties to the suit. 512

INSOLVENCY

See, also, "Assignment for Benefit of Creditors"; "Bankruptcy." 1369

Construction of the insolvent laws of Massachusetts, and the effect of proceedings thereunder, determined. 299

The creation of liens or titles, by proceedings under state insolvent laws, are governed by such laws, and the construction of the laws by the state court will be followed by the federal court. 299

A statement of property and a representation of insolvency, in a petition for the benefit of an insolvent act, are considered as representations to all creditors acting thereon. 467

INSURANCE

See, also, "Average"; "Marine Insurance."

Where the person in whose name a building is insured, described as "his," held the legal title only as trustee for a purchaser under a void mechanic's lien sale, *held*, that he could not recover for a loss where the policy provided that the insured's interest, if not absolute, must be expressed in the policy. 1070

The burden of proof to sustain the defense that the plaintiff murdered the insured to obtain money is on the insurer, but a fair preponderance of the evidence is sufficient. 1244

INTEREST

See, also, "Damages"; "Usury."

Page
After the plaintiff has received the principal
debt, he cannot recover the interest in an
action for principal and interest. 1131

INTERNAL REVENUE

Definition of broker under the internal
revenue tax acts. 39

The tax of 5 per cent. out of certain corporate
dividends, is a tax on the income of the
holder of the stock, the corporation being the
government agent for its collection. 479

The property of the corporation cannot be
levied upon for such tax. 479

A dividend declared payable after December
31, 1869, although for earnings of the past
year, is not liable to the income tax, which
expired with the year 1869. *479

Dividends declared and made payable during
the last five months of 1870 are not liable to
taxation under the act of July 14, 1870. *484

The service by a supervisor of internal
revenue, in person, of a summons upon a
clerk of a railroad company to produce certain
books and papers, and submit to examination 290

under Act July 20, 1868, § 49, *held* sufficient.
A witness, summoned for examination before
an assessor, may be compelled to answer
questions touching the falsity of tax returns
of tobacco manufacturers, as disclosures or
admissions thus made cannot be used against
him in criminal prosecutions under Act Feb.
25, 1868. 506

Judge

See "Courts"; "Justices of the Peace."

JUDGMENT

Rendition and entry.

An indorsement by plaintiff's attorney upon
the declaration, and the words, "Nov. T., 800

	Page
1866, verdict.” on the bench warrant, <i>held</i> not such a judgment as to constitute a lien which would operate from such time, on its entry nune pro tune under order of court.	
An entry of “Judgment nisi, four days,” will bind the debtor’s land where judgment is subsequently made absolute.	1311
Validity	
A judgment in a state court of probate, where obtained by fraud, is not conclusive.	1254
The regularity of a judgment when used as evidence cannot be inquired into.	550
Operation and effect	
Where the state is divided into several districts, a judgment obtained in the federal court in one district is a lien upon the defendant’s real estate in all parts of the state, and plaintiff has the right to concurrent execution all over the state.	1296
The record of a judgment is notice only of what it contains.	800
Amendment	
A clerical mistake in entering a judgment may be amended at a subsequent term, and an execution issued thereon quashed.	645
Relief against: Opening: Vacating	
A motion to set aside a judgment by default, made, after the term is over, by petition to the judge, is not within Act 1789, § 18.	1046
A judgment by default against the casual ejector for want of an appearance, and confessing lease, entry, and ouster, may be set aside at a subsequent term, on an affidavit of merits, where a trial has not been lost.	1040
On motion to set aside an office judgment upon an injunction bond the court will not suffer the defendant to plead that the obligee	1072

	Page
was dead at the time of the execution of the bond.	
Actions on judgments	
The judgment of one state court is not conclusive in a suit instituted upon it in another state.	85
A provision of a state statute requiring leave of court to enable a party to sue upon a judgment rendered in any court of the state is not applicable to the federal circuit court.	462
JUSTICES OF THE PEACE	
A creditor may give a credit upon his account so as to give jurisdiction to a justice of the peace.	1072
LANDLORD AND TENANT	
A complete executed lease of mineral rights for 99 years, renewable for a like term, <i>held</i> valid and binding on both parties though signed only by the lessor.	1320
Under a lease of mineral rights, not specifying any time for developing them, <i>held</i> , that the lessee must act within a reasonable time.	1320
In the case of inaccessible mountain lands, where a railroad was projected after 25 years, <i>held</i> , that the lessee should be allowed two more years to develop the land.	1320
Under a lease of premises to one who covenanted to continue the business carried on therein for half the profit, the lessee is entitled, at the end of the term, to a return of the fixtures and machinery, or their value, where they have not been worn out, or to new articles or machinery purchased to replace them.	240
Quere, whether children of a female slave, born while the mother was in the temporary	312

	Page
service of a vendee for years, are slaves of the vendor or vende.	
License	
See "Patents."	
LIENS	
See, also, "Admiralty"; "Bankruptcy"; "Maritime Liens" "Shipping."	
A second incumbrancer, taking up a prior incumbrance, which was also a lien upon other property, may enforce it against the property not covered by the second incumbrance.	313
LIMITATION OF ACTIONS	
See, also, "Adverse Possession"; "Equity"; "Maritime Liens."	
A statute of limitations must give a reasonable time for the enforcement of existing rights.	573
The statute of limitations does not run against an established trust.	550
The statute will operate in the case of fraud from the time the fraud is discovered.	573
In the case of a bill of exchange made payable at a particular place the statute does not commence to run until a demand is made at that place.	597
Construction of the statutes of limitations of Ohio of 1804, 1810, 1824, 1826.	573
A claim against the estate of a deceased partner, accruing, in consequence of the insolvency of the surviving partner, after the statute of limitations had run upon the claims against such estate generally, is not barred, though not exhibited within the period limited by the statute.	147
A state statute of limitations is ineffectual to bar a right of action secured to the United States by act of congress.	253

	Page
The state statute of limitations may be pleaded in the federal court in a case of concurrent jurisdiction.	1322
The state statute of limitations applies in an action on a note by an assignee in bankruptcy in a federal court.	1347
The reply, "I will put up your wages for you," to the demand of an employe, "I want to see my money," <i>held</i> sufficient to take the case out of the statute as to all the wages to which the promise applied.	132
Whether the evidence of a promise to pay a debt barred by the statute is sufficient to take the case out of the statute is a question of law for the court. Its credibility and application to the debt in suit is a question of fact for the jury.	132

LIS PENDENS

The right to file a lis pendens is statutory, and cannot be impaired by the court.	847
The pendency of the suit on negotiable paper is not constructive notice to purchasers thereof.	1266

MARINE INSURANCE

See, also, "Average."

The contract

In the case of policies bearing the same date, the insurers may show the actual time of the execution of each policy, to exonerate themselves from a loss covered by the prior policy.	1167
--	------

Where two policies are concurrently executed, the operation of the priority clause is excluded, and the assured may recover his whole loss upon either policy; and the other underwriters are liable only for contribution.	1167
---	------

	Page
Construction of policy “in port and at sea, and at all times and places, for the space of six calendar months,” as to amount of premium due.	943
The right of the master of a vessel to primage is an insurable interest.	92
The effect of the memorandum clause in policies is not to enlarge the perils underwritten against, but to exempt the underwriters from certain losses, within these perils.	1186
The assured need not communicate the age of the vessel, or where she was built.	1048
The risk	
The maxim, “Causa proxima, non remota, spectatur,” does not exclude incidental losses flowing as a legal or natural consequence from the direct injury or loss to the thing insured.	373
The underwriters are liable for the direct damage done to the insured ship by a collision, and also for the charge apportioned on such ship as her contributive share towards the common loss under the law of the country where the collision occurred, as a part of the partial loss occasioned by the collision, and not as general average.	370, 373.
Where a small boat is lost after a storm because the vessel was so disabled by the storm as to become unmanageable, the insurers are liable.	1173
A loss by the ebbing of the tide is a loss by the perils of the sea, if it be not mere wear and tear, but extraordinary in its nature or mode.	1186
To constitute a stranding within a policy, the vessel must be on the strand under extraordinary circumstances.	1186

	Page
Underwriters are liable for a loss caused by grounding in a harbor, in the absence of proof of inherent weakness.	1186
Injury to a vessel stoutly built and only two years old, on her taking ground at a wharf, <i>held</i> caused by perils of the sea.	1186
The insurers must bear the expense of a survey in a foreign port, made to ascertain the amount of damages and the propriety of making repairs.	1173
The manner of making surveys in foreign ports, and fees therefor.	1173
Underwriters <i>held</i> liable for common interest and a commission for indorsing a draft for the amount of a loan, where a bottomry bond with marine interest was surrendered.	370
Abandonment	
The owners may abandon the vessel where she is stranded, and her situation is desperate, though she is subsequently gotten off by the agent of the underwriters, and is not injured to half her value.	98
The half value which authorizes an abandonment is half the sum which the ship, if repaired, would be worth after repairs made. If, when repaired, she would not be worth double the amount of repairs, the owner has a right to abandon.	98
The act of the underwriters in taking possession of a stranded vessel after abandonment and getting her off and repairing her is in law an acceptance.	98
An abandonment accepted is irrevocable by either party without the consent of the other.	98
Suits	
In determining the amount to be paid for loss of a cargo from Calcutta, which was invoiced	514

Page

in rupees, the rupee should be estimated at its actual value in Calcutta when the cargo was purchased.

The rule of deduction of one third new for old in case of repairs, etc., does not apply to incidental expenses, from which the insured can derive no enhanced benefit or value beyond his loss.

1173

1371

MARITIME LIENS

See, also, "Admiralty"; "Affreightment"; "Bottomry and Respondentia"; "Charter Parties"; "Demurrage"; "Salvage"; "Seamen"; "Shipping."

The right to a lien

The port where the vessel is enrolled and licensed is her home port, irrespective of the residence of her owner or charterer. 580.

899

Contra.

No lien arises for necessaries supplied to enable a vessel to make voyages between ports within the limits of the district where she is enrolled and licensed, where she is employed regularly in such voyages, as a part of a through line for interstate transportation.

580

A lien arises for supplies furnished in a foreign port for the restaurant of a boat running between New York and Sandy Hook. The presumption for the necessity for the credit of the vessel for repairs ordered by the master is not repelled by proof that the owner was in good credit.

897,
899

898

The master may bind the owner for repairs, unless it appear that some other person was in authority, with a knowledge of the creditor.

505

Where materials for repairs are purchased by the agent of the owner of the vessel, residing at the place where the repairs are made, in his own name, and his personal undertaking given

441

	Page
therefore, there is no lien on the vessel, unless it is specially given.	
A part owner who furnishes material and labor for making repairs, is entitled to a maritime lien therefor, which will be superior to the rights of a mortgagee under a mortgage given by the other part owner upon his interest in the vessel.	395
Priority and enforcement	
The lien of laborers and material men will be preferred to a judgment lien in favor of the United States.	523
Pilotage and towage into port stand in the same rank of maritime liens with necessary supplies and repairs.	1072
But a claim for towage furnished in one voyage has a lien superior to a claim for supplies furnished on a previous voyage.	1072
Waiver: Discharge: Extinguishment	
A foreign condemnation in prize destroys maritime liens.	631
Such foreign condemnation may be proved without producing the decree.	631
A foreign sovereign's conversion of a piratical ship into a public vessel conclusively proves her condemnation as prize.	631
Liens under state laws	
Labor and supplies to furnish a passenger steamer's cabin give rise to a lien under the New York statute.	744
Workmen and material men, having a lien on a vessel under the provisions of a state law may enforce it by a suit in rem in admiralty.	523
MARRIAGE	
As a general rule, the capacity or incapacity to marry depends on the law of the place	983

Page

where the marriage is contracted, and not on the place of the domicile of the parties.

The disability to marry imposed upon the guilty party by the law of a state in which a divorce is granted, only attaches by way of penalty within the state, and a valid marriage may be contracted in another state, which will be recognized in the former state.

983

MARSHAL

A marshal who rents, without an order of the court, a building in his custody, is liable for injuries thereto by the tenants.

262

The marshal is entitled to the commissions on execution allowed by the state law where the money is paid without a sale of property.

967

The marshal, as messenger, when he collects moneys of a bankrupt's estate, under a warrant, is entitled to charge a commission on the amount collected.

414

MASTER AND SERVANT

Railroad company *held* liable for an injury to a vessel colliding with a "sightpile" driven into the bed of a stream by bridge contractors at the request and for the convenience of the company's engineers.

474

MINES

The owner of a mine is liable for injury caused to an adjoining mine by overflow of the usual drainage, and of the occasional and periodical heavy flow of water, and that caused by unskillful mining.

1298

The lessee of a subjacent mine cannot complain of the mere natural flow from an upper mine through an opening wrongfully made by a previous lessee of the lower mine, but he may complain of any other discharge of water through such opening.

1298

MORTGAGES

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

A sale under a power of sale in an unrecorded mortgage will be enjoined where the assignee bought of the mortgagor in ignorance of such power. 845

Cestuis que trustent are necessary parties to a suit to foreclose a mortgage given by the trustee. 550

A personal decree will not be rendered against a married woman for a deficiency on foreclosure of a mortgage given by her to secure payment of a note executed by the husband and wife jointly for a loan to him, where she did not intend to be bound as surety. 10

The power of the federal circuit court in a foreclosure suit to order a general execution for a deficiency after the sale of the mortgaged premises is discretionary. (Sup. Ct. Rules 92.). 461

A general execution for a deficiency allowed, although under the state statute an action at law on the notes to secure which the mortgage was given was barred. 461

A general execution for a deficiency refused where complainant, by reason of his delay, was not entitled to it under the state statute. 461

MUNICIPAL CORPORATIONS

See, also, "Counties"; "Railroad Companies."

The city is not liable for the willful act of its agent in raising the street grade above that fixed by a previous by-law; otherwise where it is done ignorantly or negligently. 1348

To render a corporation liable for negligence of its servant in doing an act, it is not necessary that the act should have been ordered in writing or by a by-law. 1348

	Page
The taxes or public revenues of a municipal corporation cannot be seized on execution by its creditors, though they are in the form of moneys deposited in a bank for safe-keeping.	358
A statute requiring the levy each year of a special tax sufficient to pay the annual interest on certain municipal bonds <i>held</i> to authorize and require the levy of a tax to pay interest after the maturity of the bonds as well as before.	358
The purchaser of negotiable bonds is not chargeable with notice of defenses thereto from the mere fact that some of the interest coupons attached were overdue at the time of the purchase.	1266
The innocent purchaser for value of negotiable municipal bonds may rely upon a recital therein that the preliminary conditions of their issue have been complied with.	944, 1084
NEW TRIAL	
A new trial will be granted where, in case of separate pleas, the verdict fails to respond to one of such pleas.	1096
NOTARIES	
See, also, "Seal."	
The requisites of a notarial seal are determined by the law of the locality from which the official derives his authority.	507
A notarial seal is sufficient where made by an impression upon sealing was or wafer, adhering to the paper, though it does not contain any device or words indicating any particular official.	507
OFFICE AND OFFICER	
Upon a motion to discharge a defendant arrested upon a cap ad res by a marshal appointed by the president de facto of the	409

	Page
United States, the court will not decide the question whether he was duly elected to that office.	
PARENT AND CHILD	
The domicile of the child follows the domicile of the father.	1234
An action for the personal injury of a minor must be in the name of the child, and the damages recovered will be for the use and benefit of the child, and not of the parent.	894
It seems that knowledge by respondent of the minority of a person is essential to maintain an action for loss of services for a wrongful abduction.	813
PARTIES	
The assignees of a British bankrupt cannot maintain a suit in their own names in Maryland against a debtor of the bankrupt.	266
The cestuis que trustent must be made parties to a suit by the trustee, whose object is to divest them of title.	550
The nonappearance of a necessary party who cannot be compelled to appear is good ground for the dismissal of the suit on motion by the other defendants.	617
Where the parties are so numerous as not to be inserted conveniently in the record, suit may be maintained in the name of a part for the whole.	550
In equity it is not essential, as at law, that the parties litigant should be on opposite sides of the case, to have a decree between them.	568
After the evidence is closed on the trial, defendant cannot object, for the first time, to a recovery on the ground that plaintiff was not the real party in interest, and had no capacity to sue. (Civ. Code Kan. §§ 10, 28, 89, 91.).	253

PARTNERSHIP

An agreement for a salary, to be measured by the net profits received, does not create a partnership. 661

A partner, by failing to contribute his share of the partnership fund, does not forfeit the interest which he already has in the firm. 568

An injunction against attachment of partnership property in a suit against a partnership will not be granted unless it appear that the property is needed to satisfy partnership claims, or that the partner has no interest in the surplus after payment of partnership debts. 84

The active partner cannot transfer partnership realty the same as personalty. 568

If there has been no settlement of the partnership accounts, one partner cannot maintain an action at law against the other for any matter relating to their partnership affairs. 1129

A settlement of partnership accounts, and a balance acknowledged, will not support an action at law between the partners without an express promise to pay. 1129

On the death of a partner his interest in partnership realty descends to his heirs at law, subject to partnership debts. 568

PATENTS**The commissioner of patents**

The federal circuit courts have no jurisdiction of a bill to compel the commissioner to issue a patent. The circuit court of the District of Columbia is the only court having jurisdiction to administer the remedy provided by Acts July 4, 1836, § 16, and March 3, 1839, § 10. 1280

Patentability

	Page
A new and useful device, though involving but little invention, is patentable.	1160
The inventor or discoverer of a new and useful art may have a valid patent, though ignorant of the philosophical or abstract principle involved in the practice of the art.	718
The accidental making of an improved article in a single instance, without knowledge on the part of the producer of how it was accomplished, or how to make another like it, is not invention.	127
The prior machine need not have been actually used for the purpose intended, if capable of such use, to anticipate the invention.	762
A prior apparatus, which could have been used so as to practice the patented process, is not an anticipation unless it appear that it was actually so used.	718
A single experimental use of an apparatus in such way as to involve the practice of the patented process, where afterwards destroyed, does not affect the patent of a subsequent original inventor.	718
A combination of old materials and old principles to produce a new result is patentable.	171
A similarity in parts to parts of other patented designs will not prevent a design being patentable, where the general result is different from anything known or used before.	295
A patent for a method of preserving fish or other articles in a close chamber by means of a freezing mixture having no contact with the atmosphere of the preserving chamber, is a patent for an art.	718

	Page
A pavement made of blocks of wood cut from the trunks or branches of trees in their natural form, laid vertically upon a bed of gravel or sand, is not patentable.	509
The principle of a machine or improvement is the peculiar mode, manner, or device by which the proposed result or effect is produced.	762
Making steam self-packing by introducing it into small grooves in one of two contiguous surfaces <i>held</i> not anticipated by a like device used in air engines.	906
A mixture of pulverized argillaceous rock and coal tar, hardening on exposure into a solid slate roof, <i>held</i> not anticipated by a prior use of thin mixtures of the same material for paints for sides and roofs of buildings.	812
Who may obtain, patent	
It is not necessary that the inventor should have reduced his invention to practice in any other sense than to so describe it on paper, with such drawings or models, as to enable any person skilled in the art to make and use it.	267
Suggestions made by a mechanic who constructed the first machine, as to its forms or proportions, though, incorporated in the specification of the patent, will not invalidate it.	171
To invalidate the patent on the ground that the patentee did not conceive the idea, it must appear that the suggestions made by others were sufficient of themselves to enable him to make the complete machine.	754
Prior public use or sale	

	Page
Public use or sale by the inventor two years prior to the application will forfeit the right to a patent.	754
A use for experiment or trial with a view to test the operation of or ascertain the defects in the machine will not affect the right to a patent.	754
Defendant should clearly show that the use relied on to invalidate the patent was not merely experimental.	754
Prior description or foreign patent	
A report made to a hose company, describing a hose subsequently patented, is not a public work, within section 6 of the patent law.	171
Abandonment: Laches	
The inventor may abandon his invention, or dedicate it to the public, at any time before procuring a patent.	754
Mere use or sale within two years of applying for a patent will not work an abandonment without an act showing an intention to abandon the invention to the public.	754
Declarations of an intention to abandon the invention, unaccompanied by acts evidencing such intention, will not work an abandonment.	754
But the inventor and those holding under him are estopped by his declarations of intention from asserting any right against one acting on the faith thereof.	754
A public disclosure of the invention, and permission of free use by others without objection or assertion of claim to the invention, is an abandonment.	171
A delay of three years after showing forth a complete invention on paper <i>held</i> not to bar a patent, where no patent had been previously	267

	Page
granted, and the case involved only conflicting applications.	
The abandonment of a perfected invention after its merit has been demonstrated by trial will inure to the benefit of the public, and not to that of a subsequent inventor.	582
Caveat	
A person who has filed a caveat cannot be prejudiced by the omission of the commissioner to give him notice of the application for a patent by a person who had filed a prior caveat.	439
A person who in fact first discovered the invention, and who files a caveat, if using reasonable diligence in adapting and perfecting it, although he had not given practical shape to his invention when a person who filed a previous caveat applied for a patent, is entitled to a patent as the first inventor.	439
Application and issue: Interference	
An intention, manifested intermediate the first and second application, to abandon the first, will sever the connection between the two, and a patent granted upon the second application will not relate back to the time of filing the first application.	127
The granting of a patent on a second application of narrower claim on rejection of the first application will be considered an abandonment of the first application, and the patent granted will not relate back.	127
Depositions taken without notice to one of the parties, who has not waived his right thereto, cannot be used against him. A notice to produce the depositions for inspection and examination is not a waiver of such right.	267

	Page
The power of the commissioner is not limited to a single interference, and a second may be declared after the court on appeal has decided in favor of an applicant, and ordered that a patent issue to him.	1145
The decision of the patent office in favor of an applicant and against a patentee on an interference declared will not conclude the patentee so as to prevent him from bringing a suit for infringement.	295
Appeals from commissioner's decision	
In the case of an interference declared between an applicant and a patentee, the patentee has no right of appeal from an adverse decision, as his patent is not thereby invalidated.	957
The patent office may have present at the hearing of the appeal one of its officers for the purpose of explaining the commissioner's decision.	267
Validity	
Where the claim is for an improvement, the patentee must show in what the improvement consists.	382
A claim by a patentee of more than he has invented renders the patent void only in part.	382
The fact that the invention has become useless by the discovery of another method will not invalidate the patent.	1059
Extent of claim	
A patent is to be construed without reference to previous correspondence with the patent office in relation thereto, or rejected applications therefore.	718
An agreement by the patentee, made with the commissioner, that the patent should not extend to certain articles, will limit his claim.	683

	Page
A proposition to limit the claim made by the patentee to the commissioner, but not accepted by him, is not binding.	683
The claims are to be construed with reference to the state of the art at the time of the invention.	762
A patent calling for a specific mode embraces all mechanical equivalents or modes which operate on the same principle.	751
An ambiguity in a patent and specification may be explained by the affidavit annexed to the specification.	387
In a claim, the words "the described." etc., are construed not solely with reference to the words in the specification, but with reference also to the limitations in the context of the claim.	56 1374
A claim for "a new and useful improvement," consisting of a combination of several improvements distinctly set forth in the specification, <i>held</i> good for each distinct improvement.	767
A claim for caustic alkali incased or enveloped in a tight metallic integument or metallic casing, is good as being a proper subject of letters patent.	189
A claim for caustic alkali, inclosed in an integument or casing of anticorrosive impervious fabric, substantially describes a proper subject of letters patent.	189
Reissue: Disclaimer	
Inadvertence and error in the disclaimer may be cured by reissue.	1048
The owner of a territorial interest may make a disclaimer for his interest which is to be taken as a part of the original specification for the territory owned by him.	1154

	Page
The assignee of an undivided part of the patent must join with the patentee or his legal representatives in a surrender.	1154
A reissue need not follow the exact language of the original patent, but may contain a fuller description of the invention, previously imperfectly described.	56
Where the original specification described a combination of a number of ingredients performing certain functions less than those claimed, the reissue may claim such combination.	56
It is no objection to the validity of a reissue that its object was to extend the monopoly secured by the patent beyond the limits assigned to it by a judicial decision upon it in its original form.	1052
The decision of the commissioner is prima facie evidence that the reissued patent is for the same invention as the original.	1048
The decision of the commissioner in granting a reissue is conclusive on the courts except in the case of fraud or apparent excess of authority or repugnancy between old and new.	1160
Where an original patent is reissued in divisions, such divisions are to be treated as but one patent with several claims.	192
The patentee cannot, by a surrender, affect the rights of third persons to whom he has previously, passed his interest in the whole or a part of the patent, without their consent.	1154
A person to whom the patentee has passed his interest in a part of the old patent, upon the surrender of the same by the patentee, and obtaining a reissued patent, is entitled to the same right under the reissued patent that he had to the old one.	1154

	Page
He may, however, elect to hold under the old patent, and it is not a valid objection that in such event there would be different claims of right in the same invention secured to different sectional owners.	1154
Extension: Renewal	
An extension of a patent made to the patentee on a copy of the original, where a reissue had been granted to an assignee, <i>held</i> valid.	1132
The extension of a patent to the patentee will vest an absolute and complete title in him, irrespective of outstanding interests in others at such time.	1147
The assignment of a part of a patent gives the assignee no interest in the renewal unless an intention to give such interest clearly appears.	449
An agreement to give an interest in the extension of a patent when granted on payment of a certain proportion of the expenses of procuring it, <i>held</i> not to give a vested right in the extension without payment, though the owner refused to tell the amount when payment was offered.	758
A grantee of a right to an extension, having reconveyed to the patentee, to enable him to secure the extension in fraud of the patent office, cannot claim relief in equity.	1321
Assignment	
The terms "assignee" and "grantee" are not used in the patent law of 1836 as synonymous terms.	1154
An assignee is one who has transferred to him, in writing, the whole interest of the patent, or any undivided part of the whole interest, in every portion of the United States.	1154
A grantee is one who has transferred to him, in writing, the exclusive right to make and use,	1154

	Page
and to grant to others to make and use, the thing patented within and throughout some specified part or portion of the United States. The recording of an assignment as required by Act 1830, c. 357, § 11, is not a prerequisite to its validity as between the parties.	273, 767
The assignment of a patent to the assignee in bankruptcy, though not recorded, is good as against a subsequent assignment by the bankrupt, duly recorded.	1324
The possession of a third person, where an assignment refers to use of the patented device by him, is constructive notice to the assignee of his claim.	1324
Separate transfers of all right, title, and interest in a patent were made at different times to different parties, and the first transferee subsequently retransferred to the grantor. <i>Held</i> , that such retransfer did not inure to the benefit of the second transferee, so as to perfect his title.	273
Licenses	
A licensee is one who has transferred to him, in writing or orally, a less or different interest than either the interest in the whole patent, or an undivided part of such whole interest, or an exclusive territorial interest.	1154
Infringement: What constitutes	
An experiment with a patented article for the sole purpose of gratifying a philosophical taste or curiosity, or for mere amusement, is not an infringement.	1048
But such experiment is an infringement where the product is put on the market.	1059
Where the change of form involves only the exercise of mechanical ingenuity, there is an infringement.	1182

	Page
To constitute infringement of a design patent, the designs must be so similar as to appear to ordinary observers, but not necessarily to experts, to be the same.	295
Where two designs are substantially similar, the fact that different names or trademarks are or may be used in connection with them will not sufficiently distinguish them.	295
Sheets of tin used to preserve the form of the material in the process of vulcanizing India rubber <i>held</i> not equivalent to tin foil.	1038
A patent for a combination is infringed by its use with added features.	766
A patent for a combination is not infringed by a use of less than the entire combination.	766
The superior utility of defendant's device is not of itself a certain test upon the question of identity.	762
—Who liable	
An act of an employe of a corporation, adopted by it, will be deemed to have been authorized.	1059
A joint owner, who uses or sells the patented device without the authority of his co-owner, as respects the latter's rights, is liable for infringemen.	758
The benefit of section 7, c. 88, Act 1839, cannot be claimed by a purchaser under a mere wrongdoer, but only by a person who is a purchaser, or who has used the patented invention before the patent was issued, by a license or grant, or by the consent of the inventor.	672
—Remedy generally	
The circuit court, sitting as a court of equity, has a full concurrent jurisdiction with the	273

	Page
court sitting as a court of law of all actions for the infringement of a patent.	
The court will not grant a preliminary injunction to restrain defendant from bringing suits on his patent before the patent is adjudged to be invalid.	210
Where a bill for infringement prays for a discovery and an account of profits, and alleges that plaintiff has no adequate remedy except in equity, it is not demurrable on the ground that plaintiff has an adequate remedy at law.	273
—Preliminary injunction	
Where the validity of the patent is fully established, and the infringement is clear, a party has a right to protection by injunction, although it may cause great injury to the infringer.	1148
The denial of an application for a patent on the ground of laches is not an adjudication that the applicant was the first inventor, which the court will consider on a motion for preliminary injunction.	1184
A decision between other parties upon the points in issue is entitled to great weight, though not conclusive.	1148, 1170, 1191
Verdicts in suits at law, obtained without contest, without collusion, are entitled to the same weight as verdicts obtained on full trial.	1148
Facts found by a jury in a suit at law between the parties will be considered as conclusively established on the motion.	1056
A verdict in a trial at law, in which plaintiff's right and the infringement have been fully established; is sufficient to authorize granting the writ.	1056

	Page
An adjudication upon the original patent will not conclude defendant, where the infringement of a reissue lies between the limits of the original and reissued patents.	1048
The question always depends upon the discretion of the court, considering all the circumstances.	1191
The effect of quiet enjoyment, acquiescence, recoveries without collusion, and strong evidence as to novelty, in inducing the granting of an injunction, considered.	1160
The injunction ought not to be suspended until the final decree, unless there be shown some special grounds of peculiar hardship to the defendant.	1166
The discontinuance of infringements since commencing suit is no ground of denying the writ.	1143
Where the plaintiff's rights have been clearly established, and an infringement is threatened, or there is good cause to believe that a past infringement will be continued, an injunction will issue.	1056
The sale of infringing machines by defendants as agents of the maker will be enjoined.	1148
After a decision by the commissioner of patents in an interference case the defeated applicant entered into partnership with the patentee for the manufacture of the patented article, and advertised it as secured by patent.	207
<i>Held</i> , on dissolution of the partnership, where the defeated applicant continued to manufacture the patented article, preliminary injunction should be granted.	
Granted where the infringement is clear, and plaintiff has been in exclusive possession and enjoyment for a long time.	1170

	Page
Granted, notwithstanding pendency of another suit between the same parties upon the same patent in another state, where the validity of plaintiff's patent has been determined in prior suits.	191
Denied where both plaintiff's title and the infringement is clear, where defendant's interests would be injuriously affected, while plaintiff's interests are not affected.	1191
Denied where the questions presented involve disputed facts not previously passed upon by a court or jury.	1191
It is no excuse for the violation of the injunction that the patent is invalid, or the writ improvidently granted.	512
Persons acting in an official capacity, and deriving no personal benefit from the infringement, not required to pay the patentee the amount of his royalty for violating a preliminary injunction.	512
—Procedure	
A mere licensee cannot bring an action at law for violation of the patent, and he need not be joined in the suit.	1154, 1193
The grantee of an exclusive territorial right may maintain a suit for an infringement within such territory.	273
Plaintiff, claiming title through such an assignment, need not aver in his bill the recording of the instrument in the patent office. The defense that defendant is a bona fide purchaser for value without notice must be made in the answer.	273
The allegation that respondents are using, etc., is sufficient where it appears that they are acting in concert as stockholders managers, etc., of a corporation.	1048

	Page
The profert of letters patent makes them a part of the declaration, and it is no ground of arrest of judgment that the patent is not described in the declaration.	767
Leave to amend an answer by denying the novelty and utility of the invention will not be granted where, in a prior suit on the same patent, defendant acknowledged in writing the novelty and utility of the invention, and a final decree was entered against him by consent.	209
The defense of want of novelty is not available at law without a notice and in equity it must be set up in the pleadings.	751
A special plea or notice must be filed 30 days before the term, or plaintiff will be entitled to a continuance.	509
The option to file the general issue and give notice does not take away the right to plead specially.	509
Whether an improvement required inventive skill for its production is a question of fact for the jury.	1052
A finding of the master, based in part upon unreported evidence and his own examination of the infringing device, made by consent and in the presence of the parties, will not be set aside.	722
—Evidence	
The patent is prima facie evidence of novelty and utility, and that the patentee was the inventor.	754, 1059, 1160
In the case of interfering patents the patentee under the earlier patent is entitled to the presumption of priority and novelty.	127
Evidence is inadmissible at the hearing which was not offered before the master.	1193

	Page
Minutes of a hose company, of which patentees of a hose were members, and at whose instigation and expense the hose was asserted to have been invented, are admissible for defendant to prove that plaintiffs were not the inventors.	171
But entries made at other times, acknowledging plaintiffs to be the inventors, are inadmissible against defendant.	171
The letters of the applicant on file, certified under the seal of the office, are admissible.	387
It is immaterial by whom experiments were made where the specimen was made by the patentee.	171
—Injunction, and its violation	
Defendant, enjoined from infringing a patent by manufacturing or selling, is guilty of a contempt in selling as agent for another.	1168
—Decree and its effect	
A perpetual injunction is made part of the decree which finds the infringement.	1166
On the recovery against an infringer of damages and profits for making and selling infringing machines, and payment of the decree, a prior purchaser from defendant acquires the right to use the machine until it is worn out.	260
—Accounting: Damages	
Plaintiff can recover only actual damages sustained in consequence of the infringement, as contradistinguished from exemplary, vindictive, and punitive damages.	754
The jury may give such reasonable damages as shall vindicate the rights of the patentee, and indemnify him for all expenses necessarily incurred in the suit, beyond what the taxable costs will repay.	672

	Page
Plaintiff is entitled to the profits he would have made if not interfered with.	754, 758
The profits recoverable in equity are such only as result directly and immediately from the infringement.	722
Profits resulting from an increased price obtained by defendant for unpreserved fish, for their ability to withdraw fresh fish from the market by the use of complainant's patented process of preserving fish, are not recoverable in a suit for infringement.	722
In estimating the profits realized from infringement, compensation is not allowed the infringer for his time and labor.	722
Where plaintiff does not prove actual damages, nominal damages only are recoverable.	1059
Plaintiff is entitled to interest on the actual damages from the commencement of the suit.	754
Damages in the sum of \$5,000, awarded by a verdict, increased by the court to \$7,500, where the conduct of defendant was peculiarly aggravated.	97
Various particular inventions and patents	
Bungs. Reissue No. 5,937 (original No. 148,747), <i>held</i> not infringed.	210
Buttons. No. 56,261, for improvement, <i>held</i> valid and infringed.	861
Buttons. No. 110,070, for improvement in attaching shanks, construed, and <i>held</i> not infringed.	1190
Caustic alkali. Reissues Nos. 2,569, 2,570, 2,571, for improvements in the manufacture and improved process of putting up, <i>held</i> valid.	189, 192
Crucibles. Reissue No. 6,166 (original No. 49,140), for improvement in the manufacture	582

	Page
of plumbago crucibles, <i>held</i> void for want of novelty.	
Fish. No. 31,736, for improvement in the method of preserving, <i>held</i> void for want of novelty.	724
Gutta-percha. No. 339, known as the "Grease Patent," <i>held</i> valid and infringed.	1052, 1059
Gutta-percha. No. 10,741 (reissued No. 797), known as the "Tin-Foil Patent," <i>held</i> valid and infringed.	1052, 1059
Hinges. Reissue No. 4,006 (original No. 53,251), for improvement in the mode of hinging covers to stoves and open topped vessels, construed.	285
Locomotives. Reissues Nos. 5,050, 5,051 (original No. 120,637), for improvement in spark-arresters and consumers for locomotive engines, construed, and <i>held</i> valid and infringed.	687
Lubricators. Patent to Waters for improvement <i>held</i> void for want of novelty.	127
Meats. No. 12,530, for improvement in processes for curing, <i>held</i> valid.	683
Pavements. No. 121,544, for improvement in wooden pavements, <i>held</i> void for want of novelty.	509
Planing machines. Woodworth's patent, <i>held</i> valid and infringed.	751
Puddling furnace. No. 153,110, for improvement, <i>held</i> valid and infringed.	170
Roofs. Reissue No. 2,684, for improved composition for roofing, <i>held</i> valid.	812
Seats. Nos. 134,486, 163,537, for improvement in show and portable seats and circus seats, <i>held</i> not infringed.	1317
Sewing machines. No. 2,135, for improvement, construed, and <i>held</i> infringed.	1132

	Page
	1144,
	1160,
Sewing machines. No. 7,776 (reissued Nos. 345, 346), for improvement, construed, <i>held</i> valid and infringed.	1170, 1182, 1191, 1193
Spinning machines. Reissue No. 6,036, for improvement in bobbins and spindles, <i>held</i> valid and infringed.	56
Steam joints. No. 17,855, for rendering joints steam-tight, <i>held</i> valid and infringe.	906
Stoves. Design patent No. 7,456 <i>held</i> valid.	295
Threshing machine. No. 542, for improvement, <i>held</i> valid and infringed.	762, 767

PAYMENT

The equitable rule of limitation applied to bonds, where there has been no demand for 20 years, is a mere presumption of payment, not an absolute limitation.	1120
A debtor cannot appropriate a payment in such manner as to affect the relative liability or rights of his different sureties, without their assent.	1103
Where a public officer has given different bonds with different sureties, his payments must be so appropriated as to give each bond credits for the moneys respectively due, collected, and paid under it.	1103

PLEADING AT LAW

A plea which professes to be in bar of the whole demand, and yet is so only to a part, is bad on special demurrer.	1114
After plea by appearance bail, defendant may give special bail, and plead anew.	587
The extent of the rule that, where there are several pleas, the legal inferences from the averments contained in one plea have no	119

	Page
influence in deciding on the averments of another plea.	
A demurrer generally to a plea in debt on a postmaster's bond, that plaintiff fraudulently neglected to bring suit on the bond, or give notice of the principal's default, admits the fraud, and defendant is entitled to judgment thereon.	1128
After a plea of misnomer in abatement, the court will not suffer the record to be amended, but upon payment of costs and a discharge of the bail.	11
An amendment of the declaration, offered after the jury is sworn, and introducing a new cause of action, cannot be allowed.	1124
A declaration in debt against a joint obligor, setting forth a joint and several bond, cannot be amended by adding a new count setting forth a joint bond of defendant and another.	1124
A joint bond of defendant and another is inadmissible under a declaration against one obligor as jointly and severally bound.	1124
	1377
PLEADING IN ADMIRALTY	
See, also, "Maritime Liens"; "Salvage"; "Seamen."	
A libel for wages is sufficient if it state the contract and service performed, without the annexation of an account stating the rate of wages, and the precise balance due.	1262
A neglect to state material facts within the knowledge of the party will be taken most unfavorably against him.	1008
In a libel for a marine tort libelant must set forth in distinct allegations each separate and distinct wrong for which he claims damages.	392
General ill treatment and oppression on the part of a master, relied on in aggravation of	392

	Page
damages in a suit by a seaman for assault, must be propounded in a distinct allegation.	
A libel in rem for breach of a charter party, demanding a stated sum in damages, is sufficient to hold the res to bail, although specific breaches showing a specific amount of damages are not alleged.	309
The court is not limited in its decree to the precise amount stated as due in a libel for seamen's wages, where the libel contains a prayer for further relief.	1262
The admiralty court will dismiss a libel on exceptions.	1
An answer in a collision case, which sets up facts constituting negligence, is sufficient, though no fault be formally charged.	691
PLEADING IN EQUITY	
Where the bill shows want of jurisdiction on its face, the objection is properly raised by demurrer.	976
But where the bill shows apparent jurisdiction new matter in avoidance must be set up by plea, and not by motion on affidavits.	976
A bill filed by an execution creditor in aid of his execution against the debtor and others who have fraudulently combined with him to conceal his property, <i>held</i> not multifarious, though it do not aver a conspiracy.	1301
A demurrer in part to a bill, followed by an answer as to the rest, is not thereby overruled.	652
A plea in bar, which does not set up a bar to every equitable allegation in the bill, will be set aside.	546
The answer is to be taken as true, and no evidence can be given to contradict it where plaintiff fails to file a general replication.	122

	Page
Plaintiff allowed to file a general replication after the cause was set down for hearing on bill and answer and a reference to an auditor.	122
A single witness, corroborated by additional testimony or circumstances, may overcome a positive denial in the answer.	1210
Complainant is bound at the argument by the allegation of a particular fact in the pleading.	1309
A bill for the conveyance of land, alleged to have been purchased in partnership, is sustained by proof that the land was purchased by partnership funds, without specifying the amount contributed by each.	550
An amendment of a bill should be by a separate bill, and not by interlining the original bill.	123
An amended bill should state only so much of the original bill as may be necessary to introduce and make intelligible the new matter.	123

PLEDGE

Where the charter of a bank gives it a general lien upon the shares of its stockholders for debts due the bank, the bank has such general lien on shares pledged with other securities to secure the payment of a particular note.	94
--	----

POST OFFICE

The postmaster general may require a bond from a deputy for the faithful performance of his duties, though such bond is not expressly required by law.	1114, 1120
A bond given by a postmaster, with sureties, for the performance of his official duties, does not constitute a binding contract until approved and accepted by the postmaster general.	1103

	Page
The reception and detention of an official bond by the postmaster general for a considerable time, without objection, is sufficient evidence of its acceptance.	1103
The return of the bond for the purpose of obtaining an additional surety affords no proof that it had not been accepted; nor does it amount either to a surrender or canceling of it.	1103
Where there are items of debt and credit in a running account between the postmaster general and the deputy postmasters, in the absence of any specific appropriation by either party, the credits are to be applied to the discharge of the debits antecedently due, in the order of the account.	1098
The giving of a new bond by a postmaster does not discharge sureties on the old bond for past or subsequent defaults.	1099, 1114
In such case all the sureties are responsible for defaults happening after giving the second bond.	1099
An act of congress increasing rates of postage, and consequently the responsibility of the postmaster's sureties, will not discharge them.	1099
The order of the postmaster general to the postmaster, not to remit the money he may receive, but to retain it to answer his drafts, does not discharge the sureties.	1114
The sureties on deputy postmasters' bonds are not discharged by the delay of the postmaster general to commence suits thereon.	1114
Act March 3, 1825, releasing the sureties of a deputy postmaster where suit is not brought within two years after a default, does not apply to a default which occurred before the passing of the act.	1120

	Page
An action against sureties on a postmaster's bond is barred after two years from the time the postmaster made default,—i. e. from the time the law requires the money to be paid over.	1097
This limitation does not operate in cases of balances unpaid at the end of a quarter, which are subsequently liquidated by the receipts of a succeeding one.	1103
Act March 3, 1825, substitutes a certified statement of the settled account as evidence in suits against deputy postmasters in lieu of the certified copy of the account current required by Act April 30, 1810.	1120

POWERS

A power of attorney, not under seal, will not authorize the attorney to execute a deed.	540
Powers given by a letter of attorney to several persons jointly cannot be exercised by one of the attorneys alone.	436
Equity cannot aid a defective power.	540

PRACTICE AT LAW

Where, in a suit on a joint and several bond, there is a return as to some defendants of "No inhabitants," plaintiff may proceed to trial and judgment against those who were served with process.	119
Where, on a rule to show their cause of action, the plaintiffs have produced a positive affidavit of debt, the defendant cannot give evidence that a suit for the same cause of action has been instituted in another court.	1092

PRACTICE IN ADMIRALTY.

The right of a party to appear and defend a suit in rem must be put in contestation, if at all, before the hearing, and then only by way of exception if the disability appear upon the	1345
---	------

	Page
face of the claim, or an exceptive allegation putting the right in issue if it does not so appear.	
A party will not be permitted to amend his claim by setting forth that at the time the cause of action arose he was the true and bona fide owner of the vessel, and had agreed with the present owner to discharge all liens against her.	1345
The objection of staleness of claim, or any other defense that does not go to the merits, must be propounded by special plea.	813
When property is taken for security by a warrant of attachment, the attachment may be dissolved and the property restored to the claimant on his filing a stipulation with sureties, according to the form used by the court.	912
An agreement fixing the amount of penalty or liquidated damages is not conclusive as to the amount of bail in a suit in rem.	309
Act March 3, 1847, does not abridge the power of the court to accept bail for less than double the amount of libelant's demand.	309
The respondent may waive the right to require tie libelant to give security for costs.	950
Respondent will not be required to file a stipulation for cost in a suit in personam where libelant does not move therefor until after a decree and a notice of appeal.	416
Where libelant, in consequence of poverty, is unable to find sureties, his juratory caution will be taken, instead of a stipulation with sureties.	950
The officer who has the possession of the property on proceedings in rem is the official keeper of the court, and, if it be taken from	426

	Page
him, its redelivery will be enforced by summary process, though in the hands of a person not a party to the cause.	
The depositions of witnesses for claimant will not be suppressed because taken before answer, where prejudice to libelant does not appear.	1323
In a suit for the wrongful abduction of a minor child, where the damage is loss of service, the court may take into consideration the advances for clothing and other necessaries.	813
Where property has been ordered to be sold on process in rem the gross proceeds of the sale, deducting only the expenses of the sale, are paid into the registry.	424
The claims of officers of the court for fees and expenses upon proceeds in the registry must be presented to the court for allowance.	424
Where the purchaser on a marshal's sale takes possession without paying the price, the court will enforce by summary process either a redelivery of the property in specie or the payment of the purchase money.	426
A motion to set aside a sale will not be granted where the party has been guilty of inexcusable laches.	69
A delay of six months after knowledge of the sale is inexcusable laches.	69
A rehearing in the circuit court after the lapse of several terms since the decree was entered in a collision case not granted where the supreme court, in a libel by the other party, found the facts differently.	402
PRACTICE IN EQUITY	
A bill founded on the infringement of a patent, containing the usual prayer for an answer on oath and a prayer for an account	272

	Page
of profits, but not alleging that a discovery was necessary, and having no special interrogatories annexed, <i>held</i> sufficient to give the court jurisdiction as a bill for a discovery and account, notwithstanding an admission of counsel that a discovery was not necessary. Complainant allowed to withdraw his exceptions to defendant's answer, and to take at his peril a subpoena to rejoin, returnable forthwith.	158
Where the deposition of a witness has been once taken and closed, he cannot be re-examined except by an order of court which can be made only upon good cause shown.	467
Defendant's request to introduce further evidence <i>held</i> rightly denied by the master where made after he had submitted a draft of his report.	722
To entitle plaintiff to take the bill pro confesso for failure to file the answer within three months after the day of appearance and bill filed, defendant must be ruled to answer and the case set down for hearing.	140
The decree on a bill taken pro confesso is always nisi, to be made absolute at the term succeeding that at which service of a copy of a decree shall be returned executed, unless cause is shown to the contrary.	140, 141
Where a bill for a balance of account is taken pro confesso, the account must be referred to the master.	141
Where a bill is taken pro confesso at one session of the court, and service of the decree is made and returned at the same session, it may be made absolute at the following session; otherwise it cannot be made absolute until the third session of the court.	141

	Page
The court has no power to order a rehearing after the close of the term at which the final decree was rendered.	992
A rehearing will not be granted to permit the introduction of testimony whose importance might have been ascertained before the hearing.	1303
Neither the bill to foreclose a mortgage given to secure three notes, nor the decree, accounted or provided for one of the notes. <i>Held</i> , that a bill or review would lie by defendants even though the decree had not been executed.	521
Where many terms have elapsed since the entering of a decree by consent and the payment of damages by defendant, leave will not be given him to file a supplemental bill to set aside the decree on the ground of a mistake of fact.	207
A bill of review lies only in favor of a party or privy to the original suit, or of one who is aggrieved by the decree.	992
An entirely new title, in a new party, claiming adversely to all the original parties to a suit in which a title was established, cannot be considered newly-discovered matter, for the purpose of opening the decree in such suit by a bill of review.	992
A bill of review must be supported by affidavit showing that the new matter was not known, and could not have been ascertained, at the time of the decree, and the party must have performed or must give security for the performance of the decree.	992
Where the question of pedigree was decisive of the case, and the most trustworthy evidence was accessible in parish registers, in England,	992

	Page
and the new evidence consisted merely of confirmatory writings, <i>held</i> , that the bill could not be maintained.	
PRINCIPAL AND AGENT	
See, also, "Factors and Brokers"; "Master and Servant"; "Powers."	
A power of attorney to conduct all one's business at a particular place is revoked pro tanto by the transfer by the principal of his interest in part of the property.	240
A power of attorney to conduct all ones business at a particular place is not revoked by a lease of most of the property to toe attorney, but only modified so as to exclude such property.	240
A lease to a brother, who covenants to carry on business with the property leased for half the net profits, does not give him the right to substitute a stranger as manager, or change the proportion of profits.	240
An agency to make contracts for the transportation of freight <i>held</i> to he one of special trust and confidence, and bills of lading signed by the confidential clerk of such agent are not valid, but are admissible, when adopted by the agent, to show the contract for transportation.	134
A letter authorizing an agent to purchase property of a person to whom it was directed, to be paid for at such fames as should be agreed upon between the owner and the agent, does not authorize the agent to purchase such property from other persons.	89
The Violation of the laws of a foreign country by a supercargo, which subjected the cargo to seizure and condemnation, <i>held</i> , would net prevent his recovery from the owner of a sum	409

	Page
of money lawfully paid to procure the release of the goods.	
An agency as against the individual may be proved by his acts and declarations.	550
An individual may prove his own agency.	134
PRINCIPAL AND SURETY	
New sureties are not responsible for prior defalcations unless the condition of the new obligation embraces them.	1103
The surety cannot recover the amount of his responsibility without showing that he has paid it before action brought.	683
PRIZE	
See, also, "War."	
Capture	
A vessel laden with contraband goods, ultimately destined for the enemy's use, is liable to capture the moment the voyage commences.	316
A vessel subject to capture may be arrested anywhere at sea or within the dominions of the capturing power, and by any person, officer, or citizen, as property belonging to the government.	1334
In the case of capture of prize property at sea, the right of property remains unchanged until a final decree of condemnation of the courts of the country of the captors.	356
A vessel not commissioned must be considered as a mere merchantman, and not entitled to share in a prize as a vessel in sight.	1266
Grounds of condemnation	
All military equipments and military clothing are regarded as contraband.	316
Articles which, in their actual condition, may be and are used either for purposes of war or	316

	Page
peace, are contraband, when destined to the enemy's country or to the enemy's use.	
Contraband goods may be transported by a neutral between neutral ports.	316
Contraband merchandise is liable to capture when destined to a hostile country, or for the use of the enemy.	316
Contraband articles intended to be delivered from a neutral port, by transshipment into the enemy's country, and for the use of the enemy, are liable to capture.	316
Innocent goods on board will share the fate of contraband goods where they belong to the same owner.	316
The owner of a neutral vessel <i>held</i> chargeable with knowledge of the fact that contraband cargo was destined for the enemy's use, and liable for the acts of the master in violation of the rights of the belligerent.	316
A foreign consul, carrying on trade as a merchant in the enemy's country, where he is stationed, is considered as on the same footing with other resident merchants, and his property on the high seas is subject to capture and condemnation.	708
Political status, and not individual loyalty or disloyalty, is controlling on the question of enemy ownership.	316, 706, 708
A vessel bound to a neutral port, but intending merely to touch there, and then proceed to a blockaded port, is subject to capture before she reaches the neutral port.	54
Procedure in prize cases	
The practice in prize proceedings is governed by the English practice, where not regulated by decisions or rules of our courts.	1334

	Page
The court of the district into which the property is carried and proceeded against has jurisdiction, though if was originally carried into another district.	316
The United States attorney has discretionary power as to the presentation to or withholding from the consideration of the court any particular of testimony in the cause.	316
A prize commissioner has no right to put to a witness any interrogatories, except the standing one, or those specially framed by the court for the particular case.	316
A document produced for the first time at the hearing, and forming no part of the deposition in the case, is not admissible in evidence.	316
In the case of merchandise consigned to a neutral port, the consignees may be required to make affidavit of the neutral ownership of the goods.	54
A witness cannot claim a right to modify or enlarge his testimony after it has been formally completed and submitted to the court.	314
A statement made on the record by the prize commissioner, in regard to the reluctance of a witness to answer, is not evidence.	316
A master, who had been examined as a witness in preparatorio, was allowed to be examined on one of the standing interrogatories, on condition that he should at the same time be examined on certain special interrogatories, framed by the court.	314, 316
The effect of spoliation of papers, of deficiencies in the manifest, and the absence of invoices as to contraband articles, and defects in the bills of lading, considered.	316
The refusal to send the ships papers to the capturing vessel, and the destruction of papers	316

	Page
on board the captured vessel, are suspicious circumstances.	
Cargo of vessel chased at sea while attempting to break a blockade, and driven on shore in the enemy's territory, and destroyed after capture, condemned.	406 1380
Vessel and cargo condemned as enemy property and acquitted of charge of violating blockade.	1334 1335
Vessel and cargo condemned enemy property, and for a violation of the blockade.	707 708
Vessel and cargo condemned as engaged in unlawful trade.	315
An appeal to the supreme court from a decree of the district court in a prize cause places the prize property exclusively under the control of the appellate tribunal.	356
The district court may order a sale of cargo as perishable, pending an appeal to the circuit court.	707
Pending an appeal to the supreme court, the district court refused to order the costs of the prize commissioner to be paid out of the funds in its registry.	356
PUBLIC LANDS	
An association of individuals may purchase at an auction sale of public lands.	546, 588
Pennsylvania proprietary lands	
Title and rights of the proprietaries of Pennsylvania.	161
The title vests in the grantee upon the return and acceptance of the survey and payment of the purchase money, and the legal possession vests at the same time.	1203
A warrant and survey, and consideration paid, gives a title sufficient to maintain ejectment against the proprietaries, or those claiming	16

	Page
under them; otherwise where the consideration is not paid.	
An actual survey was not necessary as to all the lines, where some of them may be obtained from old lines and natural boundaries.	159
A survey will perfect the title under a defective warrant, only where the rights of third persons have not intervened.	528
A warrant issued to resurvey land which was not legally surveyed will stand as an original warrant of survey.	161
Effect of the adjustment by an agent of the proprietaries of Pennsylvania in 1733 of the claims of settlers on the west side of the Susquehanna within the boundaries of lands afterwards resurveyed as the manor of Springettsbury.	158
Construction of the limitation law of Pennsylvania of March 26, 1785 (section 3)	159
RAILROAD COMPANIES	
See, also, "Carriers"; "Corporations."	
A constitutional provision that railroad charters may be altered or repealed by the legislature at any time after their passage becomes a part of all subsequent charters and contracts.	625
Act Mo. March 24. 1868, amending the charter of the Louisiana & Missouri River Railroad Company so as to permit an extension of its road across and on the south side of the Missouri river, <i>held</i> valid.	213
Petition of receivers to make a car trust loan denied where the funds necessary for rolling stock and equipment can be raised from net earnings, though nothing is left for payment of interest on the bonded debt.	477

	Page
An unexecuted decree for the sale of a portion of a leased railroad for the purpose of satisfying a mortgage made prior to the lease is not such an eviction of the lessee by paramount title as to terminate the lease.	772
A lessor corporation will be required to perform its stipulation to arrange, provide for, adjust and classify its indebtedness, but will be given a reasonable time therefo.	772
A lease of its property by a railroad corporation, which is neither in violation of any statute nor against the public policy of the state, is valid.	772
A lease to a corporation of another state for the purpose of forming a connecting line <i>held</i> valid.	772
Act Mo. March 23, 1868, authorizing townships to subscribe to the capital stock of arailroad company when two-thirds of the persons voting upon the question vote in favor thereof, <i>held</i> valid.	213
Validity of bonds issued by the town of Lewiston, N. Y., under Acts N. Y. May 11. 1868, and April 19, 1869.	450
Bonds containing a provision that they were to be exchanged for other bonds when an injunction against the issue of the latter should be finally dissolved are not negotiable, and are subject to defenses in the hands of innocent holders.	213
The pendency of certiorari proceedings to have set aside the bonding proceedings will not defeat the title of a bona fide purchaser for value before maturity, who had no notice thereof.	450
Where municipal officers are impliedly invested with power to decide whether a	450

	Page
condition precedent to the issue of bonds has been complied with their recital of that fact in the bonds is conclusive against the municipality in favor of a bona fide purchaser. A statement in bond that the commissioners have caused one of their number to sign the coupons is equivalent to a signing of the coupons by all of them.	450
The affidavit of the assessor as to the consent of taxpayers, when attached to and filed with such consents, <i>held</i> sufficient, although it did not state on its face what the consent was to, or for, or about.	450
In a suit on town bonds, <i>held</i> that defendant could not show that the bonds were delivered before any seals were affixed, and with the dates and numbers in blank, and were sealed and filled out and negotiated before the fulfillment of the conditions under which they were delivered where the bonds recited that they were issued under the hands and seals of the commissioners.	466
It is no defense to railroad aid bonds that after the meeting at which the donation was authorized, but before its formal acceptance by the company, the action of the first meeting was rescinded by the town.	1084
Interest is recoverable on coupons from the time of the demand.	450

REAL PROPERTY

See, also, "Adverse Possession"; "Boundaries"; "Deed"; "Ejectment"; "Estates" "Grants"; "Public Lands."	
An entry into possession under a recorded deed, claiming title to the entirety, and exercising acts of ownership, is a disseisin of	1286

	Page
all persons claiming title to the same land to the extent of the boundaries in the deed.	
An entry into possession, claiming title to the entirety under a deed, where the title turns out to be defective as to a moiety is a disseisin of the parties entitled to that moiety.	1286
RELEASE AND DISCHARGE	
A release given to a debtor by a creditor who has been misled by his fraudulent misrepresentation or other artifice may be set aside in equity.	467
	1381
REMOVAL OF CAUSES	
Right of removal	
The act of 1861, imposing direct taxes upon the states, is a revenue law, and cases arising under it are subject to removal under Act March 2, 1833.	407
A petition by persons to recover compensation for services as counsel in procuring a decree and settlement of claim on a creditors' bill <i>held</i> to be an independent suit in equity, and removable, under Act March 3, 1875.	396
The jurisdiction of the federal courts over national banks under Rev. St. § 629, cl. 10, is only concurrent with that of the state courts, and a suit brought against such bank in a state court is not subject to removal thereunder.	390
Where one of defendants is a citizen of the same state with plaintiffs, though the other defendants are citizens of another state, the cause is not removable under Act March 3, 1875, § 2, as a controversy between citizens of different states.	385
Time for removal	
A case reversed by the state supreme court, and remanded for further proceeding, stands like a new cause, and is subject to removal	390

	Page
under the act of March 3, 1875, passed during its pendency.	
Defendants are not bound to take affirmative action for a removal until complainants cause the case to be redocketed, of which they are entitled to due notice.	390
A criminal prosecution is commenced, within the meaning of Act March 3, 1863, c. 81, § 5, as soon as a warrant has been issued; and it is then removable.	187
Proceedings to obtain	
No order of the state court is necessary to perfect the removal of a cause.	384
Effect of removal: Subsequent proceedings	
An injunction will not be granted to restrain a party from proceeding in the state court in a cause which the other party claims has been removed to the federal court.	197
SALE	
See, also, "Vendor and Purchaser."	
If, at the time of the sale of a horse, the animal is subject to a disease known to the seller, which he conceals, and which was not discoverable by the buyer with ordinary vigilance, the sale is fraudulent.	68
A deed of personal property, not acknowledged and recorded according to Act Md. 1729, c. 8, is valid between the parties and their privies, though not accompanied by possession.	1243
A lease of a machine for a sum equal to its value, to be paid in nine months, in default of which the lessor was to have the right to repossess it, <i>held</i> a conditional sale, and invalid against a subsequent pledgee without notice, where not recorded. (Code Iowa, § 1922.).	785

SALVAGE

Right to salvage compensation

A seaman cannot have salvage for the boat which has brought him to land after the loss of his ship. 1321

Salvage compensation allowed a passenger who rendered extraordinary service to the vessel in distress, though he had no opportunity of leaving it. 176

A passenger and members of the crew of a captured vessel, to whom the prize crew surrender her to prevent her from falling in to the hands of an enemy, and who navigate her to port, *held* not entitled to salvage. 517

Persuasions and the stand taken by a passenger and members of the crew of a captured vessel in charge of a prize crew, to prevent her being burned by the captors, *held* not sufficient to entitle them to salvage. 517

The fact that towage services in extricating a vessel from impending peril were rendered in response to a mere signal for towage will not prevent the tug from recovering for salvage services. 527

Where two vessels are in contact, causing mutual damage salvors who separate them should receive from the one at fault salvage upon the total value of the two. 1044

Contracts for salvage services

A statement, by the master of a vessel to the commander of a tug asked to tow her out of danger, "that the ship would pay, is not sufficient evidence of a contract for payment at all events to bar a libel salvage. 1044

Forfeiture or reduction of salvage

Salvage awarded to a passenger of the nautical profession, who had rendered extraordinary 176

	Page
service to the vessel in peril, <i>held</i> should be materially reduced for his illegal usurpation of authority over the vessel after the services were rendered.	
Amount	
Rules under which salvage compensation is awarded stated by Marvin, District Judge.	200
Other things being equal, the ratio of the salvage award to the value of the property saved should be less when such value is large than when it is small.	494
The amount of the award should not increase with the value of the property beyond such as will justify a liberal reward as compared with ordinary profits.	1044
Greater compensation should be awarded for saving vessel and cargo from imminent peril of total loss than for saving the cargo alone.	494
A contract for payment of salvors, at all events where the danger is not great, and success is reasonably certain, should have little influence on the amount of the award.	1044
One thousand dollars allowed on a total value of \$60,000 for towing a leaking vessel from the Southwest Spit into New York harbor.	527
Seventeen thousand dollars allowed on a total valuation of \$165,000 for lightening a stranded vessel, and towing her 70 miles, to Key West.	200
Thirty-five per cent, on net value of cargo saved, and 45 per cent, on net value of materials, allowed in the case of a vessel wrecked on Florida Reef.	48
Sixty per cent, allowed for saving brass and other materials stripped from vessel after abandonment by original salvors.	48
Apportionment	

	Page
Contracts of consortium, where reasonable, will be sustained; but the burden of proof of such a contract is upon the party setting it up.	205
Licensed wrecking vessels are entitled to be admitted to assist in the order in which they arrive, if further assistance is needed: and later vessels, admitted after the exclusion of earlier arrivals, are not entitled to a full share.	200
Unlicensed vessels will be excluded from participating in a salvage service, sharing in the award therefor only when licensed vessels are present which are capable of rendering the required services, and their services are not accepted.	205
Where the services are such that the vessels are unable to participate, the rule of dividing the award equally between the vessels and the men will be varied so as to give the men the larger share.	205
Right to property or proceeds	
Unclaimed proceeds, remaining in the registry many years after awarding salvage without claim of ownership, will not be paid to the salvors, but will be paid into the treasury of the United States.	39
SCIRE FACIAS	
Where plaintiff's lessor dies after judgment in ejectment, the execution may issue in the name of the lessee, without the necessity of a sci. fa.	166
A sci. fa. to revive a judgment is a continuation of the original suit, and the citizenship of the parties thereto is immaterial.	166
To a sci. fa. to revive a judgment in ejectment for the term and damages, defendant cannot plead a conveyance by plaintiff's lessor subsequent to the judgment.	166

	Page
In such case a sci. fa. and a hab. fac. must issue in the name of the plaintiff in the original judgment.	166
SEAL	
Any impression made upon sealing was or wafer adhering to the paper, without any device or words indicative of the particular official, is evidence of the official character of the individual who signs the jurat.	507
SEAMEN	
See, also, "Admiralty"; "Maritime Liens."	
Protection and relief	
Where there has been long delay in bringing suit for a short allowance, the burden will be put upon libelant of showing that the ship went to sea unprovided with a sufficient supply.	622
Compensation for short allowance is recovered as wages, and a general form of pleading is sufficient to admit evidence of the right, where not excepted to before trial.	622
The contract of shipment	
A stipulation in writing for a series of voyages may be terminated or varied by mutual consent of the master and crew, and a new voyage substituted by parol agreement.	622
Under articles for a voyage to a South American port, thence to a port in Europe and back to the United States, the seamen are discharged where the vessel proceeds from Europe to South American ports.	622
Misconduct of cook <i>held</i> not sufficient to justify his discharge, or the alternative of compelling him to work without wages.	130
The damage for a wrongful discharge may include the value of board as well as the agreed wages for the unexpired term.	646

	Page
The seamen of a captured vessel must remain with her until condemnation, but they are not obliged to await the issue of an appeal.	1211
The seamen who await the issue of an appeal at the master's request are entitled to wages, as under a new contract, which, in the absence of evidence to the contrary, will be considered the same as the old contract.	1211
The payment to the supercargo of the proceeds of a condemned vessel after reversal on appeal, except a part retained as a pledge that the proceeds of certain cargo should be exported in certain productions, <i>held</i> a restoration entitling the seamen to wages to the time of condemnation.	1211
The vessel is not chargeable with the expenses of the cure of a seaman who contracted disease by his own vices or faults, and in defiance of the counsel or command of the officers of the vessel.	636
Conduct of master or mate in respect to seamen	
Since the proviso in Act 1850, c. 80, § 1, punishment by flogging on board of a whale ship is illegal.	11
Incompetency to perform the duties of the station for which an officer or seaman has shipped is no justification for the infliction of punishment.	11
Authority from a consul will not excuse excessive punishment of a seaman by the master.	366
When one of the crew of a vessel resists a person in authority over him while in the discharge of his duty, the latter may lawfully use sufficient force to overcome such resistance.	139

	Page
In actions for personal torts, courts of admiralty afford to seamen no remedies and no privileges to which they would not be entitled in courts of common law.	380
Habitual carelessness, disobedience, or negligence of the seamen may be shown in justification or in mitigation of damages in a libel against the master for assault; but such conduct must be pleaded.	392
A receipt in full for a seaman's share of the proceeds of a whaling voyage "in relinquishment of all" claims against the vessel, owners, and master, <i>held</i> , not a release of claims for personal violence of the master.	11
Wages—Right to	
An unlicensed engineer cannot recover wages for services as engineer.	711
Seamen are entitled to wages for the full period of their employment in the ship's service for any particular voyage in which freight is or might be earned by the owner.	737
Where freight is earned it is not material that it has not been received by the master or owners.	730
Where the owner of vessel and cargo captured and condemned receives indemnity therefor from the country of the captors, the seamen are entitled to full wages, though the indemnity covered only one third the loss.	730, 737
Private contracts between shipowners and shippers in regard to freight cannot affect the seamen's right to wages.	730
The seaman has an absolute right to wages for the portion of the voyage performed, on the capture and condemnation of the vessel, and a claim therefor is barred by lapse of	737

	Page
time, though the owner is subsequently indemnified.	
One half of the time during which a vessel is lying in port is deemed to belong to the outward voyage, and the other half to the homeward voyage.	737
Three months <i>held</i> a reasonable time for return of seamen home from Denmark in the case of capture.	737
The payment of three months' wages under Act Feb. 28, 1803, is confined to cases of the voluntary discharge of seamen in a foreign port.	989
Where the voyage was broken up without necessity, and such wages were not paid, the court decree that two-thirds be paid to the seamen and the other for the use of the United States.	989
—Remedies for recovery.	
A lien for wages arises for services of a maritime character on board a boat plying upon the tide waters of the Hudson river.	646
The seaman has no lien on the vessel for wages while she is moored at the wharf, where he has been paid up to the termination of the voyage.	523
Seamen have a lien by the maritime law on the freight as well as the vessel for wages, which is not taken away by the statute allowing process against the vessel.	912
Where the charterer is to victual and man the vessel, seamen have a lien for wages on cargo shipped by him, superior to all other creditors.	912
The claim for wages takes precedence of bottomry bonds and all other claims, whether the entirety of the fund out of which they are	730

	Page
to be paid remains, or a part of it is lost by accident or otherwise.	
An allegation, in an answer to a libel by an engineer for wages, that claimant had sued libelant in another jurisdiction for damages for injuries to the boat, and had caused garnishee process to be served upon the master, is impertinent.	709
Rule of ascertaining rate of wages of seamen, where the contract is doubtful applied in case of an engineer on inland waters.	711
A receipt in full for wages will not bar a suit therefor without proof that an adequate compensation was actually paid.	622
—Deductions: Extinguishment, etc	
Insubordination by a steward, who was an educated man, is a greater offense than that of an ordinary seaman.	366
The expenses of medical attention on shore, where the seaman is removed from the vessel at his own request, are to be deducted from his wages, where the vessel is properly provided with a chest of medicines.	636
The cost of the commitment and support of a seaman detained in jail under Act July 20, 1790, and the charge for a person employed in his place, are to be deducted from his wages.	636
The owners of a whaler cannot set off or recoup as against a mate's lay a proportion of an advance payment receipted for as a bonus "to perform the voyage," where the mate was discharged before the voyage ended, on agreement with the master that he should have his lay up to the time he was discharged.	93
In a case of monthly hirings, although continuous, upon river boats, misconduct by	711

	Page
the seaman during one month cannot operate to forfeit wages earned during another month. Wages are forfeited where the seaman leaves the vessel in a foreign port, and she sails without him, after waiting a reasonable time.	622
A seaman forfeits all wages due by leaving the vessel at a foreign port during her voyage, with or without leave, and not returning within a reasonable time, before another man is hired in his place.	472
The seaman cannot afterwards acquire a right to reinstatement and wages by coming clandestinely on board and remaining concealed until the vessel is at sea, and in such case he may be compelled to work his passage.	472
Desertion during a substituted voyage will not operate as a forfeiture of wages earned and due under the first voyage.	622
The entry in the log book must be made on the day on which the seaman absented himself, to entitle the vessel owners to claim a forfeiture of wages for 48 hours' absence.	530
An allegation of misconduct by an engineer as cause of forfeiture of wages must state the particular acts of misconduct relied on, with the circumstances of time and place.	709
A sheriff is not estopped by the statement in his return of the valuation of the goods attached; but such return casts the burden on him of showing a different value.	638
The state court has discretionary power to allow a sheriff to amend his return on attachment by reducing the stated value of the goods to the actual value, and its decision is not subject to review by the federal circuit court.	638

	Page
The assent of the plaintiff's attorney to the appointment of a receptor on an attachment on mesne process will conclude the plaintiff.	638
The consent of the creditor to the bailment to a receptor of goods attached only exempts the attaching officer for losses not occasioned by his neglect or misfeasance.	638
In a suit against an officer for official misfeasance plaintiff can recover only his actual loss arising therefrom.	638

SHIPPING

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

Public regulation

A steam tug, regularly licensed under the acts of congress, plying between ports in different states, is not amenable to local laws regulating Sunday labor. 474

The sale of a registered or licensed vessel to a foreigner is not void, but the vessel is liable to forfeiture. 505

The inaccurate recital of the certificate of registry in a bill of sale does not avoid the sale, but merely deprives the vessel of her American character. 505

The mere debiting of an interest in a vessel on the settlement of accounts between parties is not of itself a transfer of the vessel. 379

On an information of forfeiture under the registration laws, where the jury render a special verdict, the court cannot decide a question of law depending upon facts not found. 379

Title to vessel

	Page
The mortgagee of a vessel, before possession delivered, is not responsible for repairs made by the mortgagor; nor is he entitled to the earnings of the vessel.	505
The master	
A master appointed by the American consul in a foreign port on the death of the master appointed by the owner may draw upon the owner for supplies under authority given to his predecessor.	584
The master cannot bind the owners by a contract made in a foreign country, except such as is expressly authorized, or recognized and established by general law of the country of their domicile.	1022
The master has no right to sell the cargo, or any portion thereof, unless in case of a moral necessity, in order to prevent a greater loss to the shippers.	1022
Perishable cargo may be sold, and the proceeds applied to the repairs of the vessel.	1022
The master has no authority to sell the sound portion of a cargo which may be transshipped.	1022
The master of a vessel has a right to sell a part of the cargo to make repairs, or to furnish necessities for the completion or the voyage.	1022
The master cannot recover primage on freight agreed to be paid by the owners, where the vessel is lost, and no freight is earned, though 92 the owners recovered the full amount from underwriters.	1384
The master has no lien on the vessel for liabilities of vessels for his wages.	523
Liabilities of vessels or owners	
A vessel is not seaworthy which is not manned by the necessary officers and crew.	807

	Page
Where the loss was not attributable to the undermanning of a vessel, no recovery can be based thereon.	807
A vessel which swings a leak within 20 hours after leaving port, so as to compel a jettison of part of her cargo, where no tempestuous weather was encountered, <i>held</i> presumptively unseaworthy when she left port.	807
Only those contracts which the master enters into as such specifically bind the ship, and affect it by way of lien of privilege in favor of the creditor.	418
The shipper has a lien on the vessel for the execution of a contract by a bill of lading, entered into by the master, which may be enforced by process in rem in admiralty.	418
The fact that the vessel was let by a charter party or parol agreement on the condition that the hirer should have the whole control of her will not alter the case.	418
The owners of cargo sold to make repairs and furnish necessaries for the vessel have a personal claim therefor on the owners, and alien on the vessel and freight, which immediately attaches.	1022
The vessel is liable for a jettison of a cargo which the master might have saved by lighters.	1082
The vessel is liable for a loss by jettison on the stranding of a vessel whose master attempted to enter a harbor when not certain of his location, and not compelled by necessity.	1082
The liability of the owners of a vessel for the acts of the master is governed by the law of the master is governed by the law of the place of their domicile, and not by that of the	1022

	Page
place where the contract was made or to be discharged.	
Under the law of Massachusetts, the liability of the owners for misconduct of the master is limited to the value of the vessel and her freight.	1022
limiting liability	
Under the act of 1851 the vessel cannot be discharged of liens on giving a bond or stipulation for her value on application by the owners.	792
In an action in rem against the vessel alone by a single freighter a court of admiralty cannot order the release of the owners on giving a stipulation for value of vessel and freight.	792
But where the stipulation tendered is sufficient, the court will order the vessel to be released on giving a bond for her value.	792
The recovery by the owner of a vessel injured by collision is limited to the value of the offending vessel and her freight immediately subsequent to the collision. He has no claim upon the insurance received by the owner.	310
Where actual total loss occurred, formal abandonment is not necessary to entitle the owners to the benefit of the limited liability.	310

SLAVERY

The vessel is forfeited where the master had knowledge that two slaves were brought on board by the supercargo on the coast of Africa for transportation to Brazil. (Act May 10, 1800.).	1064
The employment of a vessel as a tender to ship engaged in the slave trade will subject her to forfeiture though no slaves are taken on the board.	1064

An agreement to convey if certain conditions were complied with within a certain time will not be enforced where the other party was not bound to perform the conditions, and did not do so within the time. 1268

In case in which the contract and the remedy is not reciprocal, or in which there has been a considerable change in the value of the land, equity will consider time to be material in the case of an agreement to convey. 1268

STATES

The alteration of the boundary line between Michigan and Ohio cannot affect titles to real estate acquired by judicial proceedings within the territory changed, prior to the change. 550

STATUTES

In the adoption of the laws of another state by the governor and judges of the territory of Michigan a change in one word made a material difference in the construction of the law. *Held*, that a subsequent adoption by a revision commission, without change, made the act as published binding. 81

The exposition of the statute of a state by its courts is of binding authority in the construction of such statutes by courts of other states. 1270

The law of England may be proved in the admiralty court by printed books of statutes, reports, and text writers, as well as by the sworn testimony of experts. 5

SUNDAY

See, also, "Time."

A statute, in general terms, against laboring on Sunday, applies to corporations. 1237

Under a state law providing a penalty for laboring on Sunday, a common carrier is not 1237

Page

responsible for failure to deliver goods delivered to him on Sunday.

TENANCY IN COMMON

One tenant in common may disseise another. 1286

Upon the death of one of two tenants in common of land sold by an attorney in fact, who took bonds in payment, running to his principals jointly, the survivor is entitled, as against the executors of deceased, to have possession of all the bonds. 156

TENDER

The principal of a ground rent is not a debt, within the meaning of Act Feb. 25, 1862, in relation to legal tenders of money. 487

A tender of more than the amount due upon condition of receiving change and a receipt in full of the claim is not a legal tender. 239

TERRITORIES

The governor and judges of the territory of Michigan had power to adopt the laws of the territory of the respective states, but had no legislative authority. 81

TIME

See, also, "Sunday."

Where an act is to be performed within a certain time, the day on which the instrument 60 1385 requiring it is made is to be excluded.

Where the last day for doing an act falls upon Sunday, it must be performed on the day preceding. 60

TOWAGE

The owners of a towing vessel are not liable as common carriers, nor are they subject to any higher obligation than that of bailees for hire. They are not guarantors, nor are they held responsible for the utmost possible skill and prudence in executing the service. 1342

	Page
Under a contract to tow “at the risk of the master and owners” of the tow, a tug is responsible only for the exercise of ordinary skill and diligence in her navigation.	1344
Under such contract the tug is not liable for a loss resulting from mere error of judgment, in the absence of gross negligence or willful misconduct.	1342
Whether a contract stipulating for the exemption of the tug from proper and reasonable care and skill in navigation would be lawful, quære.	1344
Where the master of a boat, left by her tug to wait the tug’s return to complete the towing contract, at a place from which she is obliged to move for other vessels, moves her to an unsafe place, the tug is not liable for resulting injuries.	33
TRIAL	
See, also, “Appeal”; “Evidence”; “New Trial”; “Practice”; “Witness.”	“New
The convenience of a party and his witnesses is an insufficient ground for the transfer of the cause from one place to another in the district for trial.	1289
Written testimony to which objection has been made should be handed to the court for inspection, without being read, for a determination of its admissibility.	937
Where both parties testify that a note appearing at the trial to have been duly stamped was not stamped when negotiated, <i>held</i> , that defendant was entitled to go to the jury on the question.	841
The court is not bound to give an instruction in the precise form and manner in which it is put by counsel.	767

Judgment will be given for plaintiff non obstante veredicto where defendant's plea is bad in substance. 1114

TRUSTS

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

A resulting trust arises on a conveyance for a consideration which is to be afterwards ascertained by the price at which the grantee may sell it. 1303

A resulting trust arises where a person takes the conveyance to himself of property purchased with money which he holds in a fiduciary capacity. 497

A resulting trust arises where lands have been purchased by one partner and paid for out of the funds of the partnership. 497

A credit given by the grantee to the grantor of land for the proceeds of a sale by him of part of the land *held* to amount to a declaration of trust. *1303

Parol evidence is admissible to show that the purchase made in the name of one was made for the joint benefit of two, and in such case the grantee will be considered a trustee of a moiety for the other purchaser. 1218

The person entitled to the resulting trust is not obliged to take the land, but may elect to take the money. 497

When a trust is created, the legal effect of which is declared by the law, the court is bound to presume that the intent of the testator was in conformity with it. 175

Equity will not raise a use by implication for a person who by law cannot hold it. 497

The party who alleges a trust has the burden of establishing it. 1303

	Page
A trustee who was a creditor before the trust arose may pursue the same legal remedies for enforcement of his debt which would have been otherwise available.	1303
An equity vested in an agent for certain purposes, the fee being in another, cannot be sold by attachment against him.	550
Public lands, purchased at an auction sale by an agent of an association of individuals, cannot be sold on an attachment against him; and an assignment by him of certificates of patent to the purchaser on the sale under the attachment is invalid.	550
An individual having an interest in certain real estate held by a trustee must be presumed to know the nature of his title and the acts of the trustee; and on a sale by the trustee cannot claim to be an innocent purchaser without notice.	550
A trustee, by an instrument intending to convey a complete title in the thing, may convey his individual interest, though the instrument is inoperative as to his cestuis que trustent.	568
Where the identity of a trust fund converted by the trustee can be traced, the cestui que trust may elect to take it, though it has greatly increased in value.	550, 568
A bill praying for specific relief may be considered as an election.	568
If a trustee, executor, or agent buy in debts due by his cestui que trust, testator, or principal for less than their nominal amount, the benefit arising therefrom belongs to the person for whom he acted.	1303
The profit gained by the trustee on a sale of property held by him in trust belongs to the	1303

	Page
cestui que trust, and the trustee cannot so purchase or hold the property as to release the claim of the cestui que trust to compel him to account.	
A purchase made by a trustee is voidable at the election of the cestui que trust only if he disaffirms it within a reasonable time after notice thereof.	1303
Length of time affords no presumption of an acquiescence in a purchase by a trustee of property held by him in trust, unless it appears that the cestui que trust had notice that the trustee had become the purchaser.	1303
There is no principle of equity which will invalidate the title of a trustee to land which the law has taken out of his hands, and which he has purchased from one appointed to sell it.	1303
Where the equity of each party is equal, the court will not deprive one party of the advantage he may have gained by obtaining a legal estate in property which was promised as a security for a debt due to each.	497
Trustees are in equity entitled to commissions allowed to executors by statute.	1309
USURY	
The prohibition against receiving "any greater sum or value" for the loan or use of money than that prescribed (Code Or. § 755) applies to a receipt at any time for or on account of such loan or use.	745
The defense of usury can be pleaded so long as any part of the principal debt remains unpaid.	1286
VENDOR AND PURCHASER	
See, also, "Bankruptcy"; "Fraudulent Conveyances"; "Grant"; "Sale"; "Specific	695

	Page
Performance,” A vendee who enters into possession under the vendor cannot dispute the latter’s title unless he yields up possession. An outstanding title, purchased by the vendee, will inure to the benefit of the vendor, who can be compelled to refund only the amount paid therefor.	695
The vendor has a lien for the purchase price as against purchasers from his vendee with notice.	695
One who purchases land with knowledge of defects in the vendor’s title stands in the same position as his vendor, with respect to the latter’s grantor.	362
One who purchases land with knowledge that the title is defective, relying upon his vendor’s warranty and promise to have the defect cured, cannot ask a rescission of the contract upon the ground of such defect.	361
The failure of the recording officer to record a deed will not affect the right of the grantee who has properly filed it for record.	919
Notice to plaintiff’s attorney in attachment proceedings of an unrecorded deed of the land attached operates as notice to plaintiff.	919
A clause in a deed from a stranger to the title is not notice to purchasers.	919

WAR

See, also, “Prize.”

A contract between a resident of a state in insurrection and a loyal state is void where made without license or authority from the government.	501
---	-----

A declaration of war, or the commencement of actual hostilities between two states, ipso facto dissolves the partnership relation existing between citizens of the hostile states.	809
--	-----

	Page
A citizen of a seceding state, who adheres to the Union cause, and retires within the Federal lines, and remains there during the Rebellion, though he intends to return after hostilities cease, continues to be a citizen of the United States.	809
A partnership between citizens of an insurgent state, one of which continues a loyal citizen, and saves his citizenship by retiring within the Federal lines, is ipso facto dissolved, and an agreement that the partnership continue is void as against public policy.	809
The sequestration acts of the Confederate States, and all acts under them injurious to citizens of Union-adhering states, are null and void.	217
Stock in a southern corporation owned by loyal citizens, and sequestered by a federal court, and sold to citizens of the state, does not pass by such proceedings.	216
A stockholder in a corporation of a southern state, being a loyal citizen, whose stock is sequestered, may sue in equity to have canceled certificates issued to the purchaser on a sale in the sequestration proceedings.	217
Under the confiscation act of July 17, 1862, no interest in land could be forfeited which would extend beyond the life of the offender.	689
A decree condemning as forfeited an estate for the life of the owner does not immediately cast the entire beneficial estate in the property upon his children, so as to make them, while he is still living, his heirs.	689
The heirs apparent or presumptive of one whose estate in land has been condemned under the confiscation act have no interest	*689

	Page
which they can protect from forfeiture or encumbrance.	
The courts will be governed by the decision of the political department of the government in determining when the Civil War ended.	501
WASTE	
Act Me. March 15, 1821, c. 35, § 2, punishing waste by a tenant in common by treble damages, does not apply where the title is held adversely.	1286
WHARVES	
A wharfinger, having a lien for wharfage on a vessel under arrest on legal process, cannot enforce his lien by detention of the vessel, but must apply to the court for its allowance.	424
WILLS	
See, also, "Descent and Distribution"; "Executors and Administrators"; "Trusts."	
A will not required by law to be sealed is good without a seal.	540
The will of a feme covert, under a power reserved in a postnuptial settlement, must be proved in the courts of probate of the country of her residence before it can be acted upon elsewhere.	600
A devise for the purpose of establishing a female school, not subject to denominational control, is not within the prohibition of devises to religious or ecclesiastical corporations, or for their use, or for the purpose of being given or appropriated to charitable uses. (Code Ga. 1857, art 55, p. 302.).	362
Under a direction to the executor to sell lands, and to pay over the proceeds after payment of debts, expenses, etc., to trustees for a charitable use, he may make a valid sale,	362

	Page
though the devise is invalid under the laws of the state.	
Under a devise of real estate to an executor and trustee, in trust to sell and convey it, and distribute the proceeds, the executor, under 1 Rev. St. N. Y. 728, § 55, takes no estate in the land, but it descends to the heirs at law, subject to the execution of the power in trust.	175
WITNESS	
See, also, "Bankruptcy"; "Costs"; "Deposition"; "Trial."	
A colored man <i>held</i> not a competent witness for or against a white man.	727
In a joint action of trespass against two defendants, if they plead severally, they may be mutually examined as witnesses for each other.	690
In a libel against a vessel on a contract of affreightment by the shipper, the master is not a competent witness for the owners, without a release, but a release from some of the part owners is sufficient.	410, 412
The principal obligor, having confessed judgment, and having been released by the surety from the costs of the suit against him, is a competent witness for him to prove usury.	122
In the case of the death of a claimant in admiralty who has given a stipulation to answer judgment, where the answer is filed by his administrator, the same rule as to the exclusion of parties in interest as witnesses (Rev. St. § 858) applies as in case of a common-law action brought against an administrator.	908
But the court may permit a party to testify when it appears that justice demands it.	908
A person who is interested cannot be compelled to testify against his interest.	1348

	Page
A witness residing in Virginia cannot be compelled, by attachment, to attend the circuit court of the District of Columbia, in a criminal cause.	864
Before a witness can be punished for contempt in refusing to answer a question put to him, on examination de bene esse, before a commissioner, or a subpoena duces tecum, as a witness in a suit pending in another district, it must be shown that the commissioner has jurisdiction, and that the matter was material and relevant.	72
Before a subpoena can issue in such case, evidence must be given before the commissioner showing the case to be one in which a de bene esse examination can be had.	72
Witnesses who attended in response to a summons, though served by a private person, are entitled to their fees.	1234
The complainant, who produces defendant as a witness, must accept the whole of his testimony.	1210

WRITS AND NOTICE OF SUITS

A summons in a common-law action in the federal circuit court in New York must be signed by the clerk, and be under the seal of the court, notwithstanding Rev. St. § 911.	71
The process of the federal courts must be served in the manner prescribed by the state law. The federal court has no power to substitute any other mode. (Act June 1, 1872.).	254
Act Mass. 1797, c. 50, prescribing the modes of serving process, does not apply to the case of defendant, a former inhabitant, who has changed his actual domicile before suit brought.	609

	Page
Service of process upon the mayor-elect of a city, before acceptance or qualification, is not a valid service of process in a suit against the city.	254
Defendant cannot call upon the marshal to return a writ of hab. f. ac. poss., although plaintiff may do so.	161

This volume of American Law was transcribed for use
on the Internet

through a contribution from [Google](#). 