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

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ACCOUNT.

In an action of account, a plea of plene computavit is not sustained by evidence showing that goods were sent to defendant to be sold on commission, and that he delivered an account in 347 which he debited himself with the entire amount, and credited the sales, leaving a large balance of goods unsold and unreturned
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In Kansas the title to property occupied by the bankrupt and his family as a residence at the time of the filing of the petition in bankruptcy does 846 not pass to the assignee, and he cannot maintain a suit in relation thereto

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False testimony in the examination, and false statements in the schedule, must be alleged to have been willfully false, to bar a discharge 307

An allegation that the bankrupt "is entitled" to certain real estate *held* sufficient to show that he was guilty, under section 29, of negligence, in delivering to the assignee property belonging to him 307

The creditors cannot give proof of other payments than those mentioned in the specification as alleged fraudulent preferences 1198

—**Acts barring.**

The creation of a debt by fraud is not a ground for refusing a discharge 307, 1202

A discharge will not be refused because the bankrupt has misused and wasted his estate, and made fraudulent purchases 1104

Preferences made in contemplation of the passage of the bankrupt law of 1841 will bar a discharge thereunder only when made with a view of getting the benefit of the act 101, 104

The act of suffering a default in a case in which an attachment was made prior to the filing of the petition in bankruptcy is not the granting of an unlawful preference. (Act 1841.) 1288

Mere insolvency is not sufficient to show a payment to have been made in contemplation of bankruptcy. (Act 1841.) 1288

A payment, to be voluntary, must originate with the debtor; the first step being taken by him, and 1288 not by the creditor. (Act 1841.)

“Fraudulent preference,” as used in item 9 of section 29, means only a preference in fraud of 1202 the bankrupt act; that is, contrary to its provisions The payment by a bankrupt to counsel for services “rendered and to be rendered,” without 1198 fraud, is no ground for refusing a discharge

An insurance made upon house and furniture, in pursuance of covenants in lease, is not a 1198 fraudulent preference

It is no objection to a discharge that the wages of servants were paid after the passage of the act, 1198 where they were necessary family expenses

A fraudulent conveyance made, or a fraudulent preference given, before the passage of the 1202 bankrupt act, is not a good ground for refusing a discharge. (Act 1867, § 29.)

A discharge will be refused, where the bankrupt has sworn that he has no assets, when he has concealed-his property derived from profits in the 314 firm by having his interest held in his wife’s name

The bankrupt’s wife was made a partner in a business transacted without capital, by purchasing from a member an interest which he had previously purchased from the bankrupt, who all the time continued in the employ of the 309 firm. *Held*, that the arrangement was fraudulent, and a discharge should be refused for concealment of the bankrupt’s interest in the business

The mere purchase and sale of articles will not make a person a tradesman, where the articles 1104 were not bought for the purpose of selling again

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A debt created by the fraud of the bankrupt is not affected by the discharge, though it was proved in bankruptcy	978, 1194
— Vacating: Setting aside.	
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Where a bank holding a note against the bankrupt and also a deposit account in his favor, receives a check against the account to pay the note, with knowledge of the depositor's insolvency, it is not a fraudulent preference, but an adjustment of mutual debts, within Rev. St § 5073	1053

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A conveyance of one's whole property to a creditor to secure a pre-existing debt is fraudulent and void, and the intent to prefer may be inferred from the fact of preference	835
A creditor taking security upon all his debtor's property, knowing it to be insufficient to pay his own debt and the other creditors in full, is chargeable with knowledge that the transaction is in fraud of the bankrupt act	1049
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The expense and delay of a litigation will not justify a compromise in a case where public interests and the due administration of the 1280 bankrupt law require the settlement of the 1364 questions of law involved by the judgment of the court

Review.

The circuit court has complete and unlimited control over proceedings in bankruptcy to review 1306 the whole case, or any particular question arising in it. (Act 1867, § 2.)

The distinction between the methods of review in actions in law and suits in equity—one being 1306 by writ of error, and the other by appeal—is preserved by section 8 of the act of 1867

Questions arising in the progress of a case can be reviewed by the circuit court only by petition 417

The proper process by which to remove to the circuit court an order granting or refusing a 1306 discharge is by petition under section 2, Act 1867

The circuit court will not review an incidental 978 question of practice in the district court

Arrangement with creditors: Composition.

Act June 22, 1874, § 17, providing for 490, compositions, is constitutional and valid 500

To authorize proceedings for a composition, a case in bankruptcy must be pending 490

The register has power, in composition proceedings, to conduct the inquiries to be made of the debtor, and to take down the substance of his answers, but not to conduct a written examination upon things in general, as in 1 bankruptcy

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A creditor whose claim is more than offset by claims of the bankrupt against him cannot vote at a meeting in composition	61
In the case of accommodation notes given by the bankrupt to a creditor, and afterwards proved against the estate by the holders, <i>held</i> , that the dividend paid upon the notes may be set off against the dividend due such creditors	61
Any composition is allowable which is satisfactory to the requisite majority of the creditors, and which is for the best interests of all concerned	61
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A resolution providing for the giving of notes “satisfactorily indorsed” held defective, in not naming the indorser, or providing for his being named	490
In such case an additional resolution providing for such security may be adopted at another meeting of creditors, and presented to the court in the same way as the original resolution	490
The court will not refuse to confirm, nor will it set aside, a composition, because certain property, located in another state, claimed by the bankrupt, was not reckoned, where the bankrupt had been advised by counsel that his claim was baseless,	500

and it appeared that it could not be recovered,
except by a long and expensive litigation

A party interested is not entitled, as matter of
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An order will not be made, directing the
bankrupt to comply with the terms of
composition after default by him, where it does 531
not appear that the creditors are willing to
proceed with the composition

One who has agreed to become a surety on a
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give security, where it appears that the bankrupt 531
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given the notes agreed

Where notes given upon a composition
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Fiduciary debts are discharged by a composition 1085
Creditors will be *held* bound by the proceedings
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composition, though they are irregular as regards
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Where the register to whom the matter had been
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of the amendment of July 14, 1870, the order
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A petition filed on the same day on which a repealing act was approved by the president, but before the actual time of such approval, gives jurisdiction 699

BASTARDS.

The circuit court of the District of Columbia has jurisdiction to require the father of a bastard to give security for its support 1241

BILLS, NOTES, AND CHECKS.

Acceptance.

A draft upon a bank in which the drawer has a fund on deposit, before it is presented to or accepted by the drawer, or charged by it against the drawer, does not operate as an assignment of the fund; and the payee is not entitled to the fund, as against a subsequent assignee for creditors, who first notifies the bank of his title 1211

The presentation to the drawer of a negotiable draft drawn against a general balance in his hands, less than its amount, without an acceptance by him, does not operate as an assignment of the fund, or create any lien in favor of the holder 257

To charge the accentor under a conditional acceptance, the holder must show performance of the condition 359

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In an action by the indorsee against the indorser of a void note, such note is inadmissible in evidence 1167

An indorsee may recover against the indorser of a void note by showing the consideration paid therefor 1167

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The necessity to keep schedule time will not justify a vessel in running at full speed in a fog alongshore 1067

It is bad seamanship to run at full speed in a fog alongshore, where there is danger of a mistake in reckoning 1067

Losses by "dangers of the seas" are such as are of an extraordinary nature, or arise from irresistible force, which cannot be guarded against by the ordinary exertions of human skill and prudence 458

The mere rolling of a vessel by a cross sea is not a danger of the sea 458

Proof that the injury was occasioned by an excepted cause casts the burden on libelant to show negligence, or want of reasonable skill and attention 1067

BONDS.

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

A recital in the bond that the interest is to be paid on presentation of the coupons annexed is equivalent to making the coupons payable to bearer 1077

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BOTTOMRY AND RESPONDENTIA.

On the necessary abandonment of the voyage in
a foreign port after repairs made, the master may
hypothecate the vessel for the purpose of getting
her back to the owners, or for a voyage to a place
where she can be sold without sacrifice 873

A cargo owner on board at the time of a disaster
may take a bottomry from the master for advances
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Where moneys for necessary repairs in a foreign
port have been advanced upon the credit of
the vessel owners, a bottomry bond subsequently
given therefor by the master is void 1302

A bottomry bond is not vitiated by the stipulation
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A fraudulent sale by the master in a foreign port,
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Acquiescence by part owners in a bottomry loan,
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Where land was described as bounded on the
side of a creek by a line meandering down its
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CARRIERS.

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

The placing of a ticket on the counter of a ticket office, after the purchaser has laid down his 138 money and gone away, is not a delivery

In an action for wrongful expulsion from a train, plaintiff is entitled to recover damages for loss of time, expenses while delayed, cost of another 138 ticket, and compensation for the indignity put upon him

A steamboat is not liable for the loss of jewelry usually worn by a passenger as a part of her apparel, but left in her stateroom, in a handbag, 519 with other articles of personal use, and stolen while she was at supper

Long-established, uniform, and well-known usage as to the mode of delivery will be considered as 732 a part of the contract of the carrier

A usage to deliver goods consigned to a particular person, though in different parcels, at one place, will relieve the carrier from his 732 responsibility as insurer, where he offers to make such delivery, but the consignee claims the right to require a delivery at different places

A carrier is liable for damages caused by the delay in delivering an unmarked case of goods, whose outer covering, properly marked, was 1285 removed while in its custody, where the consignee made repeated demands therefor

The carrier cannot, of his own motion, set up title in a third person in defense to an action for 1206 nondelivery to the shipper or his consignee; but he may set up a delivery to the real owner, upon 1366 demand made or suit brought by him

In a suit against a carrier, by the shipper or 1206 consignee, for nondelivery, plaintiff can only

recover nominal damages, where they have received the goods or their value from a third person, to whom they were delivered

Where the season for the sale of the goods has passed, a carrier responsible for the delay in delivering them is liable for damages occasioned 1285 thereby, and the diminution in value is properly chargeable as an item of damage

CHARTER PARTIES.

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

Where the charter gives possession and control to the charterers for a time certain, with no condition of forfeiture for a breach, the court 4 cannot decree possession to the general owners on a libel alleging a breach of the contract

The court may order a vessel libeled for wages to be delivered to the general owners, where the charterers, who are entitled to possession, refuse to claim her 4

Where the owner retains the possession and navigation of the vessel, and contracts to carry the cargo on freight for the voyage, the charter party is a mere affreightment, sounding in covenant, 726 and the freighter is not invested with the legal responsibility of ownership

The charter party is a mere contract of affreightment, where the owners agree to keep the vessel tight, staunch, fitted and provisioned, 726 and to receive on board such lawful goods as the charterers or their agents may think proper to ship

In the absence of a special agreement, the duty of the master extends to all that relates to the lading 726 and transportation of the merchandise, and, in the case of a mere contract of affreightment, the

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shipowners and master are responsible for the faithful performance of these duties	
A stipulation that the ship is to employ the charterer's stevedore and clerk does not amount to a special agreement that the charterer shall perform the duty of lading and stowing	726
Where the owner continues in control of the vessel, he is entitled to a lien for freight on goods of a third person, shipped under contract with the charterer	1313
The shipper under an ordinary bill of lading has his remedy against the ship, whether the owner retains possession and command, or the control and navigation passes to the charterer; but whether the general owner, or the charterer, is liable, depends upon the terms of the charter party	726
An agent employed by the charterer of a ship to procure freight, having notice from the owner that he must rely on the personal credit of the charterer, has no lien on the ship for his services	1034
Under a stipulation by the charterers to furnish a vessel at Calcutta with a full cargo, and, among other articles of freight, "sufficient saltpeter, or its equivalent, for ballast," <i>held</i> , that the charterer must furnish ballast paying freight	677
Under such charter the charterer may, at his election, furnish any article which is an equivalent, and answers the description	680
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Though the charter stipulates to carry goods on deck, the master may, for sailor's reasons, refuse to allow them to be so loaded, but in such case the charterer may recover damages in admiralty	621

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The master may also carry more ballast than the charter allows, but the charterer may recover in admiralty compensation for the room thus lost 621

A provision that the vessel shall sail without delay, and in ballast, to enter upon the charter, is complied with where the vessel carries a cargo of salt, where the charterer is not prejudiced 527

Where the charter stipulates that the master shall sign a draft on the consignees, in favor of the charterers, for the freight, he cannot refuse his signature on the ground that demurrage is due him 621

Chattel Mortgages.

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CITIZEN.

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

The status of a child whose mother was a citizen of the United States, and his father an Indian maintaining a tribal relation, is that of the father 582

CLAIMS.

The commissioners under the French treaty of 1831 could not decide between conflicting American claimants 766

The share of the loss of an alien partner of a firm was not allowable as a claim under such treaty, but he is entitled to be paid for freight and advances out of the moneys allowed to the other members 766

Rights of consignees of goods seized by a foreign government under the French treaty of 1831 766

COLLISION.

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

Nature of liability—Contributive fault.

Where two vessels collide, without blame on the part of either, the loss must be borne by that on which it falls. If both are to blame, it must be 461

apportioned between them. If it is by the fault of one, that must make full compensation

It is not proper for a ship to leave her wharf, in tow of a steamer, on a night so dark that a sail vessel cannot be seen in time to avoid a collision 342

An error of judgment of a sail vessel, in a maneuver made to avoid an impending collision, brought about by the fault of another vessel, will not be considered a fault 447

Between sail vessels.

A vessel sailing free must take the proper measures to avoid another closehauled to the wind 152

Where the wind is equally free to both vessels, approaching in opposite directions, or both have it abeam, each must port her helm 152

Where vessels are in such position, when within 150 feet of each other, that if no change is made by either they would pass in safety, the vessel having the right of way will be *held* in fault for a change of course 1129

In case of a collision between a vessel sailing free and one closehauled, the burden is on the former to prove that she took all proper measures to prevent it 370 1367

Between steam and sail.

Where a steamer and sail vessel are approaching each other, it is the duty of the latter to keep her course, and of the former to keep clear 342

The pilot of the steamer must ascertain the true course of an approaching sail vessel, or slacken speed, or stop 447

A steamer will be *held* in fault for a collision with a schooner at night, whose change of course was seen in ample time, though the schooner had no lights 124

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The question of the constitutionality of an act will not be determined, where the case may be decided on other points 242

An act validating conveyances of land made under a joint power of attorney from husband and wife is constitutional, as respects prior deeds, when no vested rights are infringed 234

Act Miss. Nov. 29, 1865, creating a levee district, and imposing a specific tax of 10 cents per acre upon the land included therein, in default of payment of which on a day named the land may 1265

be sold without notice, *held* a valid exercise of the power of taxation

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Sureties for the claimants, who are compelled to pay a salvage decree, are not entitled to priority over valid mortgages which antedated the salvage services.	894
The person who, at the request of the owner of a vessel seized in a foreign port for supplies furnished, signs a stipulation for its release, and subsequently pays the amount decreed against the vessel, is not subrogated to the lien discharged thereby	940
The right to sue in admiralty to enforce a claim for supplies and repairs to a vessel is personal, and cannot be maintained for the benefit of an assignee of a duebill or promissory note given to secure the claim.	541

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The objection that the vessel for which supplies or repairs are furnished is not one fitted for navigation on the high seas must be taken by answer.	541
On a libel for supplies, claimant has the burden to show that the credit was given to the owner, and not to the vessel	5
Waiver: Discharge: Extinguishment.	
The right of preference over general creditors of the claim of a shipper for loss or injury of his goods may be lost by unreasonable delay.	373
The lien of such shipper is not defeated by a bona fide sale before he has had an opportunity for enforcing it, especially where the purchaser has knowledge of his claim.	373
A delay to enforce a lien will avoid it only where it is unreasonable, operating to the prejudice of third persons, after opportunities have existed to enforce it.	5
A lien on a vessel, given by the general maritime law or by the local law, for materials used in her construction or repair, is not extinguished by the giving of a note to the material man	334
The lien is discharged where a note or other security is given which, by the law of the place, discharges the original contract, and the jurisdiction in admiralty cannot be revived by a surrender of such note or security.	541
The taking of a duebill or promissory note in Maryland does not discharge the lien	541
The fact that the holder of an admiralty lien has recovered judgment for the amount of his claim in a court of law in a suit in personam does not constitute a bar to a proceeding in admiralty to enforce such lien	1125
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Liens under state laws.	

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Act Me. Feb. 19, 1839, giving a lien for labor and materials furnished under a "written or parol agreement," includes all parol agreements, whether expressed or implied	354
Such statute does not give a lien for services performed under a hiring at monthly wages for any kind of labor required upon various vessels	354
No lien arises under 2 Rev. St. N. Y. 405, § 2, for services and supplies furnished a domestic vessel in her home port, at the request of her master and owner, to fit her out for a foreign voyage, and to be paid for on her return	529
Liens created under state laws for repairs and supplies do not adhere after the vessel has left the jurisdiction of the state.	1154
Liens on domestic ships, given by a state statute in cases of contracts maritime in their nature, may be enforced in the federal district courts in admiralty	683
The lien given by the local law for supplies furnished a domestic vessel may be enforced in the district courts in admiralty	869
The lien given by Code Va. 1873, c. 147, § 5, for supplies furnished in a home port, is enforceable by a libel in rem in admiralty, as such lien is predicated upon a credit given the vessel itself	195
A lien given by the local law to a subcontractor for labor in building a vessel is valid and enforceable in admiralty, though the owner is not personally liable therefor	67
The provision of a state statute that a lien given thereby shall not be enforced within 60 days is inapplicable to a suit in admiralty to enforce such lien.	683
When the district courts and state courts have a concurrent jurisdiction in rem, the right to maintain the jurisdiction attaches to that tribunal	869

which first exercises it and obtains possession of the thing

A vessel in the hands of a sheriff under process of a state court to enforce a lien given by the local law for materials furnished is not subject to seizure by the marshal on a libel in rem in admiralty to enforce a similar lien. 869

Filing a claim in admiralty, stating the prior attachment by the state court process, and claiming protection in regard thereto, held not a submission of the jurisdiction of the court 869

A vessel seized by a sheriff on process by a state court to enforce a lien given by the local law is still subject to seizure on a libel in rem in admiralty to enforce a lien given under the general maritime law 784

MARSHAL.

The marshal of the District of Columbia is not a county or corporation officer, and he cannot be required by the orphans' court of the county of Alexandria to administer the estate of a deceased person. 810

The marshal is not entitled to poundage on the attachment of money on deposit in a bank, where the same is not taken into his actual custody 816

The person to whose use the suit is entered of record is not liable to the marshal for his poundage on a ca. sa. 815

The marshal may recover his poundage from defendant, committed in execution, in an action of assumpsit. 815

MASTER AND SERVANT.

The act of a servant must be done in the course of his employment to render the master liable therefor. 627

MORTGAGES.

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See, also, "Acknowledgment"; "Chattel Mortgages"; "Shipping."	
Whether an absolute deed may be considered a mortgage, and under what circumstances such deed may become absolute as appears on its face	740
A stipulation that on default of the payment of interest the principal shall become due, is not a penalty, and equity will not relieve the party therefrom	1327
In the case of conflict, the clause creating the lien will control the description of lands.	822
General terms of description are controlled by subsequent particular terms.	32
A mortgage to secure future advances will not secure advances made after actual notice of a subsequent mortgage, in the absence of a binding contract to make such advances.	822
The point that the mortgage is invalid as having been taken in violation of the national banking act, when not made in the pleadings, though disclosed in the proof, will not be acted upon by the court.	832
A receiver will not be appointed on foreclosure of a mortgage, where it is clear that the property will bring enough to pay the debt, interest, and costs	32
On a foreclosure of a mortgage of a portion of a road operating as a part of a larger line, where no separate accounts are kept, held, that the master properly made a pro rata estimate of the earnings and expenses of the whole road.	38
On foreclosure of a mortgage in default of payment of interest, under the usual interest clause, giving the mortgagee the option to consider the whole amount due after such default, the decree will be granted for the full	105

sum, though the bill does not allege option by the mortgagee and notice.

MUNICIPAL CORPORATIONS.

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

Bonds issued by a municipal corporation, contrary to the restrictions of its charter, are binding in the hands of a bona fide holder for value, and the holders of bonds regularly issued cannot assail their validity or claim priority of payment 269

In an action by a bona fide holder on a municipal bond issued under authority of law, mere irregularity, or fraud or misconduct of the agents of the municipality, cannot be set up as a defense Mere suspicion of title, or the knowledge of circumstances which would excite suspicion on the part of a prudent man, or gross negligence at the time of the transfer, will not defeat the purchaser's title as a bona fide holder 1152

The fact that overdue and unpaid coupons were attached to the bond is not sufficient to put the purchaser on inquiry. 1152

A tax levied and collected as required by law to pay interest on certain bonds cannot be diverted to other purposes. 269

An injunction to restrain a city from receiving city script in payment of arrears of taxes levied to pay interest on certain bonds will be denied where it appears that, unless such script is taken, the taxes cannot be collected at all. 269

Negotiable Instruments.

See, "Bills, Notes, and Checks."

NEUTRALITY LAWS.

The court of admiralty has no power to order restitution of a British ship, brought into our ports after seizure by French prisoners, who were being conveyed therein to England 488

NEW TRIAL.

Errors of the court in matters of law constitute a valid ground for a new trial 1066

A verdict will not be set aside as against the weight of evidence unless it appear that the jury was palpably mistaken, or that the weight of evidence was decidedly against their verdict 928

The knowledge and diligence of counsel are to be considered on the subject of new evidence, the same as those of the party 365

Affidavits of jurors are not admissible to show the mode of computation adopted by the jury to be contrary to the law and the evidence 1337

NUISANCE.

Where there is a question whether a building will be a nuisance, its construction will not be enjoined. 212

PARDON.

A pardon on condition of paying a fine and costs imposed with a sentence of imprisonment is wholly inoperative until such fine and costs are paid; and an application for discharge as a poor convict under Rev. St. § 1042, cannot be based thereon. 1335

PARTIES.

Ten out of thirteen owners, having a majority of the shares in a ship, may bring a suit in the name of all the owners; but the suit will be stayed until the other owners are indemnified for costs 738

The collector is not a proper party to a suit between rival claimants to the ownership of imported goods in his custody in a bonded warehouse, where it is not alleged that ho is acting wrongfully or without authority of law 305

Purchasers pendente lite are bound by the decree, though not brought in as parties to the bill. 32

The nonjoinder of proper respondents in an action in personam in admiralty can be taken advantage of only by plea in abatement 440

PARTNERSHIP.

The partnership articles will be considered as binding after the expiration of the stipulated term where the business is carried on without any change in the circumstances 946

Under articles of copartnership stipulating that in case of the death of a partner, in order to prevent altercation with the heirs, etc., the shares of the profits and capital of the deceased shall be paid by the survivors, agreeably to the yearly statements of the company's affairs prior to his death, the entire interest in the partnership property passes to the survivor 946

One partner who pays a judgment against all the partners for a partnership debt cannot at law recover from the others their respective proportions 788

PATENTS.

Nature of the grant.

A state has no right to interfere with the enjoyment of a patent right, or to annex conditions to the grant. 961

A state law requiring the filing of a copy of letters patent and a certain affidavit by the owner with the county clerk, as a condition of the right to sell the patent right in the county, is unconstitutional and void 961

Patentability.

The patentee must in fact be the original and first inventor in the United States 1097

Where the original inventor fails to take out a patent, and abandons the invention, no other person can entitle himself to a patent, except 672

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where the knowledge of the invention had been lost.	
Invention is not made until the person contriving or those observing discover how the thing can be made available for a particular purpose	286
Speculation must be reduced to practice, and not rest in uncertain experiments, to entitle an inventor to a patent	910
Where a patent is assailed upon the ground of want of novelty, the patentee may show, by sketches and drawings, the date of his inceptive invention; and, where he has exercised reasonable diligence, the protection of the patent will be carried back to that date.	466
The discovery of a law of nature or a geological truth, as that the seams or rifts in oil-bearing rock would, if opened by a blast, yield oil, is not patentable	880
A new device, though inferior to prior devices for the same purpose, is useful and patentable if it be not frivolous nor injurious to public morals or to the well-being of society	1093
A novel process or mode of operation which amounts to a successful application of known things to a practical use is patentable as an art	880
No machine can be an anticipation which cannot be made to produce, without substantial alteration of its construction, the same results as those of the patented machine	658
A patent which introduces into an existing machine a new element not used before, which produces a new and useful result, is not anticipated by such prior machine.	658
A mere change of material, without the exercise of mechanical skill, is not patentable	92
The application and use of plaster of Paris to the filling of fireproof safes is patentable	672

An elastic erasive pencil head, consisting simply of a piece of India rubber, with a hole in it to slip over the end of the pencil, is not patentable 1298
 Protecting the treadle and pitman of a sewing machine from dust does not involve sufficient utility to sustain a patent 1252

There is no invention in placing a box over a sewing machine when not in use, to protect it from dust 1252

A composition of certain materials in certain proportions for use as a table beverage, called "Birch Beer," held patentable 1113

A combination of a cabinet and sewing machine is not patentable where crude combinations of the shipping box and the machine have been made by manufacturers 1252

A new combination of movable staples at the corners of a traveling bag frame, with a lock in the middle, is patentable as a fastening device, though each had been in use separately theretofore 1093

A carriage step with a corrugated rubber surface is not anticipated by the use of rubber on shoe soles or stirrups, or corrugated iron for carriage steps. 1297

Who may obtain a patent.

The patentee must be the first as well as an original inventor. 435

The first inventor is he who has first perfected and adapted the invention to use 435, 466

In the case of two independent inventors, he who first reduces his invention to a fixed and positive form is entitled to a priority of right to a patent therefor 435

The inventor must have used reasonable diligence in perfecting and adapting an invention, 466

to be entitled to priority over the patent of an independent though subsequent inventor.

He who invents first is entitled to the prior right if he is using reasonable diligence in adapting and perfecting the same, although the second inventor 435 has in fact first perfected the same, and first reduced it to practice in a positive form

The person who embodies the principle, so as to make it available for practical use, is the one 286 entitled to a patent.

Where the inventor of a machine and the inventor of an improvement agree to mutually use the same, the patent must issue in the name of 555 both: and, where issued in the name of one only, there can be no recovery for infringement

Caveat.

A paper adjudged by a commission appointed by the commissioner of patents to be fraudulent, and to have been surreptitiously introduced into the file of a caveat, *held* to form no part thereof 950

Prior public use or sale.

A use or sale which has not exceeded two years before the application for a patent will not 1157 invalidate it

The use and sale by an inventor of a machine embodying the substance of his invention more than two years before filing his application bars 1312 his right to a patent.

Prior description or foreign patent.

To anticipate an invention by a prior publication, there must be a description of the alleged invention contained in a work of a public character, and intended for the public, which 466 is made accessible to the public by publication before the discovery of the invention by the patentee.

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The fact of publication of a manufacturer's catalogue must be proved by evidence independent of the imprint.	466
A patent is rendered invalid by a prior published description only where that description was sufficient to give to the public a practical knowledge of the invention claimed.	880
An illustration by drawing, unaccompanied with verbal description, is not such a prior description as will defeat a patent	466
A device known and used in foreign countries, but not patented there, nor described in a printed publication, is patentable in the United States by a person without notice thereof.	1093
Abandonment: Laches.	
A patent will be <i>held</i> invalid where there was unreasonable delay in making application, after another inventor had made public the invention.	286
An invention may be abandoned after the patent has issued; and an abandonment may be inferred from the neglect to utilize the same, or to assert claims against others who are using it	286
A delay of five years after the application is rejected before a renewal is made, where no excuse is given, is an abandonment	332
An abandonment cannot be predicated upon, a delay caused by the commissioner in refusing a patent, where the application is renewed for the same invention.	672
Where the applications were not for the same invention, and the invention was in public use for more than two years before the second application, the patent is void	672
An abandonment or dedication once made cannot be recalled	286
Appeals from commissioner's decision.	

An appeal will not lie from a decision of the commissioner refusing to declare a new interference, and grant a rehearing, after the unsuccessful party has allowed the time for appeal to expire. 1262

A witness testifying to conversations and declarations describing a device of which the party had already constructed a specimen cannot be allowed to testify that a model shown him corresponds to the description given, and could have been made therefrom 710

The extent of the examination under oath of the commissioner and examiners in explanation of the principles of a machine or other thing for which a patent is prayed for, under Act March 3, 1839, § 11. 710

Validity.

A patent may contain a claim for a combination, and the invention or improvement of one or more parts of which the combination consists 1157

A patent issued to two for a thing which is the sole invention of one is invalid 286

Where the claims are definitely distinguished, the fact that some of them are void for want of novelty will not prevent a suit for infringement upon the valid claims 1348

Discovery and actual use prior to the discovery by the patentee, however limited the use or knowledge of the discovery, will in. 672

Illustrative drawings of conceived ideas, not followed up by a seasonable observance of the requirements of the patent laws, can have no effect upon a subsequently granted patent to another. 466

Extent of claim.

A claim referring to the specification must be construed in connection therewith 880

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The specification must be considered in construing the claims of the patent	286
The patentee will be concluded by the statement in his claim, uncontrolled by the specifications where it is clear and explicit, leaving no room for construction	670
The words “constructed substantially as above described” <i>held</i> to refer to the method of manufacture	1126
The claim of an arrangement of a combination, when such as to produce a given mechanical result of the combination, is a claim to the result, irrespective of such means	536
Construction of claim: “The above described method increasing the productiveness of oil wells by causing an explosion of gunpowder, or its equivalent, substantially as above described”	880
Patents for improvements in gold pens <i>held</i> could not be extended beyond the particular shape, form, or mode of construction claimed	303
Reissue: Disclaimer.	
The presumption of law is always in favor of the validity of the reissue, and the burden of proving that it is for an invention different from the original is upon the party alleging it	513
The introduction of a comma into the specification of a reissue in a sentence found in the original specifications, and alleged to be an interpolation and to introduce a new idea, <i>held</i> to be accidental and a clerical error.	950
An unreasonable neglect or delay to enter a disclaimer at the patent office, where the disclaimer has been filed, either before or after suit brought, is a good defense to suit for infringement.	435

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Plaintiff in a suit for infringement is not entitled to costs where he failed to file the disclaimer before suit brought	435
Duration.	
An extension of a prior foreign patent will not keep alive a subsequent domestic patent, but it will expire at the same time with the original term of the foreign patent	514
Assignment.	
The right of property in an invention before application for a patent is subject to sale	317
A grant of an exclusive right to construct, use, and vend a certain number of patented machines within a certain territory, with exclusive use of the patent within the territory limited to said machines, conveys the entire interest in the patent for such territory.	843
An assignment of all the assignee's interest in an invention, except territorial rights reserved to another, "to the full end of the term for which said letters patent are or may be granted," conveys the right to an extension	1317
Infringement: What constitutes.	
It is not necessary that the thing patented should be adopted in every particular to constitute an infringement; a substantial adoption is sufficient.	1157
A patent of a machine as an aggregate is infringed by a machine which omits immaterial parts, or uses fewer of the original old elements, or substitutes equivalents	670
A patent for a combination of old devices is not infringed by the use of a part only	891
Where two machines produce substantially a similar result by substantially similar means, no proof of difference between them lies in the fact that one is less effectual in operation, or more imperfect in its structure, than the other	891

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Where a patented combination turns out to be useless, a person who adds another element, and thereby makes the whole practically useful, is entitled to use the whole combination	944
The addition of a well-known device will not give defendant the right to use the patented combination where some addition is necessary to fit it for use	944
A composition of which plaster of Paris is an ingredient, used for the filling of fireproof safes, <i>held</i> not an infringement of a patent for the use of plaster of Paris	672
The manufacture and sale of a part of a patented invention, designed to be used by the purchasers for the express use to which it is put by the patentee, is an infringement.	723
The sale by defendant of the constituents of complainant's patent, with the intent and further purpose of enabling the buyer to turn them into the patented compound, is an infringement.	1342
—Who liable.	
A corporation is liable where the infringing machines are procured by it, and are used by persons employed or paid by it.	286
—Remedy generally.	
Patentees everywhere have the same rights and remedies, and a state statute of limitations cannot be pleaded in bar to an action for infringement	681
357; contra,	
—Preliminary injunction.	
Where the validity of the patent has been fully sustained in prior cases, the court will not hear evidence except on the question of infringement	944
Facts showing the invalidity of the patent set up in defendant's uncorroborated affidavit are no ground of denying the writ, where defendant had	1044

remained silent in regard thereto in a preliminary suit in which he took an active interest.

Terms imposed and an affidavit required on granting an injunction to restrain defendant from 1107 making and vending the patented machine

That a person who has infringed by manufacturing the patented article has desisted, 1355 and has no intention of again making it, is no ground for not enjoining him

The fact that only 20 days remain of the life of the patent is no ground for withholding 1355 injunctions, where the patent had only just been finally sustained, and had been much litigated.

—Procedure.

An action for infringement may be maintained by one to whom the entire property in the invention 317 was assigned before the issuing of letters patent

The equitable title of an assignee to a subsequent extended term granted to the patentee is 1317 sufficient to enable him to maintain a suit for infringement.

In an action against two defendants, plaintiff may recover damages against one, although the other 555 be acquitted

In a bill in equity, after alleging the infringement of a valid patent, it is surplusage, and not 1093 multifariousness, to aver the infringement of a void reissue thereof

Defendant cannot plead the general issue with notice of special matter of defense, and also, in a 357 special plea, set up the same matter in bar.

A plea merely that the thing claimed to have been invented was in use and for sale before the 1157 application for the patent is demurrable

The absence of proper notice of the defense of want of novelty in the answer will render 879 evidence thereof inadmissible, though the answer

is subsequently amended by setting up such defense in due form.

The absence of notice in the answer of evidence of want of novelty is waived where the testimony 1097 of witnesses is received without objection.

Where defendants admit the infringement, setting forth the number of articles made and sold, and rest their defense on a claim of ownership of the patent, they will not be granted 1319 leave to amend to contest the infringement, after a rehearing has been denied and an accounting had

Priority of invention between two patents, upon both of which the suit is brought, is not material, unless defendant shows that a third person 723 claims to have made the invention between the date of the two patents

The construction of the claims of a patent is for the court, except in the case of technical terms 286 which need explanation by evidence

The question whether plaintiff was the first inventor of the thing for which he obtained a 555 patent is one for the jury

The question whether the patentee has made a full disclosure of his invention in his 555 specifications is one of fact for the jury.

—Evidence.

The patent is prima facie evidence of novelty and utility, and that the patentee was the first inventor. 658 92,

The effect of the patent is prima facie evidence of novelty and utility is overcome by proof that 1136 it includes matters which the patentee did not invent.

The testimony of a witness that he made and peddled the patented article six months before 803 the date of plaintiff's application *held* sufficient

to overcome the prima facie evidence of the patent that plaintiff was the first inventor

On the question of the validity of a reissue, the patent-office model, filed with the original application, is admissible to aid in determining what was described therein, 513 1385

—**Injunction and its violation.**

An injunction will, as a matter of course, follow a decree in favor of complainant on the merits, unless defendant show that it should in equity be withheld until after the account has been taken 1347

Where the violation was not willful, defendant was directed to pay to plaintiff the profits and damages on account of the violation and the costs of the contempt proceedings 365

—**Decree, and its effect.**

The decision of a co-ordinate court on an interlocutory decree will be followed, in the absence of new or additional or contradictory evidence, which impels the court in a second hearing to a different result 1342

In such case a full decree will be rendered, which will also reveal the distinct ground on which the court refused to look into the question 1342.

A decision by the supreme court on the validity of a patent will be *held* binding on the circuit court, though the parties are not the same 718

—**Accounting: Damages.**

Upon an accounting before a master, the extent of the monopoly and the infringement must first be ascertained to establish the basis of profits or damages 1316

The damages are to be measured by the profits the patentee could have made on the sale of his invention 658

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A patentee is entitled to such damages as he can show have actually been sustained by the use of his invention without his license and consent	286
The difficulty of furnishing proof of damages, either by showing profits made by defendants or the value of infringing articles sold, does not authorize any presumption whereby the recovery may be enhanced beyond the damages actually shown by the testimony	1136
It is no excuse for failure to mark the patented articles "Patented" that such marking would have been so expensive as to make the articles unprofitable	88
Where the patented articles were not stamped with the word "Patented," <i>held</i> , that complainant was entitled to profits only from the date of the decree	88
Various particular inventions and patents.	
Barrels. No. 136,763, for improvement in head linings, <i>held</i> invalid for want of novelty	451
Blowers. Patent to Boots of July 27, 1869, for improvement in a rotary blower case, <i>held</i> valid and infringed.	1168
Beverages. Nos. 193,038 and 198,467, for improvement, consisting in a compound called "birch beer," <i>held</i> valid	1113
Bottles. No. 23,263 (reissued No. 1,606), for "improved bottle-stopper fastener," <i>held</i> valid, but not infringed	77, 90
Columns. No. 35,582, for an improvement in the construction of columns, shafts, braces, etc., construed, <i>held</i> valid, and infringed.	466
Driven wells. No. 49,129 (reissued No. 6,337) and No. 130,871, for improvement in well tubes or drills, <i>held</i> valid and infringed.	1264

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Firearms. No. 16,797 (reissued No. 3,798), for improvement in breech-loading firearms, <i>held</i> valid and infringed 534,	536
Firearms. No. 22,094 (reissued No. 3,946), for improvement, construed, and <i>held</i> valid and infringed	928
Fire engines. No. 1,980, for improvement, construed in a charge to the jury	286
Hand stamps. No. 18,249 (reissued No. 4,675), for improvement, <i>held</i> valid and infringed 943,	950
Journals. No. 1,252, for improvement in boxes or bearings for journals or axles, construed in a charge to a jury.	936
Lead pencils. No. 36,854 (reissued No. 3,863), for combination of the lead and an India-rubber eraser in the same sheath, construed, limited; and <i>held</i> not infringed	389
Oil wells. No. 59,936 (reissued No. 6,258), for improvement in method of increasing capacity, <i>held</i> valid and infringed 880,	911
Paper. No. 94,843, for an improved paper-pulp engine, <i>held</i> valid and infringed	1191
Phosphoric acid. No. 14,722 (reissued No. 2,979), for an improvement in preparing phosphoric acid as a substitute for other solid acids, <i>held</i> void as to certain claims, and valid and infringed as to others 1342,	1348
Plows. Prouty's patent for an improvement construed, and <i>held</i> not infringed.	11
Printing presses. Priority awarded for a device for stopping the impression without stopping the machine	1331
Refrigerators. No. 13,803 (reissued No. 455), for improvement, <i>held</i> invalid for want of novelty 879, 912; contra,	891

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Register. No. 76,646, for a conductor's register of fares and tickets, construed, and <i>held</i> not infringed.	185
Register. Reissue No. 6,929, for improved fare register, <i>held</i> valid and infringed	185
Register. Reissue No. 7,120, for an improved fare register, construed, and <i>held</i> not infringed	185
Syringes. No. 28,196, for improvement in enema syringes, <i>held</i> invalid 718,	720
Torpedo. No. 47,458, for improvement in explosive torpedoes in artesian wells, <i>held</i> valid	910
Traveling bag. Nos. 56,801 and 83,212, for improvements, <i>held</i> valid and infringed. 1083; 1097 contra,	
Water wheels. No. 2,708, for improvement, <i>held</i> valid, but not infringed	670
Wire staple. Reissue No. 2,183 (original No. 19,747), for improvement in wire staples adapted for use in making window blinds or screens, <i>held</i> valid and infringed.	1126

PAYMENT.

The taking of a negotiable note for a preexisting debt is treated prima facie as a conditional payment only, and it will not extinguish the debt unless so intended by the party. 826

An indorsed note taken for an account, where it bears a higher rate of interest, and the account is receipted as paid in full by the note, extinguishes the debt 826

A bill of exchange remitted to a creditor in payment of a debt will be considered as payment, where the amount of the bill is lost by the negligence of the creditor 890

The fact that a note was given and received in payment of an account may be shown by circumstances 801

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An agreement for payment of wages in pounds *held* to mean pounds sterling, and not the currency of the locality, which was greatly depreciated 142

Where the payment of the principal is accepted, a separate suit will not lie for the interest, though the right thereto was expressly reserved in the receipt given 804

Penalties.

See "Contracts."

PILOTS.

The claim to half fees given by a state law for a tender and refusal of services creates no lien on the vessel. 872

PLEADING AT LAW.

A declaration against two of three obligors is defective which does not aver that all three have failed to pay the debt 960

An action brought in the name of "Raw-lings & Son" *held* too uncertain as a description of plaintiffs. 630

Nil debet is not a good plea to an action brought in the federal court in one state on a judgment obtained in the federal court of another state 452

A plea of the pendency of a former suit in another court must offer to produce the record of such suit 758

The record of a former judgment between the same parties upon the same cause of action may be given in evidence under a plea of nonassumpsit 766

The declaration alleged an authority to draw, but not in writing, for 100,000 francs. The proof was a letter authorizing blank francs to be drawn for. *Held*, that this was no variance 148

PLEADING IN ADMIRALTY.

Matter of abatement may be set up in the answer, but the answer in such case must demand the same judgment as a plea 440

Exceptions to a pleading in admiralty have the effect of a demurrer, and also that of a motion to make the pleading more definite and certain 143

Where no exceptions are taken to an answer which is not as full and explicit and distinct as required by rule 27. the reading of testimony cannot be objected to on the ground of its insufficiency 1067

Evidence outside the allegations made by either party cannot be regarded in support of his charge or defense 646

PLEADING IN EQUITY.

A bill in equity filed without being signed by the plaintiff or his counsel will be stricken from the files 850

The writings mentioned in a bill, or copies of them, need not be filed as exhibits with the bill 79

Where more than one point of defense is relied on, such points should be stated by way of answer, and not of plea 512

An answer by a defendant beyond sea will be taken and sworn to by a commission under a dedimus issued by the court. 353

An answer to a cross bill filed by a person not named in the bill nor admitted as a defendant will be stricken from the files. 79

Where respondent has no personal knowledge of matter alleged in the bill, a denial upon information and belief is sufficient to put complainant to his proof. 1027

In an action against persons to enforce a conveyance of certain trust estates and for an account, defendants must answer all 1238

	Page
interrogatories in relation to the title to the estate and their dealings therewith	
The answer is not evidence in defendant's favor unless it be an answer to a fact averred in the bill, and not an answer to a mere inference of law	985
The answer is not evidence to support new facts set up by way of discharge or avoidance, or defense, not responsive, to the bill 235,	996
The separate answer of one defendant is not evidence for another	985
A cross bill cannot introduce new parties or new and distinct matters, or differ in purpose from the original bill	262
The decree cannot be founded on proof of matters not alleged.	996
Where a replication is put in to a plea, the parties proceed to the examination of witnesses in the same way as in case of a replication to an answer	513
An amendment will not be allowed by introducing a new party to the bill whose interest was known to the original plaintiffs or their agent when the bill was filed. (Equity Rule 29.).	1237
Equity will allow a bill of foreclosure, brought on an executed contract on the hypothesis that it was valid as a mortgage, to be converted, by amendment, into a bill for specific performance.	228
The court may allow a replication to be filed nune pro tune, where reasonable excuse for delay is given, and defendant is not prejudiced.	1045
The pendency of negotiations for a settlement after the filing of the answer is a sufficient excuse for delay.	1045

POST OFFICE.

The sureties on a postmaster's bond are discharged by two years' delay to bring suit after a default in not paying the quarterly balances found due by the auditor.	1084
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PRACTICE AT LAW.

After demurrer to a plea of set-off has been overruled, plaintiff should have leave to reply 1006

If a cause be non pros'd and not reinstated at the same term, it cannot be reinstated at a subsequent term, but is discontinued 776

The condition of payment of costs on vacating a judgment *held* to have been waived, where no demand for payment was made, and proceedings were taken as if the judgment was vacated 284

A writ of inquiry cannot be executed at the same term at which judgment is rendered 960

PRACTICE IN ADMIRALTY.

Courts of admiralty, in their practice and modes of proceedings, are even more free from technical rules than courts of equity 738

The omission of the summons to the master of the vessel to show cause, etc., is an error of practice which may be waived by claimant by delay in taking advantage of it. 1027

The defect of beginning a former proceeding in admiralty by warrant of arrest against the vessel, instead of summons, is waived by the concurrence of the other party in new proceedings on the same cause of action. 439

Where, in a suit in personam, a respondent cannot be arrested, a foreign attachment may issue against his property in the hands of a third person to compel his appearance 440

The suit is one in rem, where property in the hands of a third person is arrested on a claim to a specific lien upon it 440

Property purchased bona fide by the holder of it is not subject to a foreign attachment 440

Where property had been acquired by agents with full notice of libellant's claim, and on its arrest they intervened by stipulation and answer, 440

held, that the suit might be treated as one in personam against them

The court may permit a stipulation to be given to satisfy the decree, reserving to the stipulator the right to deny the legality of the custody claimed 1219 by the marshal, and, if successful in such denial, to ask to be relieved therefrom

A stipulation directed to be taken in double the amount of the demand will not be construed as a stipulation simply for costs 1219

1387

By the discharge on bond of a vessel seized, she becomes free, and all anterior liens stand good 894 against her, as before her seizure

Where petitioner, without order of the court, has obtained possession of property from the marshal, who had seized the same on process 1217 in rem, the court will not order the marshal to deliver up possession

The legality or propriety of an order of reference cannot be impeached upon exception to the 636 report

The surplus proceeds on the sale of a vessel in the registry of the court are subject to all claims 529 against the vessel.

In marshaling the proceeds of a vessel for distribution, a mortgage debt will be entitled, after satisfaction of privileged and lien debts, to 529 payment, as against the owner

PRACTICE IN EQUITY.

An order dismissing complainant's bill for want of a replication is of course, and may be entered in the clerk's office without any application to or 1046 action by the judge

A motion to set aside such dismissal, made nearly five years after the entry of the order of dismissal, without offering any excuse for the 1046 delay, will be denied.

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Notice of a motion to dissolve an injunction, given on the first day of the term, is notice of a motion to be made at the next term.	213
Leave to file a supplemental answer setting up a judgment in bar was granted after the same had become final by affirmance on appeal, on renewal of a former motion to set up the same judgment by way of amended answer which had been denied because of the pendency of an appeal therefrom	1046
Where more than one point of defense is stated by way of plea, the court will allow defendant either to set down the pleas as an answer, or will put him to his election as to which of the pleas he will abide by	512
In the case of an answer directed to be taken and sworn to in China, on objection to an answer previously filed, only one set of exceptions was allowed	353
Plaintiff is not entitled to the production of a book which his bill does not in any way call for or show to be material.	856
Plaintiff may require the production, for his inspection and use in the suit, of documents in defendant's possession referred to in the answer; without being set forth in full, and material to his case	856
But plaintiff is not entitled to the production of papers to which no allusion is made in the answer, though referred to in the bill. Plaintiff's remedy is to except to the answer	856
Where the answer sets forth extracts from defendant's books, with the averment that they embrace everything in the books that relates to the subject-matter of the suit, plaintiff cannot, on a suggestion that such extracts are garbled or liable to suspicion, entitle himself to a general	856

inspection of the books of defendant relating to other matters

Plaintiff is entitled to the production for inspection of the books referred to, but defendant may seal up the parts not relating to the subject-matter of the suit, and the inspection must take place under the supervision of an officer of the court 856

The court has power to modify or vacate a final decree until after the expiration of the term at which it was entered 472

Previous to entering the final decree the cause remains under the control of the court; any interlocutory decree is subject to examination and modification 38, 472

A decree in a patent case, making the injunction prayed for perpetual, with a reference to a master for an account of profits, is not a final decree 472

The proper practice to obtain a rehearing before final decree is by petition to the court for leave to file a supplemental bill setting forth the newly-discovered evidence. 472

The petitioners must show due diligence to discover and obtain the new evidence at the original hearing, and that it is material to the issue. 472

A bill of review will lie for errors in law or on the ground of newly-discovered evidence. On the former ground, the bill is filed without leave; but on the latter ground, leave must be obtained 1242

Principal and Agent.

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

PRINCIPAL AND SURETY.

See, also, "Bail."

Where the principal is insolvent, the sureties, in respect to their liability, are regarded in equity as creditors, and may retain any funds of the 615

principal in their hands, even against an assignee for value, without notice.

In the case of a mortgage given to secure the payment of five notes, two for the principal of the debt, one for the interest, and two as compensation to the mortgagee for indorsing the first three, *held*, that the holder of the first three notes was entitled to have the proceeds of the mortgaged property first applied to the payment of such notes 20

To debt on the bond of a paymaster in the navy, a plea of laches on the part of the government in its dealings with the paymaster, and that defendant had revoked the bond, is bad 337

The limitation of suits for penalties or forfeitures provided by Rev. St. § 1047, does not apply to the penal sum named in a bond. 337

PRIZE.

Jurisdiction.

The court may entertain and perfect its jurisdiction over property captured on board a vessel, without having the vessel itself brought within its cognizance 2

A foreign prize court which has once acquired jurisdiction over the corpus does not lose it because the same is taken into another jurisdiction by a purchase from the captors. (Reversing 1184.) 1179

A foreign decree of condemnation as prize *held* not examinable in our courts, although on its face appearing to have been founded upon an ordinance passed subsequent to the commission of the act for which the vessel and cargo were condemned. (Reversing 1187.) 1171

Grounds of condemnation.

Only those who are ignorant of the blockade under the proclamation of April 19, 1861, are 574

entitled to the warning and indorsement mentioned therein.

A vessel seized as prize and released on bonds is subject to capture and condemnation for a subsequent violation of the blockade on the same voyage 827

Thirteen years' residence in the enemy's country of a citizen of another country's *held* to subject him to the disabilities of an enemy 1107

A citizen of the United States, after he has full knowledge of the war, has not a right, without the permission of the government, to withdraw his property, acquired before the war, from the enemy's country 297

If a vessel be sent from the United States, after knowledge of war, to the enemy's country, to withdraw such property, the vessel and the cargo are confiscated *jure belli*. 297

The property of citizens taken trading with the enemy is considered as quasi enemy's property 297

During war, all trade with the enemy, unless by permission of the sovereign, is interdicted, and subjects the property engaged therein to confiscation. 297

Neither a consul nor the commander of an American vessel of war has authority, by virtue of his official station, to grant any license or permit which could have the legal effect of exempting the vessel of an enemy from capture and confiscation. 1107

Procedure.

Prize proceedings should be taken in the name of the government and not in the names of the individual captors, unless the government gives express authority to the captors to sue in their own names 2

	Page
Where the proceeds of prizes have been brought into court, the parties entitled to distributive shares therein may file their libel in their individual names.	2
The libel need not specifically set forth the grounds on which condemnation is sought.	574
On a motion to proceed to adjudication, the onus probandi rests on the claimant.	1277
The rule requiring evidence obtained directly from documents or witnesses found on board of a vessel at the time of her seizure is not imperative.	2
Papers in a prize court of another country are inadmissible to show that there was no cause for capture, unless the whole papers are produced.	1277
Persistent misrepresentation by the claimant of the character and destination of the voyage of the captured vessel is sufficient cause for condemnation of vessel and cargo	574
Vessel and cargo condemned on false and simulated papers as to destination, and for an attempt to violate the blockade. 573,	869
Vessel and cargo condemned as enemy property.	508
Vessel and cargo condemned for a violation of the blockade	210
Vessel and cargo condemned as enemy property and for a violation of the blockade	509
Cargo condemned for breach of blockade and for being contraband of war.	689
Rights and liabilities of captors.	
Captors are entitled to property captured in a trade from an enemy's port, though it was previously forfeited to the United States by a breach of the nonimportation act of 1809	297
The purchasers from captors acquire an inchoate right to the property, which is made perfect by its subsequent condemnation	1179

Page

An armed vessel in sight will be allowed a share of the prize in proportion to her men and guns only when she was in a possible condition to join in the battle 668

Vessels five miles distant *held* not entitled to a share in the prize, as within signal distance 521

The captors are exonerated from all losses and damages sustained by reason of the capture, where there was probable cause therefor 1277

PUBLIC LANDS.

Lands included within the limits of an incorporated town are not subject to entry under the pre-emption law of September 4, 1841 1160

The extent of land which may be included within a city is not limited by Act May 23, 1844 1160

The provision in such act excepting lands preempted by the corporate authorities from the operation of the pre-emption act was intended to secure to the government the enhanced value of lands in and adjoining a town 1160

A person who never has asserted any pre-emption rights to land, but has asserted other rights in contradiction thereof, cannot be deemed to have intended to claim such rights 1160

Persons will not be protected as bona fide purchasers (1) who purchased before the patent of the government issued; (2) when the defect in the title arises out of a rule of law, of which they are bound to take notice; (3) where the title acquired is absolutely void 1160

A party who is not himself injured thereby cannot defeat the title of the purchaser at a sale by auction of public land, by showing a combination to prevent competition in bidding 1160

Inaccuracies will not vitiate surveys made of wild lands infested with hostile Indians and at great hazard. 1135

Page

Under the laws of Virginia, the certificate of registry of a patent, which is required to be given, is not necessary to the title to lands under it. 842

RAILROAD COMPANIES.

On the consolidation of two companies, a stockholder in one of the old companies becomes a stockholder in the new, and he cannot bring a bill upon the theory that he is a stockholder in the old company 772

Noncompliance with an agreement as to the use of the proceeds of municipal aid bonds will not affect the rights of a holder, where the bonds were regularly executed 1077

The fact that the bonds were given in exchange for a single bond first issued in payment of the whole subscription is not a valid objection thereto. 1077

An illegal subscription to stock may be ratified under a subsequent statute authorizing the ratification 79

A bill alleging such subscription should aver the ratification, but an omission is cured by the answer putting the question of ratification in issue 79

Under a general power to mortgage, the railroad company may mortgage any part 32

Authority to a railroad company to mortgage its "road, income, and other property," does not authorize a mortgage of its franchises. 32

A mortgage of "all the present and future to be acquired property of the company, including the right of way and land occupied, and all rails and other materials used therein or procured therefor," includes the rolling stock 32

A mortgage of a branch line, under a special act providing that it shall be a first lien thereon, takes 264

precedence of a prior mortgage of the railroad, as then “made or to be made.”.

Under a mortgage providing that the future earnings and profits shall be held in equity by the mortgagee, the mortgagor, receiving such earnings, etc., will be deemed to hold the same in trust. 38

In the case of a mortgage on a railroad running through several states, a federal court of one state may decree foreclosure and direct a sale of the entire road. 264

Where trustees under a mortgage, of whom it is alleged in the bill for a foreclosure that they had refused to realize on the security, apply to come in, and have been admitted as complainants in the bill, they must control the proceedings. 692

Where a subsequent mortgagee is made a party to a foreclosure suit, the bill will be dismissed as to him, where it appears that his being made a party hinders and delays the suit 692

Where the security is inadequate, a receiver will be appointed 1327

A receiver will be appointed where the tolls and income pledged as security are being applied to other uses 1327

Eight per cent, *held* too low rent for the use of rolling stock, where the owner bears all the loss and deterioration. 38

REAL PROPERTY.

See, also, “Adverse Possession”; “Boundaries”, “Deed”; “Ejectment”; “Estates”; “Grant”; “Public Lands.”

One who purchased from a person acting under an informal power, who sold the lands in his own name, having no claim to them, cannot claim compensation for his improvements under the occupying claimant law 620

RECEIVERS.

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

The appointment of a receiver of an insolvent company cannot be dictated by the secured 692
creditors

REFERENCE.

An order of reference may be entered nunc pro
tunc, where a trial is duly had before a referee 1036
under a stipulation, and the parties have omitted
to enter the order.

A reference by consent of an action at law in the
federal circuit court is lawful, and after a trial 1036
before the referee the court may grant a new trial.

REMOVAL OF CAUSES.**Right of removal.**

Where it appears that the amount demanded,
with interest thereon, exceeds the sum of \$500, 900
exclusive of costs, the case is a proper one for
removal

The right of removal depends upon the facts as 900
they exist when the suit is commenced.

The citizenship requisite for a removal under
Act 1875 must have existed at the time of the 320
commencement of the suit in the state court.

An agreement of a foreign insurance company,
filed with a state officer, waiving the right to 1293
remove causes against it to the federal courts, is
absolutely void.

Proceedings to obtain.

An affidavit stating that defendant has a defense
arising under the constitution and laws of the 397
United States, in the words of the act, is
sufficient

The addition of an averment specifying a defense
which will not give jurisdiction will be rejected 397
as surplusage

Effect of removal: Subsequent proceedings.

The jurisdiction of the federal court, once attached, cannot be divested by a reduction by the declaration filed in such court of the amount of the claim below the jurisdictional amount 900

REPLEVIN.

Several counts cannot be joined in the cognizance 1254
 In an action upon a replevin bond, defendant may show, in mitigation of damages, title to the property in plaintiff in replevin, and such evidence may be rebutted by showing that the deed under which title was claimed was fraudulent and void 813

A judgment for defendant in replevin, without a declaration, is irregular, and will, on motion, be set aside, even at a subsequent term 815

A judgment for the return of the goods replevied, and for the rent in arrear for which they were distrained, corrected on motion by striking out the portion calling for a return of the goods 489

SALE.

See, also, "Frauds, Statute of"; "Specific Performance"; "Vendor and Purchaser."

Conditional sales of personal property are valid in Missouri, and need not be recorded 1134

To constitute a bona fide purchaser for value, he must have been without notice, and have paid a consideration at the time of the transfer, either in money or in other property, or by a surrender of existing debts or securities 835

A person who purchases property with notice of the wrongful possession of his vendor holds it subject to all remedies that could be enforced against it in the hands of such vendor 305

The place of delivery of wheat purchased by a commission merchant for his principal will be presumed to be the place where the commission merchant does business. 665

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A representation made in the course of a negotiation does not amount to a warranty, where not contained in the contract, as afterwards reduced to writing	240
Letters written before the making of the contract, and not referred to therein, are inadmissible to prove a warranty, where the contract is complete in itself	240

SALVAGE.

Jurisdiction.

A salvage suit will not be stayed pending an action of replevin for the salvaged property in a court of law, in which the validity of the salvor's lien may be determined.	171
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Right to salvage compensation.

Salvage services are not limited to a vessel or cargo, but extend to any valuable property in peril, saved on navigable waters	171
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Rescuing a raft of timber found adrift in a harbor, and floating out to sea unaccompanied by any person, is a salvage service	173
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The clothing of the master and crew, left aboard on abandonment of the vessel, will be restored free of charge.	828
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The officers and crew of a foreign vessel of war are entitled to salvage, the same as in the case of other vessels	1060
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Seamen, after a wreck, may recover from the materials and cargo, in relation to their respective values, wages for the time spent in saving them.	902
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Seamen who contract for a share of the freight, or of the proceeds of the voyage, cannot, in case of wreck, claim compensation for salvage services, or more than day wages for the time actually employed in saving the wreck	440
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The pilot tug at the mouth of the Columbia river (Act Or. Oct. 28, 1868) is entitled to salvage	1100
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compensation for towing a vessel on her pilot ground only where she incurs extraordinary risk to tow the vessel, or to rescue it from impending peril.

A tug which takes the master and crew off of a ship aground, and carries them to port, is not entitled to salvage where the vessel is subsequently saved by other tugs 70

Persons who interfere unnecessarily with wrecked property, which is being saved under a contract between the owners thereof and a third party, cannot claim as salvors, although they bring the property into port 120

Forfeiture or reduction of salvage.

A licensed wrecker, who proceeds in opposition to the master's protest, is liable, in an extraordinary degree, to forfeiture of all compensation for anything short of final success 921

The master of a wrecking vessel, by countenancing a wrongful injury to a wrecked vessel by one of his crew, and by falsely denying knowledge thereof, forfeits all right to salvage. 921

Embezzlement by a salvor works a forfeiture of his claim of salvage, but does not prejudice his cosalvors, or the innocent owners of the salvor ship 828

All salvors present when one of their number is guilty of willful wrong to the property are liable to forfeiture of their compensation, if the wrongdoer cannot be discovered 921

A salvor, by his failure to bring in and report salvaged property, though it be of little value, and abandoned as worthless, forfeits all right to salvage, as against other property saved by him 921

Salvors, by wrongfully burning a wrecked vessel, forfeit salvage on the cargo saved by them 921

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When the compensation of certain salvors has been forfeited for misconduct, the court has discretion to determine what interest shall be benefited thereby	921
The forfeited shares of salvors do not accrue to their cosalvors, but go to the owners of the salvaged property	828
Amount.	
Licensed wreckers are entitled to greater compensation, and are charged with a higher degree of care and skill, than other salvors	921
Saving a cargo in midwinter by diving in the hold of the vessel, on an exposed reef, far from land, is a salvage service of great merit.	921
Amount of salvage compensation, and its distribution among the salvors, in case of timber found adrift, and rescued	173
The rule to allow a moiety in a case of derelict is a flexible rule, yielding to circumstances	1281
In the case of a derelict vessel navigated into port after three days of great exertion and imminent danger, a decree of the district court allowing the salvors one-seventh of the net value, of \$21,000, was reversed, and a decree awarded for a moiety One-half allowed on cargo amounting to 87.500 saved from vessel wrecked on Pelican shoals	876
\$4,000 awarded a vessel worth, with cargo, \$275,000, for towing into New York Harbor disabled steamer, out of the track of commerce, worth, with cargo, \$70,000, where one day's time was lost.	384
\$30,000 allowed two tugs for towing from the False Hook, into New York Harbor, a vessel worth, with cargo and freight. \$230,000, where the services lasted about 20 hours.	70

\$20,540 awarded on a net value of \$130,000 in the case of a vessel aground five miles west of 1076 Sombero light.

Remedies for recovery.

The master and owners of the salvor vessel have general charge of a claim for salvage, and, where they present a bill for salvage service, it will be construed as covering the service of the crew, and 1103 they cannot maintain a libel for salvage against the vessel and cargo

Apportionment.

Each separate article of the cargo saved should bear its own expense of saving, landing, and 902 storing.

The master and owners of a licensed pilot tug, who receive compensation for salvage services, 1100 are accountable to the crew for their shares

They are estopped to deny that the service was a salvage one where they receipt for the amount paid as extra compensation for extraordinary 1100 services and risk

On an award of \$30,000 the masters of two tugs were each allowed \$3,000. 70

Right to property or proceeds.

The owners of the cargo were allowed interest on the proceeds after deducting salvage from the date of a wrongful sale by the master to the claimants. 736

SEAL.

A seal impressed on paper is equivalent to sealing with wax 905

SEAMEN.

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

Protection and relief.

The laws of the United States follow seamen engaged on its vessels until the voyage is 932 completed, whether in a foreign country or here

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The contract of shipment.	
Agreements for a share of the profits as wages do not make the seamen partners	440
An agreement by seamen not to claim wages unless the ship returns home and delivers her cargo is void.	522
The contract expressed in a shipping paper signed at the commencement of a fishing voyage cannot be varied by a parol agreement or understanding which is in violation of an act of congress	668
Where the contract was fully explained to the seamen before they signed it, they cannot vary the voyage by parol evidence	144
Seamen can avoid a clause in the articles which was not clearly explained to them, and which undertakes to forfeit all their wages and property for an absence of 48 hours from the vessel without the express permission of the master	144
Shipping articles for a voyage from Liverpool to ports in the Indian, Pacific, and Atlantic Oceans and back to a final port of discharge in the United Kingdom, where the vessel has sailed from St. Helena to New York, are violated by accepting a cargo there for Valparaiso	624
The transfer of a crew of a foreign vessel dismantled here to another vessel, under the authority of the consul, <i>held</i> to give no right to the seamen to libel the vessel for wages	958
The wages of seamen shipped at Valparaiso, on board a Chilian vessel, for a voyage to Boston and return, should be reckoned in money of the United States, where the contract was for so many dollars, payable here	144
In the case of wages payable in dollars and cents, <i>held</i> that the seamen were entitled to a sum	1064

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in United States currency that would make the payment equal to specie	
Seamen on a vessel lying at anchor off shore, in a place of danger, in case of a change of weather, may be required to help unload on Sunday.	689
Seamen who refuse to work on Sunday because not allowed double pay, under a custom of the port near which they were at anchor, may be discharged	689
A seaman dismissed by the master before the termination of the voyage, without just cause, is entitled to damages, which are recoverable in admiralty, in a suit for wages	1272
Full wages, in such case, are usually, though not invariably, given to the termination of the voyage	1272
The voyage will be <i>held</i> to be broken up by the confiscation of the vessel, though she is afterwards restored on condition of making a special voyage	217
A mate who had supplies on board, which were used for the necessary support of himself and crew, was allowed to recover the amount used by himself as enhanced wages, and the balance out of the surplus in court	1090
A seaman is entitled to be cured, at the expense of the ship, of sickness, hurts, wounds, etc., incurred in the service of the ship.	813
The phrase, "service of the ship," is not confined to acts done for the benefit of the ship, or in the actual performance of the seaman's duty	813
Seamen on a whaling voyage, who are to be paid by a share of the proceeds, are not deemed partners, and the expense of the cure of a sick seaman is not to be deducted from the proceeds	427
A seaman whose feet are frozen while in the ship's boat, in the service of the ship, before he is discharged therefrom on the return voyage, at the	426

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home port, is entitled to be cured at the ship's expense	
A seaman who disregards the advice of his physician, and uses a wounded foot, cannot recover of the shin for its subsequent care and cure, and damages for loss of time and general debility caused there by	716
A cabin boy injured in the service of the vessel, so that amputation of both legs was necessary, was allowed \$3 a week until the healing of his wounds, with costs and counsel fees	1010
The seaman is entitled to be cured, at the expense of the ship, of any injury received by him in executing an improper order, or inflicted upon him by the wrongful violence of an officer in the exercise of his authority, as officer, to punish him	813
Conduct of master or mate in respect to seamen.	
The master may inflict moderate chastisement on seamen	666
Where, after the voyage is ended, the master again takes an offending seaman on board, he cannot justify an assault and imprisonment without any new offense.	880
The master may use a deadly weapon, when necessary in order to suppress a mutiny	889
The vessel owner is not liable where the seaman is wrongfully arrested and imprisoned on a charge of crime in a foreign port, where the master was not a party thereto	725
In the absence of negligence, the vessel owner is not liable for the loss of the clothing and effects of a seaman, left aboard, where he is arrested and imprisoned in a foreign port without the instigation of the master	725
Wages Right to.	
The son of a partner in an adventure of discovery, who went out on the voyage as a	876

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passenger, but did full duty as a seaman on the return voyage, <i>held</i> not entitled to wages, though his name appeared on the shipping articles	
Where compensation for a fishing voyage is made by a share of the proceeds, the seamen are entitled to shares only on so much cargo as is brought safely to home port.	440
The seamen are not entitled to recover wages, as such, on the cargo brought to the port of destination by salvors	440
But the seaman's interest in such cargo, as quasi owner, may be equitably secured to him, subject to the proper charges for salvage and transportation	440
Seamen are entitled to wages, in the case of shipwreck, where the cargo is saved and freight is earned.	522
Freight will be considered to have been earned on a portion of a cargo belonging to the owner of the vessel, landed without interference, and its subsequent confiscation will not affect the right to wages	217
The fact that the cargo belongs to the owner of the vessel does not destroy the connection between freight and wages.	217
Seamen discharged for slight misconduct, and a declaration that they would not continue the voyage, can recover no damages beyond their wages for the time of their actual service	1309
Wages are recoverable where seamen are compelled to leave the ship by cruelty and oppression	666 522,
Foreign seamen, who abandon their vessel in a United States port upon a strict construction of their contract, can recover only the value of their demands in the currency of the United States, without regard to its depreciation	624

Seamen are not entitled to the two-months extra wages as having been discharged abroad, where they are actually returned to the port of shipment, 1116 and their wages and expenses paid in full to the date of their return.

—**Remedies for recovery.**

A complaint by a seaman under Rev. St. §§ 4546, 4547, must show that 10 days have elapsed after the wages were payable, or that a dispute has 1076 arisen between the master and seamen touching the same

The vessel against which process is sought on such complaint must be within the district at the 1076 time of hearing

The master, in such case, has a right to appear by attorney before the magistrate in defense of the 1056 claim

Receipts or releases given by seamen, even with all the solemnity of sealed instruments, will have no effect, beyond the actual consideration fairly 193 paid

Releases in full, given on the acceptance of reduced pay, where the seamen claimed that they were ignorant of the clause inserted in the contract reducing their wages, *held* not binding. 818

—**Deductions: Extinguishment, etc.**

Seamen must not interfere when the officers attempt to confine or punish one of the crew for 522 disorderly conduct

Mutinous and rebellious conduct, if persisted in, 522 forfeits all right to wages.

A desertion during the voyage, by the general maritime law, works a forfeiture of all wages 1272 antecedently earned

But, to constitute such desertion, there must be 1272 an intention to abandon the vessel and not return. 1392

A mere leaving of the vessel without permission is not a desertion

Absence from the ship without leave, for two hours, is not desertion or misconduct meriting a forfeiture of wages. 1309

Under the acts of congress, an absence of 48 hours is made conclusive evidence of desertion; but, to prove such absence, a proper entry in the log book is indispensable, though not conclusive evidence. 1272

Such entry in the log book must be made on the day the absence takes place, and must state the name of the seaman, and that he was absent without leave 1272

A general entry that the crew, or all the crew, were absent, is not sufficient 1272

Seamen guilty of misconduct, who subsequently repent and tender amends, will save a forfeiture of wages, in whole or in part 522

SET-OFF AND COUNTER-CLAIM.

There can be no set-off against avowry for rent 849

SHIPPINGS

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

Public regulation.

A vessel licensed for the coasting trade, engaged in smuggling foreign goods, is forfeited under Act Feb. 18, 1793, c. 8, § 32. 554

The United States has no lien upon or interest in a vessel for violation of Act 1838, § 2, and Act 1852, § 1, until a seizure, and proceedings to recover the penalty 271

Title to vessel.

Under a contract to build and deliver a vessel after a successful trial trip at sea, though the work is approved, and payments made as it progresses, the title does not pass until the final completion and delivery 568

A vessel, building under a contract with the United States to build and deliver her after a successful trial trip at sea, is subject to process to enforce a lien for materials furnished while in the hands of the contractor, though the United States kept a superintendent at the vessel, with power to reject or approve materials used in her construction 568

Under the condition that the United States might complete the work, at the expense of the contractor, upon his failure to perform, *held*, that the government would take possession merely as the agent of the contractor, to finish the vessel for and on his account. 568

The assignment by the builders of a vessel of the moneys to become due on the building contract invests the assignee with no such proprietary interest as will enable him to appear as claimant and defend 560

The purchase by the government of a vessel for the revenue service does not divest the same of valid liens existing at the time the title was acquired, and they may be enforced by the ordinary methods 560

A sale under the authority of the consul is conclusively presumed fraudulent, where the purchase money was secured by his note, and the title transferred to trustees for the benefit of his wife 804

An arrangement between the mortgagor and mortgagee that the former is to remain in possession of the vessel until the latter has a 1144

reasonable opportunity to enforce the mortgage will not affect the rights of bona fide purchasers for valuable consideration

The mortgagee will not be allowed to set up any priority over a purchaser without notice at a sale of the vessel at public auction for a valuable consideration, who bought after inspecting her papers 1144

The owners of a vessel are tenants in common, each having a distinct, though an undivided, interest. 557

The majority owners have a right to govern and control the employment of the vessel, and give directions as to her repairs and supplies 557

The implied authority of a part owner, acting as master, to do everything necessary for the employment of the vessel and her equipment, ceases when it is revoked, or anything is done to rebut the presumption. 557

A part owner, acting as master, has no right, as between the other part owners and himself, to subject their interests to expense, when forbidden to do so. 557

The master.

By the civil law, and by the common law, the owners are responsible for all the obligations of the master, to their full amount, whether arising ex contractu or ex delicto. But by the general maritime law of Europe the owners are not responsible for his obligations ex delicto, beyond the value of the vessel and freight, and by abandoning them they are discharged 373

The master may bind the vessel owner for moneys borrowed for necessary purposes in a foreign port, or, where the credit of the owner is not available, he may hypothecate the vessel. 1231

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The wages of the master are not a lien on the vessel, and he cannot sue in rem to recover them.	557
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It cannot be set up against the validity of an act of congress that it conflicts with an existing treaty with a foreign nation 1171

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A collector's deed for lands sold for taxes in Arkansas is prima facie evidence of the regularity and legality of the sale, where not contradicted by something on its face. 905

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TENANCY IN COMMON.

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TIME.

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On the question of priority between a petition in bankruptcy and an execution, both marked as filed at the same hour, *held* that the actual time of filing might be shown by parol 878

Torts.

See "Admiralty." 1394

TOWAGE.

See, also, "Collision."

A person who hires a steamboat to tow another vessel is not liable for an injury thereto sustained in the course of the navigation and not caused by the negligence of those in charge. 461

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TOWNS.

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A charter requiring a certified copy of a summons to be served on the recorder in all suits brought against the town, *held* inapplicable to an action of ejection 950

TRADE-MARKS AND TRADENAMES.

A trade-mark for soap, "Mottled German Soap," with a circle and moon and stars in the middle, *held* infringed by "S. W. McBride's German Mottled Soap." with a crescent and single star, though "Mottled German Soap" or "Mottled Soap" had been in common use for years. 3

The word "Parabola" used as the name of needles, not being descriptive of any particular quality, *held* a valid trade-mark 930

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Where plaintiff, in trespass to land, relies upon possession without title, defendant, under the general issue, may show title in another under whose authority he-claimed to enter 619

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A paper produced on notice by the adverse party who is not a party thereto and does not claim a beneficial interest under it must be proved by him who offers it in like manner as if he had himself produced it 631

Objections to a deed on the ground that there was no proof of execution by one of the parties *held* to apply to its effect and not to its admissibility 631

The fact that improper evidence was received at the first trial is no ground of admitting it at the second trial 793

After the jury has retired, and returned into court to give their verdict, a witness who has come into court since the jury retired cannot be examined 803

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

An administrator who purchases in his own name on a sale under foreclosure of a mortgage belonging to his intestate holds the property for the benefit of the heirs, and cannot sell it without authority of the court, 166

UNITED STATES.

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A sale of an indorsed negotiable note for merchandise which is disposed of for a sum less than the value of the note is not usurious. 756

VENDOR AND PURCHASER.

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WAREHOUSEMEN.

Where grain is stored in an elevator warehouse under whose invariable course of business the highest market price or the same amount of grain of like quality is given on surrender of the receipt, but not the identical grain deposited, nor grain from any specific mass, the transaction is a sale and not a bailment

The owner of a warehouse receipt is not entitled to the specific grain deposited, but to the quantity specified in the receipt and contained in the warehouse

The indorsement and delivery of a warehouse receipt will transfer the title to the property covered thereby

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WILLS.

See, also, "Conversion, Equitable": "Executors and Administrators"; "Trusts."

Under an agreement in writing to make mutual wills, neither party can make a will without notice 1027 to the other

Under a law giving all the annual income of testator's estate to his wife during her widowhood, to be equally divided between her 29 and his son, *held*, that the fee did not pass, and the title went to his heirs at law

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See, also, "Bankruptcy"; "Costs"; "Deposition"; "Trial."

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WRITS AND NOTICE OP SUITS.

Where husband and wife are codefendants, service upon the husband alone is sufficient. 985

In the case of a bill for an injunction to stay proceedings in a suit at law, brought by defendant, a resident of China, subpoena was ordered to be served upon his attorney in the action at law 350

A court has discretion to permit an officer to amend a return with or without notice, and at any time after the date thereof, so as to bind the parties to the action or those claiming under them as privies, but not third persons who acquire rights in good faith prior to such amendment. 752

An amended return, as between the parties to the action or their privies, whether made with or without notice, cannot be questioned by them collaterally 752

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