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See "Bankruptcy."

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Property levied upon by attachment or execution is subject to sale by defendant 1112

A levy under an attachment satisfies the debt if the property be of sufficient amount, though it be wasted by the negligence of the officer 1131 1112

Where attached property is lost without the neglect of the officer or plaintiff, the loss must be sustained by defendant; and a plea that property was attached and lost is defective in not showing how the loss occurred 1112 1131

The plaintiff must prove his debt before he can obtain judgment of condemnation. (Act 1303 Md. 1795, c. 56.)

ATTORNEY AND CLIENT.

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BANKRUPTCY.

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

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

The possession by the bankrupt of leased premises after petition filed is the possession of the bankrupt court, and any interference therewith, except by leave of that court, is in contempt of its authority

Jurisdiction of courts.

The district court has no jurisdiction of an involuntary case unless the debtor owes provable debts exceeding \$300, and owes the petitioning creditors \$250 thereof. If the indebtedness is reduced, by payments after the filing of the petition, below those sums, jurisdiction is lost

The petitioning creditors cannot add their costs to their debt, in order to raise it above the jurisdictional amount

Receipt by petitioning creditors of payments reducing the indebtedness below the minimum fixed by the statute is a waiver of the act of bankruptcy

Where bankrupt partners resided in different states, and proceedings were commenced in each state, held, that the proceedings in one state would be stayed until further order

Register—Powers and Duties.

Registers may take cognizance of uncontested petitions filed by attorneys against the assignee to compel the payment of their fees and disbursements 1029

Commencement of proceedings—Involuntary bankruptcy

Where the petitioners, constituting one-fourth in number and one-third in value of the creditors, are less than five, it is unnecessary for a person verifying the petition as agent to state the residence of his principals 152

Where several petitioners join in separate and distinct rights, a verification by or on behalf of each is required 152

The “debt provable under the act” (of 1867) which a creditor must have as a foundation for his petition may be an equitable demand 112

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A note of the alleged bankrupts delivered by them to the payee after it was due, and after the alleged acts of bankruptcy, and subsequently purchased by the petitioning creditor, to enable him to petition, is a sufficient debt for that purpose 27

An allegation by petitioning creditors that there is due them by the alleged bankrupts \$500 and upward is a sufficient statement of their debt to enable them to institute proceedings 27

A secured debt will support a petition, and it is not necessary to waive the security in the petition 1059

It is a good answer to a petition alleging, as an act of bankruptcy, the suspension of 1081

payment of commercial paper, that the paper in question is usurious

Pleadings in the district court in bankruptcy cases must be special. Hence a mere general denial of the intent with which an alleged act of bankruptcy is averred to have been done is insufficient; respondent must allege and prove with what intent he did the act

Under the issue made by the denial of bankruptcy, the debtor may prove that, at the time of the trial, he does not owe the amounts necessary to give the court jurisdiction

A debtor who has paid one creditor to the exclusion of others cannot be heard to say that he did not intend a preference. And, if his answer sets up no other defense than a denial of the intent, judgment may be given against him as upon failure to answer

Evidence of acts of bankruptcy must be confined to those alleged in the petition

A statement of creditors filed by the debtor on denial of bankruptcy must be verified. (Act June 22, 1874.)

Acts of bankruptcy.

A general assignment by an insolvent without preferences, untainted by actual fraud, is, nevertheless, an act of bankruptcy

Where the execution of such an assignment is admitted, an adjudication will be made, although the respondent denies any intent to defeat or delay the operation of the bankruptcy act

Creditors are not estopped from treating a general assignment as an act of bankruptcy, by an unaccepted offer to assent to the assignment, if the assignee should be changed

A general assignment for the benefit of all creditors by an insolvent insurance company,

and the payment of running expenses for the previous month, held not acts of bankruptcy Retirement of one partner, and consequent transfer of assets and liabilities to the other, are not necessarily acts of bankruptcy in the partnership, but may be so if intended in order to give a preference to a separate creditor over partnership creditors, or to place him on an equality with them, or in any other way to cover actual or legal fraud 27

Transference by a partnership of the note of a third party to one creditor as security for an antecedent debt, on the day of calling a meeting of their general creditors, is a fraudulent preference, and an act of bankruptcy 27

The taking of a judgment upon a power of attorney is not the confession of a judgment, 1310 within the meaning of the bankrupt law

The holders of notes and powers of attorney given without intent to prefer, and without knowledge of the maker's insolvency, may pursue their legal remedies thereon by judgment and levy after having knowledge of such insolvency 1310

One contracting to grade and build a railroad is not, by virtue of such contract or his acts under it, a merchant or trader, so as to make suspension of his commercial paper an act of bankruptcy 394

A railway company may be adjudged bankrupt for failure to pay its commercial paper within the period prescribed 824

A petition will lie at once on the fraudulent suspension of payment of commercial paper, without waiting the lapse of 14 days 780

Dismissal.

A voluntary petition will be annulled on motion on due notice, where all the claims against the bankrupt have been paid by an assignment to one creditor, who has released the bankrupt 1309

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A member of a dissolved firm is not entitled to an adjudication against his copartner on the ground that he can prove a debt against him in respect to bonds and mortgages given by them jointly 112

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Registers should in no manner interfere with or influence the choice of an assignee by the creditors 381

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Rights, duties, and liabilities.

Under Rev. St. § 5044, the assignee's title relates back to the date of filing the petition, and cannot be defeated or affected by a lien, by the subsequent act of any other person

64

An assignee is in contempt if he takes any steps in a state court without authority from the bankruptcy court

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Where the assignee is directed to join in a sale made by a trustee of mortgaged property, and no money is realized by the assignee thereunder, he is not entitled to commissions on the purchase price

323

The assignee may be subpœnaed to testify in the same manner as other witnesses, and the register has authority to make the requisite order

403

The assignee is not subject as of course to examination by any creditor at his pleasure, but will be protected against unnecessary annoyance by refusing an examination, except upon issues regularly referred to the register

403

Property of bankrupt—What constitutes.

The assignee is not entitled to a chose in action of the bankrupt's wife where the bankrupt never asserted his marital rights thereto, or attempted to reduce it into possession

721

Custody and control: Injunction.

An assignee for benefit of creditors may be enjoined from interfering with the debtor's assets even before an adjudication is had

304

A secured creditor has not an absolute power over his securities, and he may be restrained from selling them on the application of the assignee

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The assignee has no right to take from the possession of a sheriff property held by him under an execution on a state judgment, until the writ is set aside for fraud, or because it is in violation of the bankrupt law 45

Though all property rights become vested in the assignee, he is not ordinarily bound to take possession of any property or right which would be a burden rather than a benefit to the estate 554

The assignee must exercise his election in respect to taking possession of property rights within a reasonable time, and unreasonable delay will be considered an election in respect to rights or liens subsequently acquired by others 554

If the assignee elect not to take possession of any property rights, the same remain in the bankrupt, and are good against all the world but the assignee 554

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The circuit and district courts may grant injunctions in bankruptcy cases ex parte, and without notice to the adverse party or his attorney 411

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Where a deed of trust by a husband creating a separate estate in his wife was declared void as being voluntary, both as to antecedent and subsequent creditors, *Held*, that it was good as between the parties, and that the wife was entitled to a homestead allowance out of the proceeds of the property 584

The words "other articles," "necessaries," and "wearing apparel" construed 1202

A bankrupt engaged in commerce is properly allowed a watch of a small value, as a necessary article 1202

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Where, before an involuntary petition was filed, a sheriff had levied one execution, and 385

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But the dissolution of an attachment does not affect the priority of a creditor who has prosecuted the suit to judgment, and made an execution levy 1199

A purchaser of the check of one bank upon another who fails to present it until the drawer has been adjudged a bankrupt is not entitled to priority, although the drawee had sufficient funds at the time the check was presented 405

Where a bankrupt, nearly a year before the petition was filed, placed a note with his attorney for collection, and drew orders on him for the proceeds, *Held*, that the holders of the orders were entitled to payment out of such proceeds in preference to the assignee 409

A decree against a firm upon a suretyship obligation was paid from the firm assets. The firm having been dissolved, a balance was due from one partner to the other, but the amount was not ascertained by judgment. The partner owing the balance afterwards went 408

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A decree of bankruptcy overrides all rights sought to be acquired by appointment of a receiver in a state court after the filing of the petition 458

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A balance of accounts current between merchants is provable 1064

A judgment recovered pending the proceedings in a suit begun before and based upon a provable debt is itself provable. 1061

A partnership note indorsed by one of its members may be proved both against the partnership fund and the separate estate of the indorsing partner 1307

The holder of a note made by the bankrupt, who received from an indorser part payment in release of his liability, must prove the whole note, as he is a trustee for the indorser 815

One taking an assignment of a proved claim as security for an antecedent liability of the assignor, who is apparently, though not really, the owner thereof, is not a purchaser for value, and cannot hold the claim against the true owner 147

Losses suffered by a broker in disposing of goods purchased for the bankrupt, which he failed or refused to receive, are unliquidated claims, and not provable 388

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A creditor who has made a full surrender of a fraudulent preference before suit brought against him may prove his claim. After suit brought, and before a recovery, it is discretionary with the court to permit proof of the claim 1275

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Creditors who have proved their debts may serve on the register a protest against the proof of any claims by certain other creditors, and requesting to be notified if any such claims are pending 381

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A judgment creditor claiming money adversely to the assignee cannot enforce the same by motion and on notice to the assignee. 397

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An apprentice is an “operative” (Act 1841, § 5), and is entitled to priority 1234

On an adjudication against partners, the firm and individual assets are separate funds in 402, the first instance, for the payment of separate 812 creditors.

Firm creditors held entitled to share in the individual estates *pari passu* with individual creditors (Act 1867, § 36) where the expenses 338 of collecting the firm assets were more than the sum realized

The fact of the identity of partners in firms of different names and different localities does not operate to give the claims against one firm 1064 the character of partnership as distinguished 1344 from individual demands against the others

Act N. Y. April 15, 1853, providing that the assets of an insolvent bank, after payment of its circulating notes, shall be first applied to 264 payment of sums deposited with it by savings banks, gives a savings bank no prior lien, but it must share *pro rata* with ordinary creditors

A dividend duly made and filed in court cannot be disturbed, except for some error 403 of the register, apparent from his memoranda and papers on file, existing at the time of making the dividend.

A register cannot reopen a dividend to pay a claim for services rendered to the assignee, 403 which was not presented at the dividend meeting

A register cannot vacate or reopen a dividend to pay a claim not proved and filed, or 403 presented, prior to the dividend meeting

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The time for an examination of a bankrupt does not expire with the making of the 782 application for his discharge

Costs: Fees: Disbursements.

Fees of register for various services, in composition cases 933

On the auditing of an assignee's accounts, an attorney's bill is evidence of the services and disbursements, but must be supported by 1026 evidence of the occasion, necessity, and value of such services

In such case the register is charged with the duty of ascertaining what sum, in fairness. 1026 ought to be allowed

Where there are both firm and individual assets each estate must pay its proportion of the entire expenses of administering the whole 402

A petitioning creditor, who has advanced clerk's and marshal's fees, cannot have an order on the assignee for repayment; but the court may direct the assignee to pay the register's and marshal's fees out of the estate 384

Discharge—Proceedings to obtain.

Under the act of 1867. application for discharge must be made within one year from the adjudication, whether or not debts are proved or assets received 326

An order to show cause why a discharge should not be granted may be made after the expiration of sixty days, and within one year from the adjudication of bankruptcy, where it appears that the assets are absolutely worthless 782

In proceedings commenced after January 1, 1869, where the assets are not equal to 50 per cent, of the proved claims on which the bankrupt is liable as principal debtor, or where the requisite number of creditors have not assented, a discharge will be granted only from debts contracted prior to that date, 36

although the assets equal 50 per cent, of the claims contracted after said date

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One who has filed no proof of debt may oppose the discharge if he be in fact a creditor, and this appears by the bankrupt's oath to his schedule 390

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In the specifications against discharge, where fraudulent payments are charged, it is not necessary to state that the persons receiving such payments were creditors 398

The strictness of common-law pleading is not required in specification opposing discharge. but the bankrupt is entitled to such particularity as will give him reasonable notice of what is intended to be proved against him 398

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A decree or judgment during the progress of the cause, determining that the bankrupt has done any act which will prevent a discharge, will operate as an estoppel, although no creditors appear in opposition 780

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The assignee may set aside any conveyance or transfer which judgment creditors might set aside, but for the existence of the bankrupt law 538

A chattel mortgage taken by a retiring partner on all the firm goods in stock or to be acquired, by agreement kept from the record, is fraudulent and void as to subsequent creditors 1275

A chattel mortgage of a stock of goods, which allows the mortgagor to retain possession and sell the goods, and buy others, is void as an illegal hindrance to creditors 538

A conveyance by a bankrupt, within one month of his bankruptcy proceedings, of real 1160

and personal property that he had previously sold, received pay for, and surrendered to the purchaser, but had not conveyed, in the absence of fraud, is valid

A conveyance of such property by the bankrupt after knowledge of his insolvency is 1160 not in fraud of the act

Where the obligor on a bond, in order to indemnify Ms sureties, obtains securities from one of his debtors, and turns them over to his sureties, the transaction is a preference 589

Where a creditor of a corporation, having reasonable cause to believe that it is insolvent, sues it in a state court to secure payment in full, knowing that, if he succeeds, it will be at the expense of other creditors. 458
held, that the preference so obtained may be set aside at suit of the assignee

A mortgage of all the bankrupt's property, more than four and less than six months before the filing of the petition, to secure bona fide debts and liabilities, is good as against the assignee, unless it is shown that 101
the mortgagor was insolvent, or in 1345
contemplation of insolvency; that he had reasonable cause to know his insolvency; and that he designed to prevent, delay, or impair the operation of the bankrupt law

Where, within two months before commencement of proceedings, the bankrupt mortgaged his stock of goods to raise money for paying a creditor pressing for satisfaction, 181
the mortgagee being a party to the negotiations, *Held*, that the burden was on the latter to show good faith and actual value

A voluntary settlement by one who is indebted is fraudulent and void if the debts 892
and contingent liabilities existing at the time

of the conveyance are paid by contracting other obligations, which afterwards result in insolvency

Where the purchaser makes a payment for stock on being notified that it is about to be transferred, and the seller, later in the day, fails, without making the transfer, a subsequent transfer through a debtor of the seller *held* not in fraud of the bankrupt act 868

Conveyances to a wife under articles of separation, subsequently rescinded, except as to a provision for a separate estate in the wife, on the parties again living together, *held* void as voluntary as against subsequent as well as antecedent creditors 584

Suits and proceedings in relation to the estate.

The right of the assignee to recover property transferred in fraud of the bankrupt act can only be enforced by a suit instituted for that purpose, under Rev. St. §§ 5046, 5129 860

The assignee may petition summarily to set aside a mortgage given after the commencement of proceedings. Resort to a bill in equity is unnecessary 181

The assignee may embrace in one suit all such matters and causes of action as might be included by the creditors in a creditors' bill 891

A bill by the assignee for an accounting in respect to goods purchased by defendants from the bankrupt's employes, in pursuance of an alleged fraudulent scheme, *held* not maintainable, where the goods had been seized by the marshal under a provisional warrant, and turned over to the assignee 485

The two-year limitation prescribed in section 2 of the act of 1867 does not apply to a mere action to recover a debt due the bankrupt 489

Where a bill by a creditor against the bankrupt and his trustee for discovery and relief is pending at the appointment of the assignee, the latter may take control of the suit for the benefit of the estate, on indemnifying the complainant for reasonable expenses of the suit, and becoming responsible for costs 554

If the assignee elect not to take control of a suit, and the complainant procures a decree, this will give him a prior right against the property in question 554

In an action by the assignee to recover the value of goods transferred by the bankrupt, contrary to Rev St. §5128, the complaint must either allege actual conversion of the property or a demand by the assignee and a refusal to deliver it 54

An assignee suing for the value of goods fraudulently transferred may recover damages for their detention, including profits made out of them, or injuries received by them while in possession of the creditor 54

Review.

A resolution of composition is subject to review under the revisory power of the circuit court 812

A petition for the review of law and fact must state specifically the errors complained of in the ruling or order of the district court 812

Arrangement with creditors: Composition.

In the case of individual and partnership creditors, there can be a general composition only in the absence of objection by a creditor 848
Individual creditors cannot participate in a meeting of partnership creditors held to determine whether an offer of compromise by the bankrupt firm shall be accepted 812

A creditor who considers himself fully secured, when in fact he is not, and is ready to renounce all claim, will not be counted as a creditor to defeat a composition 719

Secured creditors are those who hold a lien upon property which otherwise would go into the general fund, not those who have personal security 848

Creditors whose debts do not exceed \$50 are counted in determining the value, but not the number, of creditors 848

Where, after a decision by the register between two parties as to the right to vote upon a claim, the person aggrieved allows the vote to be taken without further objection, he cannot again reopen the question 914

A meeting will be reopened where creditors did not receive their notices in time, if prompt application is made, and it appear that their presence might affect the result of the vote 914

On application to confirm a proposed composition, the report of the register must be taken to be full and true 914

Where debtors of a bankrupt firm accepted their proposition with the knowledge that the members had received a sum out of the partnership fund, the resolution will not be set aside 812

A composition to pay more than the estate is able to pay, where the balance is made up by friends, is not evidence of fraud 719

Amending and repealing acts.

The amendments of June 22, 1874, do not apply to involuntary proceedings commenced, but not determined, prior to December 1, 1873 202

The amendment of June 22, 1874, reducing the time within which conveyances, 202

preferences, etc., are to be invalidated, and giving section 10 of the amended act no force until after the expiration of the two and three months, respectively, does not interfere with past transactions so far as time was an element

In undetermined voluntary proceedings, as well as in involuntary proceedings, section 9 202 of the amendatory act of 1874 governs

Section 11 of the amendatory act of June 22, 1874, which amends section 35 of the original act by inserting "knowing," applies to cases brought after the amendment, though the instrument creating the alleged preference was executed before that time 201

Section 11 of the act of June 22. 1874, amends § 35 by changing the rule as to reasonable cause to believe: but cases 202 previously brought or acts previously done are not affected

The insertion of the words "know," etc., in sections 35 and 39 of the bankrupt act by the amendment of June 22, 1874. was a material change from the words "reasonable cause to believe"; and congress intended thereby to affect only transactions evidently mala fide 202

BANKS AND BANKING.

A bank issuing a certificate of deposit to a person who cannot write his name is entitled to rely upon the identification of the payee by 1137 another bank, through whom it is collected on presentation by a person who stole it

A receiver of a national bank is an officer of the United States 1074

The right of the receiver of a national bank to recover an assessment laid on the stockholders for the purpose of paying debts 1074

grows out of Rev. St. § 5234, and the state statute is inapplicable as a rule of decision
Such action is properly Drought by the receiver in his own name 1074

The receiver may in such case proceed against the separate stockholders to recover the amount due from each 1074

Debts due the late Bank of the United States were not extinguished by the expiration of its charter; and a note given after such expiration to one of its agents, in his own name, in renewal of a note previously due, is valid 552

Section 14 of the charter of the Bank of Columbia was repealed by Act March 2, 1821, § 8, except as to debts contracted before the repeal 451

Notes given after the repeal, and discounted by the bank to pay debts previously due, are not within the exception 451

BILLS, NOTES, AND CHECKS.

Validity.

A promissory note of an emancipated slave given to the master in consideration of the emancipation is valid 618

Indorsement and transfer.

The defense of fraud may be set up against an indorsee of a note, who took it after maturity 314

Notes assigned as collateral security for an antecedent debt, to one who had notice of the consideration are subject in his hands to the defenses available against the payee 432

Demand: Notice: Protest.

In the county of Washington, D. C., by usage, demand and notice, on the day after the last day of grace on a promissory note will charge indorsers residing in the county, and having notice of the usage 554

Demand at the place where a note is made payable is not necessary to the maintenance of an action against the maker. If defendant was ready to pay or did pay into the bank at that place the amount due, it is matter of defense 134

Delay in receiving a reply, due wholly to the postal service, does not charge a collecting agent with notice of the dishonor of a check which he has mailed to the drawee for collection 163

A drawee to whom a collecting agent mails a check for collection is a subagent, and the holder is chargeable with the sub-agent's negligence, either in presenting to himself or in giving notice of dishonor 163

Demand at a particular bank at which the note sued on is payable need not be averred or proved 580

Where the indorser lives at the place where the note is payable, notice of protest received through the mail on the day of dishonor or the next is sufficient 853

Where the indorser has a known place of business within the city, notice must be given to him there, irrespective of his residence 853

The fact that the notary's signature and part of a notice of protest are printed does not invalidate it 853

Payment.

A promissory note given as collateral for a note borrowed is not discharged by the borrower's taking up the borrowed note with funds furnished by the lender 580

Actions.

A note given to A., B., C., or D. is a promise to pay in the alternative, and either of the promisees may sue in his own name 889

It is sufficient to state the note sued on 889
according to its legal effect

An averment that a note sued on was
assigned on the day or at the time of its 134
execution is sufficient

Where an action is brought against two, as
the survivors of one, who executed a joint 134
note, it is not essential to allege that the note
had not been paid by the deceased

Plaintiff may at the trial strike out later blank
indorsements of the note and fill up the first 1321
blank indorsement to himself

BILL OF LADING.

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

Parol evidence is admissible to show a
supplemental agreement for a particular mode 1105
of stowage under deck

BONDS.

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

The decision of the supreme court of the
state declaring a law under which bonds were 682
authorized to be issued to be constitutional
conclusively settles the question in favor of
all purchasers of the bonds

A recovery may be had upon a coupon
payable at a particular place without 682
presentation for payment at such place

BOTTOMRY AND RESPONDENTIA.

Hypothecation can only be made in a foreign*
port, and under circumstances of absolute 327
necessity, where relief cannot be had
otherwise

One who lends securities for the general use
of a shipowner is not subrogated to the lien 1039
of the bottomry creditor, who is paid by their
proceeds

BOUNDARIES.

A call in a grant for distance gives way to a call for a natural object or boundary 57

BRIDGES.

See "Constitutional Law"; "Navigable Waters."

A preliminary injunction against the erection of a bridge authorized by state statute should be promptly granted by a federal court, until a final hearing, if there be reasonable ground to believe that it will be an obstruction to navigation 116

The erection of a bridge across the Hudson river between the city of Troy and the village of West Troy, in accordance with the provisions of Act N. Y. April. 1872, *held* not to result in a material obstruction to navigation, and an injunction refused 128

Canals.

See "Navigable Waters."

CARRIERS.

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

A sleeping-car company, who furnishes a suitable car with proper connections and in readiness for a continuous passage, is not liable to a passenger therein for the failure of a connecting line to send forward the train, on account of a riot 159

An action for the loss of baggage of a married woman containing her personal effects is properly brought in her name 1145

The carrier is liable for goods from the time they are shipped, although the bill of lading may be actually signed subsequent to the loss Delivery of goods upon the wharf is not a delivery to the consignee, unless he has authorized such a delivery, or there is proof 724 729

of a well-defined and notorious custom to that effect

Placing goods in a public storehouse without notice to the consignee, when he is known, does not release the liability of the ship for their safe-keeping and ultimate safe delivery 729

Newspaper notice to consignees to present their permits within a certain time is not good, unless it is shown to have been brought home to them 729

Where damages to goods are attributable partly to the fault of the carrier, and partly to the fault of the shipper, the loss will be equally divided, where it is impossible to ascertain for what proportion each is responsible 724

Where an extra freight is paid in consideration of the goods being stored in a cabin stateroom, but the bill of lading was in the usual form and the goods received damage by being stored in the hold, held, that the vessel was liable 1105

A contract to settle for freight on coal on the 10th of the succeeding month by giving a note at 60 days is a waiver of the carrier's lien, and the contract cannot be rescinded, and a lien asserted, before the note is dishonored 64

CHAMPERTY AND MAINTENANCE.

An objection that a bill in equity is filed under a champertous agreement must be raised by answer, and not by motion to take the bill from the files 927

CHARTER PARTIES.

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

The cardinal elements of a charter party are a definite voyage to be performed and a definite compensation to be paid by the charterer 1039

An agreement purporting to be a charter party, but not containing the essential elements, where loose and informal, may be aided by parol evidence 1039

An agreement to assign to one of the parties all the freight earned by a vessel up to certain specified sums, and one-half of all above them, is not a charter party 1039

The shipowner must use due diligence in dispatching the vessel and prosecuting the voyage to the port of lading, where the charter party is to commence, when the vessel is ready to receive cargo at the place of lading, and notice thereof is given the charterer 1099

The charterer is not relieved from his contract by delays caused by inevitable accident or perils of the sea, if the vessel be tendered in a reasonable time 1099

Under such contract there is no implied warranty or condition precedent that the vessel is seaworthy at the date of the charter Tonnage dues are port charges within a stipulation requiring the charterers to pay all port charges at the ship's destination 524

Tonnage dues payable at Cape Haytien before a ship can take cargo from Miragoane are to be considered as port charges at Cape Haytien, within the meaning of a charter party made by foreigners unacquainted with the regulations of that port 524

The rights of the parties under a charter party providing that the charterers were to pay all port charges are not affected by the fact that unknown to them the consignee had procured an exemption from tonnage dues 524

Consignees making advances to the master, which by the charter are to be free of commission, cannot have a commission by 318

reason of making an advance before they are required to do so

The master may refuse to carry forward the cargo received, where a full cargo is not furnished, only where the same is insufficient security for full freight, or is depreciating so rapidly as in all probability to become insufficient in which case he may discharge it, and then enforce his lien for freight and demurrage 1249

The measure of damages where the charterer abandons his contract is the difference between the net freight for a full cargo and what would have been netted by any other reasonable cargo which by due diligence could have been obtained 1249

A lien for freight and demurrage expressly reserved by the charter party attaches the moment cargo is put on board under a bill of lading made subject thereto 1249

CHATTEL MORTGAGES.

See, also, "Bankruptcy."

A chattel mortgage covering property in New York and New Jersey, and recorded in the latter state alone, will be held valid as to the New York property 781

A mortgage on a stock of goods given to a retiring partner by the continuing partner, which contains no provision for applying the proceeds of sales to the debt, or for reinvesting them to augment the trust fund, is void upon its face 591

A mortgagee leaving the mortgagor in possession of personal property, as his agent, is chargeable, as against other creditors, with the amount sold by the mortgagor, whether applied on the debt or not 538

CLERK OF COURT.

The clerk is entitled to a fee of two dollars for services in making up the calendar, and sending notice to the proctor that the cause is on the calendar, with its number 233

The clerk is entitled to fees in admiralty cases for filing the record, making the docket and indexes, for order to cancel stipulations, taxing costs, receiving and disbursing money, entering order check, entries in ledger, and filing clerk's costs 233

COLLISION.

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

Nature of liability—Contributive fault.

Inevitable accident is never admitted as a defense unless it appear that neither vessel was in fault 1308

A vessel which comes into the wind, for the purpose of shortening sail without first having made a careful survey to discover approaching vessels, is at fault 1094 1348

A vessel whose crew was disabled by yellow fever *Held*, not in fault in failing to put back to port, or anchoring, where she took reasonable precautions to avoid collision 822

Negligence by a vessel having the right of way in not seasonably discovering an approaching vessel will not charge the former with fault, unless such negligence contributed to the collision 1094

Vessels moored, etc.

A vessel in motion colliding with a vessel at anchor in a proper place, with sails furled, will be held solely liable 1308

Tugs and tows.

A tug employed to tow in and land a vessel at a particular place is charged with the duty of 832

directing the vessel towed, and managing the helm in making the landing

A tug is not liable for a collision by a ship in tow where her movements were directed by a 497 licensed pilot employed by the ship

River and harbor navigation.

Where steamers using the same pier have a customary mode of making landings *held* that the vessel which had begun to make her 1140 landing as customary was entitled to complete it without embarrassment from the other

On the Mississippi, a descending steamboat, by the uniform rule, runs down the bend in the strongest current and deepest water, and the ascending boat hugs the bar 228

The Mississippi below the mouth of the Ohio is not, at any point or at any stage of water, a "narrow channel," within the meaning of supervising inspector's rule 3; the term only refers to the "chutes" running behind the island 228

When there is danger of collision between steamboats on the Mississippi, it is the duty of the descending boat to ring her bell and shut off steam, and of the ascending boat to do the maneuvering 228

Lookouts, officers, etc.

A law which obliges vessels entering and leaving a harbor to receive a pilot or forfeit half pilotage is not compulsory, but optional; and hence a vessel navigated by such a pilot is liable for a collision caused by his negligence. (Reversing 494.) 497

Particular instances of collision.

Between schooner and bark at the mouth of Chesapeake Bay, coming together on converging courses, where the former was *held* solely in fault 1318

Procedure.

A claim for damages for collision *held* barred by a delay of over six years where the vessel was for more than a year after the collision 663 within the district in which the owner has continuously resided

An averment in the libel of the particular courses of the vessels is to be taken as true, where the answer in general terms avers that 1094 the vessel libeled was not in such a position as required her to avoid the other

Evidence which does not pertain to the express allegations in the pleadings is 1094 inadmissible

Declarations of witnesses as to distance in the nighttime are not of much weight 228

Rule of damages.

The damages for detention of a vessel while undergoing repairs are determined by the market value of her hire, and not by what she 809 was earning per day at the time of the injury, not being under hire or charter

Compositions.

See "Bankruptcy."

CONFLICT OF LAWS.

The law which accompanies and governs a contract relates only to rights and obligations, 426 not to the remedy

A contract made in Pennsylvania, and sued on in Indiana, cannot be governed by the 426 Pennsylvania law in respect to the remedy

The insolvent act of Massachusetts of 1838 does not dissolve an attachment in the courts 1007, of the United States under the antecedent 1008 state laws adopted by congress.

CONSTITUTIONAL LAW.

The power of congress to regulate commerce 120 among the several states is not per se, without

any exercise thereof by congress, an absolute inhibition of state legislation, which may affect such commerce

A state legislature may, in the absence of any restraint by congressional legislation, authorize the erection of a bridge over the state's navigable waters 120

The navigation between different ports on a public river within the same state is within the power to regulate commerce among the states 116

The power of congress to regulate commerce is paramount to the power of a state to authorize the building of a bridge across a public river navigable from the sea 116

The construction of a bridge across the Hudson at Albany in accordance with Act N. Y. April 9, 1856, cannot be enjoined by a federal court, unless the act is repugnant to the constitution of the United States, or unless the bridge, when erected, would abridge complainant's rights of navigation 120

A federal court should not enjoin the construction of a bridge authorized by a state legislature, unless the serious character of the injury has been first clearly established by a trial a law 120

The power of deciding between conflicting interests of river navigation and of transportation across navigable rivers by permanent structures is a legislative, and not a judicial, power 120

A government license to a vessel to carry on a coasting trade does not exempt the owners from liability to pay a license, under the municipal regulations of a town within the limits of which the vessel is moored for the 852

purpose of giving theatrical exhibitions on board

The power of congress to establish uniform bankruptcy laws is not limited to acts similar in scope to those in force in England at the adoption of the constitution, but is plenary over the subject of bankruptcy 135

Under the bankruptcy clause, any and all uniform legislation tending to promote the distribution of an insolvent's estate among his creditors, and his discharge from their demands, is within the power of congress 135

The act of March 3, 1873, amending the bankrupt law, in relation to exempt property, is uniform and constitutional. 399, 413

A statute forbidding attorneys to practice in the federal courts except on taking an oath that they have never borne arms against the United States, etc., is unconstitutional 16

A statute allowing tenants the value of improvements, etc., on recoveries against them (Act N. H. June 19. 1805), is unconstitutional so far as it applies to past improvements 756

The income tax laid by the act of July 14, 1870, is not a "direct tax," within the meaning of the constitution, and the act is valid though it imposes the tax by the rule of uniformity 368

Marriage is not a contract within the provision relating to the impairment of obligations of contracts 1107

CONSULS.

The consular court is a court of limited jurisdiction, and all the jurisdictional facts must be alleged in a libel or petition 871

Contempt.

See "Injunction"; "Patents"; "Witness."

CONTINUANCE.

It is good ground for continuance that the leading counsel is sick, and the counsel in attendance is not prepared to go on with the trial 54

A continuance will not be granted where the material witness is in the employ of defendant, and within 35 miles, where defendant had 35 days to procure his attendance 1197

An affidavit for continuance for absence of a witness cannot be explained by extrinsic matters 454

CONTRACTS.

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

There is no obligation where the acceptance of an offer is not according to its terms. 731

A mere moral obligation is not sufficient to support an express promise 756

In a case of a doubt as to the extent of a grant, the conclusion should be against the grantor, who is chargeable with obscurity in the language of the contract 652

Subsequent acts of the parties tending to show the construction put upon the contract by them may be considered where the meaning is doubtful 1116

Parol evidence of the object and intention of a party in entering into a contract, and of the circumstances inducing it, is not admissible where the written contract is not ambiguous 1166

Where a party positively refuses to perform according to the contract, a demand and readiness to perform by the other party need not be shown 790

Acquiescence by one party to a contract in the delay of the other in fulfilling it prevents the court from relieving the former from the consequences of the delay 349

No action will lie upon a charter party or contract of affreightment procured by the false representations of libelant 700

CONVICTS.

The hiring of 400 convicts, under four separate contracts, for 100 each, is not a violation of a law prohibiting the hiring of over 100 convicts in any one contract 833

A loss and damage caused by the failure of the state to perform its stipulation to keep the convicts under good discipline, and at diligent and faithful labor, may be deducted from the contract price 833

COPYRIGHT.

A motion for a provisional injunction for alleged infringement of a copyright of a map will be disposed of on the moving papers and answering affidavits, without a reference to a master 579

CORPORATIONS.

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

An obligation given by an officer signing his own name with his official designation may be shown by parol to be the obligation of the corporation 824

The acts of directors in the transaction of the corporate business bind the corporate body, and not themselves personally, unless they exceed the limit and scope of the powers granted to the corporation 627

The decree of a court of equity transferring stock held in the name of a trustee to his successor *held* a full protection to the corporation against a claim of an innocent 960

purchaser after the decree and the assignment thereunder

When the directors fraudulently and by collusion refuse to institute a suit in the case of an injury to the corporate property, or when they are the wrongdoers, a stockholder may maintain a bill in equity 627

A foreign corporation may maintain a real action in our courts 756

A corporation not created by the law of a state, but having a license to transact business therein, held not an inhabitant of, nor found within, such state, so as to give the federal court therein jurisdiction 816

The federal circuit court cannot acquire jurisdiction of the person of a defendant corporation of another state by resort to a state statute, licensing the corporation on condition of its submission to be sued in such state 816

COSTS.

Costs refused defendant in a bill for infringement on its dismissal, as he received benefit from the settlement of the question 703

Where the opposite parties in an admiralty suit each prevail on one of the two issues involved, each is entitled to taxation of costs of the issue decided in his favor, and the two bills of costs should be set off against each other, and any balance paid 170

Where two separate suits in admiralty by seamen were filed and process issued, and afterwards a number of other suits were consolidated therewith, *Held*, that the costs of the first two suits to the date of consolidation should be taxed separately, but that a single bill of costs only, could be allowed to either party after the consolidation 170

The expense of printing testimony for the convenience of the court cannot be taxed as costs against the losing party 899

Travel fees of witnesses residing either within or beyond the reach of a subpoena, who voluntarily attend the trial at the request of the prevailing party, cannot be taxed 899

Where, for the mutual convenience of the parties, it is agreed to take testimony at a certain place, reasonable compensation will be allowed for the traveling expenses of witnesses attending from without the jurisdiction, and the amount allowed by the fee bill was adopted as the proper measure. 899

A court of chancery may include in its decree expenses incurred in obtaining necessary testimony other than such items as are mentioned in the fee bill of 1853 899

COURTS.

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

In general.

The commingling of law and equity in one proceeding, allowed in the courts of Georgia, is unknown in the federal courts held in that state. These sit distinctly as courts of law or as courts of equity 48

Where the marshal had refused to permit the bail to seize his principal in court, *Held*, that the court would not interfere to authorize such seizure 478

Comparative authority of federal and state courts: Process.

The judiciary act of 1789. giving exclusive original cognizance to the district courts in cases of penalties incurred under the federal laws, is pro tanto repealed by Act Aug. 2, 1188

1813, giving the state courts jurisdiction in certain cases

In all cases where the state courts had jurisdiction originally over the subject-matter, they will retain a concurrent jurisdiction with 1188 the federal courts until congress, by express provision, revokes and extinguishes the same. The jurisdiction of the state courts over federal causes is confined to civil actions, for civil demands, or to enforce penal statutes, 1188 and does not extend to offenses against the United States

Actions for penalties, being founded upon the implied contract which every person enters 1188 into with the state to observe its laws, are civil actions, both in form and substance

In suits for penalties incurred under Act Aug. 2, 1813, giving a moiety to the United States, 1188 and the other moiety to the collector or informer, the state courts have jurisdiction

In cases of concurrent jurisdiction, the court first acquiring jurisdiction retains it, and 105 cannot be interfered with by the other.

Federal courts—Jurisdiction in general.

The jurisdiction of the supreme court is pointed out by the constitution; but the distribution of the powers of the inferior 575 courts is regulated and governed by acts of congress

The federal courts have jurisdiction in actions by and against the Union Pacific Railroad Company whenever they would have 694 jurisdiction of the same class of action between other parties (12 Stat. 489, § 1)

—Grounds of jurisdiction.

Federal courts have no jurisdiction when neither of the parties is a citizen of the state 57 where the action is brought

A federal court has no jurisdiction where the maker and indorser of a note, at the time of the assignment, both resided in the state 48, where the note is sued on. It is immaterial 366 that the indorser was an accommodation indorser.

Where a conveyance of land appears to be only colorable with a view to give jurisdiction, 1098 the writ will be dismissed on motion or on a plea

Where it appears that both parties have an option to rescind within a stipulated time and that the suit is prosecuted under the 1098 direction and at the expense of the grantor, the conveyance will be held to be colorable only

The fact that land lying in a state, of which the fee is in the United States, is set apart as an Indian reservation, is not enough to give 324 the federal courts jurisdiction over a murder committed on the reservation

Circuit courts.

A federal circuit court has no jurisdiction over a defendant served with process while 693 temporarily in a district in which he does not reside

The circuit courts have no supervising power over the district courts except as given by 575 statute

The circuit courts cannot issue mandamus after the practice of the king's bench, but only 575 where it is necessary to the exercise of their jurisdiction

The court has jurisdiction, on the ground of the subject-matter, of a suit by a licensee or grantee having an exclusive right to make and 1049 vend the invention against the patentee for an alleged infringement

—District courts.

The jurisdiction of the district courts extends to a marine league from the coasts or shores extending to low-water mark. Shoals covered with water are not a part of the coast or shore 805

Administration of state laws.

State laws are applicable as rules of decision in trials at common law only where it is not otherwise provided by federal enactment. 1074

(Rev. St. § 721.)

The federal courts follow the decisions of the state tribunals in all questions dependent upon the local laws 1008

On questions relating to real estate, the federal courts will uniformly follow the latest decision of the state courts. 568, 662

Procedure.

Plaintiff in attachment in a federal court must furnish security in the same manner and amount, and with sureties of the same qualifications, as if he were proceeding in a state court 220

Local courts.

In an action of debt on a sealed note in the circuit court of the District of Columbia, if the verdict be reduced below \$20 by payments proved at the trial, judgment of non pros must be entered 632

COVENANTS.

The statute of 4 & 5 Anne, c. 16, respecting collateral warranty, etc., has been adopted in Rhode Island 238

CRIMINAL LAW.

See, also, “Arrest”; “Bail”; “Convicts”; “Extradition”; “Habeas Corpus”; “Indictment and Information”; “Pardon”; “Witness.”

A warrant of commitment must state probable cause, and must be under seal, supported 1010

by oath, and must limit the term of imprisonment

A verdict against the law, if in favor of defendant, is as conclusive and effectual as if it were according to law 1322

CUSTOMS DUTIES.

Customs laws.

The collection law is adapted to a regular and usual course of business, and extraordinary cases, where compliance with its letter is impracticable, do not come within its meaning 253

One going to a foreign country to buy clothing is not entitled to free entry thereof, though he wears the same in returning home 154

Rates of duty.

The discriminating duty of 10 per cent, under Act Aug. 30, 1832, § 11, was not abolished by Act July 30, 1846 1041

Under the joint resolution of April 29, 1864, and Act June 20, 1864, § 20, the duty payable on a consumption entry of teas made April 29, 1864, was 30 cents a pound. 523

Act June 30, 1864. § 20. had no retroactive effect 523

Fancy boxes, of common wood, veneered with rosewood or ebony, and known to the trade as rosewood and ebony boxes, and as fancy boxes and furnished boxes, were dutiable under the act of 1846, as “manufactures of ebony, rosewood,” etc 115

Invoice: Entry: Appraisal.

At a port where there are no appraisers, a deputy collector may examine goods entered for warehousing to ascertain their dutiable value, as well as the collector 989

Where goods are entered and warehoused at one port, intended for reshipment and rewarehousing at another port, the entry is 989

to be completed at the former port and the collector of the second port has no power to make a reappraisalment

In such case the collector of the first port cannot make an addition to the invoice value upon mere hearsay information, derived from the collector of the second port. 989

Under Act March 3, 1863, goods imported by the manufacturers thereof must be invoiced at their actual market value at the time and place of manufacture. "Actual market value" 247

is the price at which the manufacturer holds his goods for sale in ordinary course of trade. The law presumes that there was, at the time and place of manufacture of imported goods, an actual market value, and no evidence is admissible to prove the contrary. 247

A series of sales or a single sale or offers to sell in the usual course of trade, are among the best evidences of market value. 247

In the absence of proof of sales or offers to sell, market value may be ascertained by cost of raw material at the time and place of manufacture, with the cost of manufacture and a manufacturer's profit. 247

Under Act March 1, 1823, § 4, where cloth was purchased abroad through an agent who there had it dyed and made up, *Held*, that the same should have been invoiced according to fair market value, and that an invoice at cost, including the dyeing and making up and the agent's commission, was ground of forfeiture. 226

Payment: Protest.

A protest against paying 25 per cent, duty on thread lace because the article is provided for under a certain schedule at a duty of 20 per cent, is a sufficient protest. 1198

The clause inserted in a protest, "I mean this protest to apply to all like exactions heretofore paid, and to all future, and shall claim a return thereof," *held* good as to future importations 1198

Bonding: Warehousing.

Under Act June 30, 1864, all teas in warehouse on July 1, 1864, were dutiable at 25 cents a pound, when afterwards withdrawn for consumption 523

Violation of law: Forfeiture.

A forfeiture is imposed only for fraud, misconduct, or negligence of the owner. He is not to suffer for the fraud, misconduct, or negligence of the revenue officers alone 253

The duty of delivering a manifest of imported merchandise devolves upon him who has charge of it, whether he be the master or not. (Act March 2, 1821.) 1235

It is not essential that such person should be actually on board the vessel when it enters the waters of the United States 1235

Any intentional undervaluation is cause of forfeiture, and intentional undervaluation of one item of an invoice authorizes forfeiture of the whole 247

Spirits, wines, and teas are not forfeitable under Act 1799, § 43, unless the certificates and marks are both wanting 253

"Possession of any person," as used in this section, means the possession of the purchaser, to whom the certificates are required to be delivered, and not the possession of a wrongdoer 253

The marks and certificates being evidence only of a lawful importation, the want of them affords no presumption of the nonpayment of duties 253

An importer's general bond for duties on teas, under Act 1799, § 62, is a securing of the duties, within the meaning of section 43 253
A decision by the court that probable cause for seizure of goods imported by the manufacturer has been shown puts the burden on the claimant to show that the invoice states the actual market value 247

DAMAGES.

See, also, "Contracts"; "Collision"; "Patents."
The owner of an oil lighter is not liable for injury to craft lying alongside, where, in the absence of a watchman, a thief broke into a locker, and an explosion was caused from gas which had escaped into the locker from the tank, ignited by a match in the hands of the thief 769

The measure of damages for breach of a contract to deliver goods free on board at Boston, and procure freight to Antwerp, is the difference between the contract price and the market value in Boston at the time of the breach 105

Expenses and counsel fees are not to be included in the verdict as actual damages 174

DEED.

See, also, "Covenants"; "Grant"; "Vendor" and Purchaser."

A deed absolute on its face may be shown by parol proof to be in fact a mortgage. 973

Registration of a deed of lands lying in several counties is sufficient if made in either county 161

A deed acknowledged before the mayor of Cincinnati, Ohio, who has the same powers as a justice of the peace "in civil and criminal cases," is good under the state decisions, which will be followed by the federal courts 51

If the acknowledgment be substantially defective, the record is not notice 51

Parol proof that a justice acted as such in taking an acknowledgment is admissible when the fact is not stated in the certificate 51

Actual notice of a prior deed may be proved 51

DEMURRAGE.

A provision in a charter party for “dispatch for discharging” at Havanna is not controlled by the customs and rules of that port, and the consignees are bound to take the cargo as rapidly as the vessel can deliver it. (Affirming 318.) 321

It being the rule at that port to deliver only at the mole, the consignees were responsible under the provision “for dispatch in discharging” for delay arising from the crowded condition of the mole. (Affirming 318.) 321

A vessel entitled to “dispatch for discharging” *held* entitled to demurrage for delay arising from its being Passion Week, and the crowded state of the mole, from custom’s regulation, and from being required to deliver over her bows 318

Where a vessel is entitled to “dispatch for discharging.” the time allowed is measured by her capacity to deliver 318

A vessel *held* not entitled to demurrage for time spent in port after discharge, pending a dispute over demurrage and errors in her account 318

Where the charterer abandons his contract, demurrage is due the ship from the expiration of the lay days, until she could, with reasonable diligence, have procured other employment 1249

The freighter is liable for any unnecessary detention in loading or unloading, although no express contract is made on the subject, 970 damages for which may be recovered under the name of demurrage

The vessel owner, having abandoned his lien on the cargo for demurrage, cannot maintain an action for damages against the shippers, 1031 who were merely agents

Upon what principles demurrage for the unnecessary detention of a vessel while 970 unloading should be computed

DEPOSITION".

A "justice" of a county court is, within Act Sept. 24, 1789, a "judge" of such court, and 700 competent to take testimony

The certificate of the magistrate to the deposition (Act Sept. 24, 1789) is competent 700 evidence to prove compliance with the statute in taking and certifying it

A magistrate acting under 3 Stat. 350, need not certify that the opposite party had no attorney within 100 miles of the place of 488 caption, in order to excuse a want of notice.

A deposition from the caption of which the name of one of the defendants is omitted 488 cannot be read in evidence

Descent and Distribution.

See "Parent and Child."

Domicile.

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

DOWER.

Construction of 1 Rev. Code Va. c. 107, § 10, declaring that if a wife willingly leave her 1226 husband, and go away and continue with the adulterer, she shall forfeit dower, etc

It will be considered a voluntary separation within 1 Rev. Code Va. c. 107, § 10, where the wife refuses to accompany her husband at his request, on the grounds of her parents' objection, and because of reports that he was married to another 1226

The English statute making adulterous elopement of the wife a bar to dower (13 Edw. I. c. 34) is not in force in Iowa, being inconsistent with the state legislation. 704

EJECTMENT.

See, also, "Adverse Possession"; "Real Property." In Oregon the defendant must set up in his answer the title relied upon to defeat the action 1084

Tenants who enter under other tenants, on whom notice has been served, will be subject to the judgment 686

Where a tenant has been improperly turned out of possession on a judgment in ejectment, a writ of restitution is the proper mode of redress 686

The judgment in ejectment does not suspend the operation of the statute of limitations 686

EMBARGO AND NONINTER-COURSE.

A registered vessel is within the prohibitions of Act Jan. 9, 1808, § 3, which was not repealed by Act March 1, 1809, § 19, or Act June 28, 1809, § 2 23

Return cargo was not affected with forfeiture under Act Jan. 9, 1808, § 3 23

Where the claimants set up a special defense against a forfeiture under the non-intercourse laws, the onus probandi lies on them 23

EQUITY.

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

A mistake which is nothing more than a misconception of the law is no ground for 186
quitable relief

Equity has no jurisdiction where the bill, in substance and effect, is nothing more than a 484
claim for damages for breach of contract

If a person most benefited by a sale of land make false statements as to material matters relating to value, and which, from being more within his private knowledge or from other 432
circumstances, were clearly relied on by the purchaser, the sale is void, whether the seller believe them to be true or not

A bill charging falsehood and fraud in a sale, and alleging exaggeration of the quantity of timber on the land, may contain enough to justify rescission for gross mistake in quantity, 432
without setting up the latter as a specific and separate cause; but it is better to plead such cause independently

Rescission of a sale is not precluded because the purchaser had an opportunity to examine the land, and one of his friends did examine it, if false representations of the vendor were 432
relied on as to details, and others hired by him united in statements and acts likely to mislead the examiner

It is no objection to a rescission that another remedy or a guaranty may exist against the person principally benefited by the sale, after 432
he has become insolvent, but not against the other parties; especially in case of fraud

In a suit for rescission, the person most benefited by the sale is to be suspected of 432
fraud, if a fraud were actually committed.

Where a daughter, immediately before marriage, conveyed land to her father, upon 341
his advice, in the belief that she would be

benefited thereby, and would receive the title on his decease, but his will proved ineffectual to transfer it, *Held*, that equity would direct a conveyance to her

A delay of two years after completion of an alleged fraudulent sale of land, and of one year after discovery of the fraud, *held* no bar to a suit for rescission 432

Where a bill is dismissed for want of equity, jurisdiction will not be retained to settle priorities or equities as between the defendants 589

ESCAPE.

It is not an escape in a jailer to allow prisoners confined for debt the liberty of all the apartments within the jail walls 1210

It is an escape in a jailer to make a prisoner a turnkey, and to trust him with the keys of both inner and outer doors, at all times 1210

The sheriff is accountable for an escape of the jailer where he is committed to his own jail, and no new keeper is appointed 1210

The Rhode Island statutes giving the liberty of the limits to prisoners, on giving bonds not to escape, etc., have not altered the common law 1210

In an action for an escape, the sheriff cannot take advantage of an irregularity in the process which does not render it void 849

The injury received by plaintiff on an escape of defendant on final process is measured by the amount of property possessed by defendant, not exceeding the sum named in the declaration 849

Where defendant is wholly without property, the sheriff is liable only to nominal damages 849

ESTOPPEL.

Where the vendor of mill property led the vendee to believe that certain machinery was on the premises, and induced him to contract 650 with such understanding, he is estopped to claim that it did not pass by the deed

EVIDENCE.

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

Judicial notice.

Federal courts will take judicial notice of the public acts of the states within which they sit 682

Presumptions: Burden of proof.

The presumption that one intends the necessary, natural, or legal consequences of his deliberate act may be either conclusive or disputable, depending on the nature of the act 385 and intent. When, by law, the consequences must necessarily follow, the presumption is ordinarily conclusive

Declarations and admissions.

Evidence of an acknowledgment by defendant of the note sued on *held* inadmissible, where there was a subscribing witness, and his testimony was not produced 478

Evidence of confessions, especially where it goes to the whole merits, is open to much objection 465

Documentary.

Records certified under the seals of state courts are admitted without other authentication in the circuit court of the District of Columbia, under an agreement of the bar 367

A promissory note, with interest, cannot be treated as a mere memorandum of an advance 465 for a purchase upon a copartnership account

That defendant has called upon plaintiff to produce an account does not give plaintiff a 488

right to read it in evidence, after defendant has refused to introduce it

Parol evidence.

A clear and unambiguous written contract cannot be varied by parol evidence 566

Where the recitals tend to show interests of third persons in the contract, evidence is admissible to show that such persons are principals, and the contract is admissible in evidence in an action between them 790

In the absence of fraud, a contract between the master and owners of a whaling ship cannot be varied by parol evidence 343

Where an assignment or sale of the time of service of a servant is in writing, parol evidence of a promise that the time of service was longer than the actual time is inadmissible 367

The officer before whom a deed was acknowledged will be allowed to explain whether an amount received at the time the deed was executed was a part of the consideration named therein 793

Weight and sufficiency.

An accomplice being a competent witness, it is not erroneous for the court to direct a jury to find a verdict upon his uncorroborated evidence, if they believe him 1235

Testimony of a party relative to his own conduct and knowledge is the best evidence, and the withholding of it awakens suspicion in regard to evidence less explicit and satisfactory 139

A claimant in admiralty who is present in court, and does not deny facts within his knowledge which are sworn to by the witnesses, confesses their truth 139

EXECUTION.

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

The clerk has no authority to issue an alias fi.
fa. under the same order on which the first 451
was issued

A plaintiff has no right to countermand a fi. 451
fa. after it has been executed

A writ of fi. fa. duly levied is a discharge
of the debt, unless, by actual sale of the
property, the value should appear to be 451
insufficient to discharge the debt. Until then
no new execution can issue

A fi. fa. issued by order of the president of
the Bank of Columbia, under section 14 of
its charter, bound the lands and goods of the 451
debtor from the time of its delivery to the
marshal, if it bound them at all

EXECUTORS AND ADMINISTRATORS.

The administrator d. b. n., and not the
distributees of the estate, is the personal 456
representative of the deceased

Setting aside an administrator's sale as
fraudulent, and charging him with the 456
appraised value of the goods, does not vest
title in him in his own right

Exemptions.

See "Bankruptcy"; "Homestead."

EXTRADITION.

State governors, in issuing warrants for the
arrest and surrender of an alleged fugitive, act
under the authority of the United States laws, 373
although the state may have legislated on the
subject

A state executive has no authority to cause
the arrest and surrender of a citizen, unless it 373
appears that the alleged crime was committed
in the state making the demand

If the affidavit on which the requisition and warrant are founded do not distinctly show that the prisoner committed any crime in the state making the requisition, or that he fled therefrom, he must be discharged 373

FALSE IMPRISONMENT.

See, also, "Malicious Prosecution."

An action for false imprisonment is an action of trespass, whether the imprisonment be charged under color of process or not 1073

Matters of aggravation may be proved without being stated in the declaration 1073

FIXTURES.

Franklin stoves fixed in the usual manner, with bricks and mortar, pass to the vendee of the house 560

FORFEITURE.

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

A libel in rem for a forfeiture under the customs laws must allege that the property has been seized by the collector. A plea of no forfeiture puts that allegation in issue 144

Correspondence between the collector, secretary of the treasury, and district attorney, and directions to the latter to file a libel, while the vessel is lying within the collector's district, do not constitute a seizure by him which will support a libel 144

Strong presumptive circumstances of fraud will outweigh positive testimony against it 23

FRAUDS, STATUTE OF.

A parol agreement to become copartners in the business of purchasing and selling lands and lumber is a parol contract respecting an interest in lands, and therefore void under the statute 465

No memorandum of the sale of lands is sufficient unless it state the price and material terms of the contract 421

An administrator acting as auctioneer at his own sale of land to pay debts is not an agent of the purchaser, so as to make his memorandum of the sale valid under the Rhode Island statute 421

FRAUDULENT CONVEYANCES.

See, also, "Bankruptcy."

A deed of personal property, to become void if the grantor on demand pay a certain sum to the grantee, is invalid as to creditors, unless accompanied by change of possession. This, although the deed be acknowledged and recorded under the statute. (Act Md. 1729, c. 8, §§ 5, 6.) 574

A blanket mortgage given by a banker to a firm of which he was a member, to secure present and future advances, *held* void as a fraud upon creditors, where he was insolvent at the time, with their knowledge, and its existence was concealed until he was on the brink of failure, and credit was obtained upon false representations as to his financial ability Where the possession of property does not accompany and follow the deed as provided by its terms, it is fraudulent and void as to creditors 1284 645

Sufficiency of evidence to sustain bill to set aside judgment on a note as collusive and without consideration 770

GARNISHMENT.

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

It is the right and duty of a garnishee in admiralty to put in an answer, which libellant has no right to contest 6

On the default of a garnishee in admiralty, execution does not go against him personally in the first instance, but only against the credits or effects of the principal in his hands 6
On the default of a garnishee in admiralty, the libellant may have compulsory process to obtain an answer. But if he needs no disclosure, and can show by affidavits that the garnishee has effects or credits in his hands, execution may issue against them without requiring an answer 6

After execution against effects or credits in the hands of a garnishee in admiralty, and a refusal by him to pay, he cannot then discharge himself by putting in an answer 6

After default by the garnishee the court has a discretion to allow him to answer upon terms 6

GRANT.

See, also, "Public Lands."

Under Act Pa. 1785, every survey made, and to be returned upon warrant, must be made by actually going upon the ground and marking the lines 568

The marks on the ground really constitute the survey and determine the rights of the parties, the plot returned to the land office being only evidence of the survey 568

A "chamber survey," if returned and accepted, is voidable only; and a new survey may be had on the same warrant, by order of resurvey 568

Warrants only authorize the survey of vacant lands. Whether lands are vacant the officers of survey do not determine; the applicant must judge for himself 568

Surveys made and returned into the land office in blocks are to be located on the ground in blocks 568

Notoriety will cure a defective description in an entry, and, in case of conflicting rights, will be sufficient, if such notoriety was established before the date of the conflicting entry 158

GUARDIAN AND WARD.

The domicile of the infant is always presumed to be that of its mother 963.

The place where its parents lived and died and its property remains is presumed to be the proper place for the appointment of a guardian 963

Temporary absence from the county does not affect the jurisdiction of the court to appoint a guardian 963

The court of common pleas in Ohio have the power to appoint guardians, and also guardians ad litem 963

The Rhode Island probate courts cannot appoint a guardian of a person on the ground that he is incapable of taking care of his estate, under the act of 1798, without notice to the party and an adjudication of the facts 459

A guardian appointed before the infant arrives at 14 years of age continues until the infant arrives at full age 708

A guardian appointed in two jurisdictions, who has given separate bonds, is not bound to account in one jurisdiction for moneys received in the other 708

A guardian may waive process, and enter his appearance for his wards 963

HABEAS CORPUS.

The federal courts have jurisdiction to discharge on habeas corpus a person wrongfully arrested by direction of a state executive for rendition to another state 373 1355

A return to a writ issued under the judiciary act of 1789, showing an imprisonment under 105

process legal and valid on its face, precludes further inquiry. But where the writ is issued under Act March 2, 1833, the court may inquire whether the imprisonment is in fact for an act done or omitted under the authority of the United States

A sheriff having a so-called "writ of habeas corpus" under the Ohio statute of 1856, and having knowledge that the prisoner is in custody of an officer of the United States under legal process, is under no obligation to attempt to serve the writ 105

A state judge has no jurisdiction to issue habeas corpus for a prisoner in the lawful custody of an officer of the United States. 105

A marshal should obey a writ of habeas corpus issued by a state court in good faith to a state officer, requiring the marshal to bring before the state court a prisoner in his charge, with the cause of detention, as he does not thereby part with the custody of the prisoner 105
A marshal having custody of a prisoner under authority of the United States is not bound to surrender him to a state officer having a writ issued under the Ohio statute of 1856 105

HOMESTEAD.

See, also, "Bankruptcy."

Laws Va. 1869-70, p. 198, allowing a waiver of the homestead exemption given.

by the state constitution, *held* valid 785

Property set apart as a homestead under the laws of Virginia cannot be alienated by a husband without joining his wife. (Code 1873, §§ 9, 11, 12.) 392

HUSBAND AND WIFE.

Prior to February 14, 1859, in Oregon, the husband became seised of a freehold estate in all the lands in which his wife had a state of 1107

inheritance during the coverture, which could
be taken on execution by his creditors
Const. Or. art. 18, § 10, concerning property
of married women, does not operate 1107
retroactively, so as to affect rights already
invested in the husband

What is the separate property of a wife under
such provision 1107

As to the validity of gifts by the husband to
the wife under Const. Or. art. 15. § 5. 1107

The right of the wife to a distributive share
of her husband's personal estate is absolute,
and she does not forfeit it by her conduct, 1226
however unworthy. (1 Rev. Code Va. c. 104.
§ 29.)

A wife having a separate estate in the hands
of a trustee may bind the same for payment 162
of her debts; and the court will appoint a
receiver to collect the rents and profits

A husband is not liable for goods delivered
to his wife on her credit after a separate 39
maintenance is allowed by him; but, from his
express promise to pay, the jury may infer that
the goods were delivered to her on his order

A wife engaging in trade, not in accordance
with the statute of the state, may avail herself 323
of her coverture to defeat the debt

INDICTMENT AND INFORMATION.

Sufficiency of indictment under Act July 7,
1838, c. 212. § 1, to restrain the circulation 1322
of small notes and currency in the District of
Columbia

Infancy.

See "Guardian and Ward."

INJUNCTION.

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

The right set up by a person as a citizen 939
of the United States to navigate navigable

waters, as an abstract right, is one which equity cannot protect from violation

Equity will not interfere to prevent a threatened wrong unless the danger be imminent, and the injury is irremediable in any other form 939

Where the joint interest of parties to a contract, in its subject-matter, has not yet commenced, the court will not enjoin acts of some of the parties, at the instance of others 349

Violation of a lawful contract may be enjoined, though it is of such a nature that specific performance cannot be enforced 220.

Violation of an existing lawful contract may be enjoined, although it is terminable at the option of one of the parties alone, unless this makes the whole contract inequitable 220

One having an exclusive license to sell patented machines, together with a contract by the corporation owning the patents to furnish him such machines at a specified price, may enjoin such corporation from undertaking a voluntary dissolution, and from assigning the patents in trust for another association 220

If an injunction is broader than was intended by the order under which it was issued. defendant, on being served therewith, should take immediate measures to set it aside, and not wait until the hearing of a motion for attachment for violation thereof 71

The fact that the chief engineer of a steamboat owned by a foreign corporation is a mere servant of the corporation, and subject to the master's orders, is no defense against an attachment for violating an injunction, served upon him in a suit against the corporation, to which he was made a party 71

Where an injunction restraining proceedings is served upon an attorney during the argument before the court, he will not be held guilty of a contempt in proceeding with the argument and handing up his papers, where he states to the court that he has been enjoined, and does nothing further. 830

A lease of a machine by defendant to one of the joint complainants or an assignee from him is not a violation of an injunction obtained by complainants prohibiting defendant from using such machine 618

INSOLVENCY.

See, also "Bankruptcy"; "Conflict of Laws."

A state insolvent law cannot discharge the obligation of any other contracts, made in the state than those which are made between the citizens of that state 1008

An attachment issued by the federal court under a state law adopted by congress in an action on a contract made with a citizen of another state is not dissolved by defendant's taking advantage of a subsequent insolvent law of the state 1008

Validity and effect of an order appointing a trustee to take possession of an insolvent's estate, made by a probate court pending an assignment for the benefit of creditors 846

Right of imprisoned debtor in Massachusetts to take the poor debtor's oath 722

An insolvent obtaining a warrant of discharge by fraud is not discharged 316

INSURANCE.

See, also, "Marine Insurance."

Under 2 Wag. St. Mo. p. 936, § 15, a policy payable to the wife of the insured is not void because the annual premium exceeds \$300, 610

but any excess recovered by her in an action thereon goes to the husband's estate

"Blacksmith and carriage maker's stock, manufactured and in process of manufacture," 973 embraces unmanufactured or raw stock

Where the application stipulates that the answers are fair and true, and that it shall be the basis of the contract, and any untrue or fraudulent answers shall avoid the policy, 195 such answers are declarations and representations, and the burden is on the company to show them false

The fact that insured was 14 years old and at home at the time of the death of certain members of his family does not prove that he knew the cause of death. 195

The insured is bound by untrue answers knowingly made, and the company may set them up in defense, though its agent had 888 knowledge of their untruth from other sources

A severe injury or a concussion of the brain from a fall on the head must be disclosed under the question, "Have you ever had any serious * * * personal injury?" 740

The exception in a policy insuring against injuries effected by "violent and accidental means" of certain causes named does not broaden the policy so as to include injuries not effected through violent and accidental. 810

A rupture effected by jumping from cars, or by running, where there was no question of peril and no stumbling, slipping, or falling, is not caused by "violent and accidental means" 810

A condition that the policy shall be void if the insured die by his own act or hand, 740 whether sane or insane, is valid

Defendant has the burden of showing that
deceased died by suicide 740

An assignment by a register in bankruptcy to
an assignee under the bankrupt law is within
the meaning of a clause in an insurance policy 1093
declaring the same void, if assigned without
the consent of the company. (Reversing 1091.)

The insured is not obliged to state his loss in
dollars and cents with arithmetical accuracy,
but must disclose the whole truth as nearly as 60
he can arrive at it by reasonable and honest
effort

Knowingly making up a false and exaggerated
statement of the amount and value of 60
property destroyed by fire forfeits all claim to
insurance

The failure of the company to object to proofs
of loss waives defects therein 973

A mutual insurance company cannot, by plea
in abatement, make the objection that, under 424
its charter, suit can only be brought at the
term of court succeeding the loss

A provision in a mutual policy that suit shall
only be brought at the term of court next 424
succeeding the loss does not apply to one
holding the policy as collateral security

The defenses of arson and of fraudulent
overvaluation must be made out by the 60
insurer by a satisfactory preponderance of
evidence

Acquittal of the insured on a criminal charge
of arson, in connection with the burning of 60
his property, is of no weight in a civil suit on
the policy

In a suit on an open policy, the actual value
must determine the amount of recovery 713

INTEREST.

Rule as to calculation of interest in the case
of partial payments 659

There is no difference as to the application
of the general rule for calculating interest to
debts legally carrying interest and of those 659
where interest is given in the name of
damages

Exchange should be calculated according to
the rate prevailing at the time of trial 659

INTERNAL REVENUE.

A brewery declared forfeited for fraudulent
manufacture of ale 394

The supervisor of internal revenue is entitled
to examine the books and papers belonging
to banks, bankers, brokers, and banking 1077
associations, and is not bound to inform the
owners of his purpose in making such
examination. (Act July 20, 1868, § 49.)

The statute giving such right is not
unconstitutional, either as purporting to
authorize an unreasonable seizure and search, 1077
or as compelling a party to testify against
himself

Where a summons for the production of
books has not been complied with, the 1077
district judge, upon application, may issue a
writ of attachment

Where a national bank refuses to pay taxes
assessed upon its income and profits (Act
July 14, 1870, §§ 15-17), a collector or his 1139
deputy, after notice and demand, may de-
strain therefor

Under the act of March 2, 1799. a certificate
of probable cause of seizure is no defense to
an action by the claimant against the seizing 426
officer, to recover the value of the property,
where it has not been returned

Jail and Jailer.

See "Escape"; "Principal and Surety"; "Sheriff."

JUDGE.

A circuit judge who was a creditor of a bankrupt, and proved his claim, and thereafter sold and assigned it, so as to have no further interest, *held* not disqualified from subsequently hearing a petition of review by a creditor, under section 2, Act 1867 145

JUDGMENT.

Validity.

Every presumption is in favor of the proceedings of a court having a general jurisdiction 963

A decree rendered by a court of competent jurisdiction cannot be collaterally impeached 625

A supersedeas judgment is absolutely void under Act Md. 1791, c. 67. unless acknowledged by the original defendant and two sureties 602

The record of a judgment will not be excluded from evidence for a misnomer, where the party appeared by the wrong name, and made no objection thereto 1336

Rendition and entry.

Judgment by motion, on notice, cannot be obtained on a bond given to secure rent upon an attachment, on a suggestion that the tenant is about to remove 1357

Operation and effect—Lien.

At common law, a judgment created no lien on real estate; but as the land was liable to satisfy the judgment, under the *elegit*, this created a lien 40

The jurisdiction of the circuit court of the United States for the district of Indiana being coextensive with the limits of the state, the lien of its judgments extends to all lands of the debtor in the state 40

Act Ind. 1831, limiting judgments of the state supreme court to the counties in which they shall be entered, being passed after the act of congress of 1828 adopting the execution laws of the several states, can have no effect upon judgments of the federal courts 40

Lands in Indiana may be sold under a judgment of the federal circuit court notwithstanding a prior levy under a subsequent judgment of a state court 40

Res judicata.

The criterion by which to decide whether two suits are for the same cause of action is whether the evidence properly admissible in the one will support the other 1166

No rights are affected by a recovery except those of the parties to the record, and those claiming through them, or purchasers pendente lite 753

The principle of res judicata does not apply where there is not an identity in the cause of action, or the character of the persons for or against whom the claim is made 691

A suit upon a ground of relief abandoned in a prior suit is barred by the final determination in such suit adversely to complainant 1113

Where complainant is compelled to elect between two grounds of action, a final decree against him on the elected ground of action will not bar a second action upon the ground withdrawn 1116

Where two lots are held under two distinct chains of title, a decree against one of such titles in a suit relating to one of the lots will not estop the party from setting up the other title in a suit relating to the other lot 1131

A party is not bound in an action relating to one lot to litigate his title to another and 1131

different lot, even though the title to both be the same

Where a tax sale is assumed to be valid, and the decision is only as to the estate conveyed, the question of the validity of the tax sale is not res judicata as to a person not a party to the record 691

Relief against: Opening: Vacating.

A judgment void for want of jurisdiction may be vacated on motion after the expiration of the term 48

A judgment entered under a power of attorney, before the obligation became due, will not be set aside on motion 559

Actions on judgments.

Equity will not lend its aid to enforce a judgment at law obtained on a prize ticket in a lottery, drawn by mistake in a place not authorized by law 482

Nil debet is not a good plea to an action of debt in the District of Columbia on a judgment of a Kentucky court. But defendant may, by leave of court, withdraw it, and plead nul tiel record, upon terms 15

A release of a judgment which has been subsequently revived by sci. fa. cannot be pleaded in an action brought on the revived judgment 739

JUDICIAL SALES.

A purchaser at a chancery sale of lands becomes a party to the suit, and is subject to the orders of the court 421

A sale under the direction of a court of chancery is not final until a report is made to and confirmed by the court 421

The purchasers of property under a decree in admiralty take subject to the power of the 874

court to vacate the sale, when such action is necessary to promote the ends of justice
A sale will be set aside for fraud of the purchaser, or of the officer who conducted it, or for fraudulent negligence or misconduct in any other person connected with it. 874

A sale in admiralty was set aside where there was a combination between the persons in possession of the vessel and libelant, and the price was grossly inadequate, and petitioner was allowed to intervene and defend 874

JURY.

When, by pleading or by special verdict or demurrer to evidence, the law is separated from the fact, the jury have no right to decide the law 1322

If the verdict be below the jurisdiction of the court, the jurors are not entitled to their fees 299

JUSTICES OF THE PEACE.

On a jury trial, under the act of March 1, 1823, extending the jurisdiction of justices of the peace, the justice is not bound to sign a bill of exceptions, as no writ of error or appeal lies in such case 478

LANDLORD AND TENANT.

Receipt by the lessor of rent from an undertenant of part of the premises is no evidence of consent to an abandonment by the lessee for want of repairs 315

A lessee cannot abandon for want of repairs if he has underlet part of the premises for a term not yet expired 315

LIBEL AND SLANDER.

A critical article, in which the words "swindler," "humbug," and "fraud" are applied to the author of a work of art, is libelous per se 934

The words, "He is a lying, slanderous rascal,"
are libelous; and that plaintiff stated what was
not true is no justification, unless plaintiff
acted maliciously 739

Honesty of motive is not a sufficient defense
for the making of false specific charges against
plaintiff by a public journal 689

The owner and editor of a journal are liable
for a libelous article published therein,
whether they had personal knowledge of the
publication or not 934

A plea or pleas in justification must be as
broad as the libel, and answer every material
part of the declaration 689

An allegation that plaintiff, in order to avoid
arrest for participation in an offense, feigned
insanity, and took refuge in a lunatic asylum,
is a material part of a libel 689

A plea of not guilty puts in issue the question
whether the proof supports the innuendoes 689

Evidence which would amount to justification
is admissible, though justification is not
pleaded; but in such case it can only go to
reduce damages 934

Where a libelous writing is actuated by
general malice, exemplary damages may be
awarded, though defendant has no personal
acquaintance with plaintiff 934

LIENS.

See, also, "Admiralty"; "Affreightment";
"Bankruptcy"; "Maritime Liens"; "Mechanics'
Liens"; "Shipping." 1358

LIMITATION" OF ACTIONS.

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

The object of statutes of limitation is to
suppress fraudulent and stale claims set up at
great distances of time, when all the proper 978

vouchers and evidence are lost, or the facts have become obscured from the lapse of time or other causes

Retrospective limitation laws which do not deprive parties of a reasonable time for prosecuting their claims before being barred are not unconstitutional 756

An attorney at law cannot avail himself of the statute as to moneys collected for his client, until demand, directions to remit, or some equivalent act 712

Act Kan. Feb. 10, 1859, limiting to two years actions on contracts made and judgments rendered out of the state, does not begin to run in favor of a person who was not a resident when it was passed, until he comes into the state 779

After a claim has been once barred under such act, defendant's liability is not revived by its repeal 779

Twenty years' continuous, adverse possession of real estate in Oregon bars an action to recover possession; but the burden of proof is on the party alleging such possession 45

A contract between shipowners and a shipper to receive half profits in lieu of freight is not a case of merchant's accounts, within the exception of the statute 978

A statute of limitations bars the remedy, but does not extinguish the debt, and a mortgage may be foreclosed after a note which it is given to secure is barred 881

Where the statute of limitations has run against a judgment, it may be pleaded to a sci. fa. to revive the judgment 173

After office judgment the court will not receive plea of the statute of limitations 662

A plea of the statute filed with a general answer to a bill in equity must contain averments negating the special matter stated in the bill which would avoid the operation of the statute. It is not sufficient that such matters are negated in the answer 1183

LOST INSTRUMENTS.

Where a will, after contestation and pro bate, has been mislaid, a copy may be read in a real action for a part of the land devised 920

MALICIOUS PROSECUTION.

A person who institutes bankruptcy proceedings when he is not a creditor, and no act of bankruptcy has been committed, is liable to an action 798

Want of probable cause for instituting bankruptcy proceedings is evidence of malice sufficient to sustain the action and to permit a recovery of actual damages, but exemplary damages are recoverable only where actual malice is shown 798

MANDAMUS.

See, also, "Municipal Corporations."

Mandamus will not lie from a circuit to a district court, requiring it to expunge amendments improperly made in the record returned to the circuit court on error 575

A mandamus will issue to compel the levy and collection of a tax to pay a judgment recovered on coupons of county bonds issued under a law providing for the levy and collection of a tax for their payment, notwithstanding an existing injunction restraining such tax, granted in a suit to which plaintiffs were not parties 68

MARINE INSURANCE.

One for whom a vessel was built, and who had entire possession and a bond for 156

conveyance on payment of a specified sum, *held* to have had an insurable interest in the freight, and to be truly represented as owner, although the register was in the builder's name

The stipulation in a policy as to the place where proof is to be made in support of the warranty of neutrality is not affected by the sentence of a foreign court 923

Instructions to the master of a vessel which violate the English admiralty rules, although such rules are against the law of nations, must be communicated to the underwriter 923

The conduct of the master in not delivering a letter of instructions when captured, though imprudent, *Held*, would not prevent a recovery by the insured 923

A warranty against illicit or prohibited trading refers to the municipal laws of the country where the trade is to be carried on, which laws foreigners going there are bound to know and observe 508

Such warranty amounts to a stipulation that the trade shall be lawful so as to protect the insured property, and shall not become unlawful by the misconduct or neglect of the insured 509

That a vessel seized in foreign waters on the ground of illicit trade was seized before she arrived at her desination, and before she had opportunity to actually engage in trade, does not show that a warranty against illicit or prohibited trade was not broken 509

A policy on a vessel for a voyage to a certain port and 24 hours after anchoring in safety is not terminated by lying at anchor at the anchorage ground outside the harbor, and there, according to custom, partially 174

discharging into lighters, in order to pass the bar

Upon an open policy from St. Thomas to Havana, *Held*, that it was unnecessary to disclose the fact that the ship had sailed from Alexandria to Buenos Ayres, and thence to St. Thomas 150

Where a ship and freight were insured from New York to Cape Francois or other ports named, but the ship was prevented from entering any of the ports named, and was carried to Kingston, by one of the blockading squadron, *Held*, that the voyage was completely broken up, and the insured had a right to abandon 165

Where freight is insured, the owner of the ship may abandon on the same principles, although he is also owner of the cargo 165

Where a vessel is captured, the voyage broken up, and the cargo abandoned to the underwriters, but its proceeds are invested by the supercargo in another cargo, the underwriters are entitled to the profit thereon, if any is made 166

The underwriters of a vessel on an outward voyage, which is broken up, are not entitled to freight earned on her return voyage 166

Upon an open policy from St. Thomas to Havana, it is no objection to a recovery of the freight that the vessel had been chartered at Buenos Ayres (then in revolt against Spain) by Danish subjects resident at St. Thomas, for a voyage from Buenos Ayres to Havana, with leave to stop at St. Thomas, where she did stop, change her papers, and take a new bill of lading, without unlading the cargo 150

MARITIME LIENS.

See, also, "Admiralty"; "Affreightment";

“Bottomry and Respondentia”; “Charter Parties”;
“Demurrage”; “Salvage”; “Seamen”; “Shipping.”.

The right to a lien.

A maritime lien arises on a loan of money to
the master in a foreign port to pay overdue 818
seamen’s wages

Money loaned in a case of actual necessity in
a foreign port gives rise to a lien, though the 818
master in fact applied a portion of it to pay
claims which constituted no lien

A ship carpenter has no lien for repairs, after
the vessel is out of his possession, if the 42
contract was made on land and the owners
reside in the place

By the maritime law, one selling materials to a
mechanic whom he knows to have contracted 526
to make repairs for a stipulated sum, and to
whom he gives credit, has no lien

A person employed to build a vessel with a
new hull, on which materials of an old boat 648
are used, has no lien thereon for his wages

A lien for supplies will not follow portions
of a vessel which have been used in the 1019
construction of a new vessel

A ship carpenter employed on a steamboat,
who deposits for safe-keeping money and 648
other valuables with the captain, has no lien
upon the boat therefor

Priority and enforcement.

Act July 29, 1850, requiring the recording of
conveyances, etc., of vessels, does not give any
force or validity to a domestic mortgage which it
has not at the place of.

its execution 1025

Liens for supplies and repairs under Act Pa. 1019,
April 20, 1858, take precedence of a mortgage 1025
recorded under Act Cong. July 29, 1850.

It seems that no claim would be valid as against a mortgage duly recorded under Act July 29, 1850, except a bottomry lien 306

Salvage services are entitled to priority of payment as against a claim for general average arising from the jettison of a portion of the cargo 888

The priority of the claim is not affected by the fact that a third person promised to pay the salvor if he could not collect from the vessel 888

A lienholder who receives a note for his claim cannot institute proceedings against a vessel until the maturity of the note, but may intervene before such maturity in proceedings instituted by others. 1019, 1025

A purchaser of a vessel under execution from a state court has no rights as against a decree in admiralty enforcing a maritime lien. If he purchased in a proceeding to enforce his own claim, the amount which he bid must be applied on his debt, and the balance may be proved as a claim 306

Waiver: Discharge: Extinguishment.

A maritime lien is waived by obtaining judgment on the claim by proceeding in a state court 1082

A maritime lien is not lost by an attachment of the vessel in a state court, where the action is voluntarily discontinued before filing the libel in admiralty 818

A maritime lien is not waived by taking drafts on the owner where the credit of the vessel was expressly relied on, and libelant offers to surrender the drafts at the trial 818

Liens under state laws.

It seems that a state legislature, by declaring a claim to be a lien, cannot override a mortgage duly recorded under the federal statutes 306

Act Mass. 1848, c. 290, does not give a lien
for materials sold to one contracting with the
owner of a vessel to make repairs, where the
vendor has notice of such contract 526

The purpose of this statute was to create liens
on domestic vessels for repairs, supplies, etc.,
to the same extent as the lien given by the
maritime law on foreign vessels 526

A debt of less than \$50, which, by the
accumulation of interest, exceeds such sum,
does not create a lien under 2 Rev. St. N. Y. 1250
493, which gives a lien for a debt amounting
to \$50 or upward

In the case of daily supplies to a boat, the lien
specification must be filed within 10 days of 917
each delivery, under the New York statute

Under Act Pa. April 20, 1858, the acceptance
of notes, etc., for an existing demand which
would entitle the party to a lien upon the 1019,
vessel, will not work a satisfaction or 1025
extinguishment thereof.

Nor is the lien released by the fact that
the note includes another demand, or by the 1019
giving of a renewal note

To maintain a lien for insurance under such
act, the insurer must hold a note or other
acknowledgment of indebtedness given for 1019
the premium totally disconnected from all
other transactions

A right of action in rem by a material man for
supplies furnished a vessel in her home port,
which is lost by neglect to prosecute within 1250
the time limited by the local statute, may still
be enforced against the surplus proceeds of
the vessel in court

The right to proceed against such surplus 1250
proceeds holds good where a party has a right

to proceed in admiralty in personam, though not in rem

MARSHAL.

A marshal having a person in custody under lawful process may use such force as is necessary to keep him in custody, and in doing so is not guilty of any crime against the state law 105

MASTER AND SERVANT.

See, also, "Apprentice."

In an action for enticing plaintiff's slave from his services, knowing him to be the plaintiff's slave, the scienter must be proved 1042

MILITIA.

An alien is not liable to militia duty 317

Clerks employed in the several departments of government are not liable to militia duty 371

In trespass against the marshal for levying a distress for a militia fine, he need only show in justification that the military court had jurisdiction, and that it was regularly constituted and imposed the fine 317

MORTGAGES.

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

Owners of the equity of redemption are entitled to possession until foreclosure 807

The fact that a note is barred by the statute of limitations will not estop the holder of a mortgage securing it from foreclosing his lien 881

MUNICIPAL CORPORATIONS.

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

Charter authority to make by-laws for the suppression of vice and immorality, and to do all things necessary for the well-being and good police of the town, carries no power to provide for punishing crimes punishable by the general laws 372

Where railway aid bonds are issued under statutory authority, and a contract by the city to appropriate money for the interest thereon is ratified by the legislature, this makes it the duty of the city to levy a tax therefor 57

Where there is a constitutional limitation of the power of taxation, the city must exhaust its power of taxation to pay interest on its bonds, if necessary, after first providing for current expenses 57

In such case all bondholders of the city are entitled to share pro rata in the general fund raised by taxation, after payment of current expenses 57

It is not competent for the legislature, after ratifying a contract by a city to appropriate sufficient money to pay interest on a certain issue of bonds, to direct that the entire taxing power of the city, as limited by the constitution, be exhausted to pay the holders of other bonds, who have no specific claim on the fund raised by taxation 57

It is no defense to a mandamus to compel a levy to pay a judgment for interest due on bonds that the levy of a tax to pay arrears on earlier bonds would exhaust the taxing power, where there is no expressed intention of levying such tax 57

The power of grading and regrading the streets of Washington, D. C., is a continuing power 709

The corporation of Washington, D. C., has power to regrade the streets under its charter without making compensation for individual injuries 698

NAME.

A judgment against "James R." held admissible in evidence against "Joseph R." 1336

on proof that notice of the suit was given the latter and that he attended the taking of depositions therein

NAVIGABLE WATERS.

See, also, "Bridges"; "Constitutional Law."

The provisions of the ordinance of 1787 that the navigable waters of the Northwest Territory should be common highways, and forever free, do not prohibit the legislature of Ohio from improving the navigation of the rivers in the state, and charging toll for increased facilities 939

The Ohio legislature has a right to charter a canal company, which may obstruct the navigation of the Maumee river by a dam, though the ordinance of 1787 declared that the navigable waters of the Northwest Territory should be "common highways, and forever free." 939

An obstruction, such as natural falls, etc., does not destroy the character of the river above them, if it be navigable 939

A telegraph company which lays a cable across a navigable river is liable for all damages caused by its catching in the screw of a propeller, where the vessel acted with reasonable skill after she became entangled 1301

NEGLIGENCE.

The failure to equip railroad cars with air brakes by which a train might have been stopped in time to avoid running over a child trespassing on the track is not the proximate cause of an injury to such child 1242

Where the question of negligence is one of law rather than fact, it will not be submitted to the jury 242

NEUTRALITY LAWS.

A French armed vessel, duly commissioned,
but fitted out in our country, may bring in and
carry away her prizes, without being subject
to the jurisdiction of our courts 1056

NEW TRIAL.

An error in awarding damages beyond the
amount laid in the writ cannot be corrected
by a remittitur, but a new trial should be
granted 1030

An error in awarding excessive damages
cannot be remedied by remitting the amount
of the excess, where it appears that the jury
was influenced by prejudice or by reckless
disregard of the instructions of the court 1030

A new trial will not be granted because the
jury, by mistake, took out with them plaintiff's
account, where the same was withdrawn a
few minutes afterwards 163

A new trial will be granted on the ground
of surprise in the testimony of witnesses,
who made different representations before
the trial, only where the evidence to be
produced on another trial is such as will
probably secure a different result 1245

Leave to reargue a motion for a new trial
cannot be granted after a judgment has been
rendered and paid and satisfied 617

NUISANCE.

An individual cannot prosecute in his own
name for a nuisance unless the act
complained of be a private nuisance to
himself 939

OFFICE AND OFFICER.

In a declaration on a marshal's bond, it is
not necessary to aver that the penalty has not
been paid. The usual averment of the breach
of the condition is sufficient 923

PARDON.

A grant of "a full and unconditional pardon," where the offense has been recited in the preamble, is not a general pardon, and is valid A pardon is effectual so long as any of the legal consequences of a conviction remain, though the term of imprisonment has expired A pardon reciting a conviction at the June term, 1850, of the offense of counterfeiting, and a sentence to imprisonment for the term of one year, is inapplicable to a conviction at the May term, 1850, for both counterfeiting and uttering counterfeit coin, where the sentence was both fine and imprisonment

PARENT AND CHILD.

See, also, "Guardian and Ward."

The presumption of legitimacy in case of a child born in lawful wedlock is repelled by evidence which places the nonaccess of the husband beyond all reasonable doubt. It is not necessary to prove that nonaccess was impossible

The unsworn declarations of the mother and putative father are inadmissible to prove illegitimacy in the case of a child born in lawful wedlock

The general report of the neighborhood is admissible on the question of legitimacy of a child born in lawful wedlock

Sufficiency of evidence to repel the presumption of legitimacy where the woman was pregnant when she was married

A parent may maintain a libel in admiralty for the wrongful abduction of his minor child, and carrying him beyond the sea, where there had not been an abandonment of all care of the child

In trespass for taking away plaintiff's son per quod servitium amisit, plaintiff must either

1226

1226

1226

1226

1361

1204

788

prove actual force or knowledge by defendant
that the boy was under age

PARTIES.

An order by the assured directing the insurer
to pay the amount of a loss to a certain person
makes him an assignee of the cause of action
and the real party in interest 973

In a suit to recover freight under a bill of
lading, the goods shipped and the claim-ants
thereof may be joined in one libel 203

Relief will not be granted in equity where
the decree, because of the absence of parties
beyond the jurisdiction of the court, would
not bar a future suit as to the parties in court 1246

An outstanding interest in a person without
the jurisdiction of the court will not prevent
a decree upon the merits, where the case may
be completely decided between the litigant
parties or without them 753

Jurisdiction in actions of foreclosure in the
case of absent mortgagors, under the
Minnesota statutes 625

Only those defendants who are improperly
joined can take advantage of an objection for
misjoinder of parties 891

A party seeking to defend in a proceeding
in rem in admiralty must file a claim to the
property libeled, which must state the facts in
a direct issuable form 871

PARTNERSHIP.

See, also, "Bankruptcy."

Evidence tending to show some sort of joint
interest in certain purchases of lumber lands
held not sufficiently definite and satisfactory
to establish a general copartnership in land
and lumber speculations 465

A contract in writing by one partner in his
own name does not bind the other, though 566

the money obtained by it comes into the joint concern

A partnership is not entitled to retain towards the payment of its debt the surplus arising from the securities held by one partner for his debt 860

Notice of dissolution, which will discharge a retiring partner, may be by express notice (by circular or otherwise), or by publication in a newspaper of general circulation 56

Notice of dissolution by newspaper publication is evidence for the jury, under all the circumstances, on the question of notice to persons previously dealing with the firm, and is conclusive of notice to all others 56

PATENTS.

Nature of the grant.

Patents are not monopolies, because a monopoly gives to one person or class what was common before, whereas a patent brings out from the realm of mind something that did not exist before, and gives it to the country 207

Commissioner of patents.

A patent signed by the secretary of state, and countersigned under the seal of the patent office, by the chief clerk of that office, as "acting commissioner," during the absence of the commissioner, is valid 597

The commissioner cannot collaterally re view and reverse a decision of his predecessor 168

Patentability.

An abstract or isolated principle is not patentable, but the new idea must be embodied in working machinery adapted to practical use. 67, 511

An inventor is entitled to a patent only when speculation and experiment have resulted in a new and useful contrivance or machine 330

An exclusive right to a motive power by electricity or steam can only be secured by patenting the instrumentality or mechanism producing the result 533

There is no invention in applying an old fabric to a new use 529

The word "Art," in the patent acts, means a useful art or manufacture, which is beneficial, and which is described with exactness in its mode of operation 511

Where a new or improved manufacture is produced by new contrivances, the usual test of invention is whether the production of the article is as good in quality at a cheaper rate, or better in quality at the same rate, or with both these results Combined 395

That a combination appears simple, and the invention not very great, is not a sufficient objection to its patentability, if it be not frivolous and foolish 395

There is sufficient utility to support a patent where the invention possesses peculiar advantages, not found in prior devices of a generally similar character 155

The fact of use by defendant is evidence of utility 174

That defendant prefers to use the patented mechanism instead of other mechanism which would accomplish his purpose without infringing is sufficient evidence of utility 553

Uncertainty as to the principle of a machine, as well as imperfect organization and imperfect power, held to prevent it from being an anticipation 543

Mere experiments by different inventors, however numerous, do not anticipate, if never perfected or brought into use 207

An anticipation remote in date must be established by more than a mere preponderance of evidence 543

Unsuccessful and abandoned experiments by others do not prevent an inventor subsequently producing a successful machine from obtaining a patent 330

A mere abstract knowledge by others of the preparation of a compound, or of the properties of its ingredients and their effect upon each other, will not defeat the patent, unless there was an actual prior use 1280

A prior discovery and practical use, however limited, will defeat a patent unless such use was secret, and confined to the knowledge of the discoverer alone 1280

The fact that the prior use was not that contemplated by the patentee is immaterial 1280

Prior use of substantially the patented combination, sufficiently to illustrate and test its complete efficiency, is an anticipation, and not an abandoned experiment, though such use was quickly discontinued 26

Where the result of a new organization is considerable and useful, and the new article has superseded the old ones in the market, and can be manufactured with less expense, held sufficiently new to support a patent 1054

The use of a working model for two or three hours by way of experiment is not a reduction of an invention to practical use 1035

A machine which, if used after the patent issued, would not be considered an infringement, cannot be invoked to destroy the patent if used before such time 1033

A rod is a known equivalent of an endless chain in machinery where it can be used for the same purpose and effect 851
1362

The principle in a machine is that which applies, modifies, or combines mechanical powers to produce a certain result 619

The novelty required by the patent law is wanting where the superiority is obtained by the application of known means, in a known way, to produce a known result 612

Who may obtain patent.

A patent will issue only to the first original inventor 851

The first discoverer of a mode of combining elements and means previously known into one organized machine, to accomplish the end desired, is the original inventor of such machine 330

The one who first invents and perfects the invention by producing a practical working machine is entitled to a patent, though another may have first conceived the general idea, and made some progress in its development 629

A person who furnishes the ideas to produce the result is entitled to avail himself of the mechanical skill of others to carry out his contrivance in practice 878

Suggestions made to a person who has conceived the idea of his invention, while he is in the process of developing it, will not affect his right to a patent 896

One who receives a suggestion of a machine from another, and promptly reduces it to practical use, is not an inventor, and will acquire no rights by the laches of the original inventor in perfecting his invention 1182

Where the first inventor has made his invention known by verbal description, so that a person skilled in the art would be able to apply it. his right will be preserved if he uses" reasonable diligence in applying for a patent 1281

A naturalized subject of Great Britain who subsequently takes up his residence in Canada, is entitled to take out letters patent there 1035

Prior public use or sale.

Public use and sale, with the inventor's consent, for more than two years before application, make the patent invalid, whatever hindrances or misfortunes delayed the application 236

Knowledge or prior use by another less than two years before the application does not affect the original inventor's rights 101

An application cannot be invalidated by anything short of the voluntary act of the applicant. The positive refusal of the office to act further upon an application, after rejecting several amendments, and the consequent filing of a new application, with which the same model is used, is not an abandonment, so as to make the placing of the invention on sale pending the first application a prior use 196

Where a second perfected application is made within a reasonable time after the rejection of the first application, the two applications will be considered as a continuous proceeding 629

Where the application is returned for in formality, but is followed up with reasonable diligence, the right of the patentee will not be defeated by a sale of machine after the application, and before the patent is granted 878

The question of identity is for the jury under instructions as to what, in law, constitutes substantial identity 500

Prior description or foreign patent.

It is immaterial whether machines described in printed works were ever practically put in use or not 560

A patent is not invalidated by the fact that the invention claimed in it is described, but not claimed, in another patent granted pending the application 196

Abandonment: Laches.

The right to a patent is barred by concealment of an invention for more than two years 903

Entirely discontinuing the use of an anticipating device leaves the invention open to the public, and no subsequent inventor can patent it 26

A delay of four years before applying for a patent held not an abandonment, where the inventor was in straitened circumstances, and there was no acquiescence in the acts of intervening inventors 958

A delay of over five years in applying for a patent without any excuse except financial inability will bar the right, where a patent has in the meantime issued to another independent inventor, with the applicant's knowledge 903

Putting a number of cooking stoves out for trial in several families, for experiment and improvement, held not an abandonment 1043

Manufacture and sale by the inventor through several years, and the use of the machine by his allowance over six years more before the application, held not an experimental use 236

Application and issue: Interference.

The description and claims of an application are open to amendment, and the addition of new matter shown in the drawings and model, 196 until the case is finally disposed of by the patent office

One who has withdrawn a rejected application may renew it in a reasonable time 168 on returning the fee

The reasonable time within which a rejected application may be renewed is to be computed from the date of the withdrawal of the application, and not from the date of perfecting the invention. Under Act March 3, 1839, 87, the renewal must not be delayed more than two years 168

Failure to renew a rejected and withdrawn application within the reasonable time allowed will not be relieved against by the court because the applicant was misled by contradictory decisions and practice of the patent office 168

The rule providing that in contested cases no evidence shall be considered at the hearing which was not taken and filed in compliance with the rules does not prevent the commissioner from examining an informal deposition, to ascertain the character of the evidence; and, if he deems that the ends of justice require it. He can postpone the hearing until the informalities are corrected 548

Where both parties to an interference are mere applicants lapse of time is immaterial, except on the question of abandonment of the invention 1281

The respective merits of the machines will not be considered on a claim of the first invention on a hearing of an interference between two parties 831

On deciding an interference between an application and a patent, the nature and extent of the patentee's invention is not necessarily to be ascertained from his specification and claim alone, but parol evidence is admissible 1303

The issuance of the patent establishes prima facie in an interference case the patentee's title as an original inventor 903

Proof that at a particular time the inventor made drawings of his invention is sufficient evidence of reduction to practice 1303

The commissioner is not required to submit to an exhibition of experiments at the discretion of the applicant 913

The rule requiring a party to examine all his witnesses in chief before closing his opening examination does not apply in an interference case 902

An applicant cannot be prejudiced by failure of the officers of the patent office to give information of his application to a person who makes inquiry there in regard to it 878

Appeal from commissioner's decision.

Under Act March 2, 1861, in a pending cause, it was not necessary to appeal first to the examiner in chief, and then to the commissioner, before appealing to the circuit court 737

The power to make regulations for the taking of testimony in contested cases is expressly conferred on the commissioner (Act March 3, 1839, § 12), and is not subject to control or revision on appeal 902

The court can only review the conclusions of the commissioner, and not the processes by which such conclusions may have been attained 913

The action of the commissioner under the statutory requirement that he shall give the applicant such reasons and suggestions as will enable him to judge of the expediency of abandoning or modifying his application is not subject to review on appeal 913

An objection to the sufficiency of notice of taking depositions cannot be insisted upon, on appeal to the judge, if not made before the commissioner 548

Remedy by bill in equity.

A bill filed under Rev. St. § 4915, is an original, and not an appellate, proceeding; and it is proper to take the testimony before an examiner 1015

In such proceeding the petitioner cannot be confined to matters existing of record in the patent office, or in the supreme court of the District of Columbia 1015

The practice in such proceeding is governed by the equity rules, and the court will receive all legal proceedings theretofore had, as well as new testimony 1175

Repeal of patent.

Upon a trial under the general issue in a suit to repeal a patent, plaintiff has the burden of showing that the patent was obtained surreptitiously, or upon false suggestion 1175

The proceedings under Act Feb. 21, 1793, c. 11, § 10, are in the nature of a scire facias at common law to repeal a patent; and, upon a judgment rendered on such a suit, error lies to the circuit court 1175

Validity.

Where the invention is of a combination of old elements, but the patent claims the invention of the constituent elements, it is void. 1043, 1046

The inclusion by accident or mistake of something not new does not invalidate the patent as to that actually invented by the patentee.

Knowledge by an applicant for a reissue that he was not the first inventor of an invention covered by any of his claims invalidates his patent

The scope of the patent is fixed by what was known at the date of the completed invention, and not by what was known at the time when the application was made

The drawings are a part of the description of the thing patented, and are to be considered in connection with the specifications

Specifications which show the parts patented, and so clearly describe their structure as to enable a person possessing ordinary skill to construct such an article, are sufficiently certain

The specifications will be held sufficiently definite if, when taken in connection with the model and drawings filed, the invention has been communicated to the public, so that a skillful workman would be able to carry it into execution

Mistake in describing the action of some part will not invalidate the patent if, from the whole specifications and drawings, one skilled in the art could still construct the machine

Extent of claim.

The claim must be construed liberally in favor of the patentee, and in connection with the specifications and accompanying drawings, and in view of the state of the art at the time it is made

A claim which makes proper reference to the specification will not be construed as covering

a result, but as covering the means by which it is attained

The title or description given to the invention in the patent is not expected to be specific, but only to indicate the nature and design of the invention 94

Reissue: Disclaimer.

The administrator of a deceased patentee is the only party having a right to obtain a reissue, and such right is not affected by the fact that he has previously granted exclusive rights under the patent for certain territory 597

The amendments in a reissue inure to the benefit of grantees under the original of exclusive rights, for particular localities 597

A reissue will be granted where the specifications are defective 619

Under Act 1836, § 13, the commissioner can grant an amended patent only where the error in the original arose through inadvertency, accident, or mistake, and without any fraudulent or deceptive intent. On this question his judgment is generally regarded as conclusive 330

A renewed patent must be for the same invention as that described in the original 330

Where the specifications show, as matter of law, that the reissue is for a different invention, it is void 82

Neither the substitution of a mechanical equivalent, nor the more perfect adjustment of the parts of the combination, will invalidate a reissue if no new invention or improvement, patentable as such, is introduced 330

A patent with corrected specifications relates back to the issue of the first patent 1046

Duration.

Under the act of 1836, a domestic patent obtained for an invention which the patentee has already patented abroad must be limited to 14 years from the date of the foreign patent; and, if issued for 14 years from its date, it is void 533

Assignment.

Where a patent is declared void for defective specifications, and a patent with corrected specifications is issued, a contract to sell the right is enforceable 1046

The owner of a patent right may sue on the patent in a federal court in Pennsylvania, though he derived his right from a foreign administrator, who has never taken out letters in Pennsylvania 597

Licenses.

Construction of license of right to use Morse's patents on telegraph lines 652

A grant of the right to use a patented machine or any number of said machines in a certain place held to convey the right to make machines, or procure them to be made for such use 1168

Under a license to use a patented machine in a certain place, and not elsewhere, and to have the privilege of using additional machines in such place, held, that the licensee was entitled, as against an assignee of the patent, to use the single machine, and to repair and rebuild it, but had forfeited his right to the additional machines by using infringing machines 1160

The licensee does not forfeit his right to the single machine by permitting it to be used by another person, but is liable for the profits arising therefrom, and the damages thereby sustained by the assignee 1160

Infringement—What constitutes.

Parts of a patented article, which were in
general use prior to the patent, may be used 487
in other inventions without infringement

There is no infringement in using what the
public had free opportunity to use before the 560
patent, whether the character or capacities
thereof were generally understood or not

Where a second invention is an improvement
on the first, which it includes, neither owner 1133
can lawfully use the invention of the other
without his consent

In determining infringement, the mere form of
defendant's machine should be disregarded,
and the substance of its arrangement and 67
method of working looked into, to see if the
patentee's ideas are incorporated in it

When the instrumentalities described are
used, by equivalent devices, operating in the 543
same general way. for the same end, the
patent is infringed

To be an infringement, a machine or
manufacture need not be identical with that 511
of the patent, but it must be similar in
principle or mode of operation

The use of an equivalent means the mere
substitution of one mechanical power for 511
another, or one obvious and customary mode
for another, to effect the like result

A change which is the substitution of an
equivalent and something more is an
infringement of what is covered by the patent, 330
though the additional matter be a patentable
improvement

It is an infringement to use an arrangement of
mechanism which performs the same service, 330
or produces the same effect, in substantially
the same way. Colorable alterations, or the

substitution of a mechanical equivalent, are immaterial

A patent for a machine is infringed by a machine or structure which discloses an arrangement performing the same services, or producing the same effect, in the same way, or substantially the same way

Embodying the essential ideas of the inventor in machinery operating to the same end is an infringement, although the arrangement may be apparently different

If defendant's machinery embody the patentee's ideas, and operate by such adoption, it infringes, in spite of an apparent or real difference of arrangement

Infringement is not avoided by change of form or proportion, substitution of one motive power for another, different position of gearing, or superior finish, etc

A combination claim is infringed only by using all the substantial parts thereof.

There is no infringement of a patent for a combination where defendants discard an essential element of the combination

A subordinate device is not an "element," within the rule relating to combination claims

The fact that the results of defendant's mechanism are greatly superior to those described and claimed by the patentee may be considered as tending to prove that defendant's mechanism is substantially different from plaintiff's

A difference in the result of the action of two devices is evidence of difference in mode of operation

One who has discovered a result and machinery that produces it may invoke the

doctrine of equivalents, but a mere improver cannot	
Accomplishing the same result by a mechanism or combinations of mechanism substantially different from that of the patent involves no infringement	207
—Who liable.	Page
An exclusive licensee may maintain a suit for infringement even against the patentee	1133
—Remedy generally.	
A bill for discovery and account of profits for infringement of a patent will be sustained after expiration of the patent, though injunction cannot be awarded	94
—Preliminary injunction.	
Acquiescence by the patentee in the alleged infringement is strong ground for refusing a preliminary injunction	330
Denied where the patentee had knowledge of the alleged infringement for nearly two years before making application.	927, 977
Where the rights of the plaintiff and the violation of them by defendant are clear, considerations of public or private convenience should have little weight	77
Denied where the bill charges that defendants have violated their contract of license, and thereby become infringers, especially where there is a substantial controversy as to the equities	508
An injunction will not issue where defendant was manufacturing under the patent on the understanding that the question between him and the plaintiff was one of compensation, and he was willing to pay a reasonable sum for the use of the invention	658
Where defendant's machine, though infringing, contains valuable improvements	1035

not covered by plaintiff's patent, an order for an account and security may be substituted for an injunction

Where the patent has been sustained in a trial at law, and an injunction has been obtained against the use of a particular apparatus. the use of a like apparatus by a different party will be enjoined, though such apparatus is patented, and has been adopted by defendant in good faith 77

On a motion for preliminary injunction, the court will not look further than to ascertain whether, upon established principles of equity its interference is required to prevent irreparable injury pending the litigation 78

A preliminary injunction will be withheld unless the right is clear in favor of complainant 78

Although, on an issue awarded in the cause, the jury has found infringement, the court will not, on a motion for preliminary injunction, adopt its verdict, but will examine the whole case, and exercise its own judgment thereon 78

On a motion to dissolve an injunction, defendant's proofs must overcome the equity in the bill and the evidence in its support 878

Procedure.

The assignees of several undivided parts of a patent may all join with the holders of the title in an action for the recovery of damages 1233

Oyer of a patent referred to in the declaration is not demandable as of right 218

If the notice of special matter sufficiently indicates the sources of defendant's proofs, so that complainant can identify and resort to them, it is sufficient under the statute 550

Where defendant, in his special notice, gave the names of certain mining establishments in a specified county, as the places of an alleged prior use, *Held*, that this was sufficient 550

Where, on a bill for infringement, the evidence is uncertain and unsatisfactory, an issue will be awarded on the questions whether the patentee was the first inventor, and whether the invention was known and used by others two years before the application 101

Failure to enter a disclaimer in the patent office, before bringing suit, of a part of the invention which is not new, prevents plaintiff from recovering costs, though infringement of the valid claims be proved 207

Evidence.

The patent is prima facie evidence of novelty, utility, and that the patentee was the first inventor. 330, 703

A reissue is prima facie evidence that the machine described therein is substantially the same as that intended to be patented by the original 330

The fact that a later device is better than an earlier one, and has driven it out of the market, is prima facie evidence that it is patentable 703

The fact that a patentee takes into partnership the assignees of another, who also claims to be the original inventor, instead of litigating the question of priority, is not an admission of priority, if the arrangement is induced by fraud 330

Verbal declarations and explanations of the inventor are competent evidence to give date to an invention 1281

The jury are not bound by the opinions of mechanical experts upon a question of identity of improvement or construction 896

Injunction and its violation.

It seems that, to attach one for breach of an injunction against the infringement of a patent, he must be a party to the suit, and have had notice of the application for the injunction 71

Plaintiff, who sets on foot a stratagem to lead defendant to violate an injunction, to entrap him, must pay the costs of a motion for an attachment 879

Where there is no Question but that defendant has infringed, he must, to avoid an injunction, prove facts tending to show that plaintiff was not the inventor of the thing patented within two years prior to his application 74

Injunction will not be denied because infringement has been discontinued without intent to resume it, where no compensation has been made 74

In a clear case it is not necessary to establish the validity of a patent by a trial at law, before an injunction can be granted, even though defendant is able to respond in damages 74

In suits in equity the federal courts do not in all cases require a verdict at law on the question of title, before granting a final injunction, or concede to either party a right to have every issue as to originality or infringement tried by a jury 04

Decree and its effect.

The title to the infringing machine passes to the purchaser where a decree is given for the profits on the manufacture and sale 1169 892

Where the court awards as damages the license fee which the patentee has fixed for the perpetual use of a machine, which defendant pays, he is entitled to the use of the infringing machine. 67, 892

A recovery of profits for the use of the infringing machine does not vest the title thereto in the defendant 892

—**Accounting: Damages.**

As a general rule, the patentee is entitled to the actual damage sustained by reason of the infringement 560

If the patentee has established a patent fee, that sum, with interest, is the measure of damages for infringement. If not, the profits made by the infringer may be taken 67

If the patentee has accepted small patent fees in order to introduce his invention to public notice, this fact should be taken into consideration in fixing a patent fee as a measure of damages 67

In a case of infringing articles made and sold, an established royalty is the proper measure of damages 1132,

The statute gives the patentee his actual damages, but these must be proved. In default of evidence thereof, only nominal damages can be given. 560, 896

In the case of a patent for an improvement, the burden is upon the plaintiff to show the profit resulting from such improvement 1132

The damages must be confined to the direct and immediate consequences of the infringement, and should not embrace those which are remote and conjectural 629

Plaintiff is entitled to any profit arising from the making and selling of any of the infringing machines, though other infringing machines 1169

were disposed of without profit, or are still on hand, and cannot be disposed of

The value of the use of real and personal estate belonging to the infringer, such as shops, fixtures, and machinery, including repairs, employed in making the infringing machines, is to be allowed as part of their cost 1169

The amount paid for insurance and for local taxes on such property is not to be allowed as part of the cost 1169.

Salaries paid in good faith for services actually rendered by stockholders of defendant corporation employed in making the infringing machine are to be allowed as part of the cost 1169

The portion of the price of an infringing machine due to a patented improvement of the infringer, as well as the cost of making such improvement, is not to be allowed 1169

Nothing is to be deducted for liabilities on guaranties and warranty of title incurred by the infringer 1169

Interest on the profits decreed will be allowed from the time of the entry of the interlocutory decree. 169, 1174

The damages cannot be increased by the fact that defendants used on their infringing preparation labels counterfeiting those of the patentee 1280

A verdict of \$2,000, *Held*, should not be set aside because of the absence of specific proof of profits and damages, where there was evidence that defendants' sales were highly profitable, and that they had made and sold large quantities 1280

Marking patented articles: Penalty.

The penalty specified in Act 1842, § 5, is incurred as to all articles made having the word "Patent" affixed with a guilty purpose

The making of application for a patent will not prevent the penalty for attaching for affixing the word "Patent" to an unpatented article, at least as to articles made and stamped before the application

Various particular inventions and patents.

Bolts. No. 48,555, for improvement in door bolt, *held* valid 1054.

Bridge. Sprague's invention *held* patentable 956

Bridge. No. 101,529, for an improvement in dies for making chord-bar heads, *held*.

void for want of novelty 420

Candles. No. 12,492, for improvement in machines for making, *held* valid. 1033, 1033, 1035

Chain links. No. 193,543, for an improvement in ornamental chain links, construed, and *held* valid and infringed 155

Circular saws. No. 33,270 (reissued. No. 1,456), for improvement, *held* valid and infringed 896

Collars. No. 132,547, for a method of cutting collars from sheets of paper, etc., *held* void for want of novelty 734

Elastics. No. 9,653 (reissued Nos. 2,843, 2,844, and 3,014), for improvement in corded elastic fabrics, *held* void for want of novelty 612

Harvesters. Reissue No. 3,372 (original No. 19,377), for improvement, *held* valid 958

Iron molding. No. 142,661. for an improvement for black-washing molds; No. 53,883. for improved molding and casting apparatus; and No. 37,037, for improved flasks for cast-iron pipes,—*held* not infringed 595

Lathes. No. 23,957, for improvement in lathes for turning irregular forms, *held* invalid for want of novelty 988

Lubricators. Reissue No. 5,328. for an improvement, *held* anticipated by No. 111, 104 881

Mortising machines. No. 10,422, for an improvement, construed, and *held* valid and infringed 543.

Paper No. 134,105, for machine for uniting paper and cloth, *held* void for want of novelty 733

Pavements. Smith's invention of an improvement in iron pavements *held* 370 patentable

Planes. Reissue No. 6,498 (original No. 67,398), for improvement, *held* valid and 1049 infringed

Planing machines. The Woodworth patent, with its extensions and renewals, *held* valid and infringed. 327, 597

Pump tube. No. 45,647 *held* void for want of novelty 26

Revolvers. No. 30,990, for an improvement, *held* valid, on proof of priority of invention over No. 28,951 (reissued as No. 1,268) 418

Sewing machines. No. 10,974 *held* not infringed 218

Sewing machines. No. 16,030, for an improvement, construed, and *held* valid and 196 infringed

Spirit levels. No. 39,906, for improvement, *held* void, as containing too broad a claim 1052

Steam valves. No. 2,631. for an improvement in cut-off valves, *held* valid, and infringed by the slide valves of the "Corliss" engine 94

Steam valves. No. 2,631 *held* not infringed 78

Steam valves. No. 4,199, for an improvement in cutoff valves, *held* valid and infringed 67, 74, 76, 77; contra, 74

Steam valves. Reissue No. 1,260 (original No. 4,199). for an improvement in tripping cut-off valves, *held* void, because for a different invention than that of the original patent 82

Stone crushers. No. 68,248, for an improved machine for crushing and washing stone and sand, *held* void for want of novelty and invention 550

Telegraphs. The Morse patents of June 20, 1840, and April 11, 1846, and their reissues, for electro-magnetic telegraphs, construed, 511 and *held* not infringed by the House patent of June 13, 1848

Weaving. Reissues Nos. 2,843 and 2,844, for improvements, *held* valid and infringed 553

Yarn coloring. No. 7,446 (reissue No. 2171. for an improvement in apparatus for parti-coloring yarn, *held* not infringed 564

PAYMENT.

A draft of a third person does not discharge the debt, unless it is received unconditionally as payment 337

Where general and special counts are pleaded, payment of money into court generally does not admit liability upon the special count 731

PILOTS.

The Pennsylvania compulsory pilotage law of 1803 applies to foreign as well as American vessels 494

PLEADING AT LAW.

A conclusion in a declaration of debt for a penalty under a statute "against the law in such case made and provided" is not a 694

conclusion against the form of a statute, and is bad on error

If the facts of a plea in bar may be admitted, and the action yet maintained, the plea is bad on demurrer 533

In a court of limited jurisdiction, a plea that the cause of action did not arise within the jurisdiction is a plea in bar, and good after office judgment 591

In assumpsit on a draft drawn by an agent whose authority to draw it is denied, plaintiff may abandon the counts on the draft, and recover the value of the goods on the counts for goods sold and delivered 337

The filing of a plea puis darrein continuance waives all prior issues 850

The district courts may allow amendments of substance on terms, but this must be before final judgment 576

The declaration may be amended at any time before the case is actually committed to the jury 454

A copy need not be served under the rule on the making of a slight amendment of the declaration, which in no respect can affect the merits of the case 933

Allegation of an undertaking in consideration of a contract by plaintiff to build a ship, and evidence of a contract to finish a ship partly built, *held* a fatal variance 454

A duebill made to a wife during coverture for a consideration accruing during the coverture is not admissible to support a declaration which avers that the duebill was made dum sola 488

A declaration describing two penal offenses in one count, where one penalty only is sought, is good after verdict 694

Omission of the averments of citizenship and of the value of the property in dispute are defects of substance, not cured by verdict, and not amendable after final judgment 576

PLEADING IN ADMIRALTY.

Where, in a collision case, the pleadings of both parties were defective, the court allowed proper pleadings after the case was closed on the proofs 1084

PLEADING IN EQUITY.

A bill addressed to the "circuit court," etc., "in chancery sitting," *held* sufficient 1313

Where a bill is entitled in a cause before it is filed, the entitling may be rejected as surplusage 1313

A bill brought after a great lapse of time must state the reasons why it was not brought before, to repel the presumption of laches or improper delay 1183

Where fraud, mistake, etc., are charged, distinct and definite averments should be made in regard to the time, occasion, or subject-matter thereof 1183

A plea professing to go to the whole bill, and in fact covering the whole subject to which it applies, does not require the support of an answer merely because it does not admit or deny all the allegations of the bill 184

An answer filed with a plea containing more than is strictly applicable to the support of the plea overrules the plea 1183

In matters of form, mistakes of dates, and verbal inaccuracies, courts of equity are very indulgent in allowing amendments of answers; but they are slow to allow amendments as to material facts or which change essentially the grounds of defense 428 1367

Amendments are wholly in the court's discretion; and, before amendments to the answer are allowed, it should be satisfied that the reasons for them are cogent and satisfactory, and that the applicant has not been guilty of gross negligence, etc 428

Equity is every reluctant to allow amendments to let in new facts or defenses, wholly dependent on parol evidence, as this would encourage carelessness in drawing answers, and encourage the manufacturing of testimony Amendments of the answer to let in writings and documents omitted by accident or mistake will be readily granted 428

Where the case is continued on the docket, and the counsel presumed to be in court, no notice of an amendment is necessary 963

Confessions, conversations, and admissions of defendant need not be expressly charged in the bill, to entitle plaintiff to prove by them facts charged and in issue 460

No appearance, demurrer, or answer to a bill will waive its omission to state the citizenship of every necessary party, and that complainants and defendants are citizens of different states 910

PLEDGE.

Where a creditor in a privileged relation, which gives him a general lien, receives security to cover a particular accommodation, such security is subject to the general lien 860

In the case of houses composed of the same persons, but transacting business under different names at different places, securities deposited with one to cover a special loan are not subject to a general lien in favor of the other 860

A creditor vested with authority to sell securities deposited with him cannot exercise it otherwise than under a trust for the debtor's benefit 860

POWERS.

An irregular conveyance under a power of attorney, acquiesced in and acted upon by the principal, who has enjoyed the consideration, will vest an equitable title in the grantee 1116

A revocation of a power is not necessarily implied from a subsequent power to another to do the same thing, where the second is not absolutely inconsistent with the first 1116

PRACTICE AT LAW.

Notice to produce an account book, given on the preceding evening, is sufficient when the counting house of the party is very near the courthouse 39

PRACTICE IN ADMIRALTY.

The district courts in admiralty exercise equity powers in the distribution of a surplus arising under a sale, whether the parties have maritime liens or not 306

The practice in respect to the process of foreign attachment defined 603

The warrant for process served upon the garnishee in a suit prosecuted by foreign attachment must contain a notice of the claim, citing him to appear and answer, to authorize the proceeding to be carried on against him personally 603

A rehearing or review cannot be had after the end of the term at which the decree was entered 349

The court has power to vary its decree 726

Summary rehearings on motion are granted only during the term at which the decree was 726

made. In defaulted actions this is limited to 10 days, irrespective of the term. (Rule 40.) After the term has passed in ordinary cases, and after 10 days in defaulted cases, the court can entertain a libel of review 726
In a libel for review by defendant in a defaulted action, he can contradict the officer's return in the action 726

PRACTICE IN EQUITY.

The practice of the English chancery court, and not that of the exchequer court, is the basis of the equity practice in the United States courts 460

Exceptions to a master's report which are vague and general, and do not raise well-defined issues, will be overruled 1065

Plaintiff, in a suit for infringement of patent, cannot, at the hearing, for the first time, as a matter of right, introduce evidence to rebut proof that he was not a citizen of the United States 1035

Plaintiff was allowed to produce evidence in rebuttal at the hearing on payment of costs to defendant of procuring its evidence 1035

An order need not be made limiting the time within which a decree rendered shall be performed before the party may be proceeded against for nonperformance 807

PRINCIPAL AND AGENT.

See, also, "Powers."

A person cannot adopt that part of an agreement made on his behalf without authority which is beneficial to himself, and repudiate the part which is beneficial to the other part 1116

An agent converting to his own use money which he has been specifically directed to invest in a certain article is accountable for 9

the value of such article after it has greatly increased in value

An agent collecting money for his principal, and retaining it as a loan to himself, according to a prior contract with the principal, is not entitled to commissions on the amounts collected 9

PRINCIPAL AND SURETY.

A writing in which a person binds himself as principal cannot be contradicted, either at law or in equity, by showing that he was in fact a surety 973

The sureties of litigants in the federal courts need not be residents of the state in which the suit is pending 807

The sureties on a bond given for the faithful collection of subscriptions are liable for collections made during the second year, although he was to close his collections in one year, unless the time was extended 416

Where a bond was given by the treasurer of a society for the faithful collection of subscriptions, *Held*, that the sureties were not released by the allowance, without their consent, of an additional percentage to the principal on the collections 416

A surety on a bond is released where without his consent the creditor takes a new security, payable at a date beyond the maturity of the bond, with an understanding that he is not to trouble the principal for the money, unless the new security prove worthless 493

It is no defense to a surety on a prison bounds bond that the principal was insolvent when the bond was given 709

The obligors on a bond for the jail limits are not discharged from liability for an escape by 339

the subsequent assent of the plaintiff to the escape

Where a firm assumed the individual debts of one member who gave bond with sureties to indemnify the other member, and after dissolution an arbitration was had by agreement between them, *Held*, that the award could not be given in evidence against the sureties 167

Entries made by the partners in the partnership books after dissolution could not be given in evidence against the sureties, but evidence could be given of the confessions of the principal 167

PRIZE.

Jurisdiction.

The district courts have prize jurisdiction in case of property, recently waterborne, captured on a wharf by man-of-war's men in boats 252

Defendant, claiming a vessel under condemnation of a foreign tribunal, must prove that the tribunal was properly constituted 714

If the constitution of a foreign tribunal be not known, it will be presumed to be a legal one 714

Nothing will be presumed in favor of a foreign tribunal erected by a military commander 714

Grounds of condemnation.

Enemy property transferred to a neutral residing at the time in the enemy's country does not lose its character as enemy property 1253

Where it is intended to transship contraband goods at an intermediate port, they are subject to capture before reaching such port 994

Where contraband cargo, when it leaves its neutral port of departure, is really designed 1253

for the use of the enemy, it is at once subject to capture, though it is intended to transship the same at an intermediate port

Where the vessel is employed with the knowledge of her master in carrying contraband goods to the enemy's country by means of transshipment at an intermediate part, from which they are sent on in another vessel, the vessel is subject to condemnation with the cargo 994

The vessel is subject to condemnation where, with the master's knowledge, it is used to carry to an intermediate port contraband of war for transshipment to the enemy country 1253

The master in time of war is bound to know the contents of contraband packages on board Innocent goods on board belonging to the owner of contraband goods will share their fate 994

Procedure.

The claimant can cause the suit to be disposed of where libelants are guilty of wrongful delay in its prosecution 991

The prize court of a belligerent, to which a captured neutral vessel is sent for adjudication, may order an examination of the cargo to ascertain its character, and to secure evidence to establish the culpability of the voyage 991

The case, in the first instance, is to be tried on evidence coming from the captured; and, if that does not raise a doubt, the property will be restored 1253

The spoliation of papers is a strong circumstance of suspicion, but does not furnish, of itself, sufficient ground for condemnation 1253

The absence of invoices of cargo in time of war is a suspicious circumstance	994
Proofs from two other cases on the docket of the court for trial at the same time allowed under Prize Rules No. 33	994
Where it is claimed that an enemy vessel has been transferred during the war to a neutral, competent proof of the transfer must be produced, or the vessel will be regarded as enemy property	1253
The mere registry of the vessel in the name of the neutral claimant as owner is not enough	1253
Witnesses who, it appeared, had not fully answered, and had not disclosed the truth in regard to papers on board a voyage, were allowed to be re-examined on standing interrogatories	1253
Vessel and cargo condemned for an attempt to violate the blockade	1319, 1321
Vessel and cargo condemned for violation of blockade	1032
Cargo condemned as enemy property, and for an attempt to violate the blockade	782
Vessel and cargo condemned for transporting contraband of war to the enemy, and for an attempt to violate the blockade	993, 1253
Rights of captors.	
The surrender of Charleston operated as a capture of all the prize or booty in the town and harbor	233
An abandoned merchant vessel, saved and taken possession of by a cruiser on the surrender of Charleston, was prize to the United States, but neither the cruiser nor the fleet generally were captors	233
The prize act of 1864 does not exhaust the subject of prize or no prize. There may still be	233

captures which go to the United States only,
and there may be prize without captors

PUBLIC LANDS.

Overlapping grants to the Union Pacific
Railroad Company and the Sioux City Branch 231
make the two companies tenants in common

The grantee of a patentee of military bounty
lands is not within the provision of the statute
(Act March 1, 1800, § 7) that the patentee 654
shall hold the same free from any contract of
sale

The patentee of military bounty lands is a
necessary party to a suit by a purchaser from 654
his grantee to compel a conveyance of the
land

The Indiana swamp law of 1850 *held* to have
carried the title of certain lands to the bed of 1136
a lake

A donee under the Oregon donation act who,
subsequent to the initiation of the four years'
possession, and before the passage of the act, 1116
has conveyed all his right, will be compelled
to convey the legal title vested in him, by the
patent subsequently issued

QUIETING TITLE.

A bill by legal owners alleging that
defendants have forcibly taken possession
under a false and fictitious claim of title, 910
whose nature is not set out, is bad for want
of equity on its face

A suit to ascertain and quiet title under Code
Or. § 500, includes all grounds of controversy
between the parties as to the title, and all 1113
matters affecting such title are determined by
the final decree therein

QUI AND PENAL ACTIONS.

Declarations in penal actions are to be strictly construed, and they must negative all exceptions 694
1369

RAILROAD COMPANIES.

See, also, "Carriers"; "Corporations"; "Mandamus."

An act authorizing a city to issue its bonds in aid of railroad companies incorporated and organized does not extend to companies afterwards incorporated 607

The want of an existing location of the route *held* no defense to a suit on town bonds authorized to be issued by any town "situate along the route" of a certain road to be built Sufficiency of affidavit of assessors under Laws N. Y. 1869, c. 241, § 2, as to the facts authorizing the issue of town bonds 706 614

A city which has issued bonds in aid of a railroad company without authority of law cannot be required, at the suit of a judgment creditor of the company, to deliver up securities received as collateral to the company's bonds issued by it, until the city's rights are determined 607

Purchasers for value without notice of shares issued to a contractor for building its road as full-paid shares are not liable to assessment or liability thereon, as unpaid shares 1142

The measure of liability of stockholders, at whatever time they became such, *Held*, to be that fixed by the charter, and which could not be increased by any subsequent act of the state not assented to by the corporation 1142

Where there are a larger number of bonds issued than are allowed by law, all at the same time, those bearing the higher numbers stand on an equal footing with the others, in the distribution of the proceeds on foreclosure 1070

Where a later company adopted the route of a former company, which abandoned operations for want of funds, and used grading done by it, *Held*, that bonds issued by the former company were a lien only to the extent of the value of the work done by it. 710

A contractor who has a lien on the entire road cannot be required to first exhaust his remedy against the portion covered by the new work 710

The purchaser of railroad bonds is bound only to take notice of what appears upon the face of the bonds and of the mortgage made to secure them 1070

Pending a suit by mortgage trustees to be put in possession on default in payment of the interest, a funding system was adopted, by which payment of the interest was postponed to enable the road to be completed. *Held*, 1310 that a nonassenting bondholder, who had not made a demand upon the trustees to foreclose, could not file an original bill for such purpose

The fact that the trustees in a railroad mortgage have approved a reorganization plan recommended by one set of bondholders, rather than that approved by another set, is no ground for admitting a committee of the latter as parties to the foreclosure suit. 274

In a suit to foreclose a mortgage on the property of a railroad company composed of several consolidated companies, the fact that some of the stock of one of the constituent companies had never been converted into stock of the consolidated company *held* no ground for making such constituent company a party defendant 274

The court may authorize receivers appointed on foreclosure of a first mortgage to borrow money to complete portions of the road, and put it in a condition to transact its business, making the sum so borrowed a lien superior to that of the first mortgage

Receivers' certificates payable to bearer, referring to the order of the court authorizing their issue, and sold for less than par, *held* not commercial paper

Such certificates are good for the amount of money actually paid for or advanced on them to the receivers in accordance with the terms of the order of court

Persons who purchase such certificates, or advance money on them to the receivers, are not bound to see that the money is applied to the purposes of the trust

Wages due for eight months before the appointment of railroad receivers *held* payable to such employes as were retained by the receivers; otherwise as to assigned claims for wages, and claims for rails and supplies furnished on the credit of the company.

In the case of a trespasser upon the track, the railroad company is required to do only what prudent owners of railroads are doing in respect to their trains and equipments

REAL PROPERTY.

See, also, "Adverse Possession"; "Deed"; "Ejectment"; "Grant"; "Public Lands."

A lease for 500 years of certain land, covered with a pond of water, conveys, as incident, the water and the fish therein

A person in possession under color of title, who believes and has good reason to believe that his title is good, may set off the value of

his improvements against a claim for mesne profits

A deed of the land will give color of title, 1084
whether the grantor had title or not

The value of improvements cannot be set off
against mesne profits unless they are not only
permanent, but also add to the future value 1084
of the property for the ordinary purposes for
which it is or may be used

A permanent improvement is something done
or put upon the land which cannot be 1084
removed either physically or in contemplation
of the law

The amount of an assessment for a street
improvement cannot be set off as an
improvement made on the property, but may 1084
be deducted from the gross value of the
rents in estimating the actual damage from
withholding the possession

RECEIVERS.

See, also, "Banks and Banking"; "Railroad
Companies."

A nonresident may be appointed a receiver 1065
on the foreclosure of a railroad mortgage

Receivers who willfully and corruptly exceed
their powers are liable for the actual damage 1065
sustained by reason of their misconduct, but
for nothing more

RELIGIOUS SOCIETIES.

As to the power of the general conference of
the Methodist Episcopal Church to divide the 663
church, and its control of the Book Concern
Preachers or members of the Methodist
Episcopal Church who withdraw therefrom,
either individually or with a body of others, 663
lose all rights of property pertaining to them
while in the church

REMOVAL OF CAUSES.

Right of removal.

Such cases only are liable to removal from the state to the circuit court as might have been brought before such court by original process

639

1370

In order to remove a cause under Act 1789, c. 20, § 12, all the defendants must join in the petition.

639

Act 1789, c. 20, § 12, in terms applying only to a single defendant, embraces cases where several aliens or several citizens of another state are jointly sued as defendants

639

In a case of diverse citizenship where there are several defendants, the cause may be removed as to all the defendants on the petition of one of them. (Act March 3, 1875.)

1080

A bill to remove a cloud from plaintiff's title, against a trustee in a deed of trust, to secure a debt, the creditor secured and the person in possession who executed such deed, whose title is attacked, cannot be removed where the latter is a citizen of the same state with plaintiff. (Act March 3, 1875.)

1239

Time for removal.

Under Rev. St. § 639, subd. 3. a cause may be removed after reversal of a judgment in the state court and the ordering of a new trial Rev. St. § 639, subd. 3, was not repealed by Act March 3, 1875

188

188

Proceedings to obtain.

A mandamus will lie to enforce the removal of a cause

955

REPLEVIN.

Where refusal to deliver property to its owner is placed on the ground of a lien for storage and also for freight, and in a suit to recover possession it is decided that there is no lien for freight, defendant cannot claim

64

judgment on the ground that he had a lien for storage alone.

It seems that in an action on a replevin bond defendant may, in mitigation of damages, give evidence of title in himself of the replevied property 560

Revival.

See "Abatement and Revival."

SALE.

See, also, "Vendor and Purchaser."

A statute inflicting a penalty on a sale does not apply to mere executory contracts, especially where they are declared void by another statute 801

A mere sale in one state, made with knowledge that the purchaser intended to use the property to violate some positive law of another state, can be the foundation of an action in the state whose law was intended to be violated 801

If one in great need of money purchase an article on long credit for more than its market value, in order to resell and raise the needed money, such sale is not void for oppression, and probably not for usury, if nothing material was concealed 177

Where a seller of tobacco in kegs opened some kegs for inspection, and offered to open more, but the quality turned out worse than either party supposed, he is not liable for fraud, nor is there any ground for rescission 177

If the purchaser discovers that the articles are of less value than he supposed, and wishes to proceed in equity, he should offer to return them. He cannot sell them at auction, and then proceed in equity for damages alone 177

Exaggerated representations as to price or value are not as strong evidence of fraud as 177

untrue statements as to title or other material facts exclusively within the seller's knowledge
Fraud or misrepresentation cannot be taken advantage of by a purchaser from the vendee, unless they were practiced on him also by the original seller; and, if so, the latter must be sued alone for what he alone did wrongfully
Where a tax on ships was changed to a tax on hulls only, pending completion of a vessel, and after it was sold by the builder for a price "in full," *Held*, that the purchaser was not liable for the tax

SALVAGE.

Right to salvage compensation.

Slaves may receive compensation as salvors 366

Services of no particular hazard rendered by the crew of a United States war vessel, under orders of their officers, in towing in a derelict, give no right to salvage compensation 382

Cotton belonging to the United States, in course of transportation on freight, is liable to pay salvage 318

Services rendered in pulling boilers out of a navigable river, into which they had fallen from a steamboat, are salvage services 141

Where a steamboat is sunk on a river by floating ice within a few feet of the shore, persons on the bank who assist, at the request of the master, in saving the cargo, are entitled to salvage 917

Personal exposure and risk is not a necessary element in a salvage service, but it is to be considered in measuring the compensation 917

The owner of blocks rented for the purpose of getting a wrecked vessel afloat, the owners having agreed that the vessel should be responsible for their hire and safe return, cannot recover either against the property 1017

saved, or in personam against the owners of the wreck, as a salvor, either the price agreed upon or for their loss

An alleged custom of boats running in New York Bay to assist each other in distress free of charge *held* not to have been proved 1140

Rescuing and taking to a place of safety a steamer caught in the ice in New York Bay on a dark, foggy night, with a broken crank, is a salvage service calling for a small reward 1140

A vessel lost in transporting salvaged cargo after it had been placed in a state of safety is not entitled to salvage 1278

Contracts for salvage services.

A contract for a specific sum dependent on success does not alter the nature of a salvage service, but only furnishes a rule of compensation 141

An agreement fixing the amount of a salvage award will not be set aside, and commensurate salvage given, because it proves to be a hard one for the salvor 141

One hired by a salvor to assist him, with knowledge that his employer is working under a contract, is limited in his recovery by the contract price. That he is misinformed as to the terms of the contract is no ground of additional liability on the part of the property or its owners 141

Amount.

Principles under which salvage is awarded, and rules for fixing the amount, stated by Bradley, C. J 795

The time occupied in the service is given but little weight in fixing the amount of salvage 795

The rule to allow moiety in cases of derelict is not inflexible where the services performed are of an extraordinary nature 968

Where the services are very meritorious, and the value of the property saved very small, the usual proportion will be exceeded in making the award 582

One-third of the gross value allowed for saving goods from a wreck with no unusual labor or difficulty 366

One-half and one-third of net value allowed for saving cargo of a vessel wrecked on Charleston Bar 1278

\$17,000 awarded for saving a ship and cargo worth \$85,000, grounded on Crocus Reef, in imminent danger, after 36 hours' labor by eight wrecking vessels and 92 men 105

Remedies for recovery.

Two years' delay is no defense to a libel in personam brought by a salvor against another who had received the salvage moneys 795

Delay by petty officers and crew in bringing a suit against the owners for their share of the salvage is no defense, where they had no previous knowledge of the amount received 795

An objection that cosalvors were not joined in the bill comes too late at the final hearing 1140

Apportionment.

In apportioning salvage, one-half is given to the salvor vessel, and the other half to her officers and crew, in proportion to wages 795

The salvor vessel will be allowed, out of the salvage, extra expenses incident to the salvage service, which may have been incurred over and above her ordinary outlays 795

The shares of persons who aid in a salvage service, and receive pay therefor from the owners, revert to the owners 917

Right to property or proceeds.

Where the owners of a derelict vessel purchased her at the salvage sale, and then 594

offered to carry the cargo to its destination, upon the raising of a blockade declared in the meantime, *Held*, that they had no lien for freight

SEAMEN.

Protection and relief.

A contract by a pilot purchasing a share in a vessel that his part owners shall retain yearly out of his wages such sum as he is able to spare, until the balance of the purchase money is paid, is not an assignment of unaccrued wages, within Rev. St. § 4536 789

The contract of shipment.

The maritime law requires that contracts touching the service of seamen shall be in writing 481

The statute requiring such contracts with the crews of vessels on foreign voyages (Rev. St. § 4511) does not apply to vessels bound for the West Indies, Mexico, or British North America 481

Shipping articles specifying no time when service shall begin are valid, and the service is to commence in a reasonable time, which may be shown by parol 481

Seamen may leave the vessel at any time where the shipping articles do not describe the voyage, and an imprisonment by the master for refusing to remain and do duty is a tort 735

A description of the voyage as "from the port of Boston to Valparaiso, and from other ports in the Pacific Ocean, at and from thence home, direct, or via ports in the East Indies or Europe," does not comply with Act July 20, 1790, § 1 735

A contract cannot be dissolved for a single fault unless it be of a high and aggravated character 687

The causes for which a seaman may be discharged are ordinarily such as amount to a disqualification, and show him to be an unsafe or an unfit man to have on board the vesse 687

The power of the master to disrate an officer or seaman is remedial, and not penal, and does not authorize degradation to the lowest place, if there be an intermediate place which the man is probably competent to fill 580

Seamen who desert from a ship which is in a perilous position, and are confined at the master's instance, are entitled to discharge on its being shown that the vessel is totally disabled, and the voyage broken up 187

Where the condition of advance security is not performed because the seamen were voluntarily discharged by the master before the time of the performance, the own is still liable thereon 622

The voyage is not ended until the cargo and ballast are discharged 1010

The ship is liable for the loss of a seaman's trunk, though he negligently failed to get aboard for the voyage 697

Conduct of master or mate in respect to seamen.

The master should not inflict punishment for threats supposed to have been uttered by seamen while confined in jail, without first seeing them and hearing their statements 1

Where the master causes any of the crew to be confined in a foreign jail, he must see that they have humane treatment 1

The master is civilly responsible for his ill treatment of the crew on board, 1

notwithstanding the advice or direction of a consul

The crew are entitled to the protection of the master against illegal violence from his officers; and if he refuse to hear their complaints, and gives no assurance against future wrong, he has no right to require further services from them

1

Any officer may use force to coerce performance of duty by a seaman in an emergency requiring instant obedience; but only the highest officer on board can inflict punishment for a past offense for purposes of reformation or example

1

Knocking a man down with a belaying pin is an illegal mode of punishment

1

A seaman is not authorized to use any kind and degree of resistance where the wrong done him will admit of complete indemnity

1

Wages—Right to.

The cargo is bound to the ship for the freight, and the freight to the seamen for their wages. This is true even where the shipowners are also the cargo owners

299

A shipment for a voyage from Philadelphia to Batavia and back, at a certain rate of wages per month, is a shipment for an entire voyage, and wages for the whole voyage are recoverable though the seamen die at Batavia Seamen taken from their vessel by a privateer, and afterwards escaping, and returning home, some of them earning wages on the return, *held* entitled to wages for the voyage, deducting the amount so earned, where their vessel was afterwards liberated and completed her voyage

183

224

Where the vessel is let to the master for a portion of her earnings, and he is to have

299

entire control, and to victual, man, and furnish her, the owners are still liable for wages, unless the contract is known to the seamen at the time of shipping

In such case the money received by the owners is freight, and they are liable for wages, as having an interest in the freight 299

A seaman who returns after a week's absence without leave, and continues during the voyage, is entitled to wages under the original contract, unless a new one is made 716

An agreement by a pilot purchasing a share in a vessel that the co-owners shall retain yearly out of his wages such sum as he is able to spare until the balance of the purchase money is paid gives them no authority to apply his wages without his direction 789

Remedies for recovery.

The crew of a vessel abandoned at sea have a lien on her. in the hands of salvors, for wages to the last port of delivery before abandonment, where they were shipped for an indefinite period 582

A draft for advanced wages drawn by the master on the owner, and discounted by a third person under Rev. St. §§ 4533, 4534, is enforceable in admiralty against the owner without acceptance by him 622

An agreement to renounce wages for a share in the catch on a fishing voyage disregarded where unequal and unjust 791

One seaman may be a witness for another in any suit respecting the same voyage, although interested in the question, if not interested in the suit 1011

Deductions: Extinguishment, etc.

Seamen are liable for demurrage where the vessel is detained by their refusal to work 716

The seamen are not liable to contribute for embezzlement on board unless it was caused 1011 by their fraud, connivance, or negligence

The police costs and charges incurred by a seaman for improper conduct while on shore. 716 as well as wages paid another to take his place, are to be deducted from his wages

Forfeiture of half of the seaman's wages decreed for misconduct in striking the master, 963 where the seaman was otherwise punished

A claim to wages is not necessarily barred by the arrest and imprisonment of the seaman in a foreign port, and ending him home by the 687 public authority, as a prisoner charged with an indictable offense

A seaman signing articles. and not reporting for duty at the stipulated time, or, if no time is fixed. within a reasonable time, may be 481 discharged

The seaman loses his right to wages where. though especially requested, he made no 697 attempt until the last moment to get aboard

A single act of assault and battery, though exceeding the bounds of moderation, will not justify a desertion, unless there be reasonable 1204 ground for apprehending that the acts of oppression will be repeated

The log-book entry required by the act (July 20. 1790) must be made in accordance 716 therewith to subject a seaman to forfeiture of wages thereunder for absence

Offenses by seamen.

The authority to commit a seaman on the charge of deserting his ship is limited to a 1010 justice of the peace

SET-OFF AND COUNTER-CLAIM.

In an action for goods sold for cash at auction, 1321 defendant may set off plaintiff's note

A consignee who has made advances upon a consignment may recoup damages for breach of the contract of shipment in a suit for freight 724

There is no general doctrine of set-off recognized in admiralty; and, if the damages set up by respondent exceed libellant's demand, there can be no decree for the balance, nor any subsequent suit therefor. 724

SHERIFFS AND CONSTABLES.

A sheriff who receives as jailer a person arrested by the marshal is bound to keep the prisoner under all the responsibilities as if he had been arrested under state process 849

An officer executing a writ cannot be *held* liable as a trespasser, however malicious his conduct, if the subject-matter was within the jurisdiction of the magistrate, and the execution regular on its face 602

SHIPPING.

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

Public regulation.

Act June 27, 1797, denying right of re-registration to an American vessel seized and condemned by a foreign power, even on again becoming American property, does not apply to American vessels privately sold to foreigners, and again purchased by Americans Act March 27, 1804, taking away the privileges of American ships from vessels owned by naturalized citizens who reside for a certain time in foreign countries, etc., did not repeal Act June 27. 1797, which denied registry to American vessels captured and 557 557

condemned by foreign power, even on again
becoming American property

A collector wrongfully refusing to re-register
a vessel sold to a foreigner, and repurchased
by an American, is not personally liable in 557
damages, if his refusal is based on honest
mistake in construing the law.

Title to vessel.

To charge a mortgagee personally, as owner
of a vessel, there must be some unequivocal 1039
act of possession

Great circumspection should be used before
ordering a sale of a ship in the absence of the 305
owner

The master.

Where the master is also consignee of the
cargo, he has the authority of a supercargo 370
during the voyage

The master of a ship may hypothecate her
under certain circumstances to raise money 305
for her use, but he cannot sell her

The master is liable to make good the loss
where a common gambler cheated a minor 700
passenger out of a sum of money, and he
failed, after notice, to compel restitution

Where a whaling voyage was to end at New
Bedford, but the parties afterwards agreed to
end it at San Francisco, *Held*, that the master 343
should have the expenses of his passage to
New Bedford, and the owners should be
allowed freight on oil to the same place

A contract between the owners and master
for a whaling voyage not exceeding five years'
duration does not mean several voyages 343
extending through five years, but ends when
a full cargo is obtained

A master who has a right to sue in personam for wages may proceed by summary petition 1250 against surplus proceeds in court

Employment of vessel.

The shipowner is bound to furnish all reasonable and proper accommodations usually afforded to passengers on similar 883 voyages in similar vessels, and such as are 1373 necessary to a reasonable degree of comfort, and to Physical health and safety

A stateroom whose temperature is raised from 25 to 40 degrees with heated air coming from the boiler room, where access of light and air is obstructed, and where bedding is 883 constantly wet from a defective pump, does not comply with a contract for first-cabin passage

Where the comfortable staterooms are disposed of, the ship's agent must inform the passengers, so that they may take the risk of 883 such accommodations as are left.

A person who puts aboard a vessel silver dollars, against the local regulations, which subjects her to seizure and detention, is liable 887 to the owner for the damages sustained thereby

Liabilities of vessels or owners.

Quære, whether a ship may be liable in rem for a tort, under circumstanced excluding any 494 personal liability of her own

A vessel unlawfully obstructing the passage of another on tide waters is liable to the latter 417 for any direct damage or prejudice resulting therefrom

Limiting liability.

There can be no limitation of liability under Act March 3, 1851, for damage to cargo by 189 breach of the warranty of seaworthiness

SLAVERY.

A slave hired to the master of a vessel as a mariner, with authority to sign the shipping articles, forfeits his wages by any act which would forfeit them if he were free. 316

The act respecting fugitives from service does not apply to slaves brought by their masters from one state to another, who afterwards escape or refuse to return 151

A sojourner bringing his slave with him to Pennsylvania cannot claim him as a slave after a residence of six months. The slave is free by Act Pa. March 1, 1780 151

Time of a slave's being on a voyage from Alexandria is not to be computed as part of the year's residence which will entitle him to freedom 157

Slaves escaping from Maryland, and suing for their freedom in the District of Columbia, will not be delivered up on security to return them to Maryland 163

SPECIFIC PERFORMANCE.

Specific performance will not be decreed where the terms of the contract are not definite and full, and its nature and extent are not made out by clear and unambiguous proofs 465

A purchaser will not be required to take a doubtful title 772

A title may be doubtful because it depends on a doubtful interpretation of a will, if all parties who may be interested in the estate are not bound by the decree 772

The tenant for life and contingent remainderman in fee may represent the inheritance, though their interests are merely equitable, if the issue of the remainderman will take, if he fails to do so by reason of the contingency 772

TAXATION.

See, also, "Customs Duties"; "Internal Revenue."

The lien of the state for taxes is paramount to
all private rights 1335

The lien of the state for taxes attaches to
personal property upon the seizure thereof by
the collecting officers, from which time the
property is in the custody of the law 1335

The rolling stock of a railroad may be sold for
taxes as against mortgagees, though the road
be unable to replace it 1335

The court cannot interfere where the manner
of assessing and collecting taxes prescribed by
law is not unconstitutional, and the officers'
charged with such duties conform to the law 1335

A tax title is utterly void if the land be sold
in a wrong name, under a wrong assessment 1057

A tax deed in Kansas, made and recorded as
required by law, bars a recovery of the land
after two years 969

TERRITORIES.

As to the force and effect generally of
provisions of the ordinance of 1787 for the
government of the Northwest Territory 939

Any provisions of the ordinance of 1787 for
the government of the Northwest Territory
which are repugnant to the Ohio constitution,
sanctioned by congress, are abrogated by its
provisions 939

The article in such ordinance respecting the
navigableness of certain waters, and the
carrying places between them, remains
without modification 939

TORTS.

See, also, "Admiralty"; "Collision."

In cases of tort, plaintiff may elect or make
his action joint or several, and no defendant
can take away such election 639

As between contending parties., the wrongdoer is not entitled to the benefit of the rule that the condition of one seeking to avoid a loss is viewed with more favor than that of one seeking a gain 9

Towage.

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

TRADE-MARKS AND TRADE-NAMES.

An illustration of a crown used by brand, stencil plate, etc., upon vessels and labels for paints, may be a lawful trade-mark 634

A manufacturer had no right to use the illustration of a crown as a trade-mark for paints generally, where another has previously used it for white lead. 634, 638

In the case of a trade-mark owned by a firm, it is not necessary to record the name of each individual partner, and his place of residence, under Act July 8, 1870, § 77 634

Where a trade-mark is claimed for paints generally, it is sufficient to specify paints as the class of merchandise, without specifying any description of paints. 634

Sufficiency of evidence of the filing of the declaration under oath as to the right to a trade-mark, under Act July 8, 1870, § 77 633

The use of a name indicating peculiar mechanism covered by a patent is not protected after the patent expires 219

There can be no trade-mark in the name "Singer Sewing Machine." 219

A person not connected with the Singer Manufacturing Company may make a Singer sewing machine, and sell it by that name, after the patents have expired, but he may not do any act conveying an intimation that such machine was made by that company 219

TREASON.

Levying war against the United States by citizens of the republic, under the pretended authority of the new state government of North Carolina, or of the so-called “Confederate Government,” was treason against the United States 20

TRIAL.

See, also, “Appeal”; “Continuance”; “Evidence”; “Judgment”; “Jury”; “New Trial”; “Practice”; “Witness.”

The right of the court to instruct the jury is not confined to the giving of such instructions as may be requested by counsel 1322

A verdict which is repugnant or uncertain in a material point is void 1175

A verdict in a suit brought in the name of “the United States of America,” finding that the party is indebted to “the United States.” is sufficient 694

If the jury find the point in issue, a finding as to another matter out of the issue may be rejected as surplusage 1175

A jury which has given a verdict of one cent damages, under the mistaken view that it will carry costs, cannot change the same after they have been discharged 736

The verdict will cure defects in substance in the pleadings if, from the issue in the case, the facts omitted or defectively stated may fairly be presumed to have been proved on the trial 1046

TRUSTS.

Where, by contract, a trust was created and trustees appointed, but the trust was not to take effect until the happening of a certain event, held, that before that time the court would not, at the instance of one of the 349

parties, remove the trustees for alleged misfeasance

A strict trust, entirely private in its nature, must be executed by all the trustees, unless otherwise provided. But a public trust may be executed by a majority of the trustees, unless otherwise provided 354

One trustee will be enjoined from denying another access to the books and papers relating to the trust 354

A conveyance of land in consideration of coupon bonds by a trustee empowered to sell may be valid, though it be not a sale for money 910

A trustee will not be permitted to obtain any personal benefit to himself at the expense of his cestui que trust 354

As to the priorities between the parties where a trustee in a deed of trust is also made agent to collect the notes secured thereby, which he sells to bona fide purchasers, where he subsequently obtains title to the property, having previously executed a release as trustee 623

UNITED STATES.

Where the United States prosecute their suits in the state court, they are subject to the state law as to the manner of enforcing their rights 1188

In such case a discharge from imprisonment of a judgment debtor under a law of the state will bar an action of debt on a bond given for the jail liberties 1188

USURY.

The purchase of a note drawn by the maker to his own order, and indorsed in blank, from his brokers, without knowledge of their agency, in the regular course of business, at a 854

greater rate than 6 per cent., is not usurious,
within Act Pa. May 28, 1858

Alleged usury in a loan of money and sale of
goods cannot be taken advantage of by one 177
purchasing the goods from the vendee

A principal betrayed into loaning money at a
usurious rate by an agent may recover legal 9
interest from the borrower

VENDOR AND PURCHASER.

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

The vendee will be required to pay interest
where he refused to receive and pay for the
title on tender of a conveyance on the day 777
fixed, though there was a doubtful point of
law involved in the title

One who purchases with full knowledge of
the title, and of pretended claims, and
receives a deed, cannot withhold a part of 1057
the purchase money on account of the alleged
defect, but must seek redress on his warranty
Where the statement of the quantity is mere
matter of description, and not of the essence
of the contract, the vendee takes upon himself 1192
the risk of the quantity, where there is no
fraud or willful misrepresentation

Equity will grant relief in the case of mistake
by the parties where land is sold at a certain 1192
sum per acre, and the vendee will be allowed
compensation for the deficiency

The same rule will obtain where the sale
is for a gross sum, and there is a positive 1192
representation of the quantity by the vendor

On the resale of lots on default of the
purchaser, some bringing more and some less 421
than the contract price, the indorser on the
purchase-money notes is entitled to the

surplus of one to make good the deficiency of the others

Where one having an interest in lands contracted with trustees to purchase the whole at a given price, but failed to pay at the time agreed, and afterwards sold to others at a profit, and received the consideration, before conveyance to him by the trustees, *Held*, that he was to be regarded as the agent of his vendees, so that they must aid him to refund the consideration. 432

A subpurchaser who gets in the paramount title is bound in equity to fulfill his contract with the first purchaser, deducting what he has been obliged to pay to get in the title. 421

WAR.

See, also, "Prize"; "Treason."

The intervention of war pending a suit by a foreign corporation will not defeat the action unless it appear on the record that plaintiff is not within any of the exceptions which enable an alien enemy to sue 756

There is no legal difference as to the plea of alien enemy between a corporation and an individual 756

Compulsory payment of a debt to a receiver under the Confederate sequestration acts is no defense to a suit by the creditor 20

The suspension of intercourse during the Civil War did not prevent the accrual of interest, as between citizens adhering to the respective belligerents 1375

Legal rights can neither be created nor defeated by the action of the government of the Confederate States 20

Concession of belligerent rights by the legislative and executive departments to 20

rebels establishes no rights except during the war

The acts of the people of the states in rebellion merely suspended the practical relations of those states to the Union, but did not for a moment effect their separation therefrom. 20

The proclamation of April 19, 1861, did not interdict commercial intercourse between the citizens of the states in rebellion and those of the other states 908

Contracts made prior to July 13, 1861, were not invalidated by the operation of the principles of international law 908

WILLS.

Query, if the probate of a will in Rhode Island be not conclusive as well to real as personal estate 920

Where a suit brings incidentally in question the title to land held under devise in another state, the will need not be probated in the state where the suit is brought, before it can be used as evidence of title 309

In a suit to establish a lost will, secondary evidence of its existence and contents is admissible 837

The presumption arising from the failure to find a will proved to have been executed by the testator is that it was destroyed, animo cancellandi; but such presumption may be overcome by circumstantial evidence 837

On a question whether an alteration was made by the original draftsman or by a stranger, other proved writings of his, and also testimony of witnesses, are admissible to show that the peculiarities were such as the draftsman frequently used in his ordinary handwriting 546

Declarations of an intention to alter a will,
and of being prevailed upon not to do so, 546
are inadmissible to show that testator was
fraudulently prevented from revoking the will
An alteration of a pecuniary legacy in the will,
by the legatee or a stranger, does not avoid 546
the will as to other bequests

Declarations of the testator before and at the
time of making the will, and after wards, if
so near as to be part of the *res gestæ*, are 546
admissible to show fraud in obtaining the
will. But declarations at any distance of time
after execution are inadmissible

A devise to "A. and to his male children,
lawfully begotten of his body, and their heirs,
forever, to be equally divided amongst them 238
and their heirs forever," passes a life estate to
A., with a contingent remainder in fee to his
children

Under a power in a trustee to sell land
"when the major part of my children shall
recommend and advise the same," the consent 772
of the major part of those living at the time of
the sale is sufficient

WITNESS.

See, also, "Bankruptcy"; "Costs"; "Deposition."
The federal district court has no power to
issue a summons to compel a witness to
appear and testify on a commission from a 854
court of a foreign "country to its resident
consul to take testimony to be used in a
criminal prosecution

Attachments may run from the District of
Columbia into Maryland for witnesses 794
residing within 100 miles of the place of trial
The witness is privileged from arrest during
a reasonable time in going to court and 710
returning to his home

Under Act 1789, § 30, witnesses may be examined and cross-examined ore tenus in equity suits as well as suits at law. This power was not taken away by any subsequent act, or by rule 67, promulgated March 2, 1842 92

WRITS AND NOTICE OF SUITS.

To entitle plaintiff to file a common appearance for defendant under Act Pa. March 20, 1724, the summons must have been served 10 days before the return day. 458
But, if not so served the writ is not to be dismissed, but plaintiff must proceed regularly to enforce an appearance

The intermission of a term between the issue of the writ on which one defendant was taken and an alias or pluries against the other will not prevent consolidation of the causes 704

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