INDEX.

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

24FED.CAS.
24FED.CAS.—84
24FED.CAS.—85

ABATEMENT AND REVIVAL.

In an action of detinue, the cause of action on the death of plaintiff survives
Where a cause of action, jurisdiction of which depends upon citizenship, survives the death of plaintiff, his representatives may be substituted, though they are citizens of the same state with defendant
A suit against a copartnership for infringement of a patent does not abate on the death of a copartner, and it will not be revived against his executors where it does not appear that the survivors are insolvent, and the copartnership assets are insufficient to pay the claim

ACCOUNT.

On a general demurrer to a count it need only be sufficient in substance, without regard to form.
The declaration must show the privity by which plaintiff is entitled to an account, and also proceedings under or pursuant to it, raising a balance in his favor to be recovered

ACTION.

A judgment against one of two joint contractors may be set up in bar to a suit against both.
Where a contract is both joint and several, a judgment against both contractors is not a bar to a several action against either, and a several judgment against either is not a bar to a joint judgment against both.

ADMIRALTY.
A court of admiralty will order an account only as incident to other matter of which it has admitted cognizance. The court will decline jurisdiction on a libel by a seaman of a British vessel, who, having submitted his claim to the British consul, disregarded the award. Rafts anchored in a public navigable river are not the subject-matter of admiralty jurisdiction. To entitle a person employed on board a vessel to sue in admiralty for wages, the services rendered must contribute to the preservation of the vessel or those employed in her navigation. Admiralty has no jurisdiction of a suit in rem for wages of persons employed on a vessel as musicians. The district court in admiralty has no jurisdiction of a suit in rem to enforce a claim for materials and labor for the repair of a steamboat engaged in running upon waters wholly within the limits of the state of New York. Admiralty has jurisdiction of a libel for forfeiture of goods for a fraud on the customs laws, though part of the goods were seized on land. Admiralty has jurisdiction of cases of seizure and forfeiture on tide waters without as well as within the United States, regardless of foreign territorial authority over the place where the seizure was made.
Admiralty has no jurisdiction over preliminary contracts leading to maritime contracts, irrespective of the name given to them. There is no remedy in admiralty for breach of a charter party, where the cargo has not been placed on board.

Admiralty has jurisdiction in the case of a contract for repairs or supplies to a domestic ship, to determine to whom the credit was given and who is liable for the amount.

Admiralty has no jurisdiction where a maritime contract sought to be enforced is so inseparably connected with a contract over which the court has no jurisdiction that one cannot be decided without disposing of the other.

Admiralty has no jurisdiction to decide whether a contract to form a partnership to purchase a vessel is legally or equitably binding, nor to adjust the accounts and liabilities of the different partners.

The district court in admiralty has jurisdiction of a libel for damages for the death of libelant's husband in a collision caused by the negligence of the vessel libeled.

It is a maritime tort for the master to shave the head of a stowaway on board his vessel for the mere purpose of putting a mark upon him.

**AFFREIGHTMENT.**

See, also, “Admiralty”; “Bills of Lading”; “Carriers”; “Charter Parties”; “Demurrage”; “Shipping.”
Where a canal boat, hired to carry a cargo of coal between certain places, was stopped en route, and, after some delay, unloaded, *held*, that she was entitled to freight to the port of unloading, and demurrage for the detention there above the usual time for unloading.
Page 456

In the absence of a special contract, goods will be regarded as delivered when deposited upon the proper wharf at their place of destination, at a proper time, and notice given to the consignee, after which he has had a reasonable time and opportunity to remove them.

A known usage and custom of the ship's agents to protect goods after they are landed, and to make a small charge for services therefor, will control the contract as to delivery.

The owners of a vessel let to the United States in time of war have no lien for their charter money on goods the United States may put on board.

The holder of the bill of lading cannot require delivery of the cargo without paying freight, but may require it to be discharged so that it can be inspected by him.

Where the quantity is to be ascertained by weighing, the holder of the bill of lading cannot insist that the certificate of a particular weigher shall be conclusive.

Vessel 15 years old held unseaworthy where she sprung a leak when 24 hours out of port, and her log book did not show unusual stress of weather.

Where stoneware pipes are properly stowed with reference to their character and apparent condition, the vessel is not liable for breakage during the voyage, and may retain all the goods until freight is paid on the broken pipes.

See “Principal and Agent”

ALIENS.

A deposition, made in 1802, that deponents have known the applicant “since the year 1793, in New York,” is not evidence that he was residing in the United States before Jan. 29, 1795. (Act April 14, 1802.)
ALTERATION OF INSTRUMENTS.

An alteration of the date of a promissory note, whereby the time of payment is prolonged, does not invalidate it as against the maker.

APPEAL, AND ERROR.

Time for appeals from the orphans' court of the county of Alexandria, D. C.

Where an appeal ties up a fund in court, the bond should provide for payment of interest during the pendency of the appeal.

In an action upon an appeal bond given upon a writ of error to the supreme court, the breach to be assigned must be a single breach, denying each alternative.

The plaintiff in error is bound only to indemnify the defendant in error for whatever losses he may have sustained by the judgment not being satisfied and paid after affirmance, which must be specially alleged in an action on the appeal bond.

It is no ground of error that the court refused to instruct the jury on a point of law which was so stated as to involve an opinion on matters of fact.

On an appeal in admiralty to the circuit court, the trial there is de novo, and the opinion of the district judge cannot be read.

The judgment will not be reversed for the small excess of $1.90.

The findings of fact by a referee cannot be reviewed on writ of error to the circuit court, where his report was not excepted to, and a case containing exceptions forming part of the record contained only proceedings which took place prior to the making of such report.

If the verdict below was given upon an immaterial issue, a repleader cannot be awarded.
but judgment must be rendered against the party who committed the first fault.

**APPEARANCE.**

The general appearance of a party to a suit in personam waives all irregularities in the service of the process, and confers jurisdiction, so far as the person is concerned, which cannot be withdrawn without consent of the court or the opposite party.

**ARBITRATION AND AWARD.**

An umpire is not to be called in until the original arbitrators have differed, and is then only to decide the points on which they differ.

An award will be set aside for misconduct of arbitrators, or where they have decided contrary to law.

An award will be set aside where the arbitrators have refused to give time to defendant to produce an absent witness to explain evidence in a case of surprise.

**ARMY AND NAVY.**

A minor, enlisted in the army without the consent of his parents, may be discharged on habeas corpus at the instance of the parent.

Congress has a constitutional power to enlist minors in the army or navy without the consent of their parents.

Under the navy acts of 1798, 1806, 1807, 1809, 1813, the consent of the father is not necessary to the valid enlistment of minors.

An indictment for purchasing of a soldier “his arms” can only be sustained by showing that the soldier was in lawful possession of the arms, or had a special bailment of them.

Duties, rights, and emoluments of pursers in relation to the stores to be provided, and the price therefor, and the effect of usage.
A paymaster's clerk in the navy is a person “in the naval forces,” and in case of embezzlement is liable for the amount embezzled, under Act March 2, 1863, § 1, and not to the penalty under section 3.
The marine station at the Washington navy yard held “a permanent or fixed-post garrisoned by troops.” within Act Aug. 23, 1842, § 6, allowing double rations.

**ARREST.**

See, also, “Bail”; “Criminal Law.”
An officer effects an arrest of a person by laying his hands on him for the purpose of arresting him, though he may not succeed in stopping and holding him.

**ASSAULT AND BATTERY.**

The builders of a house have a right to remove, without unnecessary violence, all persons who come into the building without authority, and refuse to depart upon request.
On a plea of not guilty, evidence may be given in mitigation of the fine to be assessed by the jury.

**Assignment for Benefit of Creditors.**
See “Bankruptcy.”

**ASSUMPSIT.**

Assumpsit will lie for money extorted by duress of goods.

**ATTACHMENT.**

See, also, “Bankruptcy”; “Garnishment”; “Writs and Notice of Suits.”
An attachment levied on land fixes the lien from the time of the levy, and a sale under a judgment on the attachment relates back to such time.

**AVERAGE.**
The vessel and the cargo under deck are not liable to contribution for the deck load thrown overboard for the general safety.

**BAIL.**

Sufficiency of affidavit to hold to bail
The recognizance need not state the particular Charge on which the party is under arrest and to which he is to appear
Subsequent detention for additional security, and subsequent arrest to compel the prisoner to keep the securities good, will not release the sureties
The rescission of the forfeiture of a recognizance will be ordered, and a motion in arrest of judgment allowed, without the personal appearance of defendant
A declaration on a recognizance should state that the recognizance was filed in court

**BAILMENT.**

A gratuitous bailee is guilty of gross negligence if he omits that reasonable care which persons in the like situation exercise or which he is accustomed to exercise in like cases
Gross negligence is to be considered with reference to the nature of the goods committed to his care
The question of negligence of a bailee, as a general rule, is one of fact for the jury

**BANKRUPTCY.**

See, also, “Insolvency.”
Operation and effect of bankruptcy laws and of proceedings thereunder.
A bankrupt indorser may waive demand and notice upon a note maturing before the choice of an assignee
Acts of bankruptcy.
A conveyance by an insolvent railroad company in trust to secure bonds to be issued and sold
to pay unsecured debts made in good faith to enable it to continue its business, held not an act of bankruptcy.

A common carrier is not a trader, and a mortgage by a railroad company is not an act out of the ordinary course of its business, within the meaning of the bankrupt law. A mortgage by a railroad company to secure all its creditors equally out of its earnings, or to pay such as refuse the security their ratabe proportion of the proceeds, is not an act of bankruptcy.

**Meeting of creditors: Notice.**
The clerk's certificate under seal, that notices "were duly mailed to each creditor," will prevail, though it appear that a notice was mailed by the clerk to one of the creditors, naming a different day than that fixed.

**Assignee—Rights, duties, and liabilities.**
Where the assignee is made a party to a suit, he must come in and assert his rights, or he will be barred by decree on default, as any other party.

**Property of bankrupt—What constitutes.**
A person who furnishes money to the bankrupts for the purchase of stock, the title to which the bankrupts take in their own name without his knowledge, and subsequently hypothecate as security for a loan, is not entitled to the proceeds of such stock, where securities are deposited on the day of their failure to release it.

**Custody and control.**
The possession of a sheriff under a levy made before proceedings in bankruptcy commenced cannot be disturbed by the bankruptcy court. On petition of creditors after an adjudication and before the appointment of an assignee, an
injunction may be issued restraining interference with the property of the bankrupt

—Exemptions.
Under Rev. St. § 5045, the assignee cannot set apart money which is not the proceeds of exempt property, or which is not necessary for temporary support where the bankrupt's family is entirely destitute

The bankrupt is entitled to an exemption" although his wife owns a house

A partner cannot have an exemption set off to him out of the joint estate

—Liens.
A landlord has a lien, in South Carolina, on the personal property of the tenant, which is good for one year as against execution and other creditors and as against an assignee in bankruptcy

—Sale.
A sale at auction by the assignee of a large amount of property set aside where the purchase was made by a combination of creditors, and other creditors were ignorant of the fact of sale Creditors, upon whose application and offer to bid a larger sum a sale by the assignee was set aside, held would be required to fulfill their offer

Proof of debts—What is provable.
The payment by creditors of a decree obtained against them in a suit by the assignee to recover a preference is not a surrender, and they are not entitled to prove their debt

—Set-off.
Where a new account is opened with a debtor by a creditor under an agreement to account for goods sent for sale by turning over cash or notes received therefor, the creditor cannot set off the amount due by him under such account against the amount due him on the old account
—Allowance or rejection of claim.
An objecting creditor cannot further contest the claim of another after a decision on its validity by the district court. Proceedings to review such decision must be taken by the assignee by appeal under section 8. (Act 1867.)
The creditor at whose instance the assignee contests the claim of another creditor is liable to the latter for costs, where the claim is allowed.

Payment of debts: Priority: Dividends.
An agreement of dissolution between partners is ineffectual where no notice is given thereof, and the business is continued under the old firm name, and the assets will be held to be firm assets.
A surplus remaining in the hands of the assignee after paying the creditors should be applied to the payment of interest, to be computed from the date of the adjudication.

Examination of bankrupt, etc.
The fact that an answer would reveal the private business of the witness unnecessarily, and prejudice him in another suit pending, is not sufficient reason for his refusing to testify to the actual consideration paid for his claim.

Costs: Fees: Disbursements.
Items of cost allowable to an assignee

Discharge—Proceedings in opposition.
Vague and general specifications filed in opposition to a discharge will be disregarded.

—Acts barring.
It is no ground of opposition to a discharge that a debt was created by the bankrupt while acting in a fiduciary capacity.
A person who buys and sells apples, partly on his own account and partly on joint account with
another, is a tradesman, required to keep books of account

—Scope and effect.

A person having a contingent and unliquidated claim not capable of being proved as a debt comes within the class of “other persons in interest” (Act 1841, § 4), and may show cause against a discharge

Prohibited or fraudulent transfers.

An attorney to whom the insolvent has in good faith paid a fee for necessary services rendered at the time is not liable to refund it.

Fees paid an attorney by a bankrupt for services in opposing a petition in bankruptcy may be recovered back where inconsistent with a due regard for the interests of the general creditors

A mortgage taken by a creditor with knowledge of the debtor’s insolvency, given in part to secure a pre-existing debt and in part for a credit given at the time of its execution, is void in toto

Suits and proceedings in relation to the estate.

The statute of limitation of two years will not bar an action where the facts attending a fraudulent transfer by the bankrupt were concealed by the parties, and not brought to the attention of the assignee, until within three months of bringing the suit

The objection that the relief sought to set aside a transfer by the bankrupt must be obtained by bill instead of on petition is waived where not taken by pleading

Review.

A reargument or rehearing on the report of a referee allowing the claim of a creditor will not be granted after separate exceptions and appeals by a contesting creditor and the assignee have been decided against them
Arrangement with creditors: Composition.
The word “creditors” in the provisions of the bankruptcy act relating to composition means all whose debts are provable in bankruptcy.
After the resolution of creditors for the appointment of a trustee, under section 43, has gone into effect, a creditor cannot prove his claim before the register, under section 22. (Act 1867.)
The bankruptcy court will not enforce the provisions of a composition as against a creditor who has obtained a judgment by default in the state court upon a debt contracted by fraud.
A mistake without fraud in the statement of the amount due a creditor will not vitiate the composition.
The court may confirm a resolution of composition in cases of voluntary bankruptcy, although the bankrupt has by his own acts and conduct deprived himself of the right to obtain a discharge.
The court may provide for an unliquidated claim by permitting the prosecution of a pending suit in the state court, or by ordering an inquiry in the matter at the bar of the bankruptcy court.
The committee of creditors (Act 1867. § 43) are entitled to reasonable compensation for their services.

Criminal prosecutions.
Under Rev St. § 5440, a person who conspires with the bankrupt to commit the acts made criminal by section 5132, subds. 7, 10, may be indicted.
A chattel mortgage is a disposition of property out of the usual course of business, and, where executed with an intent to defraud creditors, will subject the bankrupt to indictment, under Rev. St. § 5132.
The crime defined in Rev St. § 5132, subd. 6, is not an infamous one, within the meaning of that term at common law and as used in Const. Amend. 5, and the party committing it may be prosecuted by information

**BANKS AND BANKING.**

The holders of notes for small amounts, payable to bearer, illegally issued by a firm of bankers, held entitled to preference on their insolvency

The expiration of the charter of a bank indebted to the United States will prevent a remedy over against the debtors of the bank where there was no previous assignment

Construction of Acts Ind. May 28, 1852, and March, 1855, in relation to the liability of stockholders of banks

Suits may be maintained by as well as against national banks in the federal courts of the district of their location. (Act June 2, 1864, § 57.)

A taxation of national bank shares above their par value renders the whole tax inoperative and void

**BILLS, NOTES, AND CHECKS.**

See, also, “Alteration of Instruments.”

**Interpretation.**

Where the maker signs a note by mistake above the printed line, stating where it is payable, the latter is nevertheless a part of the note

**Indorsement and transfer.**

A creditor to whom an agent transfers notes of his principal, before maturity, in consideration of the canceling of a security held against the agent held a bona fide purchaser for value where the principal was indebted for advances made

**Demand: Notice: Protest.**

Where the maker dies before the note falls due, demand or notice to charge the indorser is not
necessary where he administers upon the maker's estate.

A bill of exchange, payable at sight, must be presented within a reasonable time. In the case of a foreign bill, it need not be sent by the first vessel.

Where a bill is presented and dishonored, though it was not necessary to present it notice must be given without waiting the maturity of the bill.

Notice of protest of a bill of exchange must be given by the earliest practicable post after the bill is dishonored, where the parties do not live in the same town.

An unexplained delay of nine days in giving notice of nonacceptance of a foreign bill held fatal.

In case of a war between two countries, a notice of nonpayment, sent between the countries through the post, is not good.

As to the sufficiency of a notice of dishonor of a bill held by the government, to the transation of whose business unusual delays are incident.

Notices of dishonor sent through agents must be transmitted within the time allowed to the principal.

Where an agent, who received directions by mail on noon of Saturday to give notice of protest, did not give "such notice until Monday, held, that the drawer was discharged.

A protest for nonpayment will not supply the place of a protest for nonacceptance where the bill has been presented.

Inserting the name "John" instead of "James" will invalidate the notice, unless the party have good reason to believe that "James" was intended.

The burden is upon the party charged with the duty of giving notice of nonacceptance or
dishonor of proving the manner in which it was given, and of any legal excuses for its delay

**Actions.**
The holder of a bill of exchange cannot recover from the maker damages for its nonpayment after receiving the principal and interest from the indorser.

An indorser of a bill of exchange may fill in prior blank indorsements and strike out subsequent indorsements, and sue on it in his own name.

A single bill may be declared on according to its legal effect.

Where there is a subscribing witness to a promissory note, its execution must be proved by him.

Evidence of the confession of the maker of a note that he owes part of it, held, not sufficient on the money counts.

The measure of damages in an action on a bill of exchange is its value, at the time of notice of protest, in gold or silver, and not in a depreciated or fluctuating currency.

In New York the holder of a bill of exchange is entitled to recover at the rate of exchange at the time the notice of protest was given.

Where the facts have been found by the jury, it is within the province of the court to determine whether due diligence has been used in giving notice of dishonor.

**BILLS OF LADING.**
See, also, “Admiralty” “Affreightment” “Carriers” “Demurrage” “Shipping.”

Where the bill of lading is silent as to the place of stowage of cargo, there is a presumption that the cargo is to be carried under deck; but the shipowner may prove a different agreement.
A bill of lading, consigning the cargo to a certain person, does not preclude the court from ascertaining the true ownership of the property by other evidence.

The assignee of the bill of lading who receives the goods is bound for the freight, unless the assignor is bound by the charter party to pay it, or the assignee has contracted with the master in a different right.

**BONDS.**

See also “Counties” “Municipal” Corporations” “Principal and Surety” “Railroad Companies.”.

Where, in a bond taken at common law, the condition is bad in part only, a recovery may be had on it for breach of the good part.

A statutory bond is vitiated by the omission of a material condition required by the statute.

A superadded condition in a statutory bond will not invalidate it, but will be disregarded as surplasage.

Where a bond taken under a statute contains a condition in part not prescribed by it, which is easily divisible, a recovery may be had on it for breach of the part prescribed by the statute.

Where the statute declares that the bond shall be in a prescribed form, and no other, any variance is fatal.

A retrospective condition in a statutory bond is void.

Coupons taken after they are due are subject to all the equities which properly attach to them in the hands of the previous holder.

Judgment on a bond cannot exceed the penalty thereof and interest from the breach, though the sum actually be larger.

**BOTTOMRY AND RESPONDENTIA.**
A bottomry bond can be entered into by the master only under circumstances of great distress, and when he has no other means of repairing, etc.

**Bounties.**

See “Fisheries.”

**BURGLARY.**

A slave, lodging in the house, who lifts the latch of his master’s sleeping room in the nighttime, and enters with an axe in his hand, with intent to murder him, is guilty of burglary.

**CARRIERS.**


The common-law doctrine of carriers' liability by land is applicable in admiralty to carriers by water. A carrier by sea is not exempt from liability on account of loss through the ordinary perils of navigation. The “act of God” which excuses the carrier from liability must be the immediate and distinct result of providential events, sudden or overwhelming in their character, which human sagacity could not foresee, or human force prevent.

The bill of lading is prima facie evidence that the goods were shipped in good condition. Though the damage was the result, of a clause excepted against, the carrier is still liable if it could have been avoided by skill and diligence. Where the damage is shown to have been caused by an excepted peril, the burden is on the shipper to prove want of skill or diligence. A carrier's liability ceases when he has delivered the goods according to the bill of lading.

**CHARTER PARTIES.**

See, also, “Admiralty” “Affreightment” “Average” “Bills of Lading” “Demurrage” “Shipping.”
An agreement for a charter party to be made at a later period held, to amount to a present charter party, though a more formal instrument was contemplated.

As between the shipowner and charterer, the charter party, and not the bill of lading, determines the contract of shipment.

It will be presumed that the parties contracted with reference to the character of the port of loading named, and the incidents and difficulties attendant upon entering the harbor and leading there.

The master, who is a part owner, will be presumed to be bound by the provisions of the charter party, though it is not signed by him; and on the voyage he has no power to exercise the rights of a part owner.

In such case the master has no power, as part owner, to submit to arbitration a controversy as to the amount of freight due.

Under a charter party providing that cargo is to be furnished as “required” by the master, it is sufficient on the ship’s part if the master gives notice that he is in want of more cargo.

The measure of damages, where the voyage is broken up by the shipowners, held, to be compensation for the actual loss and expense incurred about the voyage, the labor and services in procuring another vessel, and reasonable disbursements in the action beyond the taxed costs.

**CIVIL RIGHTS.**

Colored persons, equally with white persons, are citizens of the United States.

An indenture of apprentice of a negro child, which does not contain the provisions for his security and benefit required by the general laws.
of the state in indentures of white apprentices, is void, under the civil rights bill of 1866

CLAIMS.

See, also, “Criminal Law.”

Slaking a claim against the government within Rev. St. § 5438, punishing the making of false or fraudulent claims, consists in asking or demanding payment for services.

CLERK OF COURT.

Where the office of clerk of the district court and that of the clerk of the circuit court are held by the same person, he is entitled to the salary of each office. (Act May 18, 1842, c. 29.)

The fees of each office are to be kept distinct, and a deficiency in the amount of one cannot be made up by excess in the amount of the other

COLLISION.

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

Rules of navigation.

A pilot boat under reefed sails, with helm lashed to leeward, and alternately luffing up and falling off must unlash her helm, and keep a steady course, on the approach of another vessel

Between steam and sail.

A sail vessel beating in advance of a steamer must run out her tacks

Where a wharf presents itself as a dangerous obstacle to a nearer approach to the shore by a vessel beating, she may come about, and throw the responsibility on an overtaking steamer to avoid her

Vessels moored, etc.

A vessel which fastens to a pier in New York harbor in midwinter, while a strong tide is running, and the river is full of floating ice,
is negligent in not having a competent pilot or master on board.

The act of a sail vessel in detaching herself from a tug and fastening herself to a pier is to be considered her act, unless she show that she was left at the pier in opposition to her wishes.

River and harbor navigation.

A steamer proceeding slowly to her dock held, not liable for collision with sloop endeavoring to cross her bows into the same slip, where she stopped her engines as soon as the maneuver was discovered.

Lights, signals, etc.

In the case of a steamer and sail vessel, where the lights are red to red or green to green, the sail vessel is not required to show a lighted torch, as the vessels are not then approaching, within the meaning of Rev. St. § 4234.

In case of a collision between a steamer and schooner, whose light was seen in ample time to avoid her, the steamer was condemned for all the damages, though the schooner had no lookout.

Particular instances of collision.

Between schooner sailing free and pilot boat under reefed sails, with her helm lashed to leeward, where both were held, at fault; the former for not changing her course, and the latter for not unlashing her helm, and keeping steadily on her course.

Between ferryboat coming down East river at 12 miles an hour and tug crossing the river, where both were held, in fault; the former for too great speed, and the latter for failure to have the statutory lights.

Procedure.
The master has authority as such to sue in his own name for damages to his vessel by collision.

The master's right of action, as such, for a collision, is not affected by the fact that underwriters upon the vessel have paid the cost of repairs, which constitutes a part of the claim for damages.

Where it is impossible to tell on the pleadings and proofs which vessel had the right of way, the case will be considered as one of mutual fault or of inscrutable fault, and the damages will be divided.

**Rule of damages.**

Pilots whose boat is injured in a collision held, not bound to hire a fruiter or fishing smack for the purpose of carrying on their business while their vessel was being repaired.

The value of the time of a pilot boat while undergoing repairs must include only the value of the use of the boat as a vessel without pilots or crew or stores.

A wrongdoer, who takes the injured vessel in his possession to repair her, must show that the boat, when returned, was in substantially as good condition as before the accident, and he is liable for the additional work necessary to put the boat in such condition.

**Compositions.**

See “Bankruptcy.”

**CONSPIRACY.**

What facts are essential to constitute a conspiracy, and how they must be proved.

An indictment for conspiracy to defraud the government must allege an overt act.

In an indictment under Act March 2, 1867. § 30, 1213 for a conspiracy to defraud the United States, the
subject-matter is sufficiently described as “taxes upon distilled spirits, distilled in the United States, and situated in certain bonded warehouses.”

It is sufficient to allege that the overt acts were done “in pursuance” of the conspiracy.

Though a revenue officer is liable to a greater penalty than other persons, he may be joined in the same indictment with others: but in such case he will be liable in his individual capacity.

On a prosecution for conspiracy to deprive colored citizens of the equal protection and privileges of the laws, it is no defense that such colored persons were charged by defendants or others with illegal acts or crimes.

Such charge is sustained by evidence that the colored people of a certain township were entitled to a public school, and that defendants conspired by illegal means to deprive such colored persons as a class, and on account of their color, of such school by intimidation.

There is a deprivation of equal protection of the laws where the officers of the law, with knowledge of the public outrages and crimes committed by defendants, willfully failed to employ legal means to bring the offenders to trial because of the color of their victims.

The declarations of conspirators are not admissible, of themselves, to connect a third person with the conspiracy; but where such third person is shown to be a member of the conspiracy, such declarations are admissible against him.

CONSTITUTIONAL LAW.

See, also, “Civil Rights.”
The right or privilege of voting is one arising under the constitution of the state, and not under the constitution of the United States.

A law may be unconstitutional in some of its provisions and not in others, and in its effect upon some classes of citizens and not upon others, and may be so treated.

An act punishing a slave, for theft, by imprisonment, is not unconstitutional as a taking of private property without just compensation.

The restriction, under the constitution and laws of a state, of the right to vote, to males, is not in violation of Const. U. S. Amend. 14.

An information verified on information and belief by the prosecuting attorney does not of itself constitute "probable cause supported by affidavit," as provided by Const, art. 1, § 4.

The restraint of jurisdiction over suits against a state or the government is limited to those suits in which a state or the government is a party on the record.

The power of congress to punish offenses committed on the high seas below the grade of piracy or felony may be sustained under the provision conferring power to regulate foreign commerce.

**CONTEMPT.**

A court of admiralty has full power to punish by fine the action of one of the parties in taking a vessel away from the custody of the court without permission.

An indictment for using contemptuous language to a magistrate in the exercise of his office should set forth the words spoken, and the day and month, and that the magistrate was in the discharge of his judicial functions.

**CONTINUANCE.**
A supplemental affidavit will not be received to support a motion for continuance. Where the ground alleged is the absence of a witness, the moving affidavit must state that the party cannot safely proceed to trial without the attendance of the witness.

**CONTRACTS.**

A note made and signed in Michigan, given in payment of liquors sold in Massachusetts, is not affected by the Michigan laws prohibiting the sale of intoxicating liquors. A contract in part only connected with an illegal transaction, and growing immediately out of it, though in fact it be a new contract, is equally tainted by it. A promise unconnected with the illegal act, and founded on a new consideration, is not tainted with it, although remotely caused by it. Where certain things were necessary to be done by plaintiffs to enable defendant to perform, his contract, the declaration in an action thereon must show performance of the precedent acts. Sufficiency of complaint in an action on a contract by plaintiff to furnish defendant 66 or more men, at different rates of wages, to work upon a certain railroad for an indefinite time. A party to a contract, who can save himself from loss arising from a breach at a trifling expense, or with reasonable exertions, is in duty bound to do so.

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See, also, “Banks and Banking” “Counties”; “Municipal Corporations” “Railroad Companies” “Receivers.”
The presumption in favor of the validity of a contract by a corporation only arises where power to contract appears from its charter or the laws of the state.
Where the charter required the officers annually between the 1st and 20th of January to make and publish a certain report, held, that a company incorporated in May was bound to make and publish such report in the following January.
A director who aids in the passage of a resolution by which he appropriates certain corporate assets to his use is liable to the corporate creditors, as trustee, for their value.
The president of a corporation, who has become liable for a loan to the company, will not be restrained from selling collaterals to reimburse him to the extent of moneys actually received by the company, because he has retained excessive commissions for securing and guarantying such loan.
Stockholders are not entitled to any share of the capital stock, nor any profits, until the debts of the corporation are paid, and a creditor may pursue the property of the corporation into whose possession, save that of a bona fide purchaser, it may be transferred.
The federal circuit court will take notice of and enforce a state statute prohibiting a charter from taking effect except on compliance with certain conditions, in the same manner that the state courts would do.
Plaintiffs, in Rhode Island, held, not entitled to sue as a corporation, having failed to pay the fee into the state treasury, as required by general law of the state.
A corporation is liable to indictment for the act of its officer or employe in issuing papers unstamped with intent to evade the stamp duty.

COSTS.

Where several seamen joined in a libel for shares of a whaling voyage, and the decrees in favor of some were final and the others were appealed, held, that the former were entitled to recover all the costs which they had advanced, or for which they were liable.

Where, in taking an account of profits in a patent suit, plaintiff greatly exaggerated his claim, and introduced a large amount of irrelevant testimony, and recovered only a small sum, held, that each party should bear his own costs, and the compensation of the master should be paid equally by both.

A compromise of a suit for seamen's wages without the knowledge of libelant's attorney will not relieve respondent from his liability for costs. An auctioneer cannot have costs or disbursements taxed in his favor by the court in invitum.

The solicitor's fee of $2.50 for each deposition taken and admitted as evidence relates to testimony taken out of court under authority which will entitle it to be read as evidence in court, and has no relation to oral evidence taken in court or before a master.

A docket fee of $20 is the highest compensation allowed to a solicitor, and it can be allowed but once.

No per diem allowance is taxable for the attendance of witnesses whose testimony is afterwards abandoned or given up or stricken out or rejected by the master.

COUNTERFEITING.
Whether congress has power to provide for the punishment of the offense of passing counterfeit coin, quære

Act March 3, 1825, § 18, punishes counterfeiting the gold and silver coin of the United States, and also foreign gold and silver coin made current by the laws of the United States

Act June 30, 1864, § 12, is confined to the case of an unauthorized possession of genuine plates, and is not applicable to a case of the possession of counterfeit plates.

The base coin need not have been made in exact resemblance of the true coin to constitute the offense of counterfeiting, under Act 1825, c. 65, § 20. It is sufficient if the resemblance is strong enough to deceive persons exercising ordinary caution.

When the purpose and act are otherwise guilty within the statute, the similitude suffices if, according to the mode of use apparently designed, the coin would have a probable tendency to mislead persons whom it might be intended in this manner to defraud into a belief of its genuineness.

Where the spurious coin for any reason is not fitted to deceive persons of the most ordinary precaution and intelligence, the inference of a criminal intention in making it does not arise.

Rev. St. § 5461. does not extend to the uttering of a token which does not purport to be an imitation, or in substitution, of any coin known to the law; and does not cover a piece of metal bearing the device of an Indian and the inscription “¼ dollar.”

Alleging the coins as 50-cent pieces and 25-cent pieces instead of the half dollar and quarter.
dollar, as named in the coinage act, is not a material variance
An indictment under Act March 3, 1825, § 21, which names the person intended to be defrauded by the passing of Counterfeit coin, need not name the person to whom the coin was passed
It is not a misjoinder to add to the counts charging the making of false coin a count for aiding and assisting in making such coins and ore for procuring them to be made
Proof that a quantity of spurious coin and instruments and appliances for making it were found in defendant's possession, where unexplained by evidence rebutting the presumption of guilt, is sufficient to sustain a conviction

COUNTIES.
See, also, “Railroad Companies.”
The issue of bonds to a railroad company will not be restrained where the requirements of the statute authorizing the issue have been complied with
The issue of negotiable bonds will be enjoined when the statute authorizing their issue only upon certain terms has not been complied with in matters of substance
The issue of bonds running 20 years under a statute requiring them to be paid in 10 years will be enjoined

COURTS.
See, also, “Admiralty” “Bankruptcy” “Clerk of Court” “Equity” “Indians” “Maritime Liens” “Removal of Causes.”
Jurisdiction and powers in general.
The courts cannot recognize the existence of a new foreign government until after its recognition by the legislative or executive departments.

Where proceedings by a court are had under special authority, and not under its general jurisdiction, no presumptions will be indulged in favor of their regularity.

The court may discriminate as to the unlimited admission into the court room of persons whose presence as a class, for any reason, will endanger the security of the administration of justice, or prevent the police of the court.

The division of a county subsequent to the levy of an attachment on land therein does not affect the lien or oust the court or sheriff of jurisdiction.

Comparative authority of federal and state courts: Process.

The court which first takes cognizance of the controversy is entitled to retain jurisdiction, and to take possession and control of the subject-matter.

It is not necessary that the court first taking jurisdiction shall take possession of the property.

The court may, during the term, set aside a dismissal, and restore the case, without losing its jurisdiction; and another court cannot, by taking jurisdiction during the interval, oust or supersede its jurisdiction.

Poll books, ballots, and other books relating to an election, which have come into the possession of a federal court by virtue of its process for use as evidence in pending prosecutions, cannot be taken from its custody by a state court.

Federal courts—Jurisdiction in general.

The circuit and district courts of the United States can take cognizance of civil and criminal matters only so far as the power so to do is
conferring upon them by statutes of the United States.

The jurisdiction of such courts is restricted to the territorial limits within which they are placed. The jurisdiction of such courts must in all cases appear on the face of the pleading.

The federal courts have no jurisdiction of criminal offenses, save such as are prohibited by the Constitution, or by act of Congress.

The crime of murder, charged against a white man for killing another white man in an Indian country, within a state, cannot be punished within the courts of the United States.

An offense committed on a United States naval vessel while lying in the channel of the harbor of Boston, outside of low-water mark, is committed upon the "high seas," and is within the jurisdiction of the federal courts.

The court of appeals established by Congress under the Articles of Confederation had full power to re-examine and reverse or affirm the sentences of the courts of admiralty established by the different states, though founded upon the verdict of juries.

---Grounds of jurisdiction.---

Where the interest of the parties is joint, to sustain the jurisdiction, each of the plaintiffs must be competent to sue each of the defendants in the federal courts.

In a garnishment proceeding it must appear on the face of the pleading or by the record that the judgment creditor and garnishee are citizens of different states.

A note made payable to the maker's own order, and by him indorsed, passes by delivery, as if made payable to bearer, and an action may be
maintained thereon in the federal court, where
the holder and maker reside in different states

—Circuit courts.
The circuit court of the district of Arkansas, in
the absence of any statute attaching the Indian
country west of Arkansas thereto, has no jurisprudence over such country, and cannot punish
offenses committed therein.

A proceeding under an act of congress to
condemn property is a “suit of a civil nature at
common law or in equity” (Act Sept. 24 1789),
and within the jurisdiction of the circuit court,
th rough authorized by a subsequent act.

The clause quoted does not restrict the
jurisdiction to old and settled forms, but includes
all suits in which legal rights are to be ascertained
and determined.

—District courts.

Where the subject of litigation depends upon the
question of prize or no prize, it is completely and
exclusively within the cognizance of the district
court.

Under Act 1789, § 9, the district courts have
cognizance of all suits at common law brought by
the United States, where the matter in dispute
amounts to $100, exclusive of costs.

The court of the district in which the offending
vessel is arrested has jurisdiction of a libel for
collision which occurred within the territorial
limits of another district.

COVENANT, ACTION OF.

Covenant will not lie on words in a penal bond,
inserted by way of condition or defeasance by
the performance of some collateral act, but it
will lie upon the bond itself where the breach
assigned is nonpayment of the penalty, and not
nonperformance of the condition.
CRIMINAL LAW.


What constitutes crime.

An unlawful stroke on the sea, without malice, followed by death on shore, is not within either Act April 30, 1790, § 12, or Act March 3, 1825, § 4

Act April 30, 1790, § 9, in regard to piracy or robbery on the high seas, applies only to citizens, and not to foreigners

Act May 15, 1820, § 3, in regard to robbery on the high seas, applies to all persons, whether citizens or foreigners

To constitute robbery on the high seas within Act May 15, 1820, § 3, the taking need not be such as to amount to piracy according to the law of nations

A commission by a nation at war to a private armed vessel will afford protection, even in the judicial tribunals of the enemy, against a charge of robbery or piracy

It is an offense under Act March 3, 1823 to transmit false papers for the purpose of obtaining from the government a bounty land warrant

It is an offense, under such act, to procure false papers with a view of their transmission by another; and the actual transmission by the prisoner need not be shown.

Declarations and affidavits subscribed and sworn to by the signers are “papers” within said act

The offense is committed in Vermont, where the papers are transmitted from there to Washington city
Ignorance is no excuse where the offender might readily have know the truth upon inquiry
Drunkenness is no justification, but is admissible to enable the jury to judge of the intent

Jurisdiction and procedure.
The place where the death happens, and not that where the mortal stroke is given, determines the jurisdiction of the court on an indictment for manslaughter; otherwise where the indictment is for assault and battery.
An offense committed on board an American vessel is an offense against the United States, regardless of the location of such vessel.
An offense committed without the limits of the United States, on the high seas, must be tried in the district where the offender is apprehended, or into which he may be first brought in legal custody.
A person captured on the high seas by a public armed vessel of the United States for an offense committed on the high seas, and transferred at Hampton Roads to another vessel, destined to New York, may be tried in either district, under Act March 3, 1825, § 14.
An indictment found in a circuit court cannot be remitted by it to the district court, unless the district attorney deems it necessary.
The repeal of an act defining a crime and its punishment does not prevent the prosecution and conviction of a party for the prior violation thereof. (Rev. St. § 13.)
Act March 3, 1825, § 3, is confined to offenses committed in places the sites whereof have been ceded to and are under the jurisdiction of the United States at the time of its enactment.
Pledges of protection given to criminals by the executive department cannot be redeemed by the courts.

In the absence of constitutional and statutory provisions, the common law furnishes the rule as to the mode of procedure in criminal cases in the federal courts.

Where an act is declared unlawful, and a penalty prescribed, but no remedy specially provided, an offender may be proceeded against either by indictment or by an action of debt.

**Arrest, examination, and commitment.**

A bench warrant will be issued upon ex parte affidavits against a person charged with treason, and he will be committed to prison without stating when or where he is to answer for the offense.

On an application for a bench warrant on a charge for treason, as well as upon a motion to commit, messages from the president to congress may be read.

Upon a motion to commit for trial, the accused may be heard by counsel.

On an examination before a United States commissioner of a person charged with crime, his confession of the crime, without any proof of the corpus delicti, is sufficient to warrant his being held for trial.

A commitment not stating on its face any offense, although written on the back of a warrant of arrest charging a felony, but not referring to it, is not evidence of a commitment for felony.

A person arrested on a criminal charge may be committed for a further examination, and held under such commitment for a reasonable time.
A prisoner is not entitled to be discharged because he is not indicted at the first term of the court, or the grand jury has ignored the bill

Evidence.

Evidence of acts and declarations of the prisoner and prosecuting witness at the time of the commission of the alleged crime is admissible. Testimony as to the evasion of criminal process by a third person whose connection with the prisoner's case is not shown is erroneously admitted.

A confession of a prisoner, taken upon oath, held, inadmissible against him upon the trial.

Statements in the presence of the prisoner before the examining magistrate, to which he made no reply, are not evidence against him.

The offer of a bribe by the prisoner to the officer to permit him to escape is evidence independent of his confession.

An American registry is not even prima facie evidence of American ownership on prosecution for an offense committed on board a vessel owned in whole or in part by a citizen of the United States.

The uncorroborated evidence of a single accomplice is not sufficient to support a conviction.

Rules laid down for guidance of the jury by Dillon, C. J, where the evidence tending to show guilt is wholly circumstantial.

"Beyond a reasonable doubt," as applied to the measure of proof, defined by Dillon, C. J.

When the jury have no doubt on the question of guilt, they cannot take into consideration proof of defendant's good character.

Trial.
The failure to read the indictment to the prisoner or to the jury, where its reading is not demanded by him, is no ground for a motion in arrest of judgment.

A witness was produced by defendant in rebuttal after the prosecution had failed to call him at defendant's request. held, no error.

Where it is agreed that a sealed verdict shall be delivered, defendant has no right to have the jury polled when it is read.

**Sentence and punishment.**

A criminal convicted of several offenses under several counts of an indictment may be sentenced under the first count, and sentence suspended as to the others until after the first sentence is fully executed.

Where defendant is convicted of several offenses, charged in one indictment, in separate counts, he may be separately punished for each offense.

The punishment for cheating at cards, fixed at a fine of five times the amount of the loss, and imprisonment of six months.

**CUSTOM AND USAGE.**

A usage cannot be considered for the purpose of determining the construction of a charter party unless there is an ambiguity in the terms of the instrument itself.

**CUSTOMS DUTIES.**

**Customs laws.**

Rule as to the construction of revenue laws stated by Story, J.

Revenue laws are not penal in the sense that requires them to be construed with great strictness in favor of the importer.
The designation of an article by a specific name as exempt excludes it from the operation of general words imposing duties. Act July 1, 1812, c. 112, laying double duties, took effect on that day as to all vessels arriving at their port of entry and discharge on that day, though they were previously within the jurisdictional limits of the United States.

**Rates of duty.**

Crushed loaf sugar is not “loaf sugar,” within Act 1816, c. 107, where in commerce loaf sugar means sugar in loaves. Gunny cloth, known in commerce by that name, held, dutiable as a manufacture of jute, and not as an article “suitable for the uses to which cotton bagging is applied,” not otherwise provided for. Whale oil, manufactured by the crew of an American whaler, is not dutiable as the product of “foreign fishing,” though purchased and brought into port by persons in a foreign service.

**Invoice: Entry: Appraisal.**

On the entry of sugar in peculs the weight is properly stated by giving the weight of peculs under the usage of the custom house at the time of entry. The invoice of goods procured otherwise than by purchase must state their actual market value at the time and place when or where they are procured or manufactured. (Act March 3, 1863)

How actual market value determined in the case of wines sold by agents here for delivery at a certain sum, duty free. In the absence of fraud or collusion, the decision of the collector is conclusive as to the reasonable allowance of goods to be made to a vessel for entry free of duty, as sea stores.
An importer who offers for sale goods entered free of duty as sea stores is liable to an action of debt for the duties, but the goods are not subject to forfeiture.

There cannot be a reappraisal, on appeal, unless there has been an entry of the goods, and such entry may be presumed from the circumstances on reappraisal.

The appraisement by merchant appraisers under Act Aug. 30, 1842, is final, and it is not necessary that their award should set forth the principles upon which they acted or the evidence by which they were governed.

The validity of such appraisement can be impeached outside the award only by testimony showing that the question referred was not decided, or some misconduct in the appraisers.

The secretary of the treasury has no power to review such appraisement.

**Payment: Protest.**

Under protest that the invoice entry “is in all respects correct and just,” and that “no legal forfeiture or penalty has been incurred,” the only question that can be raised is the difference between the appraised and market value of the goods at the place of shipment at the date of the invoice.

An indorsement on a protest on file: “I intend this protest to apply to all future similar importations by me,” *held*, not a sufficient protest as to future importations, under Act June 30, 1864, § 14.

**Violations of law: Forfeiture.**

Construction of Act March 3, 1863, § 3, in relation to the fraudulent entry of goods.

The unlading of rum from a vessel before arrival at her port of discharge is an offense under Act
March 2, 1799, § 27, and not under section 50 of such act
The introduction of an article perfectly lawful, which defeats the policy contemplated by a customs law, or which supersedes or diminishes the article taxed, is not a fraudulent evasion of the law
The act of one member of a firm in subscribing an entry in the firm name and taking an oath, is to be deemed the act of the firm
An attempt to practice fraud upon the revenue as to a portion of a cargo is ground of forfeiture of the whole cargo belonging to the same person
The goods or their value are forfeited where the importer makes oath to the truth of the invoice, and the cost stated therein is not the actual cost, though the cost is not required to be stated in the invoice
Goods on board a ship, which have been entered for exportation, are forfeited by being put on board a lighter alongside the ship, though no bond has been given or debenture issued. (Act March 2, 1799)
It is no defense that claimant caused the goods to be relanded simply to correct a mistake in entering the wrong quality of goods for export
An action lies against the person making the entry for the recovery of the value of the goods where the entry was by means of false papers, under Act March 3, 1863, § 1
The bribing of a weigher by an importer at any time before the final payment of duties with the intent of procuring a false return, where a false return is procured, will subject the goods or their value to forfeiture, under Act March 3, 1863, § 1
The word “knowingly” (Act March 3, 1863), and the expression, “with intent to defraud the
revenue” (Act May 28, 1830), in reference to undervaluation, have the same meaning
On a forfeiture of goods by reason of the falsity of the original warehouse entry, the value of the goods at the time of such entry is recoverable
On a forfeiture of goods by reason of false practice subsequent to the original entry, the value of the goods at the time of the payment of the duties is recoverable
The information under Act 1799, e. 128, § 50, must allege that the goods were unladen in some port or place within a collection district, without a permit from its collector, or that the port or district is unknown
The acts necessary to effect an entry being prescribed by statute, an allegation that an entry was effected is a specific statement of what acts were done without a specific description of those acts
Where probable cause is shown for the forfeiture of goods, the burden of proof is upon claimants to show their innocence
Admissibility and competency of evidence to prove the actual market value of imported wines alleged to have been undervalued.

**Bonding, Warehousing.**
Ascertaining weight of teas exported, where the chests were of different weights and tares, and teas of different values
Imported goods, so long as they remain in a warehouse, are subject to new revenue legislation, as well in relation to duties as to alteration in warehouse laws
Goods warehoused under Act Aug. 5, 1861, and withdrawn more than three months from the date of importation, and after Act July 14, 1862, was passed, held, dutiable under the latter act
Customs officers
An officer of the customs, duly commissioned, and acting in the duties of his office, is presumed to have taken the regular oaths. The approbation of the secretary of the treasury is presumed where the collector appoints and commissions an inspector. The deputy collector is a permanent officer of the customs, and may exercise and perform the functions, powers, and duties of the collector. (Act March 3, 1817.)

Duties and fees of collectors as disbursing agents under Acts Aug. 23, 1842, and June 12, 1858.
The duties of the collector of the port in relation to the branding of casks, chests, or cases of distilled spirits, wines, and teas, and the giving of certificates and the fees therefor, under Acts March 2, 1799, and April 6, 1802.

DEBT, ACTION OF.
Debt will lie whenever the obligation is to pay a sum certain, or which may be readily rendered certain, whether the liability arises on simple contract, legal liability, specialty, record, or statute.

DEMURRAGE.
See, also, “Admiralty.”
A formal notice to the consignees that the vessel is ready to receive cargo is not necessary, where they knew that she was ready, and such knowledge may be inferred from circumstances. Where part of the cargo is discharged at one wharf and part at another, without objection from the vessel owner, the charterer is not liable for the time necessarily spent in moving the vessel. Where the master waited to have the cargo discharged by the consignee under the terms of the bill of lading, held, that he was not entitled to demurrage where he was assigned dock room,
where he might himself have discharged the cargo

DEPOSITION.
A witness may be sworn either before or after the deposition is reduced to writing
Where the place where the deposition is taken is stated in the caption, it is sufficient
Where the magistrate omits to state whether notice was given defendant, plaintiff may show that defendant lived more than 100 miles from the place of hearing, and had no agent or attorney within that distance
Proceedings for partition or sale of real estate of an intestate under Act Md. 1786, c. 45, § 8

Discharge.
See, also, “Bankruptcy” “Insolvency” “Judgment.”

DISORDERLY HOUSE.
A person who keeps a barroom open on all days and at all hours for the promiscuous sale of liquors is guilty of keeping a disorderly house
The time laid in the indictment is not material if before the indictment is found.

DISTURBANCE OF PUBLIC ASSEMBLAGE.
The disturbance of public worship is an act tending to destroy the public morals and to a breach of the peace, and is indictable at common law
The offense of disturbing a religious congregation held, punishable by fine and imprisonment, to be assessed by the jury

Domicile.
See “Courts” “Prize” “Removal of Causes” “War.”

EASEMENTS.
See, also, “Riparian Rights.”
Where a house or store is conveyed by the owner thereof, everything passes which belongs to and
is in use for the house or store as an incident or appurtenance
The use of a side door of a wing, swinging over the piazza of the main building, and a passage over such piazza, will pass under a conveyance of the wing building to the extent that they were used at the time of the conveyance

**EJECTMENT.**

The rule that plaintiff must recover upon the strength of his title, and not upon the weakness of defendant's title, is not applied where plaintiff has documentary title, accompanied by possession, and defendant is a mere trespasser.

As to the status of the tenant as a party, and the right of the landlord to appear and defend and have a severance.

Defendant may show fraud in the plaintiff, or one under whom he claimed, in obtaining the title derived from defendant.

**ELECTIONS AND VOTERS.**

The laws of New York do not deprive of the right of suffrage a person who has been convicted in the federal courts of a mere statutory offense against the United States, such as uttering a counterfeited security of the United States. (Rev. St. § 5431.)

A conviction on an indictment for using, for the purpose of registering as a voter, a naturalization certificate, knowing the same to have been unlawfully issued (Rev. St. § 5426), is not sustained by proof that defendant knew that the certificate had been issued without his presence in court, and without any oath being taken by him.

It is no defense to an indictment of a woman for knowingly voting at an election Without a lawful right to vote, that she believed that she had a right to vote, and voted in reliance on such belief.
EMBARGO AND NONINTER-COURSE.
A piece of colored cloth is a pass within the meaning of Act Aug. 13, 1813, c. 56, § 1, if used for the purpose of protection in concert with the commander of the foreign vessel
Debt will lie in favor of the United States to recover the penalty given by the embargo act for being knowingly concerned in a foreign voyage in violation of such act

EMBEZZLEMENT.
A deputy collector is a “public officer,” within the meaning of the act of 1846 relating to the embezzlement by public officers of public moneys intrusted to them
Moneys collected from engineers and pilots under the act of 1852, and the proceeds of forfeited goods under the revenue laws, paid to the deputy collector, are “public moneys,” within the statute
A clerk appointed by the direction and with the approbation of the secretary of the treasury at a fractional currency counter of a sub treasury department is an officer of the United States
A postmaster who takes money out of a letter will be held, guilty of embezzlement, though the addressee was an illiterate person, whose letters he was in the habit of reading to him
For the crime of embezzlement by a federal officer the court sentenced the convicted person to confinement for six years at hard labor, and to pay a fine to the extent of his embezzlements

EMINENT DOMAIN.
Congress may clothe the federal courts with authority to proceed for the condemnation of property in conformity with a particular state statute
Condemnation proceedings are necessary where lien owners are not willing to surrender, though the owners and the government have agreed upon the price. (Act Ill. Dec. 14, 1871.)

**EQUITY.**

See, also, “Courts” “Injunction” “Pleading in Equity” “Practice in Equity.”

Equity has cognizance of a bill brought against the counties through which a railroad runs to restrain sales of its lands for taxes to prevent a multiplicity of suits and a cloud on title.

Where a party, whose obligation to pay arises from his contract only,—as a surety,—is discharged at law, equity will not extend his liability, in the absence of fraud or mistake.

The fact that a creditor of a partnership has lost his remedy at law against some of the partners by recovering a judgment against one partner alone in ignorance of the existence of the partnership, is no ground of relief, against them in equity.

The vendee of timber land will not be precluded from rescinding the sale for fraud, where he confides for details in the false statements of the vendor and his agents, though he made an examination of the land before the purchase.

A covenant not to sue some of the persons liable for such fraud will not preclude the remedy in equity.

**ESTOPPEL.**

The principle of estoppel applies to acts of corporations equally with those of individuals.

**EVIDENCE.**

See, also, “Appeal” “Deposition” “Trial” “Witness.”

Judicial notice.

Judicial notice will be taken of the legal coins made at the United States mint, and of foreign coins made current by law.
Best and secondary.
The contents of a written notice cannot be given in evidence unless notice has been given to the party to produce it.
A retail dealer, who enters accounts in a customer's hook, may compel him to produce the same on notice, or admit secondary evidence thereof.

Documentary.
The omission of the certificate of the presiding magistrate to a record of another state, to state that the attestation of the clerk is in due form, under Act May 26, 1790, is fatal.
A copy of the record of the appointment of a commissioner to take depositions is inadmissible without the certificate of the presiding judge.
The letters of an agent to his principal are inadmissible against a third person.

Parol evidence.
A promissory note given for the purchase price of property is ineffectual to establish the fact of the sale as against the seller, and parol evidence is admissible to show the actual transaction.

Competency: Materiality: Relevancy.
The deposit of a letter in the post office, postage prepaid, directed to a person at his usual place of residence, is evidence from which its receipt by the addressee may be inferred.
The delivery of telegraphic dispatches addressed to defendant to the doorkeeper at the executive mansion, where defendant had an office as private secretary of the president, held, sufficient evidence from which their delivery to defendant might be inferred.

Handwriting.
Handwriting cannot be proved by comparing the paper in dispute with other papers acknowledged to be genuine.

**Weight and sufficiency.**
The whole testimony of a witness may be rejected where it is found that he has willfully testified falsely as to a material fact.

**EXECUTION.**
See, also, “Attachment” “Bankruptcy” “Judgment,”
Plaintiff's agent may enter defendant's house with the officer to show him the goods to be taken on execution.
The officer cannot justify under an execution without producing it.

**EXECUTORS AND ADMINISTRATORS.**
See, also, “Descent and Distribution.”
An executor, as such, has a right to enter goods of his testator at the customhouse, and to give bonds for duties which will hind the estate.
Where the executor has wasted the assets, and is insolvent, the government may claim payment of the duties from the sureties on the executor's bond, without in the first instance resorting to the sureties on the customhouse bond.
An administrator who mingles the assets with his own fund, upon which he draws indiscriminately for his own purposes, should be charged with interest thereon.
A contract made by an executrix with a relative and another to hold land until they could purchase, it for a price less than its true value at the time of its actual sale is against public policy, and voidable.
The priority of debts must be determined by the law of the country from which the representative derives his power to act.
A derivative title to personality may be proved under a foreign will without probate here.

The rule that a suit cannot be maintained in our courts by a foreign executor or administrator who has not taken out administration only applies where such person sues in right of the deceased.

If he sues in his own right, although the right be derived under a foreign will, no administration need be taken out here if it does not affect real estate passed by the will here.

**Exemptions.**

See, also, “Bankruptcy” “Homestead.”

**FINDING LOST GOODS.**

A person, who finds and rescues lumber from a raft broken up by a high wind, has no lien thereon for his services and the owner may recover the property in an action of replevin.

**FISHERIES.**

See, also, “Seamen” “Shipping.”

A vessel whose enrollment is not legally made is not entitled to claim the fishing bounty under Act July 29, 1813, § 5.

A vessel is not entitled to the statutory bounty unless the fishermen are, by a written agreement, to share in the proceeds of the voyage. Fishing bounty improvidently paid to a vessel not entitled to it may be recovered back by the United States in an action for money had and received.

**FORCIBLE ENTRY AND DETAINER.**

As to pleas, practice, and restitution in forcible entry and detainer in Virginia.

**Forfeiture.**

See, also, “Customs Duties” “Fisheries” “Informers” “Internal Revenue” “Shipping.”

**FORGERY.**
The crime of forgery, under Act March 3, 1823, § 1, is confined to instruments designed to obtain money from the United States, and does not include a false bond given on the exportation of distilled spirits under Act June 30, 1864, § 61.

An order, “Please let the bearer have one pair of boots,” is a draft for the delivery of goods, within Act Md. 1799, c. 75, § 2.

An order: “Please let the bearer, A., have such articles as he may choose on my account, to the value of $30; also $20 in cash.”—is within Act Md. 1799, c. 75.

A forgery under the federal laws must be tried in the district where the crime is committed.

In the absence of direct evidence, an altered check will be presumed to have been altered in the first state where it is known to be altered.

To support an indictment for forgery it is not necessary that the drawer should have a right to draw, or that the draft should purport to be by a person having a right to draw (Act Md. 1799, c. 75, § 2.)

The tenor of the instrument must generally be set forth in the indictment, and it must be proved as alleged.

The tenor of the instrument need not be set forth where it is stated in the indictment that the instrument has been destroyed or suppressed by the prisoner.

In such case the tenor may be proved by parol evidence.

The drawee of a forged draft is a competent witness to support the prosecution.

FRAUDS, STATUTE OF.

A note expressed to be held as collateral security for the maker's obligation upon a previous note of another is not void as a promise to pay the
debt of another without a consideration therein expressed
Charges and credits made in the books of an administratrix in relation to land which she had agreed by parol to sell held sufficient written evidence to take the case out of the statute

**FRAUDULENT CONVEYANCES.**

See, also. “Bankruptcy.”

Where both parties to a sale of chattels live together in the same house, the possession will be presumed to remain in the seller until the contrary is shown

**GARNISHMENT.**

See, also, “Attachment”;“Execution.”

An acceptance by the garnishee of defendant's draft in favor of a third person before service of the attachment binds the garnishee, and cannot be overreached by the attachment

**GRANT.**

See, also. “Public Lands.”

The secretary of war under Act March 3, 1819, and Act April 28, 1828, held to have authority to grant to a railroad company the power to construct their railroad over government property at Harper's Ferry.

The Bay of San Francisco is the eastern boundary of the land confirmed to the city of San Francisco, the line being that of ordinary high-water mark as it existed July 7, 1840, crossing the mouth of all creeks running into the bay

Before the court will disturb or set aside a survey made by the surveyor general under the law of 1851, it must be satisfied that the decree of confirmation has been plainly departed from, or that some clear and obvious error has been committed
The ayuntamiento of a pueblo had no power to grant lands within the limits of proprios duly and formally assigned to the pueblo, so as to create 1131 a greater estate in them than a leasehold for five years.

A favorable report by the ayuntamiento on an application on an expediente formed does not show that any grant was actually made.

There is no obligation upon the United States to allow the claim to land of one who had obtained its loan from the ayuntamiento, and had settled upon and cultivated it, where the Mexican government for years had failed to act favorably upon an application for a grant.

A grant of a certain rancho according to boundaries named, stating the quantity as “one square league, a little more or less.” held to convey the entire rancho, though it contained much more than one square league.

Where the lines of a Mexican grant have been run due east and west instead of due north and south by mistake of the draftsman of the diseno the running of such lines may be altered.

Oral testimony is not admissible to establish the making and contents of a Spanish grant of the issue of which the archives contain no trace.

Possession of lands in a pueblo under a concession by an officer having authority only to lease for five years, accompanied by efforts on the part of the occupant to obtain a grant, is not “under claim of ownership.”

The approval by the governor of an application for title by me in possession does not affect the character of his possession, so as to render it that of a Mexican colonist with the permission of the government.
A survey made by the surveyor general on the confirmation of a Mexican grant cannot be contested by a purchaser from the claimant of a tract which is within the location as made by the surveyor general, and which would be included within any survey that be made.

A person alleging that any of the land included in a survey of a rancho is public land of the United States must urge his objection in their name, and through the district attorney.

An equity based upon a license to occupy can be enforced only where there is clear proof of an occupancy and settlement of the land upon the faith thereof.

A claim under an alleged Spanish land grant rejected, in the absence of documentary evidence, where supported in part by the testimony of a perjured witness.

The rules of equity allowing the filing of a bill of review are not applicable to proceedings under Acts 1851, 1852, and 1855 in relation to the trial and determination of the validity of claims based on titles from the Mexican or Spanish government.

Claims to a Mexican land grant confirmed upon the evidence 779, 858, 968, 1029, 1123, 1130, 1238, 1134, 1186.

Validity of survey of Santa Teresa rancho determined upon the evidence.

Claim to a Mexican grant rejected where there was an entire absence of documentary evidence of its existence.

GUARANTY.

See also. "Railroad Companies."

A guaranty of payment, indorsed upon a negotiable bond made before the security is
delivered, is supported by the same consideration which upholds the original contract

GUARDIAN AND WARD.
A guardian in the District of Columbia is liable to account for money of his ward received in Maryland for land sold in Maryland.

A guardian who receives a negotiable note for a debt due his ward is liable for the amount of the debt, though the note has not been paid.

In debt on a guardian's bond defendant will not be allowed to show any facts to impeach the authority or jurisdiction of the court to take the bond.

HABEAS CORPUS.
See, also, “Army and Navy.”

A nonresident, arrested for an act which would subject a resident to prosecution under a law which is unconstitutional in some of its provisions in regard to nonresidents, is not entitled to discharge on habeas corpus.

The court will only inquire whether the warrant of commitment states a sufficient probable cause to believe that the prisoner has committed the offense stated.

The court may look into the testimony upon which the commitment of the prisoner was made.

A person in custody for an act done or omitted, in pursuance of a federal law or process, is entitled to be discharged, irrespective of the authority by which he is restrained of his liberty.

Whore, on habeas corpus to procure the discharge of a federal officer arrested by state authorities for malicious shooting, the evidence does not show that the shooting was done to enable him to execute a federal process in his hands, he will be remanded into custody.
An attachment for not returning a writ of habeas corpus at the appointed time will not be issued until three days have expired after the service of the writ.

**HOMESTEAD.**

See, also, “Bankruptcy.”

A homestead exemption established by law cannot affect antecedent liens.

**HOMICIDE.**

If upon slight provocation one inflicts with a deadly weapon a punishment outrageous in its nature, and beyond all proportion to the offense, and death results, the law presumes that the act was inspired rather by malignity and a depraved spirit recklessly bent on mischief than by human frailty.

A homicide is not justified by the command of a naval officer to a sentry on duty aboard the vessel to run through the body any man who should abuse the sentry by words alone, however opprobrious.

The circumstances attending a homicide may be such that the law deems it malicious.

The fact of death may be proved by presumptive evidence, as, e. g. in the case of a person thrown overboard by the prisoner, whose body was not afterwards seen.

Manslaughter, in the District of Columbia, is punishable by fine and imprisonment.

A slave who enters the sleeping room of his master in the nighttime with an axe in his hand, with intent to kill him, is guilty of an attempt to murder, though he was seized by others before he made an assault.

Defendant, proven to have killed the deceased, has the burden of showing that the act was done.
under circumstances which excuse or justify it or abate its malignity
Where defendant relies on an assault by deceased as extenuating his crime, he must show such assault by some satisfactory evidence
When the extenuating circumstances can be apprehended by the court, it must declare as matter of law whether it is sufficient to mitigate the offense

HUSBAND AND WIFE.
Where a sale of land is set aside, and the money directed to be paid to the administrator or the purchaser, to be distributed as assets, the second husband of the widow of the purchaser is entitled as distributee to his deceased wife’s third

INDIANS.
The act of 1817, which assumes to exercise a general jurisdiction over Indian countries within a state, is unconstitutional, and of no effect
Congress cannot punish for an offense within the Indian territory in a state which has no relation to the Indians, and which cannot affect their commerce
Under the general power of congress to regulate commerce with the Indian tribes, it cannot exercise a general jurisdiction over an Indian territory within a state

INDICTMENT AND INFORMATION.
See, also, “Criminal Law.”
An indictment must conclude “against the government of the United States.”
An indictment for a statutory offense charging the same to have been committed “in contempt of the laws of the United States of America,” without referring to the statute, is bad
The common-law refinements in criminal pleadings are not applicable to statutory offenses
against the laws of the United States. It is usually sufficient to allege the offense in the terms of the statute.

In an indictment or information for a purely statutory offense, the averment of the offense in the words of the statute creating it is sufficient.

In an indictment for a statutory offense it is sufficient if the offense is substantially set forth, though not in the exact words of the statute.

The means employed to effect the commission of a statutory offense need not be set out in the information.

An indictment charging defendant with effecting an entry of goods by fraudulent means (Act March 3, 1863, § 3) must specify what fraudulent means were used; otherwise it is bad.

In an indictment for an assault with a dangerous weapon on board a vessel, under Rev. St. § 5346, alleging the place as the harbor of Guantanamo, the Island of Cuba, does not dispense with the allegation that the place was out of the jurisdiction of a state of the United States.

An acquittal upon an indictment for forging an order with intent to defraud John L. is no bar to an indictment for forging the same order with intent to defraud William L.

The two acts of transmitting and presenting forged papers, etc., are not separate offenses, under Act March 3, 1823, to punish frauds against the United States.

Under Act Feb. 26, 1853, an indictment may join several counts for offenses under Act March 3, 1823, for transmitting false papers for the purpose of obtaining bounty land warrants.

Different offenses under Rev. St. §§ 5431, 5434, for which different punishments are prescribed, held properly charged in different counts, and
joined in the same indictment, under section 1024
Whether such offenses are properly joined can be determined only on a motion to quash or to compel an election. The embezzlement of several letters from a post office may be charged in separate counts of the same indictment, or separate indictments therefor may be consolidated. The offense of effecting an entry and of aiding in effecting an entry of imported goods at less than their true weight or measure, by means of false samples or representations, may be charged conjunctively in the same count of an indictment. A prisoner is entitled to have a copy of the indictment against him furnished to him at the expense of the government. A motion to set aside or quash an indictment will not lie unless the objection appears upon the face of the indictment. An affidavit of defendant that he believed the grand jury acted upon incompetent or insufficient evidence in finding an indictment against him is not admissible on a motion to quash. The proof must correspond with the averments, though the offense is stated with greater particularity than is required by law. Material matter, although alleged under a videlicet, is traversable, and must be proved as laid. Unless the date stated in an indictment is of the essence of the crime, it need not be proved as alleged. The caption of an indictment may be referred to, to show that the United States mentioned in the body of the indictment are the United States of America.
Circulating notes of a national banking association are properly admissible in evidence under an indictment for counterfeiting, setting them out at length, and calling them “national bank currency notes.”

An indictment, in setting out counterfeit notes, did not exhibit any imprint of the seal of the treasury, while the notes put in evidence on the trial exhibited such imprint. Held, not a material variance

Infancy.
See “Guardian and Ward.”

INFORMERS.
The right of the informer becomes vested only when the money representing the forfeited property is paid over and is ready for distribution, and until then his right is liable to be divested by the act of the government, and the court may set aside a decree of condemnation without the informer’s consent.

The amount of the informer's share is to be determined by the law as it stands at the time of the final decree of forfeiture.

INJUNCTION.
See, also, “Equity” “Patents.”

A court of equity may enjoin the collection of taxes to prevent a multiplicity of suits or of injury, for the redress of which the remedy at law is not adequate.

A sale of personal property for an illegal tax will not be enjoined, there being an adequate remedy at law.

Creditors of a bankrupt cannot purge themselves of contempt in violating an injunction restraining attachment proceedings in state courts by showing that the proceedings were continued by assignees of their firm, unless they show that the
assignment was prior to the injunction, or that they endeavored to stop the suit
In such a case, a fine to the amount of the value of the attached property, with interest, and the expense of the contempt proceedings, including a proper counsel fee, will be imposed upon such creditors
An injunction to stay an ejectment suit until matters of equity can be examined will not be allowed unless judgment in the ejectment be entered
Where a lessee under a lease renewable for terms aggregating 500 years had made valuable improvements, held, that an action for use and occupation would be stayed until the lessor had appointed an assessor to make valuation of the property for the purpose of ascertaining the rental, as required by the terms of the lease

INSOLVENCY.
See, also, “Bankruptcy.”
Where the United States have various debts due by bonds with different sureties, payments by the assignees must be applied pro rata
Whether the actual seizure of property of an insolvent under process of a federal court before his assignees under the state insolvent law take possession of it creates a valid lien,—quære
A discharge under a state insolvent law will be held good in other states and in the federal courts, except as to contracts made or to be performed abroad
Where the indorsee of a negotiable note not restricted on its face to be paid within the state lives out of the state, the note is not barred by a subsequent discharge in the state in which the note was made

INSURANCE.
See, also, “Marine Insurance.”
A court of equity will enforce a contract to make a policy of insurance, and, treating that agreed to be done as if actually done, will ascertain the amount due, and enforce payment by a decree. A by-law, made a part of the contract of insurance, providing for a reference of all disputes as to losses, and that the claim of the party shall be released or discharged where a suit is commenced without an offer of reference, is void, as in effect ousting the courts of jurisdiction. An application for a policy on the life of the husband in favor of the wife, where signed by both, held a joint agreement, though in the singular number. Under a condition that the policy shall be void if any of the statements in the application are in any respect untrue, it is immaterial whether any false statement is material to the risk or not. A policy limited to accidents “while actually traveling in a public conveyance,” and in compliance with all the rules and regulations of the carrier, covers an accident while getting on or off a train, either at an intermediate station or at the destination. Under such policy, the assured is only bound to observe such rules as a general traveler might be presumed and ought to know. It is for the jury to say whether a statement in the application, “never sick,” was false, where the medical examiner stated to the applicant that the alleged sickness was too trivial to mention.

Interest.

See “Usury.”

INTERNAL REVENUE.

A regulation of the treasury department made pursuant to an act of congress is of the same
force as if incorporated in the body of the act itself
A revenue officer cannot disregard a requirement of the law as useless, or because he deems the government protected by other provisions
The proper credits to a collector on transferring the list of assessments to his successor
The commissioner of internal revenue has a right to make regulations concerning gauging and in relation to gaugers obligatory upon them
Where the assessment is too small, the assessor may make an assessment of an additional tax to cover the deficiency
A gauger has no power to delegate his authority, or to have his duties performed for him
The commissioner of internal revenue may require a tobacco manufacturer to give explanation of the undue consumption of leaf tobacco in the manufacture of cigars, and, where the manufacturer refuses, may base the amount of tax upon the average amount of tobacco used by other manufacturers
Receipts for goods delivered to a common carrier for transportation, being in effect inland bills of lading, are not subject to stamp duty under the act of 1864
An indictment will lie to recover a penalty for failure to affix a revenue stamp to a package sold, under Act July 13, 1866, § 9
Where an article is sold unstamped, the presumption is that it never was stamped, but such presumption may be overcome by evidence that the stamp had been lost or removed by accident or the like
An entry by a brewer, knowingly, on his books, in any one day, of a less quantity of beer than that manufactured by him, will subject his brewery to
forfeiture. (Act 1864. §§ 48–51, amended May 13, 1866.)
A book of general accounts, kept by a brewer in conducting his business, is not such a book as is required to be kept by section 49 of the act of 1866.
Knowledge by the owner of a distillery that his lessees are using the same for the fraudulent manufacture of liquors, and evading payment of taxes thereon, is sufficient to warrant a forfeiture of the property.
The clerks of rectifiers and wholesale liquor dealers may make the entries in the government books required by Rev. St. § 3318, and the employers are liable for neglect which is not the result of pure accident.
The same rules apply to the making of notices of rectification.
The failure of employés of a rectifier to efface or obliterate stamps at the time of emptying spirits will render the rectifier liable to indictment under Rev. St § 3324.
A dealer in leaf tobacco is criminally responsible, under Act July, 1868, § 76, for the neglect of his bookkeeper to make the proper book entries.
The finding of an unstamped package of beer in the possession of a brewer, who has knowledge thereof, and does not satisfactorily explain it is ground of forfeiture of all the beer and materials of the brewery.
Separate suits will lie to recover the penalty of $500, and to enforce a forfeiture for neglect to report the use of vessels, etc., in distilling liquors. (Act July 1, 1862.)
The limitation of 30 days for making a seizure and of 20 days thereafter for commencing
forfeiture proceedings does not apply, to the suit to recover the penalty
A person is liable for illicit distilling under Act July 20, 1868, where the spirits extracted partake of the qualities of alcohol, irrespective of their degree of strength
A part owner of a still is liable where he has knowledge of illicit distilling by his co-owner, though he does not share in the product
Wine and distilled spirits owned by a wholesale liquor dealer are not forfeited by reason of his not having paid the special tax, under Act July 20, 1868, § 44
The act which casts upon claimant the burden of proving that the distiller's tax has been paid, *held* not repealed by Act July, 1868, as to prior seizures
The court has no power to allow an abatement of tax to a distiller from the loss of mash by the bursting of a fermenting tub
Where the period of fermentation has been fixed at 48 hours by the officers of the government upon survey, it is not a valid objection to the tax that the distillery uses a longer time in fermentation. The distiller's remedy is by appeal to the commissioner of internal revenue
A distiller who pays tax on the actual product of the distillery, though falling short of 80 per cent, of its estimated capacity, cannot be made liable for a larger amount
The “capacity tax” (Act July 20, 1868, § 13) is in the nature of a license, and does not come within such principle
The government has its remedy upon the distiller's bond, though it might have collected the tax from the proceeds themselves
The seizure of the goods as forfeited is no defense to an action upon a tobacco manufacturer’s bond to recover the tax. In an action on a distiller’s bond it need not be shown affirmatively that the survey required by Act July 20, 1868, § 10, has been made, and a copy of it served upon him, and a demand of payment made.

A public officer cannot vary, or in any way change the terms of distillers’ bonds required by law.

Moneys paid to the collector without specific appropriation during the existence of a bond are properly applied first to the payment of back taxes.

Errors in the assessment and reassessment of a distiller’s tax cannot be set up by the sureties in defense to a suit on the bond. Their remedy is to pay the tax under restraint, and to appeal to the commissioner of internal revenue. If the appeal is denied, a suit will lie against the collector.

An action for a penalty for the violation of the internal revenue act is a civil action and the jury are to find according to their preponderance of the evidence.

A concert of action and of intent, though there was no pecuniary consideration or a definite absolute contract between the parties, is sufficient to constitute a conspiracy, to defraud the United States, under Act March 2, 1867, § 30.

A deputy collector who accepts a bond for the withdrawal of whisky from a warehouse, knowing that the signatures thereto have been forged, is subject to punishment under Act July 13, 1866, § 42.
An indictment under Rev. St. § 3296, which charges a removal of a certain quantity of "distilled spirits" on which the tax has not been paid to a place other than the distillery warehouse, is good.

Under Act July 13, 1866, replevin does not lie for property of plaintiff seized under a warrant by a collector of internal revenue as the property of another.

Under Act July 13, 1866. § 45, a person cannot be convicted as a principal in removing spirits, and also as an aider and abettor in the same offense.

As to who is liable under such section for removing such spirits, or aiding or abetting such removal.

Under such section, any one who has an interest in the distillery, who directs a removal, may be convicted thereof, though not personally present. Intent to defraud the government need not be proved to sustain a conviction for selling intoxicating liquor without a license.

A single sale of spirituous liquors makes the seller a retail dealer.

Agents who sell by sample from their place of business all the goods of a manufacturing company, from whose factory the goods are delivered, are not liable to a special tax as wholesale dealers. (Acts June 30, 1864; July 13, 1866.)

Brewers selling elsewhere than at the place of manufacture are liable to taxation as wholesale dealers. (Acts July 20, 1868, § 59; April 10, 1869.)

The exemption of manufactured goods whose increased value does not exceed 5 per cent, ad valorem (Act 1864, § 96) applies only where
duties have previously been paid on the articles before manufacture.

A corporation which maintains a driving track where public racing is given, and the public admitted for pay, is liable to a tax on its gross receipts. (Act June 30, 1864. § 108.)

A false return of income for taxation, made with an intent to be acted upon by the government, will subject the party to an indictment, though he make a subsequent correct return.

The allowance for leakage in the case of oil shipped under a transportation bond is regulated by a rule of the treasury department, and the courts cannot depart therefrom, though there has been a greater actual loss by solar heat or the action of the elements. (Laws July 13, 1866, § 94; March 3, 1865, § 61.)

The federal government has no power to tax agencies employed by a municipal corporation in the exercise of its legitimate powers, such as an advance of money to aid in the construction of a railroad to the city.

The legatee or cestui que trust is not liable in personam for the legacy tax imposed by Act July 1, 1862, §§ 111, 112, and an action will not lie against him to recover it.

INTOXICATING LIQUORS.

The day laid in the indictment for retailing whisky without a license is not material, if the fact be proved to have been committed before the indictment was found.

JAIL AND JAILER.

A prisoner in execution for a debt due the United States is entitled to be released on prison-bonds bonds.

JUDGE.
If the disability of the district judge terminates in his death, the circuit court must remand the certified causes to the district court under Act March 2, 1809, c. 94

JUDGMENT.

Lien.
The lien of a dormant judgment is lost as against a mortgage executed by the judgment creditor during the continuance of the judgment lien, and a revival will not give it priority

Operation and effect.
Judgment against one partner is a bar to a subsequent suit against the others, though they were dormant partners at the time of the contract; and were not discovered by the plaintiff until after the judgment
A judgment dismissing upon the merits a bill by a patentee against a patentee of a junior patent, claiming an interference, and praying that the junior patent be declared void, is not a bar to a suit for an infringement against an assignee of a junior patentee, where the judgment did not find an interference, and declare complainant's patent void

Amendment.
After the term at which a decree was entered, the court may amend it as to mode of execution, manner of sale, time of publication of sale, and distribution of proceeds arising therefrom
Where a decree, through mistake or accident, does not express the judgment of the court, it may be corrected on motion after expiration of the term

Relief against: Opening: Vacating.
Execution on a judgment obtained in a suit on a judgment obtained in another state will not be stayed pending an appeal from the original
judgment, where such appeal is not a supersedeas.

The power of the court to set aside, modify, or annul its judgments is unlimited during the term at which they were rendered.

A judgment irregularly obtained may be set aside at a subsequent term, and the execution issued thereon quashed.

A judgment by default for want of a plea before the expiration of the rule to plead is irregular, and may be set aside on motion at a subsequent term.

**Satisfaction and discharge.**

Where a bond running to the United States is taken in satisfaction of a judgment in which a special agent is entitled to a share, and judgment is afterwards obtained upon such bond, the United States may enter satisfaction of such judgment, without payment made, and without consent of the special agent.

**Actions on judgments.**

Upon the plea of nullity record to debt on a judgment of another state, the seal of the court must be annexed to the record itself. The certificate is no part of the record.

**Sufficiency of plea in action on an assigned judgment.**

**JURY.**

The jury must in all cases follow the law as laid down by the court.

On the trial of an indictment it is the duty of the court to direct a verdict of guilty whenever the facts constituting the guilt are undisputed.

In felony cases in Virginia the prisoner is entitled to 20 peremptory challenges.

**LARCENY.**
Bank notes are not goods and chattels, nor money, and stealing them is no offense at common law.

Horse stealing in the District of Columbia held punishable as an ordinary larceny, under Act April 30, 1790.

The theft by the same persons, at the same time, of goods belonging to different persons, may be the subject of joint or separate indictments, at the option of the district attorney.

An indictment for stealing “one hundred silver coins of the value of seventy-five dollars,” sufficiently describes the money stolen.

Proof that goods stolen were the property of a deceased person, in the possession and management of A., will support an indictment for the larceny of goods of A.

LIBEL AND SLANDER.

In an action for words spoken in relation to plaintiff's credit, defendant may give evidence in mitigation of damages of the general reputation of plaintiffs want of punctuality in payment of his debts.

LICENSE.

Where a license to use property for specific purposes under a contract perpetual in its purport is not specially restricted, and is coupled with an interest necessary to the possession and enjoyment of the rights acquired, the license is not revocable.

LIENS.

See, also, “Admiralty”; “Bankruptcy”; “Finding Lost Goods”; “Maritime Liens”; “Shipping.”

A person who rescues lumber while floating down stream from a broken-up raft has no lien thereon for his services.
A mere promise to pay out of a particular fund when received, the promisor retaining control of such fund, and no notice being given to the person who is to pay, creates no lien or charge upon such fund. The legislature has no power to make a lien given on sawmills in favor of employes and persons, furnishing logs paramount to that of prior judgments and mortgages.

**LIMITATION OF ACTIONS.**

Act April 30, 1790, § 32, limiting the time for a criminal prosecution to two years, applies to offenses created after, as well as before, the act. In Massachusetts, the statute does not begin to run in favor of executors and administrators against persons who have a right to appeal from the decree granting administration until the right of appeal is lost, or the decree becomes absolute. Trusts devolving on an executor, and trust property in the hands of the deceased, kept separate, are not assets in the hands of executors and administrators, and the statute of limitations does not run against them.

Ignorance of the practice of the court by an attorney recently admitted held good cause for allowing the statute of limitations to be pleaded after the rule day.

The statute of limitations intervening after the dismissal of a suit on plea of a defense which was subsequently held by a court of last resort in another action not to be good may be pleaded by defendant in a second action against him for the same cause.

Act Feb. 28, 1839, § 4, extending the time for suits and prosecutions for penalties to five years, does not apply to indictments for crimes which may be punished by imprisonment.
The two-years limitation (Act April 30, 1790) will bar a prosecution against an officer of a vessel for beating a seaman, though he was absent from the United States during the whole of the two years after the offense was committed.

The indictment or information must be found within the limitation of the statute. A second indictment after the two years will not save the bar where the first one, found in due time, was non-prossed.

Defendant, on trial upon an indictment, may take advantage of the bar of the statute under the plea of not guilty.

LOST INSTRUMENTS.

Securities in the hands of officers of a rebel state, carried from the capital on its occupation by the federal forces, and held within the lines of the enemy, are lost, within the meaning of the law authorizing a recovery on instruments lost, without producing them.

Where the locus of such securities is known, a recovery may be had by the owner without advertising them as required by law.

MANDAMUS.

The fact that officers have resigned will not prevent the issue of a mandamus to compel the performance of a public duty, where their successors have not been elected or appointed and qualified.

A mandamus will not be granted where the right of the applicant is not clear, or where he has an adequate legal remedy equivalent to a specific remedy.

The federal courts have power to issue mandamus to a municipal corporation to compel it to perform a duty created and enjoined by state law alone.
A judgment against a county upon railway aid bonds may be enforced by a federal court by mandamus to compel the levy and collection of taxes, or to compel the county court to draw a warrant on a fund applicable to such debt to pay the judgment.

Where the maximum amount of tax authorized by a city charter for any one year is actually levied, a mandamus will be refused to a judgment creditor to compel the city to levy any other tax.

Query, whether a mandamus may issue from the federal circuit court to a state court to compel it to send a cause from its jurisdiction into the former court.

**MARINE INSURANCE.**

See, also, “Average.”

A parol acceptance of a written proposal for insurance, admitted by the answer, is a binding contract for insurance, in the absence of any statute requiring such contract to be in writing.

**MARITIME LIENS.**


**The right to a lien.**

A maritime lien exists for moneys advanced to purchase or pay for necessary supplies whenever it would exist for the necessaries themselves.

A lien arises for advances made on the credit of the vessel to supply her with necessaries, though the master squanders the money.

A maritime lien exists for necessaries furnished upon request of the owner when shown affirmatively that they were furnished on the credit of the vessel.
Where the credit for supplies was not in fact given to the vessel, there is no lien enforceable in admiralty therefor.

A person jointly interested with the equitable owner of a vessel in the profits of a voyage has no lien for advances made during such voyage.

By the general maritime law a lien exists for necessaries furnished a domestic vessel, though by the law of the place there may be no jurisdiction to enforce it.

Parties may stipulate for a lien for necessaries, though no such lien is implied by the law of the place where such necessaries are furnished.

A lien arises for wharfage and dockage.

Compressing cotton and storing it upon a vessel are not maritime services.

A lien arises for board furnished seamen employed on a vessel in port.

The master cannot charge a vessel with a lien for necessaries furnished her before the voyage is begun, or in the port in which the owners reside.

A lien for supplies furnished in one port to a vessel belonging to another port, both before and after the purchase of a share in her by a resident of the former port, and her enrollment there, held enforceable as to the supplies purchased before the new enrollment, but not subsequently, the latter lien having been divested by making subsequent voyages.

**Priority and enforcement.**

A maritime lien is only a privilege to arrest the vessel for the debt.

The first libelant seizing the property is entitled to a preference over all other claims of his class.

In the distribution of proceeds of sale claims for towage and necessaries are entitled to rank with those for breaches of contracts of affreightment.
The liability of the vessel for wages of the nominal owner, shipped as cook, held superior to that of mortgagees from him, who had no knowledge that the sale to him was without consideration, and made for the purpose of obtaining a registry, and the liability for a deficiency cannot be set off against his claim for wages.

A lien given under the local law for materials furnished in the construction of a vessel will be postponed in a federal court of another state to a subsequent mortgage recorded under the act of congress in the home port of the vessel in the latter state.

**Waiver: Discharge: Extinguishment.**

A note of or a draft upon a third person, received in satisfaction of the debt, will extinguish the lien.

**Liens under state laws.**

2 Rev. St. N. Y. p. 423. § 1, giving a lien for materials or work furnished when contracted for by the master, owner, agent, or consignee, does not apply in the case of materials furnished to one who builds the vessel under the supervision and direction of the owner.

A material man has no lien on a vessel built under a contract which names the parties for whom to be built as owners, after the builders are paid in full, and the vessel launched. (2 Rev. St. N. Y. p. 423, § 1.)

The lien given under a local law for supplies furnished in the home port to a vessel employed in commerce between different states is enforceable in admiralty.

Such a lien will prevail over the title of a purchaser who has bought without notice of the lien.
The court declined to enforce a domestic lien given by a state statute.

**MARSHAL.**

A marshal is removed by the receipt of a commission from the president by an appointee who takes the oath of office and gives the requisite bond, though no notice is given. A sale on execution by a marshal after he has been removed is null and void. The marshal cannot appoint an auctioneer to conduct a judicial sale at the expense of the government or of a private party, without the consent of the party for whose benefit the services are performed. Marshal *held* entitled to poundage where an insolvent debtor to the United States, imprisoned on a ca. sa., is discharged therefrom by the secretary of the treasury “on payment of costs.” If the state court compensates services similar to those performed by a marshal, although not performed there by a like officer, the marshal is entitled to the same compensation. The marshal is liable upon his official bond if he suffer a debtor to escape after arrest upon a cap. ad sat., although he has him in court at the return day. The marshal is relieved from his liability for failure to bring in defendant on the return of the writ, where the latter has been discharged under the insolvent law.

**MAYHEM.**

Biting off an ear is not within Act Va. Dec. 17, 1792, to prevent malicious disfiguring.

**MINISTER.**

A foreign minister cannot waive his privileges or immunities, and his submission or consent to an arrest is no justification.
A certificate by the secretary of state, under seal, that a person has been recognized by the department of state as a foreign minister, is sufficient to prove his immunity from arrest.

To support an indictment under Act 1789, § 27, for executing process on a foreign minister it is not necessary that defendant, who executed the process, should know the person arrested to be a foreign minister, or that he was in fact an officer. An attaché to a foreign legation is a public minister, within the act of congress.

**MORTGAGES.**

The mortgagee may recover in assumpsit from a purchaser from the mortgagor, where the mortgage constituted part of the purchase price. Where a mortgage lien is paramount to a claim for homestead in the premises, the wife of the mortgagor is not a necessary party to a bill to foreclose.

A joint mortgagor, who has conveyed absolutely to the other his equity of redemption, is not a necessary party to a bill to foreclose; but his right of redemption is not cut off where the property did not satisfy the debt.

Mere inadequacy of price, which is not sufficient to show that the sale was not the result of fair dealing, is not a sufficient ground to set aside a sale.

A sale will not be set aside for mere inadequacy of the bid, unless the applicant show that a reasonable party will make an advance bid.

**MUNICIPAL CORPORATIONS.**

See, also, “Counties”; “Railroad Companies.”

An agreement to levy a special tax cannot be implied from an ordinance making it the duty of the city council “to provide means to meet the
payment” of a designated debt when the same may become due

Naturalization.

See “Aliens”

NAVIGABLE WATERS.

In the absence of specific legislation by congress, the regulation of a navigable stream rests entirely with the state, and a bill will not lie by the government to prevent or abate any obstruction. Acts which do not necessarily interfere with the operation of legislation by congress for the improvement of a navigable stream will not be interfered with by the courts.

Navy.

See “Army and Navy.”

NEGLIGENCE.

A person who had left his vessel and taken refuge in another at the time of a collision was injured in regaining his vessel. Held. that the collision was the remote, and not the proximate, cause of the injuries.

Negotiable Instruments.

See “Bills, Notes, and Checks”; “Bills of Lading.”

NEUTRALITY LAWS.

A sea letter is not the only document necessary to establish the neutral character of a vessel belonging to the United States under treaty with France.

NEW TRIAL.

Nothing that is a cause of challenge to a juror before verdict can be used to set aside a verdict. The fact that one of the jurors in a criminal trial was deaf, though defendant was ignorant thereof, is no ground of setting aside the verdict. The fact that one of the jurors was asleep during part of a trial, where known to the defendant at
the time, is no ground for new trial, where first brought forward after the verdict
Where the court has misdirected the jury, a new trial will be granted without imposing costs or any terms whatever
The verdict will not be set aside in the case of a misdemeanor, where the court, in the absence of the prisoner, directed that a sealed verdict might be delivered, where the jury, on being polled, stated that the sealed verdict was their verdict

**Obscenity.**

See “Post Office”

**OFFICE AND OFFICER.**

See, also, “Principal and Surety.”

Where, from the beginning, congress has practically conceded the authority to the president to make removals, without the consent of the senate, from offices to which appointments were made for fixed terms by consent of the senate, the courts cannot deny such power
Where the appointing power is the president and senate, acting concurrently, the president alone has not the power of removal, in the absence of legislation and precedent to the contrary

Act July 1, 1862, creating the office of assessor of internal revenue, does not prescribe the tenure thereof, and the incumbent is deemed to hold such only during the pleasure of the appointing power

Public officers are not entitled to extra compensation for services in sudden and unforeseen emergencies, but only where the services are rendered upon a matter of permanent character

An assistant employed by a public officer is ordinarily only responsible to him
Public officers are not responsible for the fraudulent transactions of their clerks, where they are free from negligence.

Though several persons are concerned in resisting a revenue officer in the execution of his duty, the offense, under Act March 23, 1823, c. 58, is severable, and separate penalties are recoverable.

In an indictment for resisting a public officer it is not necessary to set forth the particular exercise of office in which he was engaged, or the particular act and circumstance of obstruction.

Sufficiency of allegation of a forcible impeding within Act March 2, 1799, c. 128, § 71

Pardon.

See “Witnesses.”

PARENT AND CHILD.

The nature and extent of the parental power at common law discussed by Story, J.

PARTIES.

A bill of exchange indorsed to the treasurer of the United States may be declared on in the name of the United States, and an averment that it was indorsed immediately to them will be good.

Several defendants, who have no connection with each other in interest, in estate, or in contract, and against whom jointly plaintiffs have no cause of action, cannot be joined in one bill.

The assignor of a chose in action is not in equity a necessary party, where the suit is by the assignee, and the assignment is absolute.

PARTNERSHIP.

See, also, “Bankruptcy.”

Persons owning merchandise in common, who ship it on joint account and risk for sale, are copartners in the adventure.
A hill drawn upon a partnership, but not accepted until after its dissolution has been publicly announced, does not bind partners who did not consent thereto.

A partner, with the assent of his copartners, may bind the firm by a joint and several bond made by him in the firm name, and under a single seal affixed to its signature.

Assumpsit will not lie against partners on a bond given by one partner for a debt due from both where not executed in the presence or by the consent of the copartner.

The general creditors of a firm have no specific lien on the assets before levy or seizure.

Mere insolvency, in the absence of fraud, will not deprive the partners of their legal control over the firm property, or their right to dispose of it as they see fit.

A suit cannot be sustained against the representatives of a deceased copartner to charge his estate for the copartnership debts if the surviving partners are solvent, and the assets of the firm are sufficient.

**PATENTS.**

**Patentability.**

Abandoned experiments, however suggested, producing no practical and useful results, do not affect the validity of a subsequent patent to an original inventor.

The patentee may take up the invention at the point where it was abandoned by his predecessor.

The fact that another first conceived the possibility of effecting what the patentee accomplished, unless it appear that he reduced it to practice, will not defeat the patent.

Knowledge of prior experiments by another will not defeat the claim of the patentee, if it appear
that after such experiments were abandoned he first perfected and adapted the invention to actual use 665,
To invalidate a patent it is not sufficient to show use prior to plaintiff's application, but it should be shown to have been prior to his discovery Proof of an article which might have been made by a machine similar to that for which plaintiff afterwards obtained a patent is not sufficient to invalidate the patent
While the result or effect of a process is not patentable, it may become the test of invention, which may be inferred from the existence of the results
Combinations of similar elements, which could not be successfully used to produce the effect produced by the patented machine, do not anticipate the patent
An invention in mechanics consists not in the discovery of new principles, but in new combinations of old principles
The claim to an invention of a mechanical process must fall with the claim to an unsuccessful machine which the inventor constructed to work out such process
The various classes of inventions defined
The application of paper embossed in imitation of linen to the making of collars and cuffs is not patentable where paper collars and cuffs and paper embossed in imitation of textile fabrics were previously known
Public use for more than two years before application, by permission of the inventor, forfeits his right
It is the use, and not the intention of an inventor to use an improvement to be found in plaintiff's
machine, that invalidates plaintiff's patent under section 6 of the patent act.

**Prior description or foreign patent.**
The patent is not invalidated by statements in an earlier publication, unless such statements are full and definite enough to inform those skilled in the art how to practice the patented invention.

**Application and issue: Interference.**
In the case of two inventions consisting in placing flanges on the periphery of propeller blades to prevent the formation of lateral waves, one to be used on canals and the other for general navigation, *held*, that there was no interference.

**Validity.**
A patent is not invalid because of a double claim, where there is no evidence that it was made with an intention to mislead.

A specification, alleged to be defective in not pointing out the means of operation, must be read in view of the preceding state of the art immediately connected with the particular subject-matter.

A claim of a combination of three mechanisms, and a claim in the same patent for the particular manner in which the three mechanisms were combined and made effective in producing the particular result, *held* claims for the same invention.

The patent is void where the inventor claims more than he has actually invented.

A patent taken out on the whole improved machine upon the mere making of an improvement to a previously patented machine is not valid.

**Extent of claim.**
A patentee who describes particular modes as essential to his invention will not be confined to them where the device is complete in itself. To determine the patentee's own construction of his claim, the patent-office files may be resorted to, to ascertain what changes were made in the original specifications and claims, and the significance of such changes. Declarations of the patentee, undertaking to restrict the invention within a narrower compass than that stated in his specifications, will not affect the construction of the patent in the hands of a prior assignee.

**Suit to invalidate patent.**

A decision of the patent office in an interference case is not conclusive upon the question of priority of invention in a subsequent suit to have the interfering patent declared void. A statement of the date of invention, made to the patent office by the patentee after an assignment by him will not estop the assignees to show that the invention was in fact made at an earlier date.

**Reissue: Disclaimer.**

The reissue of a patent describing a new article made by a new process may be in two parts, one for the process and one for the article. The reissue will be held invalid where it appears on inspection of the two grants by the court that the reissue is for a different invention from that described in the original. Whether a reissue covers no more than the invention described in the original patent is a question of construction for the court. Where a disclaimer is entered after suit commenced, the patentee may recover therein where such entry was not unreasonably neglected or delayed, but he cannot recover costs.
Extension: Renewal.
The patentee will be held to representations made by him to congress upon the faith of which a patent was extended by special act

Assignment.
An assignment of a right under a patent is valid as between the parties without being recorded. A conveyance of all right, title, and interest in a patent in a particular territory, as to a portion of which the patentee has previously parted with some interest, will he held to operate only upon the residuary interest of the patentee, though the second assignment is first recorded. The word “invention,” in the contract for the assignment of a patent, held not to cover other improvements in the same art, although the patent to be assigned would he worthless without them.

Licenses.
An agreement, made on the settlement of a dispute as to conflicting claims to the right to make a certain patented spike, that hereafter each party may make and vend spikes of such character as he sees fit, held a license to make the patented spike. The holder of the legal interest in a patent, who is the agent of and principal stockholder in a corporation owning the equitable interest, has the right to make a contract of license in settlement of conflicting claims with an alleged infringer.

Sale of patented machine or product.
A purchaser of a patented machine from the assignee of a patent, sifter he has conveyed his entire interest to a second assignee, obtains no right to use the machine during the original or extended term.

Infringement—What constitutes.
A purchaser from a patentee may repair and perfect the machines purchased, but he has no right to use machines embracing the patented inventions, which are not the identical machines purchased.

A patent for an invention embracing an entire machine is infringed by the making, without license, of any part of it.

A patent for an invention, embracing a new element and a combination of old elements, is infringed by the use of the new element or new combination.

A patent for an invention embracing an element of a machine is infringed by the making or use of such element.

Where all the elements of a machine are old, the doctrine of equivalents cannot be invoked to suppress all other improvements on the old machine.

But such patent is infringed by the substitution for one of its elements of an equivalent well known at the time of the invention.

Although a patented device, without the improvement of another added to it, is of little practical value, the latter cannot use it without the consent of the patentee.

If two machines, having the same mode of operation, do the same work in substantially the same way, and accomplish substantially the same result, they are the same, though differing in form, shape, or name.

—Remedy generally.

The repeal by Act July 8, 1870, § 111, of Act July 4, 1836, did not have the effect to prevent the maintaining of suits on patents previously granted for causes of action subsequently accruing.
A complainant having two suits against the same defendant for infringement of the same letters patent will not be compelled to elect which he will prosecute

---Preliminary injunction.---

Plaintiff cannot strengthen his case on the question of infringement by rebutting affidavits. The granting or dissolving of an injunction rests in the sound discretion of the court, and on the justice and equity of each particular case. A delay of three months in filing a bill after the infringement was ascertained is no ground of denial. The obtaining of an interlocutory decree in a suit against infringing manufacturers is not a sufficient reason for withholding an injunction against purchasers from such manufacturers. All constructions must be unfavorable to defendant who denies access to his machine, and does not produce any model or drawing, nor the produce which it manufactures. Denied, where the title of the patent is not strengthened by exclusive possession for some length of time, or by an adjudication sustaining its validity. Defenses that cannot be availed of by defendant in the taking of proofs for final hearing cannot be availed of on motion to dissolve the injunction. An injunction dissolved upon an answer denying the equity of the hill may be reinstated on application, where testimony subsequently taken shows the right of complainant to relief.

---Procedure.---

The failure of the declaration to lay the act complained of to be “against the form of the statute” is no ground of nonsuit.
Plaintiff must allege in his declaration or bill that he, or the one under whom he claims, is the original and, first inventor of what is claimed in the patent
A general averment of infringement is sufficient
Where the declaration professes to set forth the specification in a patent as part of the grant, the slightest variance is fatal
Under a notice that the thing patented was known and used by A., B., C., and others prior to plaintiff's discovery, defendant must prove its use by others than those named

—Evidence.
The presumption, arising from the patent, that the patentee is the original and first inventor, extends no further back than the date of the patent
Defendant, shown to have in his possession a number of each of the parts constituting the elements of complainant's patented combination, may be compelled to show his subsequent use of such parts
The use by defendants of the patented invention is evidence of its utility
The defense of want of novelty must be made out by satisfactory and preponderating evidence

—Accounting: Damages.
Effect of admission in the answer that defendant had made "large profits" by the use of the alleged infringing machinery
On a reference to ascertain the damages caused by an infringement, the master cannot go into the general question of infringement, nor consider the general scope and extent of the patent
Where an infringement commenced by one railroad company is continued by another with which it is consolidated, the extent of the
infringement by each must be ascertained by the master
The proper basis for estimating damages caused by the infringement of a patented machine for repairing rails is the cost of repairing by such machine as compared with the cost of other known methods, and defendant cannot show that it would have been cheaper to reroll such rails
The net profit derived from using infringing machinery in making articles which are sold is determined by deducting from the value of the articles all the elements of cost in their production
Consideration of the expenses and charges proper to be allowed to defendant in ascertaining such net profits

Various particular inventions and patents.
Bronzing iron. No. 40,964 (reissue No. 2,355), for coloring iron in imitation of bronze, held valid and infringed
Cannon. No. 13,927, for improvement in manufacture, held void for want of novelty
Cartridges. No. 1,948, for machine for making cartridge cases, held infringed
Cultivators. No. 4,459, for improvement, held valid and infringed
Dough. Invention of Treadwell for machine for making rolled dough held patentable
Elevators. Patent to Tufts, of December 11, 1866, for improvement in elevator guides, held invalid for want of novelty
Elevators. No. 25,061, for improvements in hoisting apparatus, construed strictly, and held not infringed
Elevators. No. 32,441, for improvements in the mode of suspending and operating elevators, held invalid for want of novelty
Elevators. No. 60,442, for improvements in the mode of adjusting the length and tension of the ropes, held invalid for want of novelty.

Nickel plating. Nos. 93,157, 102,748, and 113,612, for improvements in the electrodeposition of nickel, held valid and infringed. 725, 727, 733.

Paper bags. Reissue No. No. 17,184), and No. 38,452, for improvement in machines for making paper bags, construed, and held valid and infringed in part 649,

Paper bags. No. 24,734, for improvement in machinery for making paper bags, held infringed.

Paper bags. No. 49,951, for machine for making, construed, and held valid and infringed.

Rails. No. 15,687, for improvement in anvil or swage block for welding railroad bars, held valid and infringed 385.

Seed planter. No. 26,410, for improvement, construed and limited, and held not infringed.

Shirt collars. Reissue No. 1,646 (original No. 38,961), held void for want of novelty.

Shirt collars. Reissue 1,828 (original No.; 11,376), for improvement, held valid and infringed.

Shirt collars. Reissue Nos. 1,980, 1,981, (original No. 23,771), held invalid for want of novelty.

Shirt collars. Reissue No. 2,309 (original No. 38,604), for improvement in paper shirt collars, held void for want of novelty.

Shirt collars. Reissue No. 5,109 (original No. 11,376), for improved shirt collar, held valid and infringed.

Shirt collars and cuffs. Reissue No. 5,259 (original No. 23,771), for paper collars and cuffs, held void for want of novelty.
Shirt cuffs. No. 50,737, for improvement in paper cuffs, *held* void in part and valid in part and infringed.

Skates. Reissue No. 6,369 (original No. 28,495), for improvement in mode of fastening to the feet, *held* valid and infringed

Spikes. Burden’s patent for improvements in machinery for making hook or brad-headed spikes, *held* valid

Steam engines. No. 13,145, for improvements in packing for pistons or stuffing boxes, limited, and *held* infringed

Sugar. No. 37,548, for improvement in method of purifying and cleansing, construed in a charge to a jury

**PAYMENT.**

On a shipment at St. John for a voyage to terminate in the United States for wages at “$25 per month,” the seaman is not entitled to an amount in our currency equal to the value of the contract price here, if paid in the currency of St. John.

Money paid by an agent under a mistake of the legal obligation of his principal may be recovered back by the latter.

A payment made by a shipper to a carrier at the place of destination of a rate in excess of that previously agreed, to obtain possession of the goods after the carrier’s refusal to deliver them, is not voluntary, and the excess may be recovered back.

A debtor owing several accounts, who makes a payment, may appropriate the same as he pleases. Where he fails to make the appropriation, the creditor may make it: and, if neither makes it, the law applies it to the oldest item.
Where an appropriation is made by a receipt, it is prima facie made by the creditor

PENSION.

Effect of repeals and re-enactments of pension acts as to the punishment of the offense of withholding pension claims allowed, stated

PERJURY.

Perjury, under Act 1823, may be either by swearing to a fact which the party knows is not true, or to his knowledge of a fact when he has not knowledge. An intent to defraud the government is not necessary.

An oath, not required to be administered by any law or rule of court, is not perjury, though administered under the usage of a ministerial officer.

An oath in a case required by law, taken before a deputy collector, may be the basis of an indictment for perjury.

The indictment should charge that the oath was false, and known to be so by the witness, and that the motive was corrupt.

The judgment will be arrested where the indictment fails to state the day upon which the trial took place, and on which defendant was sworn in the case in which the perjury was alleged to have been committed.

The affidavit of a third person is admissible to show what the prisoner swore to, where both affidavits were on the same sheet of paper.

PILOTS.

A vessel in the port of New York, which has entered on a voyage which will carry her through Hell Gate, who refuses a pilot’s services, is liable for half pilotage, though the voyage through Hell Gate is not completed.

PIRACY.
A commission from a foreign government, issued in blank, and afterwards filled up by the person intrusted with it to an American citizen, held a good defense to an indictment for piracy. The American members of a crew of a foreign privateer, who mutinied, and secured control of the vessel, may be tried in the United States, where the case is one of general piracy.

PLEADING AT LAW.

“Nonassumpsit infra tres annos” is not a good plea to an action against the maker of a promissory note payable 60 days after date. When a condition is in the disjunctive, defendant must, by his plea, show which part he has performed.

A plea, which is not a direct denial of some material fact stated in the declaration, should conclude with a verification. A reply is not necessary when the plea does not state facts necessarily precluding a recovery by plaintiff.

Defendant cannot take advantage of a variance between a writ and declaration by demurrer without praying oyer of the writ. A demurrer reaches the first defect in pleading. The allowance of amendments of defective pleadings is in the discretion of the court.

An amendment by changing the form of the action from debt to covenant, and by striking out the name of one of the plaintiffs, will be allowed. The sufficiency, in point of substance, of a plea which is regular in form, cannot be inquired into on motion.

Payment on a judgment cannot be proved under the plea of nul tiel record. Upon the plea of payment to debt on a single bill, it is not necessary to produce the bill in evidence.
In an action against one of two sureties in a joint and several bond given to the United States, a discharge of the other surety by the president under Act March 3, 1817 cannot be given in evidence under a plea of payment.

The letters and transactions between officers of the government and a debtor to the United States, relative to his account, may be given in evidence under a plea of payment.

A declaration on a promise to pay on the delivery of goods to C. is not supported by proof of a promise to pay if C. did not.

**PLEADING IN ADMIRALTY**

In libels of forfeiture it is sufficient to describe the offense and the method of its commission in the words of the statute creating it. The manner or agency of arrest need not be averred, except in prize cases.

A libel for damages should state each distinct act of injury in a distinct article with reasonable certainty of time and place.

A defense put in by way of justification must admit the facts, and the onus probandi is on respondent.

Libelant may amend his libel in any of the points excepted to by the claimant (Rule 24).

Neither party can contradict by proof the averments set forth in his pleading, and the opposite party is entitled to rely thereon as an admission of facts.

**PLEADING IN EQUITY**

A bill by railroad company to restrain the collection of taxes, joining as defendants the various counties through which the railroad runs, held not multifarious.

Under rule 40, defendant is not bound to answer unless special interrogatories be put in the bill.
A bill may be sustained on grounds not set up in terms therein, if they come within the facts duly alleged and duly proved.

In a suit to set aside a contract, variances will be allowed to be cured by amendments on easy terms, where the substance of the contract appears; and so also as to mistakes in form in pleading the statute of frauds.

**POST OFFICE.**

The lien of a private citizen against horses for their livery cannot be enforced so as to stop the United States mail in a stage coach drawn by such horses.

A driver and carrier of the United States mail is exempt from arrest on civil process while engaged in the service, which includes waiting for the mail.

As to duties of postmasters in keeping moneys received for postage.

A deposit of post-office receipts in the joint name of the postmaster and his assistant does not make them jointly liable.

Rev. St. § 3893, forbidding the depositing in the mail of any obscene or indecent publication, is not repugnant to any constitutional provision.

The test of obscenity, within the meaning of the statute, is whether the tendency of the matter is to deprave and corrupt the morals of those whose minds are open to such influences, and into whose hands a publication of the sort may fall.

A pamphlet of twenty-four pages, consisting of a sheet and a half, secured together by stitching, with a cover of four pages, and a title page, is properly described as a book.

An indictment under such statute need not set forth in hæc verba the book, or the obscene part.
thereof, where it states that it is so indecent as
to make it improper to place it on the records,
where the book is otherwise sufficiently identified
An indictment is sufficient which alleges that
defendant knowingly deposited the obscene book, 1093
without alleging that he knew it to be
nonmailable matter under the statute
On trial of such an indictment clauses of alleged
similar character cannot be read from other books 1093
by way of illustration
Under an indictment for mailing an article
“designed or intended for the prevention of
conception or procuring of abortion” (Act June
8, 1872, § 148 amended March 3, 1873, § 2), it
is no defense that the article would not in fact
have such effect, if it was put up in a manner and
described so as to insure its use for such purpose
by one desiring to accomplish such result
Under such acts, making it a misdemeanor to
mail any advertisement or notice giving
information where or of whom such article may 1204
be obtained, it is immaterial whether the article
was in fact at the place designated
The carrier of letters by private express, in a
package, is not liable to the penalty under the
act of 1825, unless he knew that the package 761
contained letters
The master or owner of a steamboat is not liable
to the penalty of 8150 (Act 1845, § 13) for failure
to deliver a letter, unless it has been brought 1057
to him, or intrusted to his care, or is within his
power
The master or owner is not liable for the neglect
of a clerk in failing to deliver a letter of which
the former had no knowledge, unless they fail to
exercise reasonable diligence
A mail carrier is within Act April 30, 1810, § 13, punishing embezzlement by any person “employed in any of the departments of the general post office”

One sworn in as a deputy postmaster, who handled the mail whenever he was about the post office and felt inclined to do so, is an employe within the meaning of the law

The possession and exhibition of dangerous weapons in effecting the robbery of the mail is within Act April 30, 1810, § 19, cl. 2

Robbers of a mail stage held not to intend to effect the robbery by the use of dangerous weapons which would put the guard's life in jeopardy, where, though armed, and dangerously wounded, they took precautions against injuring the guard

**PRACTICE AT LAW.**

A call for all the letter books of defendant bank from its institution to the time when the cause of action arose, held too general

Effect of written stipulation between attorneys after verdict as to the disposal of future questions

A motion in arrest of judgment and for a new trial may be made at the same time, but the motion in arrest will be first heard

**PRACTICE IN ADMIRALTY.**

Where, in a possessory action, the disposal of the case upon the merits is not likely to be attended by delay, a motion to bond will not be granted

The default of libelant on an application to bond a vessel, held should be opened with leave to file objections to the right of the applicant to appear as claimant

The vessel is absolutely discharged by a release upon a bond or stipulation given on its arrest for a claim
Where a vessel is discharged on stipulation of value fixed at the amount claimed in the libel, which is subsequently amended so as to claim a larger amount, she cannot, after a sale to a third person, be ordered again into the custody of the marshal, nor can the owners be required to pay the purchase money into court
On the dissolution of an attachment against a vessel it should be restored to the person who was in possession at the time when she was taken under process; and in the case of conflicting claims the marshal should not deliver her without the order of the court
The clerk's report in matters referred to him should state facts and conclusions, and not detail the evidence at length
A neglect at the trial to object to the competency of evidence waives the right to object to the same evidence on a subsequent reference to the clerk
Objections to the admission of evidence before a commissioner cannot be raised by exception to his report
An exception to the method adopted by a commissioner in ascertaining damages is unavailing, unless the report or the exception show what the method was
An application to set aside a sale of a vessel, regularly made, denied in the case of a delay of three months, where the parties could not be put back to their original position
Claims arising on the last voyage and those for watching the vessel in port up to the time of her seizure by the marshal, were allowed out of the surplus proceeds in the registry, as against the assignee in bankruptcy
As between a lien claimant and the owner, though the lien has been lost by lapse of time,
if originally founded upon a maritime claim, the court will order it to be paid out of the proceeds in the registry. Where a mortgage lien appears, though informal on its face, the court, in distributing proceeds of sale of a vessel, will equitably allow payment as between the owner and the mortgagee. Intervening mortgagees are entitled to the surplus proceeds of the sale of a vessel after the payment of prior claims.

**PRACTICE IN EQUITY.**

Where the process on defendant is not served 20 days before he is bound to appear, all subsequent proceedings are irregular, and will be set aside on motion.

On a reference to a master to take and state an account, the master should make up his draft report after completing his investigation, file it in the clerk's office, and give time for the parties to make their objections thereto.

An exception should always be taken on the spot to each ruling of the master which the party intends to contest, though it need not then be drawn up in form.

An exception should be taken at the earliest opportunity to the omission of the master to pass upon a question reserved, or to his alleged error in ruling upon it.

Exceptions not taken at the time objections are filed to the draft report of the master are waived after the final report.

On a reference to a master to take and state an account, the court will not revise each act of the master as the case progresses.

After the ease has been heard, neither party has a right to file any paper therein except by leave of court.
A rehearing will not be granted merely on a certificate of counsel stating as a reason only an error in law on a particular point. Some new fact or precedent, or some specific mistake, must be shown.

An application for a rehearing on the same facts and cases and arguments will not be considered.

**PRINCIPAL AND AGENT.**

Agents who pass goods through the customhouse free of duty, by mistake of the revenue officers, are not liable for the sum afterwards found to be due, where their agency was well known.

**PRINCIPAL AND SURETY.**

Notes taken up by agents of the maker at maturity, and charged in their account current with the maker, will be held to have been paid, and the agents are not entitled to the benefit of a mortgage given to secure such notes.

A bond that the officer has faithfully and truly discharged his duties is not authorized under a statute requiring a bond for the true and faithful discharge of duties.

Where a bond contains a condition that the officer has truly and faithfully discharged his duties, and also a condition that he will truly and faithfully discharge them, a recovery may be had for breach of the latter condition.

A new bond of a navy agent, given when a defalcation was known, held to cover past defalcations as well as the future.

A teller's bond, executed under the original charter of the bank, held would cover defalcations arising under an extended charter after the time when the original charter would have expired by its own limitation.

Construction of condition of a teller's bond to faithfully perform his duties and make good to
the bank “all damages which the same shall sustain through his unfaithfulness or want of care”
The neglect of the cashier of a bank to settle the daily accounts of the teller according to the by-law of the bank will not discharge the sureties of the teller’s bond
The sureties on the bond of a bank teller are not liable for loss caused by his receiving as cash, according to the usage of hanks, the check of an individual of good credit upon another bank
The fact that the teller subsequently agreed to take the check as his own and look to the drawer for payment, will not render his sureties liable
Under the condition of a bond, given as additional security, that the officer “has faithfully discharged, and shall continue faithfully to discharge,” etc, held that the surety became absolutely bound for any default of the officer
The surety of a consul for the faithful discharge of his duties and for his truly accounting for all moneys coming into his possession by virtue of Act April 14, 1792, is not responsible on account of moneys remitted to him for purposes not comprehended within his consular duties, as prescribed by such act
The moneys of the second term of an officer, in which his new sureties are interested, cannot be taken to pay off an old debt, or defalcation with which they had no concern
Where an officer receiving a salary from the United States is surety for a defaulter, the continuance of the payment of his salary is no relinquishment of the claim against him as surety
The settlement and closing of an account of a public officer does not discharge his liability as
surety of another officer, though the default of the latter was previously known
The United States, suing on an official bond, has the burden of showing that the principal failed to discharge the duties of his office

PRIZE.

Jurisdiction.
It is no legal ground of objection to the jurisdiction of the court that the arrest was made out of its territorial authority.
The prize court has cognizance of all captures in an enemy country, made in creeks, havens, and rivers by a naval force acting alone or in cooperation with land forces.
Any person may take possession of property seizable as prize, when found within the jurisdiction of the court.

Grounds of condemnation
Sailing by an American vessel on a voyage to a neutral country under ii license or passport issued by one of the enemy's admirals does not make the voyage illegal.
A trading voyage by an American vessel is not made unlawful by directing that the proceeds shall be remitted to American citizens detained in the enemy's country in bills of exchange drawn upon that country.
A neutral vessel on a lawful voyage from Washington City to Halifax, during the Civil War, is not subject to arrest on the Potomac river.
An American ship, carrying dispatches from a foreign minister in this country to "his government after declaration of war is subject of condemnation as prize, and cargo belonging to the vessel owner will share the fate of the ship.
The interests of a loyal mortgagee under a mortgage recorded before the outbreak of
hostilities will not be condemned because of enemy ownership.
The existence of a state of war with a Southern state dated from the time that the government was justified in exercising belligerent rights, and not from the passage or adoption of the ordinance of secession.
The loyalty of an inhabitant of an insurrectionary state will not protect his property from seizure and condemnation as prize of war.
The fact that his place of residence is occupied by the army of the United States will not affect his status, where the government of the state is still under the control of the insurgents.

**Procedure.**

Common-law principles and rules of evidence cannot be applied in a prize court.

Enemy ownership *held* proved by the uncontradicted testimony of the owner as to, his residence, supported by a recital in a mortgage given by him.

Vessel and cargo condemned for an attempt to violate the blockade.

Vessel and cargo condemned as enemy property and for an attempt to violate the blockade.

**Disposition of proceeds.**

The question of the disposition of prize, proceeds is not governed by the international law.

Soldiers belonging to the land forces of the United States have not, in the absence of statute, any right of property in a vessel captured by them on the sea. The acts of April 23, 1800, and June 26, 1812, and articles of war do not give such right.

Land forces, who act in concert with vessels of war in making a capture, must prove that the
capture was produced by their active interference to entitle them to share in the prize
Prize cargoes sent in for adjudication in a transport chartered by the government are not chargeable with freight, or any part of the charter money, in favor of the vessel owner
The claim of a warehouseman for storage, at the instance of the officers of the court, of property seized as prize, presented after the property was restored to the claimant, was allowed payable out of the fund for defraying expenses of suits in which the United States is a party, under Act June 30, 1864, § 14

Liability of captors.
A capture after a treaty of peace, though made in good faith, will entitle the owner to damages for goods taken and costs
Probable or reasonable cause of capture must be shown to rest on strong facts apparent at the time of capture What facts are sufficient
Claimants who complain of irregularities, delay, and acts of negligence by the captors must proceed by libel and monition, and not by special motion (Rule 23)

PUBLIC LANDS.

See, also, “Grant”
A state has no power over public lands within its limits
Act July 26, 1866, granting a right of way to ditch and canal owners, is prospective in its operation, and does not in any manner qualify or limit the effect of a patent issued before its passage
A person who entered and paid for his land before the passage of the homestead act holds the land unaffected by it His patent, when issued, will relate to the date of his entry
The exception in the grant to the Union Pacific Railroad Company of lands to which homestead claims had attached does not operate in favor of a sham and fraudulent homestead claim.

The defense to an action of trespass for cutting timber, that defendant claimed the land under Act Sept 4, 1841, can only be sustained by showing some steps taken to secure a pre-emptive right.

Construction of the grants of lands to the Burlington & Missouri River Railroad Company and the Union Pacific Railroad Company.

A reservation of land for a specific purpose withdraws it from general location and from pre-emption rights.

A stream of running water is part and parcel of the land through which it flows, inseparably annexed to the soil, and the use of it as an incident to the soil passes to the patentee.

Where lines of a tract have been traced without a warrant, the warrant may be applied to such land without the surveyor going upon it, and the survey will bear date of the day when it was made.

QUI TAM AND PENAL ACTIONS

In an action or information to recover a statutory fine or penalty the declaration must conclude, “against the form of the statute,” or with words of equivalent import.

In debt on a penal statute the existence of the statute must be alleged as a matter of fact by a direct allegation.

Where the declaration is defective in this particular, the judgment will be arrested on motion.

On an issue found against defendant on plea of nil debet in an action of debt to recover a penalty.
given by the embargo act, the amount of the penalty is to be fixed by the jury

RAILROAD COMPANIES.

See, also, “Carriers”

In an action by a shareholder against the officers of the company, alleging an illegal consolidation with other companies in a new corporation, praying injunctions, etc, the officers of the consolidated company are necessary parties

Authority of a railroad company to guaranty the bonds of another, when made under a general statute, need not be alleged in an action on such bonds

On foreclosure of a blanket mortgage given by a consolidated company, containing a covenant to pay interest on mortgages given by the separate companies, the decree cannot extend to the latter where the holders are not made parties

Where the principal sum named in the mortgage was not due, held, that a decree of foreclosure could go only in respect of interest due and unpaid

A decree for the sale of a railroad, providing that the purchasers shall pay enough money to liquidate certain judgments, etc, may be amended at a subsequent term by providing that the property shall be sold subject to such judgments, etc

A railroad may be sold subject to claims against it as finally adjudicated, where their amount depends on a long course of litigation

The appointment of a receiver pending proceedings for foreclosure of a railroad mortgage is a matter resting in the sound discretion of the court

A default in the payment of the debt is no ground for the appointment of a receiver in the
absence of a stipulation that the mortgagee shall have the rents
The court will not appoint a receiver where it appears that a much greater injury will result to those interested in the railroad than by leaving the property in the hands then holding it
A receiver will be appointed on default in the payment of interest, only where it is shown that a loss will happen if the property remains in the hands of its present owners, though the mortgage covers the income, and gives the trustees immediate possession on default
A receiver appointed in foreclosure proceedings is the agent of the bondholders and the trustees, and they are bound by a judgment rendered against him
The receiver may be required to pay the claims of operatives and supplymen owing at the time of his appointment, and to hold the property subject to them irrespective of a lien
A receiver is liable for damage to engines rented by him arising from omission to make necessary repairs
Conditions as to the location of a depot near the county seat, and that a bridge shall be so constructed that it may be used as a free wagon bridge, will not invalidate the vote of a county on the issuing of railroad aid bonds

RECEIVERS.
See, also, “Railroad Companies”
A receiver may be appointed in a suit to recover a fund alleged to be held by defendant as plaintiff's agent, where it appears that defendant received, as agent, a fund prima facie belonging to plaintiff, which was I presumably still under his control, and in peril

Recognizance.
See “Bail.”

**RECORDS.**

The proceedings to restore records in the federal courts must conform to the act of congress, and not to the state statute

**REMOVAL OF CAUSES.**

See, also, “Courts”

**Right of removal.**

Under Act March 3, 1875, § 2, only suits involving rights depending upon a disputed construction of the constitution and laws of the United States are removable

A suit to determine the right to mining claims is not removable under such section where the only questions to be litigated are as to the local laws, rules, regulations, and customs, and the fact of conformance thereto

The Union Pacific Railroad Company, when sued in a state court for negligence, may remove the cause under a petition stating that it has a defense arising under its charter

Where there are several defendants, a nonresident cannot remove the cause unless there be a controversy wholly between him and the plaintiff, so that a final decree will settle the whole case

**Proceedings to obtain.**

A petition for removal on the ground that the case arises under the constitution and laws of the United States must state the facts and indicate the questions arising which are claimed to give jurisdiction

The suit is not properly removed where the bond given in a suit commenced after the passage of the act of March 3, 1875, contains no provision for costs

**Effect of removal: Subsequent proceedings**
The question of jurisdiction is considered as conclusively settled where there has been no appeal from a decision denying a motion to remand for want of jurisdiction. After removal, the suit must be made to conform substantially to the modes of procedure observed in the federal courts, as in original cases. Proof of publication of notice to defendant in chancery, made according to the state statutes subsequent to the removal, will sustain the jurisdiction of the federal court.

**REPLEVIN.**

Nominal damages only should be allowed on judgment for defendant in replevin, where he has failed to show right in himself to the property in controversy.

**RIPARIAN RIGHTS.**

The owners of a wharf on a navigable river constructed wholly beyond low-water mark, and adjoining their lot on the main land, bounded by a street running to the water's edge, have no easement in the water in front of the street and beside their wharf. The right of lot owners to easement in adjoining streets held not to extend to an extension of the street running into a navigable river below low-water mark. Prima facie the proprietor upon each bank of a nonnavigable river is entitled to the land covered with water in front of his bank to the middle thread of the stream. In virtue of this ownership he has the right to the use of the water flowing over it in its natural current without diminution or obstruction, without any property in the water itself. One who has entered and paid for land and received a certificate of purchase has the
equitable title, and is entitled to riparian rights, although he has not received his patent
One who has entered land under the homestead act, and continues to reside thereon, is entitled to use water as other riparian proprietors may
The appropriation of water flowing through the public land confers no right on the appropriator, either against the government or its grantee
So long as the title to land through which a stream flows remains in the United States, there can be no use of the waters of the stream which will ripen into a title by prescription, either against the government or its grantee
The use of water by a riparian proprietor does not become adverse until it amounts to an actionable invasion of another's right
A right to use water, obtained by prescription, only operates against the property, and not against the proprietor, and he may purchase and hold other lands unaffected by such right
Priority of occupancy of flowing water creates no right, unless the appropriation be for a period which the law deems a presumption of right
The exclusive use of flowing water for 20 years is a conclusive presumption of the right
Of the nature and effect of presumptions arising from use of water as to pre-eminent or prior use in case of a deficiency to supply all concerned
A mill owner, as such, has no right to the water of a river beyond what has been legally appropriated to his mill by title or long use
The riparian proprietor may use the water as it flows according to his pleasure, if the use be not to the prejudice of another proprietor
The right of each proprietor is limited and qualified by the precisely equal right of every
other riparian proprietor, and this right determines reasonable use.
In the exercise of his common right, every proprietor may consume so much water as is necessary for his household and domestic purposes and for watering his stock.
The riparian owner has no right to throw water hack on a proprietor above, or to divert it from a proprietor below to his injury.
What is a reasonable use of water by a riparian owner depends upon the circumstances of each case.
The use of water for irrigation is not for a natural want, as in the case of quenching thirst, and water cannot be diverted to such purpose so as to destroy or render useless or materially affect the application of the water by other riparian proprietors.
Actual damages need not be shown to sustain an action for an invasion of water rights, where defendant's use is not made in the exercise of the riparian owner's natural right.

SALE.
See, also, “Vendor and Purchaser.”
A contract by the consignee of cargo for the sale thereof may be rescinded where the purchaser refuses to receive the cargo and make payment, except upon conditions which he has no right to prescribe.

SALVAGE.
Right to salvage compensation.
A tow-boat company cannot be treated as a salvor, but it is entitled to compensation for its property put at risk, the same as other salvors.
A passenger, who after the officers of the ship, in two days of effort, have exhausted all their means to get control of the rudder with a broken shaft,
devises, and, with the aid of men put under his direction by the captain, executes a plan for that purpose, thereby saving the ship from peril, is entitled to salvage.

The seaman’s allegiance to the ship may be absolved by his being deserted by the master and rest of the crew, so as to entitle him to salvage for navigating the vessel to a place of safety.

Seamen are entitled to salvage for saving the materials of the ship, where freight is not earned, and under the circumstances salvage was allowed to the extent of their wages for the voyage.

A barge without small boat, provisions, or means of provision, adrift on Lake St Clair, after she had come to anchor in good weather, held in a situation to have salvage services rendered.

The rescue, while floating down stream, of logs which formed part of a raft of lumber driven from its anchorage and broken up in a high wind and tide, is not a salvage service.

The fact that there was no formal surrender of the vessel to which salvage services were rendered, will not detract from their character.

Services rendered to a burning vessel by tugs, which were in fact supernumeraries, will not be compensated as salvage.

Compensation awarded for the services of a tug and lighter in saving cotton floating near the Narrows, which had been dumped from a lighter in New York bay.

**Contracts for salvage services.**

A contract for the salvage of a canal boat and cargo, made by the master, when all parties interested are within easy reach, will not be enforced where the rate agreed upon is exorbitant.
Forfeiture of salvage.

Salvage will not be denied for refusal of salvors of cotton to surrender it to the master of the vessel sent by the owners to pick it up.

Amount

The rule limiting the amount of salvage in cases of derelict to a moiety is not inflexible. In this case over five-sixths was awarded.

A case of derelict occurs only where the property has been abandoned without the hope or intention of recovery.

The amount of salvage in case of a derelict ought not to be less than one-third, unless the property be very valuable or the services very considerable.

$100 in addition to pilotage, allowed a pilot for bringing into port a vessel which was being navigated under a jury rig and makeshift rudder.

$300 awarded on a gross value of $5,000, to a seaman, who, being deserted by the rest of the crew, alone navigated the vessel to a place of safety.

A decree awarding $5,000 to a steamer worth, with cargo, $170,000, for staying by a stranded vessel during the night, and saving her passengers and crew, reversed on appeal, and $2,500 allowed.

$15,000 allowed on a gross value of $500,000 to a passenger for devising and putting in execution a plan for steering a steamer with a broken rudder shaft.

Remedies for recovery

An adjustment of salvage, made by the owner of the cargo, is not binding upon the vessel.

Salvage paid to seamen in case of shipwreck is a charge on the property, and is to be borne by the underwriters where the vessel is abandoned to them.
Right to property or proceeds.
As to the lien for customs duties on the salved property and the duty of the court

SEAMEN.

See, also, “Admiralty.”

The contract of shipment.
“Port of destination” and “port of discharge” are not equivalent words. The port of destination is not the port of discharge, unless the voyage is actually terminated there, or some cargo is unladen.
Where the shipping articles are to the final port of discharge, the owner may order the vessel from port to port until the whole is discharged.
Parol proof offered by a shipowner to vary the voyage described in the shipping articles is not admissible in an action in rem by seamen for their wages.

Presumptions and proof as to the terms of hiring at monthly wages of a pilot on the Hudson river.
A mariner shipping after a whaling voyage was partly performed held entitled to a lay only in the products taken during his time of service.
A seaman is not relieved from working on Sunday by any general law.
The contract of seamen is not dissolved by shipwreck, and, if they leave the vessel without endeavoring to save either vessel or cargo, they may forfeit wages antecedently due.
The fact that a seaman is suffering from a malignant and infectious decease will not justify the master in setting him ashore without provision for his care, subsistence, and proper medication.

Conduct of master or mate in respect to seamen.
The master, under the marine law, may chastise a disorderly or disobedient seaman in a moderate and reasonable manner. The master may inflict reasonable punishment and use means of coercion in ease of desertion and persistent refusal to perform duty. The master may retake a deserting seaman, and confine him on board, irrespective of the remedy given under Act 1790, c. 56.

**Wages—Right to.**

Seamen are not entitled to wages for the voyage on which the vessel was wrecked and earned no wages. Where the vessel is wrecked on the homeward voyage, the seamen are entitled to wages from the port at which she was laden, though she only carried ballast between such port and that of the destination of her outward cargo.

**Remedies for recovery.**

The lien on the vessel is lost where seamen, with knowledge of a libel filed by other members of the crew, failed to apply for their wages. On a showing of reasonable ground of belief that the vessel is about to proceed to sea within this 10 days after its arrival, process in rem may issue within such time, under Act July 20, 1790, § 6.

**Deductions: Extinguishment, etc.**

A seaman is not justified in leaving a vessel at a foreign port on the ground of bad provisions, unless the provisions were positively bad, and unfit for the men’s support. Seamen forfeit their wages, under Act July 20, 1790, § 5, by absence without leave and remaining away for 48 hours, though they intended to return. The statute inflicts an absolute forfeiture of wages for an absence without leave continued for
48 hours, or a desertion; but the mode of proof required by the statute must be strictly followed. 537.
A return to the vessel at night by seamen, absent without leave, without saying who they are or what they want, will not restore the right to wages. 502
The log-book entry of the absence of a seaman must show that it was without leave, where it is used to support a claim of desertion. 502
To constitute a desertion under the maritime law working a forfeiture of wages, there must be an abandonment of the ship with an intent not to return. 537

**Crimes by seamen.**
Where the crew combined together not to do duty, it is an endeavor to make a revolt, within Act 1790, c. 9, § 12, although no orders are actually given afterwards. 985
Restraining the master from performing the duties of his station by such mutinous conduct of the crew as would reasonably intimidate a firm man is confining him, within 2 Laws U. S. 93, § 12. 1161
Seizing the person of the master, although the restraint be but momentary, is a confinement prohibited by law. 1161
A bona fide combination to compel the master to return into port for the actual unseaworthiness of the vessel, or where seaworthiness is doubtful, is not punishable as a revolt, under Act 1790, c. 36, § 12. 873
To constitute the crime of making a revolt under Act 1835, c. 40, § 1, a certain end must have been accomplished by certain means unlawfully and willfully done. 1202
The prevention of a single lawful command by willful and unlawful combination, which
intimidates the master, makes the act a revolt within the statute.
The crew may take reasonable measures to protect one of their number from the infliction of what they have reason to believe to be a great wrong.
The offense of seamen who revolt against the master on the ground of his intemperance and danger to the vessel, and place him in confinement, continuing the voyage under the mate, is not a felony.
A seaman cannot be prosecuted under Rev St § 4596, unless the circumstance of the offense is entered in the log book as soon as possible after the occurrence, and is read over to the seaman, or a copy furnished him, and his reply entered in the same manner.
The charge that defendants “with force and arms, did then and there feloniously make a revolt on board the said ship, contrary,” etc., is insufficient to charge the offense of revolt or mutiny under the act of 1835.

**SET-OFF AND COUNTER-CLAIM.**

Defendant cannot set off a joint judgment recovered by himself and wife against plaintiff.
A maker of a promissory note, when sued by the indorsee, may set off the payee’s note to him, which he held at the time he had notice of the assignment of his own note to plaintiff, though it was not then payable.
A set-off in a suit by the United States on a bill of exchange against a private individual, where the course required by the act for the settlement of accounts between the United States and receivers of public moneys has not been pursued, will be rejected.
Unliquidated damages arising from torts may be set off against a government claim, but such damages can only include actual loss, not anticipated profits

**SHERIFFS AND CONSTABLES.**

The temporary removal of a constable from office will not vacate or invalidate his official bond. A constable is not liable for wantonly sacrificing property taken under execution, unless it appear that he acted from a corrupt motive.

**SHIPPING**


**Public regulation.**

The offense punished by Act Feb 22, 1847, § 1, is committed by taking on board the forbidden number of passengers, with intent, etc, as well as the bringing them, or any number of them, into the United States.

The mere intention to violate the act of 1847, limiting the number of passengers, formed in a foreign country, and not completed by the actual illegal importation, is not punishable.

The liability of the vessel will be determined by her customhouse measurement, which has been delivered by the surveyor of the port to her master or owner, and not by any subsequent measurement.

“Personal luggage” (Act 1847) does not include furniture, stores, or other articles not necessary for the personal convenience of passengers.

Passenger Act 1819, § 2, is repealed by Act May 17, 1848, § 10.
Hay in bales, piled up in the engine or deck room of a steamer, *field* sufficiently protected, under Act July 25, 1866, where surrounded by a tier of grain in sacks, extending from floor to carlings and stripped with planks to make the sacks steady.

A vessel arriving in the district of Barnstable from Nova Scotia, bound to New York, must make entry in such district, for New York is not “a more interior district,” with reference to Barnstable, in the sense of Act 1799, c. 128, § 29.

The master of a vessel merely touching at a port without coming to an entry or transacting any business, need not deposit the ship's papers with the consul (Act Feb 28, 1803, § 2).

The enrollment of a vessel is absolutely void where the oath of one of the owners has not been previously taken and subscribed in conformity with Act Feb 18, 1793, § 2.

A vessel registered as American, when owned in part by a foreigner, cannot be libeled as forfeited after her sale to a person innocent of the fraud.

A coasting vessel, engaged in an illegal traffic, is forfeitable, under Act Feb 18, 1793, c. 3, § 32.

If a vessel licensed for the fisheries take on board goods with intent to transport them on an illicit voyage, it is a sufficient “trade other than that for which she is licensed,” within such section.

A licensed vessel, transferred in whole or in part to a foreigner, is forfeited under such section.

Under such section, the cargo found on board at the time of seizure is forfeited, and not merely the cargo on board at the time of committing the offense.

The United States may sue in debt to recover the penalty given by Act Aug 30, 1852, 1205 notwithstanding section 41, which provides that
all penalties “may be recovered in an action of debt by any person who will sue therefor.”

Act June 7, 1872, § 62, making it an offense to board a vessel without permission of her master, before she has actually arrived at her destination, and has been moored, held valid

Climbing on the rail of the vessel from a boat, in the act of entering on the vessel without permission, is within the prohibition

Such section is intended to protect foreign vessels as well as vessels of the United States

**Title to vessel.**

A dissenting part owner is entitled to a stipulation to secure his interest in case of a loss on a voyage undertaken against his wishes

Where the opinion of the majority owners prevents the employment of the vessel, they must yield to the minority owners who desire its employment

**The master.**

A person once master of a vessel will be deemed to continue in that character until displaced by some overt act or declaration of the owners

The power of the master to make contracts in relation to the vessel at her home port is limited

A mate of a vessel, through whose negligence in taking account of cargo a loss to the owner has resulted, is liable therefor

But the mate is not liable where the master voluntarily pays to the consignee the difference between the amount of goods actually received on board and that receipted for by mistake by the mate, and for which a bill of lading is given

**Employment of vessel**

The vessel owner has no right without necessity to change the vehicle of conveyance of goods shipped on freight for a voyage
A usage, to control such general rule, will not affect the rights of the parties unless it is very clear and uniform.

**SLAVERY.**

The word “person,” as used in an act of congress punishing any person who shall steal, etc, held to include slaves as well as freemen; and such construction does not render the act unconstitutional.

The offense of engaging in the slave trade is committed by procuring slaves and shipping them by the vessel of another.

A vessel ostensibly fitted out as a whaler, held, on the evidence, subject to forfeiture as fitted out with the intent to employ her in the slave trade.

The acts of 1794 and 1800 in relation to the slave trade do not apply to a case where slaves are carried from one foreign port to another as passengers, and not for sale—

A person employed merely in the transportation of negroes from port to port is not guilty of piracy, under the act of 1820, for seizing negroes, or receiving them on a ship, with intent to make slaves of them.

To bring a case within the act it is necessary that the negroes should have been free when seized or received on board.

Either the owner of the vessel engaged in slave trade or the accused must be a citizen to constitute the offense described by Act 1820, § 4.

Admissibility of evidence of the acts and statements of the accused to rebut a prima facie case of ownership in a citizen.

To cruelly, inhumanly, and maliciously cut, slash, beat, and ill-treat one's own slave is an indictable offense at common law.
A person is not properly charged as a slave after an actual manumission, though the deed is not executed until afterwards.

STATES.

A state has no constitutional power to direct its governor to employ force to resist the execution of a decree of the federal court, though such decree is deemed to have been beyond its jurisdiction to make.

The state legislature has no power to construe a statute previously enacted as to acts done.

The mere fact that a state claims an interest in a subject in dispute in an action between private citizens does not deprive the federal courts of jurisdiction.

Suits involving questions of admiralty and maritime jurisdiction, brought in the federal district courts as courts of admiralty, are not within the exception in the grant of the judicial power to the United States of any suit “in law or equity” commenced or prosecuted against a state by a citizen of another state (Const Amend 11).

STATUTES.

See, also, “Constitutional Law.”

An interpretation, which requires the introduction of new provisions and clauses to render the statute sensible or practicable, will not be adopted.

A statute is repealed by the enactment of another repugnant to it, or one covering the whole subject of the former.

Actions on statutes in their nature penal, pending at the time of repeal of such statutes, cannot be further prosecuted after such repeal.

The provision that the repeal of a statute shall not extinguish any liability incurred under it (Act
Feb 25, 1871, § 4) does not apply to an act not forbidden by statute at the time of its commission

TAXATION.

See, also, “Internal Revenue.”

The portion of a railroad bridge over the Missouri river between Iowa and Nebraska, which lies within the limits of Iowa, may be taxed as a bridge, under Code Iowa, 1873, §§ 808–810

Shares of stock cannot be taxed in the place where the corporation is located, without regard to the residence of the owner

Taxation of the shares of a bank in the place where the bank is located, being void as to all shareholders not residing in the district, is also void as to those residing there

The Union Pacific Company and its property are not exempt from state taxation because of the interest of the general government therein

The lands patented to the Union Pacific Railroad Company are liable to state taxations before their sale by the company (Reversing 638)

Where the title to a railroad company exempted by charter from taxation passes to the state, and is sold by it to a new organization, after the adoption of a new constitution prohibiting the exemption of private property from taxation, the right of exemption does not pass

Though a tax be irregularly assessed, if it appear that the property was taxable, and the amount is not excessive, equity will not interfere

The fact that a tax on part of the property of a railroad company is admittedly illegal does not authorize the court to enjoin the collection thereof, where enforcement is sought by a sale of personal property only

TOWAGE.

See, also, “Collision” “Salvage”
The tug is not an insurer or common carrier, but she must use reasonable carefulness and ordinary skill, and cannot bargain to be exempted from all the risks of the service. A tug towing a lighter from the North into the East river, without slackening speed upon coming round against the ebb tide, held liable for the capsizing of the lighter.

**TOWNS.**

In Illinois, town officers continue to be such until their successors are qualified, and resignation does not relieve them from duty and liability.

**TRADE-MARKS AND TRADE-NAMES.**

The words imprinted upon a patented article of manufacture are common property from the date of the expiration of the patent.

**TREATIES.**

A treaty which stipulates for the payment of money is not the supreme law of the land, for such stipulation is not within the treaty-making power. The stipulation in the Oregon treaty of 1846 that the United States would respect "the possessory right" of British occupants, held not a grant, but a mere promise, for a violation of which occupants only have a claim against the United States for compensation.

**TRIAL.**

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

In all criminal prosecutions the attorney for the government upon the general issue has the right to close. Where there are material facts in the case, depending upon the weight of evidence and the credibility of witnesses, which are in dispute,
and the proper inferences to be drawn from the evidence are not certain, necessary, or undisputed, defendant is not entitled to have a verdict directed. After the jury has retired, the court will not instruct them upon any matter at the motion of either of the parties. The record of the verdict will be amended in the case of a clerical mistake to conform to the verdict as rendered.

**TRUSTS.**

The manager of a railroad company, who, by an oppressive exercise of his powers, procures donations of property to be made to him in trust for the company, will be considered to hold the property in trust for the donors.

**UNITED STATES.**

The United States cannot be sued. The United States, like individuals, can sue in their own name without special authority. On a note given to an agent of the United States for their benefit, suit may be brought in their name. The Massachusetts laws of flowage do not apply to the case of machinery used by the United States on its lands over which jurisdiction has been ceded to them. The United States, in cases where congress has not provided adequate remedies for injuries to public property, may resort to those of common-law origin or those provided by the laws of the state. The lex rei sitæ will govern the rights and remedies in relation to land owned by the United States within the limits of a state over which they have no cession of jurisdiction.
But lands over which jurisdiction has been ceded, or which are not within the limits of any state used for constitutional purposes, are subject only to the laws of congress in the case of conflict State statutes in relation to the proof of claims against decedents' estates are not binding on the United States in the collection of their debts
A federal officer cannot, without the authority of congress, submit to arbitration a dispute as to the riparian rights of the United States
The right of the United States to summary judgment under Act March 3, 1797, c. 74, § 3, does not extend the suits brought by them as indorsees of promissory notes

United States Officers.
See “Clerk of Court”; “Marshals,” etc.

USURY.
The discount of a note made payable directly to the bank is not usury
It is not usury in a bank to take the discount for 64 days upon a 60-day note

WAR.
See, also, “Prize”
A citizen of the United States may lawfully, during a war with a foreign country, draw a bill of exchange on one of its subjects
Construction of rule 22 of the trade regulations of September 11, 1863, in relation to gold coin or bullion
Gold coin comes within the description of “goods and chattels, wares and merchandise,” within Act July 13, 1861, prohibiting intercourse with the inhabitants of the states in insurrection
Property found on shore, or even land itself, may be condemned under Act Aug 6, 1861, declaring private property used in promoting insurrection to be lawful subject of prize and capture
In prosecuting an information to enforce a seizure under such act, issues of fact should be submitted for trial by a jury, according to the course of the common law. An unqualified pardon, granted to the owner prior to the seizure or condemnation proceedings, is a bar to a judgment of condemnation.

**WAREHOUSEMEN.**

Warehousemen are not liable for discoloration of coffee stored with them, arising from the storage of guano in the same building, unless it appear that they were wanting in ordinary diligence in storing the two articles together.

**WATERS AND WATER COURSES.**

See, also, "Riparian Rights.

No presumption of grant arises from an adverse use of water, unless the use has been peaceable; and to be peaceable it must have been with the acquiescence of the owner of the servient tenement.

**WILLS.**

On the question of testator’s mental capacity the court will look to his substantial business acts, more than to his conversation, or occasional doings, not connected with business. Declarations of testator, after the alleged making of a will, as to the disposition of his property, tending to show a want of knowledge of the existence of the will, held admissible upon the question of forgery. Proof of forgery, derived from knowledge of handwriting, will not prevail against positive and unimpeached evidence of actual execution. The Massachusetts probate courts have complete jurisdiction over the probate of wills of both real and personal estate, and its decrees are
conclusive upon all parties, and not re-examinable in any other court
A like effect is given to the probate of a will by the Rhode Island supreme court

WITNESS.

See, also, “Bankruptcy”; “Costs”; “Deposition”; “Trial”

Where incompetency depends upon an infamous punishment, and the same is not inflicted where it might have been inflicted, the witness is not rendered incompetent

A person convicted in Pennsylvania of an assault and battery with intent to murder, and sentenced to fine and imprisonment, is a competent witness
Serving out a term of imprisonment in the penitentiary for felony does not restore the person’s competency

Defendants are not competent witnesses in their own behalf on their trial on indictment for violating section 44 of the bankrupt act of 1867

Defendant in equity is a competent witness upon an indictment against plaintiff for perjury in his affidavit made to procure an injunction

A person whose name is forged is a good witness for the prosecution
Upon an indictment for forgery, a person interested in setting aside the instrument forged is not a competent witness to prove the forgery

The owner of goods stolen, having released to the United States his interest in the fine, is a competent witness for them on a prosecution for larceny

The prosecutor whose name is indorsed on an indictment for a misdemeanor is not a competent witness for the prosecution

A person who has given a receipt for goods to be delivered is a competent witness upon a
prosecution against a third person for stealing the goods
On the separate trial of one of two persons jointly indicted, the wife of the other is a competent witness for defendant
In a suit for seamen's wages the master is a competent witness for libelant, although he may have executed a sale of the vessel to the claimant
Competency of negroes or slaves as witnesses
Act July 6, 1862, in relation to the competency of witnesses, does not apply to criminal cases
A party may not contradict testimony of his own witness except in case of a surprise
A person may be compelled, in a judicial proceeding, to testify to matters tending to criminate himself, but no use can be made of such testimony against the witness in a criminal proceeding (Act Feb 25, 1868)
Practice in respect to the issue and form of subpoenas duces tecum stated
A writ directed to an officer of a telegraph company to produce messages, stating the names of the signers and addressees, with their dates, held sufficient
It is the duty of the person to whom the writ is directed to use reasonable diligence to obey it, and to find and produce the required instruments of evidence if they are within his custody
The issuing of a subpoena for a person, or indorsing his name on a complaint, makes him a witness, within Rev St § 5399, punishing the influencing or intimidation of witnesses by threats, force, or corrupt means
A case is pending, within the contemplation of the statute, when a complaint is lodged with a
commissioner charging a violation of the laws of the United States
It is an offense under the statute to corruptly influence a witness to secrete or so dispose of himself as to prevent service of process upon him

WORDS AND PHRASES
The “high seas” are, in legal contemplation, that portion of the waters of the sea and of the arms of the sea which lies without the low-water mark

WRITS AND NOTICE OF SUITS.
As to what facts amount to resisting process
A citizen of one state, indicted in the federal court of another, who comes therein to plead under an arrangement with the district attorney that he may appear without arrest, and plead and give bail, is exempt, while so in the state, from liability to civil process
The service of a writ by enticing the person within the jurisdiction of the court by false representations or deceitful contrivances for the purpose of making such service will be set aside
The defendant, while within the jurisdiction of the court, on invitation of an inventor, for the purpose of settling a controversy in relation to infringement of a patent, was served with process in a suit for infringement brought by the assignees of the inventor, who had no knowledge of the purpose of his visit Held, that the service would not be set aside
Courts of admiralty have authority to issue a warrant of arrest with a clause that, if defendants cannot be found, their goods and chattels, credits and effects, in the hands of parties named, shall be attached
Such writ will be set aside as to parties served who are not named therein
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