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The practice of the court may be established without the existence of a positive, written rule. 1326

The forms of process and procedure of the federal courts in actions at common law within the 13 original states are the same as those employed therein May 8, 1792, except so far as the federal courts may have prescribed alterations. 1326

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A doubt whether an act charged in an indictment is embraced in the criminal prohibition must be resolved In favor of the accused. 742

Where a penal statute is complete without certain words, and giving them effect will render the whole act meaningless, they should be rejected as surplusage. 1310

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Insanity, to constitute a defense, need only to have existed at the moment when the act was charged to have been committed. 1074

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The federal courts have no common-law jurisdiction to try and punish crimes, but only such jurisdiction as is expressly authorized by the constitution or by congress. 91, 694

The federal courts have jurisdiction of all criminal cases arising under the federal laws. 1147

The circuit court has jurisdiction to inquire into and pass upon all acts charged by competent authority to be public offenses, and presented to it by such authority for its consideration. 746

The jurisdiction of the United States to punish crimes extends to vessels sailing under their flag, wherever they may be. 1132

Except offenses committed on the high seas, or in places in the states which are under the exclusive jurisdiction of the United States, there are no felonies against the United States cognizable by courts of the United States, except those which are expressly made such by act of congress. 1060

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"High seas" (Act April 30, 1790, c. 9, § 8) mean any waters on the sea coast which are without the boundaries of low-water mark. 899

An offense committed in a bay which is entirely landlocked and inclosed by reefs is not committed on the high seas within Act March 26, 1804, c. 40. 871

The federal courts have jurisdiction, under the act of 1825, over their own citizens, in foreign countries, for offenses committed on tide waters. 822

An American vessel was wrecked within 150 feet of the Mexican shore, and completely broken up and destroyed Defendant recovered a part of her treasure, buried in the sand under water, and converted the same *Held,* that the United States courts had no jurisdiction either over the place or property. 1132

The court, in a capital case, arrested judgment on its own motion, for want of jurisdiction, and directed that the prisoner be turned over to the state authorities. 923

Preliminary hearing: Arrest, commitment, custody, and discharge of accused.

No instruction or official authorization is required for the institution of a criminal prosecution, and it is the duty of a judge to issue a warrant on the complaint of any citizen. 1123

A United States commissioner has power to let to bail one brought before him on a criminal complaint, pending the proceeding, in those states where justices of the peace have a similar power. 915

The commissioner has power to adjourn to another time and place, as incident to the power to hear and determine, but he cannot adjourn in the absence of the accused. 915

Pending the hearing of a motion for new trial on conviction as a common scold, defendant was required to give bail for appearance and for good behavior. 907

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A warrant for the removal of a prisoner to another district, in which he was indicted, will not be granted, in the absence of the original affidavit 128

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Limitation of prosecution.

Act April 30, 1790, § 32, limiting the prosecution of offenses not capital to two years, is applicable to common-law misdemeanors, in the District of Columbia. 595, 1124

The finding of an informal presentment is not the finding or instituting of the indictment, so as to take the case out of the statute. 1124

There must be a leaving of one's home, residence, or place of abode within the district, or a concealing of one's self therein, to avoid detection or punishment for some offense against the United States, to constitute a "fleeing from justice," under 1 St 117, § 32. 212

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The district attorney has power, under control of the court, at any time before a jury is impaneled, to enter a nolle prosequi. 1350

Arraignment and plea.

In cases of felony the prisoner must be arraigned in the criminal bar, or dock. 521, 543

The prisoner charged with a felony need not hold up his hand when called, if he admits himself to be the person indicted. 543

In misdemeanors, as well as in felonies, two or more pleas in abatement, not repugnant to each other, may be pleaded together. 750

On demurrer to an indictment, where it is not suggested that defendant has any defense thereto, judgment absolute will he rendered against him on overruling the demurrer. 673

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Practice of abusing witnesses and attacking absent persons by counsel, in arguments to the jury, commented on. 819

When several persons are charged in one indictment with the same offense, each defendant has a right to be tried separately. 1041

Trials for misdemeanors may be had, after service of summons upon the accused, without his actual presence in court, especially if he be represented by counsel. 1030

The accused is not entitled to the minutes of the proceedings before the grand jury, nor, in the absence of strong reasons to the contrary, should they be furnished him. 1275

Where there has been no preliminary examination, it is within the discretion of the court to order a list of the witnesses sworn before the grand jury to be furnished the accused. 1275

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Counsel will not be permitted to argue a question of law to the jury, in contradiction of the previously expressed opinion of the court. 1347

Evidence.

The court Will take judicial notice of the public statutes of the state referred to in the indictment. 673

The examination of a witness before an examining court, where the witness has since died, is competent evidence upon the trial of the party for the same offense. 490

The rule that the testimony of a deceased witness may be given in evidence on a second trial between the same parties does not apply to a criminal case. 1307

Words accompanying acts are admissible to show the intent. 236

The statements of a party charged with absconding, made on his way from the place of his residence, as to his intention of returning, is competent evidence to disprove the charge. 490

Where the evidence shows that defendant made a false statement about the circumstances of the commission of the crime charged, he may show 696

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that he had good reason to believe at the time that the statement was true.

False and contradictory statements, and falsification of records by defendant, and special circumstances not consistent with his innocence, may all be considered in determining his guilt. 696

Confessions extorted from the prisoner cannot be used against him. 631

Confessions to be excluded from the jury must have been made by the prisoner under some hope of advantage, or extorted by some apprehension of danger. 189

Confessions made to an examining magistrate under hopes excited by statements that his punishment might be mitigated are not admissible. 580

While a confession made upon promise of favor is not admissible, the fact that the prisoner went to the place where the property was secreted, and identified it, is admissible. 798

The whole confession must be given in evidence if any part is given, but the jury is not bound to accept it all as true. 624, 1233

Good general character avails a defendant only in a doubtful case. 902

Proof of good character may afford good ground for a presumption of innocence if there is doubt of guilt, but it will not overcome satisfactory proof of guilt. 1144

A reasonable doubt is a doubt for which a reason may be assigned, not necessarily sufficient to convince another, but such as may properly influence a juror honestly endeavoring to perform his duty. 1312

Jury.

The jury are not the judges of the law in the federal courts. 810

The question whether one fact can be inferred from another is a question of law, to be decided by the court. 1347

The right of the jury to decide the law as well as the facts results only from their power to find a general verdict. 1347

Where the jurisdiction depends upon facts to be found by the jury, the latter may, under the direction of the court as to matter of law, affirm, through the medium of a general verdict, whether there is or is not jurisdiction. 950

The court may require that the constitutionality of the act on which the indictment is founded shall be argued to the court, instead of the jury. 810

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After the jury is sworn in a capital case, and the cause has been opened, the court, without the prisoner's consent, cannot discharge a juror at his own request. 696

A jury sworn, even in a capital case, may be discharged by the court under any sudden and uncontrollable emergency, and such discharge is no bar to another trial. 1067

The prosecuting attorney, after the jury are impaneled and witnesses sworn, has no right to enter a nolle prosequi, because the evidence is not sufficient to convict, which will not have the effect of a verdict of acquittal. 1067

The jury having been discharged after being out only about four hours and reporting that they were equally divided and could not agree, the court was divided on the question whether the discharge was justifiable under the circumstances. 504

Verdict: Judgment: Sentence.

One good count in an indictment will sustain a general verdict although the others are bad. 604

Where a sealed verdict is brought in by consent of the parties, the court will not permit the jury to be questioned as to their finding, but will order them to be polled. 604

The court will not delay judgment merely to give defendant time to discover new evidence on which to ask a new trial. 696

In misdemeanor cases in the federal courts, the court, and not the jury, should assess the fine. 23

Where a statute merely alters the punishment of a common-law offense, the statutory punishment may be inflicted, although the indictment does not conclude against the form of the statute. 187

In cases of statutory crimes punishable by fine, or by fine and imprisonment, the federal courts may sentence defendant to confinement in jail until the fine is paid. 822

A prisoner confined in a New York jail under a sentence which did not fix the place of confinement is not entitled to the deduction of five days during every month, under Act March 3, 1875, but to the deduction allowed by Rev St § 5543. 977

Review.

A writ of error dots not lie from the supreme court to the circuit court. 551

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If the alleged error be in the judgment itself, and not in the process, a writ of error does not lie in the same court to correct it. 561

A writ of error coram vobis does not lie in the circuit court, either from its own judgment, or the judgment of the district court. 561

CUSTOMS DUTIES.

See, also, "Forfeiture"; "Seizure."

Customs laws.

The revenue acts of 1799 and 1863 apply to commercial intercourse between Canada and the united States as well as to other foreign countries. 1030

The contemporaneous exposition by the government of an act prohibiting certain importations, followed by the concurrent practical construction for 30 years, will govern, as against the claim of the government to a different construction. 718

Rates of duty.

To authorize the entry of small pieces of bolt iron under the name of "chain links," it must be proved that they have been previously known in commerce by that name. 958

Where bar or bolt iron has been changed by subsequent manufacture, it ceases to be subject to duty as such, although it may not have become a new and distinct manufacture, having a new name or use. 958

A vessel sailing in ballast from Boston, by way of New York, to San Francisco, for a cargo to Europe, is not engaged in "coastwise" trade, within Act June 1, 1872, § 10; and articles withdrawn from bond, and used in repairing her, are exempt from duty. 460

Trade between the Atlantic and Pacific ports of the United States is "foreign trade," and not "coastwise trade," within Act June 1, 1872, § 10. 460

Invoice: Entry: Appraisal.

An oath taken under Act March 1, 1823, not so modified as to conform to the provisions of Act March 3, 1863, is not sufficient to support an entry, and will work a forfeiture of the goods. 1036

Under Act Aug 30, 1842, the price or value of the goods must be stated in the invoice according to the actual market value or wholesale price at the time of purchase in the principal markets of the country from which the imports are made. 240

Goods imported by the manufacturer must be invoiced at the actual market value at the time and place of manufacture (Act March 3, 1863). 1099

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"Market value" is the price at which the manufacturer holds the goods for sale, and which purchasers are willing to pay in the ordinary course of trade.	1099
Evidence is not admissible to show that there was not in fact such an actual market value.	1099
The cost of production, with the addition of a manufacturer's profit, is admissible as tending to show market value, when no evidence of sales can be given.	1099
The cost of the raw materials is to be taken at the market price of such material at the time when the manufacture of the goods was completed.	1099
The sum at which an agent who purchased goods for his principal surrendered them to the latter, because he was unable to pay more, is not the proper invoice price; otherwise where the agent violated his authority in purchasing the goods.	1115
The government is not bound by the acts of its consul in certifying to the correctness of an invoice, when based upon false and fraudulent statements.	1099
In assessing ad valorem duties on given weights, the actual weight when landed governs.	75
The merchant appraisers in whose presence the packages must be examined by the customhouse officer under Act 1799, c. 22, § 67, must be in a situation to be able to witness the examination, and to see and testify to a part, at least, of the contents of each package.	340
Under Rev. St. §§ 2927, 2928, there can be an appraisement for an abatement of duties for damage sustained to the goods during the voyage after entry and payment of the estimated amount.	523
Within a year from the entry a collector may make a reliquidation, notwithstanding a previous liquidation and payment of the duties, which will be binding upon the importer in the absence of an appeal.	521
Neither accident, mistake, nor innocence of fraudulent intention is a sufficient defense to an information for forfeiture of a package of goods containing an article not described in the invoice (Act May 28, 1830.).	401
But evidence of accident or mistake may be given to rebut the inference of fraudulent intention.	405
The decision of the collector as to the rate and amount of duties is final and conclusive, under Rev St § 31, unless the owner, within 10 days af-	1276

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ter the ascertainment and liquidation, appeal therefrom to the secretary of the treasury.
In the absence of such appeal, the courts cannot grant relief. 1276

Manifest.

Articles purchased for the ship's equipment to replace articles lost or deteriorated by use are not subject to duty, and need not be entered in the manifest. 264
Hempen cables and hawsers are not "vessel and cabin stores" (1 Stat 644, § 23), nor are they "sea stores" (Id § 45). 264
Importations from Canada *held* governed by Act March 2, 1821, and not by Act August 30, 1842, § 19. 187
A horse brought in from adjacent foreign territory as a mere instrument of conveyance in the prosecution of a temporary journey, is not within Act 1821, § 1, and no manifest thereof is necessary. 315
The master is not liable for not entering on a manifest goods brought on board a foreign vessel, and concealed by the steward (Act March 2, 1799.). 1283
An information will lie directly against a vessel for the recovery of the penalty for importing goods not included in the manifest without a previous prosecution of the master. 669, 672
In such suit proof that the master had no actual knowledge that the goods were on board will not exempt the vessel from liability. 672
The district court has jurisdiction on an information against a vessel and her master alleging importation of merchandise not included in the manifest to enforce the penalty against the vessel without a trial by jury. 669
A suit to recover the penalty against the master of the vessel for the importation of merchandise not included in the manifest is a suit at common law, and he is entitled to a trial by jury. 669
An information against a vessel and her master charging the importation of merchandise not included in the manifest may be amended without terms in respect to allegations of ownership of the vessel. 669
On an information against a vessel and her master for the penalty for the importation of merchandise not included in the manifest tried as a civil cause of admiralty and maritime jurisdiction where the answer of the vessel does not except to such joinder but that of the master does, the information will be dismissed as to him and a decree entered against the vessel. 669, 672

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If the master make report of arrival he is not liable to the penalty (Act March 2, 1799, § 30), though he do not repair to the office of the principal officer of customs for that purpose. 779

Unlading.

Goods free of duty cannot be lawfully unladen and delivered without a written permit from the collector and naval officer (Act March 2, 1799, § 50.). 954

Mackerel, the property of an American citizen, caught in an American vessel by an American seaman, and shipped in an American vessel from a foreign port of transshipment, cannot be landed under such section without a written permit. 954

Innocence of intention cannot, any more than ignorance of law, afford a defense to the master or owner of a vessel for a violation of Act March 2, 1799, § 50. 954

The removal of dutiable goods from the vessel to the wharf is an unlading, within Act July 18, 1866, and, where no permit was granted, will subject them to a forfeiture. 161

Goods were taken at night in a boat from the vessel, and when partly unloaded on the wharf the witness discovered himself, and the goods were all returned to the vessel *Held* not a landing, within Act March 2, 1709. 1246

Act March 2, 1799, § 27, which makes the unlading an offense, applies only to the captain and mate. 1246

Liability for duties: Lien: Actions.

Although included in the invoice, goods lost on the voyage are not subject to duty. 75

Payment of duties into the state treasury or to the Confederate government, on goods imported at a place entirely in control of the rebel forces during the war of the Rebellion, will not discharge the duties. 494, 1029

A deputy collector has no authority to waive a tender proposed to be made by importers, by acknowledging a tender when none is made. 75

The lien on imported goods for duties is relinquished by the taking of bond and security therefor, and delivery to the consignee. 34

Violations of law: Forfeiture.

A bona fide purchaser of goods imported at a fraudulent undervaluation before the government has instituted proceedings obtains a good title unaffected by such fraud, and the goods are not liable for the deficiency. 1363

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To subject goods to forfeiture for fraudulent undervaluation, it must be shown that the goods were invoiced below their value, with an intent to defraud the United States.	1033
To entail a forfeiture for undervaluation, under Act March 2, 1799, § 66, and Act May 28, 1830, § 4, there must be a concurrence of undervaluation, and intent to evade payment of duties.	269
An intent to evade the payment of duties is essential to the maintenance of a prosecution for the personal penalty for fraudulent entries, and the declaration must aver a scienter (Act March 2, 1799, § 66).	546
The government may proceed in the first instance either for the forfeiture, or for the personal penalty.	546
To authorize a recovery against a consignee of the value of goods fraudulently invoiced, where he is not the owner, but merely an agent to sell, knowledge on his part of the fraudulent undervaluation is necessary to establish the "actual intention to defraud." (Act June 22, 1874, § 16.).	129
Goods invoiced at their actual market price cannot be forfeited for undervaluation, although in fact the price stated was below the market value at the place of exportation.	268, 269
Goods invoiced at the price paid on a bona fide sale are not subject to forfeiture, though it be below the ordinary market price (Act 1799, c. 128, § 66.).	1111
But the terms "actual cost" do not apply to the case of a voluntary gift or conveyance, where the substantial consideration is not money, or its equivalent estimated at a money price, nor where the consideration is partly money, and partly love and affection.	1111
An information alleging fraud in the importation of merchandise at an undervaluation (Act March 3, 1799, § 66) must aver that the valuation was under cost at the place of exportation.	1030
A direct averment that the person making the fraudulent entry was either owner, consignee, or agent of the property (Act March 3, 1863, § 1) is not necessary where it appears from the statements of the information that the person was either the owner, or acted as agent of the owner.	1030
An averment that the requirements of the statute, which are merely directory to the revenue officers and the importer, have been complied with, is not necessary (Act March 3, 1863).	1030
Where probable cause of seizure is shown, claimants have the burden of showing the absence of fraudulent intent.	1099

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Where it appears that the goods were entered at only about one-half of the invoice price of like goods purchased by other importers at the same time, and imported by the same vessel, the claimants have the burden of substantiating the invoice by clear proofs.	1115
Evidence of prior undervaluation is admissible only to show the intent with which the present undervaluation was made.	1099
On a libel to forfeit goods for false valuation, proof of correct entries made about the same time of the same kind of goods by the claimant is admissible to show that he knew their real value.	274
In a case of false invoice valuation, evidence of other fraudulent acts, of a similar nature, committed at about the same time, is admissible on the question of intent.	274
Advances made in good faith, by auctioneers in possession, upon goods entered at a fraudulent undervaluation, before the government had elected to proceed for a forfeiture, or to sue for the value, are a lien upon the proceeds.	1035
Fraud will not be imputed to an importer in invoicing goods at the weight as given by the customary method of weighing, but the appraisers are not bound thereby.	75
An indictment for an offense against Act Aug 30, 1842, is not barred, if found within five years subsequent to the act charged.	1071
A false and fraudulent valuation in an invoice not demanded by the statutes, and which can be of no avail at the customhouse, is not of itself sufficient to justify condemnation of the goods.	240
The limitation of five years for prosecutions for crimes under the revenue laws (Act 1804, § 3) is applicable to an action of debt to recover the value of imported goods for fraudulent entries.	546
Act March 2, 1821, § 1, as re-enacted March 3, 1823, is not repealed by Act Aug 30 1842 § 19.	1136
The latter act is aimed at frauds on the revenue in cases where an entry of goods and an invoice are required as prescribed by the act of 1823.	1136

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An attempt to make an entry by means of any false or fraudulent invoice, affidavit, etc., with intent to defraud, completes the ground of forfeiture, though the fraudulent entry is not carried out (Act June 22, 1874, § 12.).	1092
The making of a false affidavit of damage, with intent to defraud the revenue, is sufficient to incur the forfeiture.	1092
Where an affidavit of damage is in fact false, there is a prima facie presumption of an intent to defraud the revenue.	1092
Evidence of other fraudulent transactions is admissible to show the intent with which the act was committed.	1092
The illegal act of one partner without the knowledge or consent of the others is sufficient to forfeit the partnership goods.	1092
Dutiable goods, imported as passenger's baggage, where no attempt was made to have them passed as such, and the owner, without knowledge of their seizure, offered them with correct bills of lading and moneys for entry at the customhouse, *held* not forfeitable, either under Act March 2, 1799, § 50, Act March 3, 1863, § 1, or Act July 18, 1866, § 4.	171
Where the claimant sets up mistake as an excuse for disagreement with the entries, the fact that probable cause of seizure has been made out does not impose upon him the necessity of making out an unusually clear case of mistake.	154
The hurried entry of goods in the absence of the owner, where pillage by the enemies' soldiers was threatened, *held* a sufficient excuse for a mistake.	154
The question whether the difference between the entry and the invoice arose from accident or mistake is one exclusively for the secretary of the treasury, and cannot he raised at the trial on a seizure as forfeited under Act April 20, 1818.	244
Where an article not described in the invoice is found in a package, the whole package, and not the article alone, is forfeited (Act May 28, 1830.).	405
To justify the forfeiture of a package of goods under section 4, Act May 28, 1830, either the package must contain an article not described in the invoice, or the package or invoice must be made up with intent to evade or defraud the revenue.	401
Under Act March 2, 1857, c. 63 if an invoice or package of imported goods contains some articles which are indecent or obscene, and others which are not so, the whole are liable to forfeiture; the unlawful ones being destroyed, and the others sold.	255

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Under a count alleging that certain articles imported were indecent and obscene, and asking that they be condemned and destroyed, the government cannot ask for a forfeiture and sale of other articles in the same case, which the verdict finds to be lawful.	255
A bond for the delivery of goods seized must be for the market value of the goods at the place of seizure, without any deduction for the regular amount of duties 343, 1015; contra,	340
The amount of duties payable on giving bond for the value of goods seized is only that demandable if the fairness of the importation had not been impeached.	1015
Where the goods are afterwards condemned, the claimant loses the amount of the duties thus assessed, as well as the value of the goods forfeited.	1015
Where a bond has been given with the addition of penal duties under protest, the excess will be directed to be paid to the claimant.	1015
A certificate of probable cause of seizure will be granted where it appears that the seizure was made in good faith, and after consultation with the surveyor, naval officer, and district attorney.	264
Proof that the fact of an intended illegal importation was previously known to the revenue officers, and that they acted thereon in making the seizure, is admissible.	164
A violation of an act requiring that certain goods shall be packed in a certain way does not subject goods not so packed to forfeiture, in the absence of a statute declaring such forfeiture.	167
Upon information filed against goods alleged to be forfeited, the goods pass out of the hands of the collector who seized them into the hands of the marshal, whose custody is thenceforth that of the court.	1015
After information filed against goods alleged to be forfeited, no penal increase of duties can be exacted by the collector, and such an exaction will not affect the prosecution.	1015
Where the claimant knew that his method of importation was contrary to law, the burden is upon him to show affirmatively that he did not adopt such method with intent to evade the payment of duties.	164
Where the duty of the master of a vessel arriving from a foreign port to repair to the office of the chief officer of the customs, and there make report (Act 1799, c. 22, § 36), cannot be performed, by reason of the neglect of the officer to do that which is prerequisite, the statute is not violated.	708

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Foreign distilled spirits.

It is unlawful to fill with domestic tax-paid spirits any casks in which foreign spirits have been imported, even where the brands, stamps, and marks required by law have been removed (Act March 1, 1879, § 12.). 263

The certificate required to be given on the importation of distilled spirits (Act March 2, 1799, § 41) is an "official document granted by the collector," within Act 1825, § 19, relating to forging and counterfeiting. 976

The provision requiring the certificate to be signed and countersigned is complied with where the signature is printed. 976

Where the certificate which the supervisor of the revenue was authorized to issue (Act March 2, 1799, § 41) was issued by the collector, an indictment under Act March 3, 1825, § 19, for altering it, must allege that the collector was designated by the president to fulfill the duties of the supervisor under Act March 3, 1803, and that the certificate was issued in such capacity. 975

Bonding: Warehousing.

An instrument not in the form of a bond with a penal sum and condition, but containing the requirements of the statute (1854, c. 30), where the obligors were not prejudiced by the form, *held* a sufficient bond under the statute. 539

A surety who has discharged a duty bond to the United States is entitled to he subrogated only to the preference and priority of the United States to be first paid out of the estate of the principal (Act March 2, 1799, § 65.). 616

A surety in such case cannot maintain assumpsit in the name of the United States against the assignees of the principal. 616

Where a surety pays the bond, he cannot maintain an action on it in the name of the obligee against his co-obligors, nor an action for money laid out and advanced, except in his own name. 616

The "additional duty of 100 per cent." secured by transportation bonds under Act 1854, c. 30, § 6, is 100 per cent, on the original duty, and not on the invoice value of the goods. 539

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The transportation bond, under such section, properly includes the original duty as well as the additional duty, the bond first given for the original duty being canceled. 539

Customs officers.

Inspectors are, in law, officers appointed by the head of the treasury department. 1

An inspector is an officer of the customs, the obstruction of whom is an offense, under Act March 1, 1799, c. 128, § 71 1006. 1

Proof that an inspector was commissioned and sworn, and in the actual execution of the duties of the office, with the knowledge of the treasury department, is sufficient proof of his appointment to support an indictment for obstructing him in the performance of his duties. 1006

It is not necessary to produce the commission of appointment to prove such appointment. 1006

The offices of deputy collector and of inspector may be held by the same person (Act 1822 c. 107.). 1

A deputy collector acting also as inspector may receive additional compensation therefor. 1

A collector removed from office before the expiration of the year is entitled to the maximum amount of $3,000 out of the fees, etc., collected at such time, under Act 1822, c. 107, providing that the excess of emoluments over $3,000 in any one year shall be paid into the treasury. 482

DEED.

Where the description in a deed is not impossible or repugnant, the court will not reform it, as against third persons who purchased the remaining interest of the grantor at sheriff's sale without knowledge of the error in the description. 474

An application to reform a deed, *held,* should not be entertained after the lapse of 11 years, where all persons had dealt with the land on the theory that the description was correct. 474

DEPOSITION.

A motion for the appointment of commissioners to take testimony abroad is not grantable of course, and previous notice to the adverse party is necessary. 444

On an application for a dedimus potestatem, the court will consider the materiality of the testimony, and the purposes for which it is invoked. 444

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A commission opened before it came into the hands of the clerk will be set aside. 623

A false certificate of magistrate as to the time and place when and the person by whom the deposition was reduced to writing will render it inadmissible. 1158

A party attending on the taking of depositions will be presumed to have waived objections to the competency of witnesses not raised at the time But objections not known at the time may be raised on the reading of the deposition. 244

DISORDERLY HOUSE.

The sale of spirituous liquors to negroes assembled in considerable numbers in and about a house on Sunday constitutes a disorderly house. 625

The name of a prosecutor must be indorsed on an indictment for keeping a bawdyhouse. 715

On a prosecution for keeping a bawdy-house, the United States cannot give evidence of the general reputation of the house. 894

Upon an indictment for keeping a house of ill fame, evidence of the ill fame of defendant cannot be given. 69

Under an indictment for keeping a bawdy-house, evidence is admissible of the general reputation of the people who frequent it. 1312

Under an indictment for keeping a disorderly house, charging that defendant suffered persons of ill fame to come together, etc., evidence is admissible of the general reputation of such persons. 1312

DUELING.

Upon an indictment for unlawfully carrying a challenge to fight a duel, a scienter must be proved. 1037

EJECTMENT.

Defendant cannot rule the marshal to return a hab. fac. poss. although plaintiff may do so. 1127

If, after plaintiff is put into possession under a hab fac poss, if he is turned out by the defendant, he may, upon suggesting vice comitatus non misit breve, obtain an attachment or an alias hab fac Aliter, if he is turned out by a stranger. 1127

If the first writ be returned executed, plaintiff cannot issue out an alias If the writ, though executed, has not been returned, and an alias issues on the suggestion of the plaintiff, resistance to such writ is an offense Aliter, if the first writ had been returned. 1127

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The hab. fac. poss. cannot be executed after the return day, and, if it be attempted, resistance to it is no offense against the act of congress. 1127

ELECTIONS AND VOTERS.

The offense of preventing the free exercise of the right of suffrage (Act May 31, 1870, § 19) is complete by the forcible expulsion from the polls of voters waiting in line to cast their ballots, though they afterwards returned and voted. 1267

Act May 31, 1870, § 20, providing for the punishment of persons illegally registering under the state law at an election for a representative in congress, is not unconstitutional. 673

The offense is sufficiently described in the words of the statute adapted to the particular circumstances involved therein. 673

Act La. April 11, 1877, does not authorize the use of separate ballot boxes for state and federal offices. 143

Rev. St. § 5515, does not apply to a violation of the state laws regulating elections, when such violation does not affect the election, or the result of the election, of a delegate or representative in congress. 143

An allegation that defendant knowingly offered to give O. a bribe to vote, the said O. being then under 21 years of age, sufficiently charges knowledge of such nonage. 310

The mayor of Washington, D. C., has no power to enforce a demand that the polls should be kept open as required by law. 1339

A copy of a township election return filed with the county clerk, accompanied by his certificate that it is a full and correct return of such election as filed, sent to the office of the secretary of state, is not an official paper under the election law of New Jersey. 1267

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EMBARGO AND NONINTERCOURSE.

Construction and effect of Acts March 1, 1809, and March 2, 1811, in relation to the place of lading of prohibited articles. 69

Imported cargo taken in at a port with which intercourse is prohibited is prima facie presumed to have been laden with an intention to import the same into the United States. 467

The value of $400, in determining the liability to forfeiture for taking on goods without permit and inspection (Act Jan 9, 1808), may be made up by the aggregate of different shipments at different times and places. 587

Sea stores and provisions are not to be considered as a part of the cargo, so as to be forfeitable under such act, along with goods which the vessel was prohibited from taking on board. 587

An inspector may go on board of any vessel to discover if any goods, etc., were illegally laden on hoard contrary to the embargo acts; and, if obstructed, an indictment will lie, under Act March 1, 1799, c. 128 § 71. 1006

A British subject living in Bermuda, who came to the United States in his own vessel to take his children home from school, returning after two weeks with a cargo, *held* not a resident within the United States, under 2 Stat. 351. 486

Vessels and cargoes liable for forfeiture under Act April 18, 1818, may be delivered to the claimants upon giving a bond for value, 541

Validity of bond given under Act Dec. 22, 1807. 1161

An action of debt upon a bond given under the embargo laws is a penal action, and the jury are judges both of the law and the facts. 608

Sufficiency of bond given under Act March 1, 1809, c. 91, § 13. 967

An open boat is not a ship or vessel, within Acts 1820, c. 122, and 1823, c. 150, which prohibit commercial intercourse from the British colonies. 346, 354

British ships or vessels excluded from our ports by such statutes are such as are owned by British subjects having a British domicile, and sailing under a British flag, and not ships or vessels owned by British subjects domiciled in the United States. 346

British-owned vessels are included in the prohibition, although not registered or navigated according to the British navigation and registry acts. 354

The forfeiture attaches to the cargo on board at the time the vessel enters or attempts to enter our ports, and not to any cargo subsequently taken on board, though on board at the time of the seizure. 354

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The government has the burden of showing that the goods seized were part of the cargo on board at the time of the offense. 354

EQUITY.

See, also, "Injunction."

In the exercise of its equity jurisdiction, the federal circuit court, as to persons and matters within its jurisdiction, can afford relief where it can be afforded by the principles of the high court of chancery in England. 416

The right of the United States to retain moneys due their debtors by an award under a treaty with a foreign power will not affect their right to proceed in a court of equity. 38

Where the party has a legal remedy, but a trust is created, equity has concurrent jurisdiction. 38

The aid of equity will not be given to enforce a judgment at law against a chattel, unless it appear that the creditor has tried to enforce the same by execution at law; otherwise as to land upon which the judgment is a lien. 1358

A written instrument will not be reformed upon the ground of mistake unless the same be made out by the clearest and most unequivocal evidence. 32

A bill of review lies either for error in law appearing on the face of the decree, or for new material matter which has, come to light afterwards, and which could not have been used at the time the decree was made. 932

Act May 26, 1824, confers on the superior court of the territory of Arkansas the powers of a court of chancery for the purpose of trying the validity of claims mentioned therein, and a bill of review may be maintained therein. 932

A bill of review must be founded on new matter to prove what was before in issue. 932

It rests in the sound discretion of a chancellor to grant or refuse a feigned issue, and it will not be awarded where there is sufficient proof to enable him to decide. 932

The verdict of the jury on a feigned issue is not conclusive. 932

Where the allegations of the bill are so defective or vague that a precise decree cannot be rendered upon them, proof must be adduced before a decree can be made. 932

Where the ease is submitted upon the bill and answer, the answer must be taken as true, and where it denies the case made by the bill the bill must be dismissed. 999

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Error.

See "Appeal and Error."

ESCAPE.

After a prisoner has been released upon a limit bond, the sheriff can confine him again only on the bail's becoming insufficient He cannot accept a surrender. 176

Under Act Jan 6, 1800, the sheriff is hound to take a bond for the limits, as provided by the state laws, from a prisoner confined on process from a federal court. 176

The assignment of such a bond discharges the sheriff from liability for a subsequent escape. 176

An assignment of such a bond to the United States, when they are plaintiffs, is valid, and its acceptance by the secretary of the treasury will be presumed to have been authorized. 176

EVIDENCE.

See, also, "Criminal Law," "Names of Particular Crimes."

The federal courts take judicial notice of the acts of congress, and they need not be set forth or specially referred to in the proceedings before them. 696

A waiver or right of a privilege must plainly and clearly appear, and every reasonable presumption may be made against it. 711

After notice given to produce the original policy of insurance, and proof of the existence thereof, the register in the hands of the company should he introduced in evidence, and not a copy therefrom. 467

Where a contract alleged by a party appears to have been in writing, he must either produce it, or show that it is not in his power to produce it, to prove its execution or contents. 598

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Rev. St. § 880, applies only to suits against persons accountable for public moneys as such, and is inapplicable to an action for moneys alleged to have been paid to defendant by the mistake of a government disbursing officer. 684

A certified statement of a balance due, and a report thereof to the comptroller, is not such a transcript from the books and proceedings of the treasury as may be given in evidence under Act March 3, 1797 § 2. 462

A certified copy made evidence by statute must show that the statutory requirements have been complied with. 873

A journal kept by the master of a ship alleged to be insane *held* admissible to prove his sanity, by the style in which it was kept. 1041

When the intent or guilty knowledge of a party is material to the issue, collateral facts tending to establish such intent or knowledge are properly admissible in evidence. 274

EXECUTION.

An alias cap. ad resp. must be tested at the return of the original writ, and made returnable at the next ensuing term. 411

An extent under Act Mass March 17, 1784, upon real estate, is not good unless it appear by the return that all the appraisers are sworn, nor unless all the appraisers concur in the appraisement. 1125

But it is not necessary that the levy should be recorded in the registry of deeds within the time prescribed by the statute, as between the parties to the execution, nor that the certificate of appraisement should be made and signed by the appraisers. 1125

A debtor of the United States, discharged, by order of the president, under Act March 3, 1817, cannot be arrested again on a new ca sa by the marshal for his fees, irrespective of an agreement to that effect. 1149

EXECUTIVE DEPARTMENTS.

Neither the war department nor the treasury department has authority to sell public property put under its management or superintendence, and the bringing of an action for the price or value of such property is not an affirmance of a sale made without authority. 149

The head of a department is authorized, in the administration of the duties of his office, to employ agents, and to determine when an exigency arises demanding their employment. 603

EXECUTORS AND ADMINISTRATORS.

Page

A probate court has no jurisdiction to make an appointment of an administrator of the goods of a person who at the time is alive. 470

Where an administrator is appointed of a person who at the time is alive, money paid to him in that capacity may be recovered back, where it has not been paid over. 470

Right of action upon an administration bond by a creditor of the intestate in the District of Columbia. 1048

An action cannot be maintained upon an administration bond of an executor for not giving in a claim against himself, until the claim has been established under Act Md 1798, c. 101, § 20, cl. 8. 895

In Washington county, D. C, there must be a return of non est, or of fi. fa., against the executor or administrator, before suit upon his bond (Act Md 1720, c. 24.). 673

An executor indebted to the estate cannot, in an action upon the administration bond brought by creditors or legatees, discharge himself by showing payments to his co-executors. 895

The administrator of the surety in a collector's bond, who pays away the assets on the intestate's debts before notice of the government's claim, is not guilty of a devastavit. 806

In a suit against the administratrix of a surety in a revenue bond, brought 13 years after the breach, a plea of want of assets, and fully administered before notice of the bond, *held* good. 624

In an action upon an administrator's bond to recover a distributive share of the estate, defendants may retain for necessaries furnished the distributee. 819

EXTRADITION.

Article 27 of the treaty of 1794 with Great Britain, which provides for the reciprocal extradition of fugitives charged with the crimes of murder and forgery, is not in contravention of the constitution of the United States, as violating the right of trial by jury. 825

Article 27 of the treaty of 1794 with Great Britain applies to citizens of the United States who have committed the specified crimes within the jurisdiction of Great Britain, and have fled to this country. 825

A murder committed on hoard a British vessel of war on the high seas is committed within the jurisdiction of Great Britain, within the meaning of the treaty of 1794. 825

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Where a treaty of extradition does not state which department of the government shall execute its provisions, the judiciary will take jurisdiction. 825

Where a person is arrested, and brought up to be held to bail for trial in another district, a certified copy of the indictment found in such other district, if it be consistent and set forth an offense, is competent evidence against defendant. 593

FALSE PRETENSES.

An indictment cannot be sustained in one place for obtaining money by false pretenses, made in another place. 578

FISHERIES.

No registered ship or vessel, while she remains registered, can engage in the whale fisheries (Act 1793, c. 52); but she must surrender her register, and be enrolled and licensed for the fisheries. 890

A fishing vessel licensed to catch codfish cannot catch mackerel, except as bait, or provisions for the crew. 454, 456

A vessel licensed for the codfishery will not be forfeited for catching mackerel, which is incidental merely, and not the main object of pursuit. 758

On a libel for forfeiture for breach of a license to catch codfish, by catching mackerel at a certain time and place, parol evidence is admissible of catching mackerel at other times and places during the trip, as showing the real business of the voyage. 454

Act July 29, 1813, c. 35, § 7, in relation to bounties, does not require any oath to the agreement referred to therein. 146

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FORFEITURE.

See, also, "Customs Duties"; "Informers"; "internal Revenue"; "Shipping."

Where a party, *for* fraudulent purposes, mixes up goods prohibited by a revenue act with those not prohibited, the whole will be forfeited. 284

A forfeiture denounced in direct terms in a statute as a penalty takes place at the time the offense is committed, and operates as a statutory transfer of the right of property to the government 256, 753, 1118. 1329

In such case, possession of the property by a sheriff under civil process will not prevent the federal courts from taking jurisdiction on a libel of information, claiming forfeiture. 753

But where there is more than one remedy provided, and the government may elect to proceed for the forfeiture, or in some other way not involving a forfeiture, the title does not vest in the government until the performance of some act amounting to an election. 1118

Act June 22, 1874, § 16, which makes the finding of an intent to defraud a prerequisite to a forfeiture of goods, though in terms restricted to cases in which issue of fact is joined, is applicable to suits in rem in admiralty, even where there is no answer or appearance. 167

On a libel to forfeit goods for alleged violation of the revenue laws, where the goods had been seized by, and were in the possession of, a collector of customs, the marshal will be required to attach the property by leaving a copy of the monition with the collector, and a notice requiring him to retain the property until the further order of the court. 248

Jurisdiction to proceed by information for the condemnation of property forfeited under the revenue laws depends upon the possession of the property, actual or constructive. 174

On an information of forfeiture, the goods themselves are regarded as the defendant, and it is no objection to the admission of proof of communications made to the revenue officer that they were made in the absence of the claimant. 164

In a suit on a bond for the redelivery of property seized, the amount of the judgment is the highest price for the property between the date of the bond and the date of the judgment. 873

Where property seized as forfeited before information filed is bonded as for a seizure made under Act July 13, 1866, § 9, a verdict of condemnation on a count based upon section 26 cannot be sustained. 174

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The difficulty is not remedied by the fact that after the information was filed the property was reseized, and then taken possession of by the marshal on a monition founded on the information, and then re-bonded by its owner. 174

In a suit to forfeit manufactured tobacco, raw materials, and certain tools, the words "condemning the goods," in a verdict "in favor of the United States," may be rejected as surplusage. 665

Claimants contesting a forfeiture under Act 1864, § 48, are subject to costs on a judgment of forfeiture. 1026

In suits brought to enforce forfeitures, the clerk is entitled to tax 1 per cent, on the proceeds (Act Feb 26, 1853, § 1), and the district attorney 2 per cent (Act March 3, 1863, § 11), notwithstanding the repeal by Act June 22, 1874, § 2, in relation to payments of commissions, etc., to federal officers. 266

FORGERY.

Any addition to a genuine paper, or any alteration of it in an essential particular, so as to give it a different meaning, is a forgery. 362

To forge the name of a magistrate to the jurat of an affidavit is a forgery of the affidavit. 362

A note of an unincorporated hank, "payable out of the joint funds thereof, and no other," is a promissory note, within Act Md 1799, c. 75 § 1. 1148

Aiding or assisting in forging papers with intent to defraud the government consists in the commission of any act having a tendency to forward or facilitate a forgery committed by another. 362

To trace a name with a pencil, afterwards filled up by another in ink, or to take measures to prevent surprise or detection while the forgery is being committed, would be such an act. 362

Act March 3, 1823 § 1, applies only to instruments altered or forged for the purpose of obtaining moneys from the United States, their officers or agents. 746

A forged paper, inclosed at B., directed to a person in W., and put into the post office at B., is not uttered in W. 578

The offense of attempting to pass a knowingly falsely altered national banknote (Rev. St. § 5145) is not a felony, and the indictment need not charge such offense to have been feloniously committed. 1060

In an indictment for forging a bill in the name of a fictitious drawer and indorser, the subsequent indorsements need not be stated. 479

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In an indictment for forging a bill of exchange, the omission of the words "account of" is fatal. 479

Defendant has no right to peremptory challenges. 1065

On an indictment for forging a bill in the name of a fictitious drawer and indorser, the prisoner's indorsement is admissible to prove his intent to defraud, although such indorsement be not set forth in the indictment. 479

Evidence is admissible that a parcel of counterfeit checks and drafts on other banks than that alleged in the indictment, and others printed on bank paper not filled up, were found in defendant's possession. 179

Witnesses skilled in handwriting will not be permitted to give their opinion, upon inspection of the papers, whether the forgery was done by defendant. 625

FRAUD.

Fraud is not indictable unless it concerns the public, or be committed by false tokens or false pretenses. 595

An indictment for defrauding the United States of a land warrant will not lie, under Act 1823, c. 38. 50

FRAUDULENT CONVEYANCES.

An intent to defraud subsequent creditors is sufficient to avoid a voluntary conveyance, or one not made in good faith, at the suit of such creditors. 1344

GAMING.

Sections 1, 12, Act March 2, 1831, so far as they relate to the offense of keeping a faro bank, or other common gaming table, are to be construed together, and when so construed they contain a complete description of the offense and its punishment. 1149

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A single day's use of a gaming table, called a "sweat cloth," at a race track, is not the keeping of a common gaming table, within Act March 2, 1831, §§ 1, 12. 1155

The game called "equality" *held* within the meaning of the words "other device," as used in the Maryland gaming act (1797, c. 110). 1280

An indictment for keeping "a gaming table" is bad. 817

An indictment for keeping "a faro bank" is bad, unless it aver the faro bank to be a common gaming table. 817

An indictment for keeping "a certain public gaming table, called 'faro bank,' is bad, 817

GRAND JURY.

Witnesses cannot be sent to the grand jury on the part of the accused. 410

The absence of a venire for the summoning of a grand jury, in a case where it is required, is a ground of challenge to the array. 727

Challenges to the array of grand jurors, being abolished by the laws of New York, are abolished in the federal courts of New York; but in the case of improper conduct in designating, summoning, and returning them, the accused has a remedy by motion. 727

The court will not interpose for technical irregularities for which there is no right of challenge, unless it appear that the accused is prejudiced. 727

Under Act Aug 8, 1846, providing that no grand jury shall be summoned except upon an order for a venire to be made by a judge, a verbal order given by the judge to the clerk is sufficient, though no order be filed or entered of record. 727

The omission to issue a venire in such case is ground of challenge to the array. 727

Such omission, however, is not good ground for a motion to set aside the panel for cause. 727

A challenge to the array on the ground that the jurors have been selected, summoned, and returned by a person unfit to summon an indifferent jury touches the qualification of the panel. 727

A challenge to a grand juror for favor, on the ground that he is the prosecutor, or a witness for the prosecution, duly subpoenaed or recognized, goes to his qualification. 727

The fact that a grand juror had on a previous summons attended the court as a juror, within two years, does not constitute such a disqualifica- 750

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tion (Rev. St. § 812) as will render bad an indictment found by the grand jury of which he is a member.

Where a period of two full years has elapsed between the beginnings of two terms at which a juror was summoned, he is not liable to challenge under Rev. St. § 812, irrespective of the term of service. 750

Under 2 Rev. St. N. Y. p. 724, §§ 27, 28, persons "held to answer" are the only persons who can challenge either the array of grand jurors, or the individual grand jurors, for favor. 727

A grand juror cannot be withdrawn after he is sworn, for a cause which existed before he was sworn. 410

Defendants who have not had any earlier chance to object to the composition of the grand jury by which they have been indicted may do so by plea in abatement. 750

The federal officers in New York have no right to change or alter the state boxes and ballots as furnished to them by the state officer. 727

Evidence before a grand jury must be competent legal evidence, such as is legitimate and proper before a petit jury;. 727

Any abuse or improper conduct on the part of any person admitted to the grand jury will be investigated by the court. 727

Witnesses before the grand jury may consult their previous affidavit to refresh their recollection, and affirm facts previously stated on paper. 727

Sufficiency of oath of witnesses sworn to testify before a grand jury. 727

A general oath to give evidence touching criminal charges to be laid before the grand jury without reference to any particular person is unobjectionable. 727

But where the oath names one or more persons, evidence cannot be given under it in support of an accusation against others. 727

A grand juror may be required to testify as to the evidence given before the grand jury. 595

GRANT.

See, also, "Public Lands."

Indians had a right to receive grants of land under the Mexican laws. 1367

The fact that the grantee himself was acting governor, and made out the papers to himself, according to a petition presented to a previous governor, *held* not sufficient to justify rejecting the claim, where the possession had been long continued, and all the papers were regular. 537

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Prior and continued occupancy of a tract adjoining that granted will extend to the latter, so as to rebut any presumption of abandonment of the grant.	896
Under a grant designating the quantity as two leagues, a little more or less, the court will not confirm a claim to a tract of four or five leagues.	502
Where the conditions of a grant have been performed cy pres, though no approval has been given by the departmental assembly, the claim is entitled to confirmation.	716
In the absence of archive evidence of the grant, the fullest and most satisfactory proofs of possession and occupation during the existence of the former government, under a notorious and undisputed claim of title, and clear and indubitable evidence of the genuineness of the grant produced, will be required.	580
The record of the act of possession, based on depositions containing statements upon which the alcalde acted, cannot be contradicted by testimony of aged, illiterate, and infirm witnesses-as to their recollection of what was done or intended by the alcalde.	471
Where land is granted with reference to a map which clearly indicated the quantity, it will be assumed that the intention was to grant all the land included in the boundaries, though in a subsequent condition the quantity was erroneously stated.	395
The claimants of a grant are estopped to object that parts of the land which they have sold and conveyed as part of their rancho are not within its limits, for the purpose of completing their quantity by embracing in the survey lands not conveyed by them.	393
Land will not be excluded from the claimant's survey because included in the diseno of a neighboring rancho, where the latter has not been surveyed, and the owners have not intervened.	393
One claiming title to a confirmed grant in opposition to the confirmed, but under the same original grantee, is entitled, under Act 1851, § 13, to enjoin the issuance of a patent to the confirmee pending a suit in the state courts to determine the title as between the two.	946

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The recital in a grant of pueblo lands by the prefect as "within the demarkation" of the pueblo affords presumptive proof, in the absence of opposing evidence, that the land was so situated, and that the officer acted within the limits of his authority.	1062
A grantee will not be decreed an equivalent for a deficiency within his exterior boundaries out of a sobrante accidentally found to exist within the exterior boundaries of a neighboring grant.	881
The word "point" in the description, "a straight line drawn to the beach, and from that point" another line, *held* not to mean a mathematical point, but to refer to the beach as one of the boundaries.	1264
A junior grantee cannot insist on a survey which will overlap a prior grant for which a patent has been issued, where he will obtain the full quantity without such overlapping.	1261
When a certain quantity has been granted within limits which embrace a much larger tract, the quantity granted is to be located within the exterior limits at the election of the grantee.	1368
The building of a house and the making of improvements within such limits by the grantee may be considered as an election of location in favor of a subsequent purchaser thereof, and will he so treated by the court, to protect an earlier grantee, where there are conflicting claims.	1368
Where it appears that the governor intended to accede to the petition, and the land has been long occupied and enjoyed under the grant or promise to grant, and by everybody recognized as belonging to the grantee, the latter has an equitable title, which the United States will respect.	1264
The failure to strictly comely, in regard to time, with a condition requiring a house to be built upon the land, will not prevent the confirmation of a grant otherwise valid, and confirmed by the departmental assembly.	1262
A case in which an order has been entered rejecting the original survey, and giving directions for a new and reformed survey, is still "pending," within Act June 14, 1860.	1019
In a proceeding to contest or reform a survey, no decree can be deemed final which does not adopt and approve some survey and plat fixing with precision every line of the land.	1019
A case is "pending," within the act of 1860, where a motion for rehearing remains unargued and undisposed of at the date of the passage of the act.	36

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The extension of the line beyond the limits of the grant recognized by the government and adjoining proprietors for a number of years *held* sufficient to warrant confirmation of a survey adopting such boundary.	72
A grant of land, *held,* should be surveyed in accordance with the claimant's original survey and election, where large expenditures have been made, in reliance thereon, without objection by adjoining owners.	798
In a proceeding to correct a survey under the act of 1860, the district court has no jurisdiction to review and reverse the final decree whereby the genuineness and validity of the claim is established.	806
After affirmance of a decree of the district court, it may, upon objections to the survey, inquire whether the boundaries described therein are in accordance with its own decree, and with the title papers upon which the judgments of both courts, as shown by their opinions, were founded.	497
Claim confirmed on evidence from the archives supported by long-continued possession, though the original title was lost.	883
Claim to a Mexican land grant confirmed on evidence of continued occupancy and proper proceedings leading up to its issue, and of its issue and loss.	1262
Mexican land grant confirmed where it appeared that all the preliminaries were in due form, the conditions complied with, and the grant confirmed by the departmental assembly.	1333
Mexican land grant confirmed on proof of due preliminary proceedings, approval by the departmental assembly, and a compliance with the conditions.	1367
Modification of the official survey of the Mexican grant directed on a review of the evidence.	1365
Claims to Mexican land grants confirmed upon the evidence.	37, 358, 365, 395, 409, 410, 477, 502, 532, 592, 752, 809, 870, 883, 890, 948, 1051
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An official survey of a Mexican land grant confirmed upon the evidence.	529, 877
Official survey of Mexican land grant rejected upon the evidence.	879

GUARDIAN AND WARD.

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A guardian will be held liable on his bond for money received in another jurisdiction for the use of his ward. 141, 142

A guardian is liable upon his bond to pay over the money in his hands to a person appointed as his successor, though the latter has not given bond as guardian. 142

In an action on a guardian's bond, for failure to comply with an order of court, it is not necessary to set forth the facts justifying the granting of the order. 141

HABEAS CORPUS.

Neither the state nor the federal courts have power to take from the custody of each other persons confined under their lawful authority. 726

A writ of habeas corpus was issued just prior to the suspension of such writ as a military necessity by the president, and the marshal was directed by the president not to execute the same The court unanimously protested against the action of the military authorities. 599

HIGHWAYS.

There is no public road in Maryland, the obstruction of which may be punished by a criminal prosecution, unless it be properly laid out and recorded. 985

HOMICIDE.

A particular malice against deceased is not necessary to constitute murder, if there be deliberate malignity and depravity in the conduct of the party. 899

The difference between murder and manslaughter consists in the existence of malice, express or implied, in one case, and the absence of malice in the other. 390

Where it is shown that a person was intentionally killed, the law implies malice, and the party who caused the death has the burden of rebutting the implication. 390, 1074

To make a man a principal in murder, it is not necessary that he should inflict the mortal wound, if he be present, aiding and abetting the act. 899

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If a number of persons conspire together to do an unlawful act and death happen in the prosecution of the design, it is murder in all If the unlawful act was a trespass, the murder, to affect all, must be done in the prosecution of the design If the unlawful act be a felony it will be murder in all, although the death happen collaterally, or beside tie principal design. 899

If several persons conspire to commit a felony, and, if necessary, to kill any person who shall oppose them in the execution of the design, and death ensue in prosecution of the design, it is murder in all who are present, aiding and abetting in executing the design. 899

There are no degrees of murder, under the laws of the United States. 390

An indictment as accessory before the fact of murder will not lie in the federal courts, there being no act of congress covering such offense. 694

Neither words nor gestures, however insulting or irritating, nor an assault, will justify the killing of the aggressor His killing is justifiable only when there is an apparent intent by him to commit a felony, and the danger is imminent, and the species of resistance used necessary to avert it. 390

By "imminent danger" is meant immediate danger, such as must be instantly met, and cannot be guarded against by calling upon the assistance of others, or the protection of the law. 390

A man may repel force by force in the defense of his person, his family, or property against any one who manifestly endeavors, by violence or surprise, to commit a felony. 390

Mere threats against the person or life of another will not justify homicide, even when an attempt at execution is made, unless the danger be so imminent as not to admit of any delay in meeting it on the part of the assailed. 390

An offender having made public threats against the life of an officer having a warrant for his arrest, the latter is justified in taking his life, where he so acts with a rifle when the attempt at arrest is made that the officer has reason to believe that he intends to execute such threats. 795

An indictment for murder will not lie in a federal court, except as authorized by an act of congress. 997

Sufficiency of indictment for murder under the act of congress punishing opposition to the enrollment of the national forces. 997

A person indicted for murder on the high seas is entitled to only 20 peremptory challenges. 918

INDIANS.

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Indians belonging to a tribe maintaining a tribal organization on a reservation within the limits of a state are amenable to the state laws for offenses off the reservation, and within the limits of the state.	923
A white man may incorporate himself with an Indian tribe, be adopted by it, and become a member of it, so as to be included within the effect of a pardon of offenses committed by citizens of the tribe.	684
A white man, who, at a mature age, is adopted into an Indian tribe, is not an "Indian," within the exception of Act June 30, 1834, § 25, of jurisdiction of "crimes committed by one Indian against the person or property of another Indian".	886
Where land is set apart by the president for the use of Indians, whites who go upon the reservation to fish do so "contrary to law." within Rev. St. § 2147.	1357
The federal circuit court has no jurisdiction, under the act of 1834, to punish offenses committed by one Indian against the person or property of another Indian.	950
Congress has the power to prohibit the traffic of spirituous liquors between the Indian tribes, or members thereof, within as well as without the limits of the state.	1049
An Indian may be punished for disposing of spirituous liquors to another Indian, under Act March 15, 1864.	1049
The "Indian country," within the meaning of Act June 30, 1834, declaring it a crime to introduce spirituous liquors therein, is only that portion of the United States which has been declared to be such by act of congress.	1021
Such act was not extended, propria vigore, over the territory of Alaska, upon its cession to the United States.	1021
Such act as amended March 15, 1864, was not extended over Alaska by Act July 27, 1868, extending the laws "relating to customs, commerce and navigation" over that territory.	1021
The title of the Cherokee tribe to their lands is a base, qualified, or determinable fee, without the right of reversion, but only a possibility of reversion, in the United States.	742
The Cherokee tribe derived the title to their lands by grant from the United States, and such lands cannot be held to be "lands of the United States," within Rev St § 5388.	742
The treaty-making power of the United States can make a sale or grant of land to an Indian tribe without an act of congress.	742

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Without the assent of the general government, the state probate courts cannot administer upon the property or credits of Indians who were members of a tribe which maintained towards the United States its tribal relation. 470

INDICTMENT AND INFORMATION.

See, also, "Criminal Law"; "Internal Revenue."

When lies.

Where a statute has prescribed the mode of prosecution, no other can be sustained. 528, 904

An offense against the laws of the United States, which is of a character not capital or infamous, may be prosecuted in the federal courts by an information according to the course of the common law. 1056

The district attorney may proceed by information, though an indictment against the same person for the same offense has been quashed for insufficient averments. 68

A preliminary examination, or an order to show cause, and a hearing thereon, is not a necessary preliminary to a proceeding on information. 894

An information prosecuted in a district court must be regarded and treated as a common-law proceeding. 1326

Finding.

On a motion to quash an indictment on the ground that no evidence of defendant's guilt was adduced in support of an application for a warrant for his arrest, the court cannot inquire into the sufficiency of the evidence, but may quash the indictment, where none was given. 1056

The court has no power to inquire into the mode in which the examination of witnesses was conducted before the grand jury, for the purpose of invalidating an indictment. 727

It will, however, inquire into the competency of evidence, whether oral or documentary, and into the manner of authenticating the latter. 727

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The court cannot revise the judgment of the grand jury upon the evidence, for the purpose of determining whether or not the finding was founded upon sufficient proof, or whether there was a deficiency in respect to any part of the complaint. 727

It cannot be pleaded in abatement to an indictment that it was founded on illegal testimony introduced before the grand jury. 1186

It is discretionary with the court to quash an indictment, or to hold defendant to plead in abatement or demur. 1350

Form.

A conclusion of an indictment founded on a statute, "contrary to the true intent and meaning of the act of congress of the United States in such case made and provided," is good. 1167

When a statute makes one or more distinct acts, connected with the same transaction, indictable, they may be charged as one act. 949

A motion to quash an indictment is a proper mode of taking objections to it for want of form or substance. 367

It is discretionary with the court whether it will quash an indictment for defect of form. 367

A defect pleadable only in abatement is not ground for quashing an indictment. 590

A defendant acquitted upon a flaw in the indictment will be remanded for trial, at the nest term. 1148

Indorsement.

The designation "foreman" is sufficient to show that the person to whose name it was appended was foreman of the grand jury. 561

The sworn assistant of the district attorney may sign the latter's name of an information. 68

At common law, the name of the prosecutor need not be written at the foot of the indictment. 23

The name of a prosecutor must be written at the foot of an indictment for a misdemeanor under the Virginia law. 1037

It is not a good ground for arrest of judgment that the name of the prosecutor was not indorsed upon an indictment for a misdemeanor in Virginia. 1085

It is no ground for general demurrer to an indictment for a misdemeanor under Acts Va. Nov. 13, 1792, and Act 1795, p. 346, that the name of a prosecutor is not written at the foot of the indictment. 952

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Description of offense.

An indictment need not aver the existence or provisions of a public statute upon which the prosecution is founded. 785

Where an exception in an act does not occur in the enacting clause, it is not necessary to set it out, or negative it in the indictment. 973

It is generally sufficient to describe a statutory offense in the words of the statute. 367

In indictments for misdemeanors it is sufficient to lay the charge in the words of the act describing the offense, unless it appear that those words include cases not intended to be embraced within the laws, in which event the indictment must show the case to be one not thus excluded. 590

Where a criminal statute does not so define the acts constituting the offense as to give the offender information of the nature and cause of the accusation, an indictment which does not go beyond the words of the statute is defective. 1300

The particulars constituting the offense are matters of evidence, and need not be pleaded. 367

It is not charging an offense in the alternative where the language describes the same offense. 604

Time and place.

An allegation that the crime was committed on board a vessel belonging to citizens of the United States, within the admiralty and maritime jurisdiction of the United States, and within the jurisdiction of the court, and without the jurisdiction of any particular state, sufficiently shows the jurisdiction. 561

An indictment for a statutory misdemeanor need not charge the offense with the particularity of time, place, and circumstance required for a felony or a common-law offense, as defendant has a remedy by application for a rule for specifications and particulars. 973

Joinder of parties and offenses.

It is not a misjoinder of offenses in different counts unless they belong to different families, or the judgments and punishments are inconsistent with each other. 515

Offenses of the same class may be included in the same indictment. 216

A count for a misdemeanor and one for a felony cannot be joined in the same indictment. 1046

Counts for conspiracy cannot be joined with counts for murder. 997

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Two or more counts for misdemeanor may be joined in one indictment. 595

A count for stealing and a count for receiving stolen goods may be contained in the same indictment. 624

Where an indictment describes in different counts different offenses, of different grades and punishments, implied from the same transaction, and the verdict is guilty of the last count only, judgment may properly be rendered on the verdict. 1311

Variance.

Where an indictment for resisting a customs officer improperly describes the office, the variance is fatal. 526

An allegation in an indictment, which is not impertinent or foreign to the cause, must be proved, though a prosecution for the same offense might be supported without such allegation. 598

An indictment for an assault committed on the high seas in the outer road off St Domingo, on an American vessel, is supported by proving the offense to have been committed in the inner road, and in port. 1325

Conviction of other offense than that charged.

On an indictment for a felonious entry and taking of goods from a storehouse, *held,* that defendant might be found guilty of simple larceny. 716

INFORMERS.

The informer is he who first gives to some officer authorized to act upon it information which leads in fact to a seizure and forfeiture. 300

An officer who obtains information by the examination of witnesses compelled to testify before the grand jury is not the informer. 300

An officer who acts on information furnished him by another officer, intended to be given the government, and does not discover new facts by his own diligence, or who merely makes certain what was suspected, is not the informer. 300

Under Act 1864, § 179, as amended July 13, 1866, officers of the internal revenue may be informers. 300

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It is only when the amount of the penalty has been recovered by judgment of the court that an informer is entitled to a moiety thereof.	300
Where liquor is forfeited by consent in pursuance of an agreement with the commissioner of internal revenue, a person, to be entitled to a share in the proceeds, must make out a clear case.	168
The informer's share is to be calculated upon the gross proceeds of the forfeitures without deducting costs. (Act June 30, 1864, § 179, as amended July 13, 1866).	318
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An informer may sue in his own name under Act Feb. 28, 1799, § 8.	544
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On a motion to dissolve an injunction, matters set up by way of avoidance in the answer responsive to the bill should be deemed on such motion equivalent to an affidavit by defendant.	416
Where the answer denies directly and positively, upon personal knowledge, the allegations of the bill, the injunction will be dissolved, in the absence of extraordinary circumstances.	416
A denial on information and belief of facts distinctly alleged making out a case for injunction, cannot arrest the issue of the injunction, or authorize a dissolution of it, if one has been granted.	416, 444

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Such denial will not be deemed sufficient because the allegations of the pleadings are not sworn to from personal knowledge. 444

A general denial of allegations by one uninformed as to their truth is not sufficient to dissolve an injunction. 932

INTEREST.

Interest will run from the time of a statement of a balance of account against a person, though the amount was subsequently reduced on the allowance of further credits claimed. 357

INTERNAL REVENUE.

See, also, "Forfeiture"; "Informers"; "Seizure."

Assessments and collections.

A provision for the collection of a tax in districts where the same is forcibly resisted so soon as such resistance is put down does not show a want of uniformity in the tax. 810

Visitorial powers are not conferred upon internal revenue officers under Rev St §§ 3177, 5241, authorizing them to examine the checks of the national bank. 414

A national bank is not exempt from examination by the internal revenue officers under Rev. St § 3177. 784

A clerk of a supervisor of internal revenue cannot make such examination. 784

A dealer in tobacco has no right to forcibly eject a customs officer from his premises after the "officer has fulfilled his errand. 4

The obligation or duty to pay taxes is one which may be enforced by suit, by an action at law, or a bill in equity, according to the nature of the relief sought. 397

A demand for the payment of taxes is necessary, under Rev. St. § 3188, to create and bring into operation a lien therefor, and such demand must state the amount of the tax. 399

A suit will not lie to recover a tax in a district other than that in which the tax accrues, or that in which the delinquent resides, although he may be found and served with process therein (Rev. St, § 733.). 139

In a suit for taxes defendant cannot plead a set-off, legal or equitable, growing out of independent claims. 397

To a suit to recover the balance of a tax the defense that the amount already paid was determined to be the true amount by the assessor cannot be tried upon demurrer. 133

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Special taxes.	
An association whose initiation fees were used to buy a stock of liquors which were dealt out to members only on payment by the drink, at cost price, is a partnership for the sale of liquors at retail, and each member thereof is guilty of violating the statute, where the special tax is not paid.	893
Where a person has complied with section 24, Act July 13, 1866, as to giving notice, bond, etc., he is not liable to indictment for carrying on the business within the 10 days after the receipt by the collector of the assessment list without having paid the special tax.	1050
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A knowing and willful failure to comply with section 25 will cause a forfeiture by virtue of section 96 Otherwise with a neglect of the requirements of section 47, which provides a penalty for a breach thereof (Act July 20, 1868.). 168

A retail dealer in liquors, who also purchases and sells malt liquors in quantities of more than five gallons at the same time, is not required to keep the book provided for in Act July 20, 1888, c. 186, § 45. 717

The book is to be kept only by wholesale dealers in domestic spirits, and a person does not become such dealer by taking out a wholesale license for selling ale, though he also sells domestic spirits at retail. 717

A rectifier and wholesale liquor dealer, who enters upon his books spirits bought by him, and the names of the manufacturers or rectifiers marked on the barrels as the names of the persons from whom purchased, instead of the names of the actual sellers, incurs the forfeiture denounced by Act July 13, 1866, § 26. 344

The forfeiture denounced by section 26 (Act July 13, 1866) applies only to the spirits, apparatus, and articles in the possession of the offender at the time of the act or neglect whereby forfeited, and not to those subsequently acquired, and found in his possession. 344

Wholesale dealers are hound to "cause" their casks to be stamped and branded in the cases which come under Act July 20, 1868 §§ 25, 47. 168

The forfeiture by section 57 (Act July 20, 1868) is general, and that section imposes a penalty for a violation of section 25 in case the unstamped packages contain more than five gallons. 170

The intention of congress must be manifest and unmistakable to justify the courts in construing a law imposing a forfeiture as extending to property which, before seizure, had been sold to an innocent purchaser. *303

The fact that barrels containing spirits purchased in the open market bear all the brands indicating payment of the taxes does not create a presumption that such taxes have been paid. 1029

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Persons supplying and sewing two small buckles and straps upon knapsacks, under agreement with the government contractor, are not liable for the manufacturer's tax. (Act July 1, 1862, § 75.).	1321, 1323, 1323
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A person who makes alcoholic vapor in the process of making vinegar by machinery which is not adapted to the condensation of such vapor, *held* not a distiller. (Act July 13, 1866, §§ 21, 23; Act March 2, 1867, § 16.).	320
The manufacture of alcohol in the process of making vinegar, though the alcohol is not released from its impure state, is within the prohibition of Act July 20, 1868, § 4.	626
The premises and property thereon are forfeited where there is a wash and a still on the premises capable of distilling, and fermented liquors are there distilled without authority, though the product of the establishment is not distilled spirits, but only vinegar.	1303
A distiller is bound to pay taxes on 80 per cent, of the producing capacity of his distillery, although this may be more than the amount of spirits actually produced. 175: contra,	*1082
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The words "in execution and pursuance of" are equivalent in meaning to the words "to effect the object of.".	202

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A distiller's bond given under Act July 1, 1862, § 39, conditioned that the distiller should comply with the conditions of such act and of such other acts as might thereafter be enacted, *held* valid 64; contra, 53

In a suit on a distiller's bond for the amount of an assessment (Rev. St. § 3182) defendant may impeach the assessment, though he has not first appealed to the commissioner. 43

It is no defense to a prosecution for executing and signing a false and fraudulent bond that defendant knew nothing of his sureties, but hired a man to obtain them, and that they swore to all that was required by law. 213

The testimony of a subscribing witness that the bond was taken away and returned with the signature of a person whom the witness had seen sign another bond, *held* sufficient proof of execution by him. 213

Under Act July 13, 1866, a removal by a distiller of spirits from the place of distillation to a bonded warehouse is a legal act. *303

Spirits in bond may be forfeited for noncompliance of the provisions of the revenue laws. 636

Distilled spirits, purchased in good faith, while in a bonded warehouse of the United States, upon which the purchaser paid the taxes, cannot be afterwards seized and condemned as forfeited for the failure of the distiller to keep proper hooks and to make proper reports. (Acts July 13, 1866, and March 2, 1867.). 303

The fact that distilled spirits are seized, condemned, and sold for violation of the internal revenue law while bonded, does not release the obligors on the warehouse bond. 1272

The fact that the purchaser at the sale paid the tax is immaterial. 1272

It is a good defense to a suit on a distiller's transportation bond that during the act of transportation the government officers seized them, and the collector of the district to which they were consigned refuses to grant a certificate of delivery. 1335

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It is immaterial that the seizure was made by reason of the wrongful act of the persons having the goods in charge.	1335
Under Act July 13, 1866, § 9, the raw material found, if intended to be used for a fraudulent purpose, may be seized, and is subject to forfeiture, without reference to the place where it is found.	1110
Under Rev. St. § 3453, it is not necessary, in order that other personal property found with the distilled spirits be forfeited, that raw materials intended to be used in the manufacture should be found in the same place.	1098
Personal property found in buildings in the same inclosure with a building in which an illicit distillery is carried on, and in such juxtaposition to it that the owners thereof could not be ignorant of the existence of the still, is subject to forfeiture. (13 Stat. 240, § 48.).	638
Personal property situated upon distillery premises and used in the business of illicit distilling is subject to forfeiture, irrespective of its ownership and knowledge by the owner of its unlawful use.	256
The interest of a mortgagee of personal property remaining in possession of the mortgagor may be condemned for unlawful acts of the mortgagor, though the mortgagee be innocent thereof.	1025
The tools, implements, and other personal property must be found in the place or building or within the yard or inclosure where they were intended to be used, and the information should aver such fact.	1110
Act June 30, 1864, § 68, confers no authority for the seizure of a distillery, and the lot on which it is situated, or for subjecting such real estate to forfeiture.	237
"Form 122" for the return of spirits emptied for rectification, *held* authorized by law.	292
Fermented liquors.	
The penalty of $300 (Act July 13, 1866, § 49) is imposed not for the omission to make the proper entries, but for the failure to keep any books at all.	211
An indictment for removing malt liquors without affixing or canceling the proper stamps (Act July 13, 1866) need not negative the cases where the law authorizes a removal without affixing a stamp.	973
Tobacco and cigars.	
Under Act July 13, 1866, § 9, a tobacco manufacturer is required to keep a book showing the goods manufactured as well as those sold.	639

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An entry was made on the sales books of tobacco sold, and a cheek was taken for the amount, but subsequently the manufacturers gave their check to the purchaser for the same amount, and the tobacco did not pass from their possession, but was treated and disposed of as their own. *Held,* that the tobacco was illegally returned for tax. (Act June 30, 1864, § 94.). 639, 650

Manufactured goods under Act 1864, § 90, means goods the manufacture of which is completed, so that the goods are in a condition to be sold. 639

Under Act June 30, 1884, §§ 90, 94, as amended by Acts July 13, 1866, and July 20, 1868, a completed sale or a completed removal of manufactured tobacco is a necessary preliminary to the accruing, assessment, and payment of the tax upon it. 650

Goods found in the possession of a person for the purpose of being sold or removed in fraud of the law are subject to forfeiture under Act June 30, 1864, § 48, as amended July 30, 1866, though there has not been a completed sale or removal thereof. 650

It is illegal for a tobacco manufacturer to remove from the wholesale to the retail department a quantity of tobacco, and to make a return and pay tax on it as one sale instead of on the actual sales in the retail department. 650

The fraudulent intent or purpose of the person in possession of articles seized because found in a place where the articles or raw materials mentioned in section 48 (Act June 30, 1864, as amended July 13, 1866, § 9) are found does not constitute an element of the ground of forfeiture. 317

In such case the burden is on the claimant to show that the situation of the property is consistent with his entire innocence of complicity with the offenses for which such articles or raw materials were seized. 317

The forfeiture of the raw materials is not made dependent on their being seized in the possession of the person in whose possession forfeitable taxable articles are found. 650

Where cigars are made in the back part of a room and sold in the front part thereof, the back part is to be regarded as a manufactory, and they cannot be removed to the front part without first branding and stamping. 79

Banks and bankers.

But one penalty is imposed by Act June 30, 1864, §§ 110. 120, as amended July 20, 1866, for ail failures to make returns prior to commencement of a suit to recover penalties for such failure. 133

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National banks are liable to a penalty for failing to make return of dividends declared, etc., during the period between July 1 and December 30, 1870. (Act July 14, 1870.). 1299

Said dividends, etc., are subject to a tax of 2½ per cent, during said period. 1299

Sufficiency of complaint in an action against a bank for the $1,000 penalty for failing to make return of its net earnings, incomes, or gains under Act June 30, 1864, § 120, as re-enacted July 14, 1870. 1297

Income taxes.

A person's compensation as state's attorney for a certain county is not liable to the income tax. 818

The income tax acts require a return for taxation as income of all gains derived from the sale of corporation stock in 1868, if purchased at any time after August 5, 1861. 1175

A bona fide exchange of stock for other property is not a sale thereof from which profits are derived liable to taxation as income. 1175

A transfer of stocks for a collectible promissory note, or an exchange thereof for lands which are sold within the year for collectible promissory notes, is considered as a sale of such stock for so much cash. 1175

The beneficiary of a trust fund under a will, who had not on October 1, 1870, become entitled to the possession or enjoyment of, or to the beneficial interest in, any of the principal sum (Act July 14, 1870, § 3), is not liable to the legacy tax under Acts June 30, 1864, §§ 124, 125, and July 13, 1866, § 9. 134

The amount of a promissory note taken in 1871 on a sale in that year of a patent right not maturing or paid until 1872, is not taxable as income for 1871. (Act July 14, 1870, § 6.). 973

The compensation of a state officer cannot be applied to the satisfaction of the $1,000 exemption from the income tax. 818

Violations of law and punishment—Forfeiture proceedings.

The circuit courts have original jurisdiction of suits in rem for forfeitures under the internal revenue laws. 1025

The charge of fraud is sufficient if made in the words of the statute. (Act July 13, 1866, § 9.). 1110

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An information under Rev. St. § 3453, is sufficient if it follow the language of the statute, and without an express averment that the taxes were not paid. 1028

An information of forfeiture for violation of Act July 20, 1868, § 44, need not aver that the special tax was assessed, or that payment was demanded and refused, or neglected to be paid, but only that the business was carried on without payment of such tax. 724

An information of forfeiture must aver that the property sought to be adjudged forfeited was used in the illicit distillation charged, or was the product of such distillation. 259

A description of property claimed as forfeited as "all the boilers, stills, and other vessels used in the distillation of spirits, and all the distilled spirits—being about twelve barrels—now in the distillery owned by W.," is not sufficiently specific. 259

In an information of forfeiture for neglect to make the entries required by Act July 20, 1808, § 45, it is not necessary to aver the time the liquors were received or sent out, or from whom received, or to whom sent. 724

The validity of an assessment against a distiller may be inquired into by defendant's answering a bill by the United States to subject to the payment of such assessment lands transferred to them. 816

The courts have no power under the act of 1864 to release oh bond or stipulation goods seized for forfeiture under sections 48. 68. 1122

The notice required to be given to persons executing a bond for the return of property seized is that prescribed by Rev. St, § 3459, and not the previous rules of the court. 1028

It is no defense to a surety in a stipulation for property seized that on appeals by the claimant bonds were taken without surety, with the approval of the district attorney, and that government bonds had been given as further security, which had been stolen. 637

An agreement by a district attorney to release a surety on a stipulation for value on condition of his giving information against other persons is not valid without the concurrence of the commissioner of internal revenue, the secretary of the treasury, and the attorney general. 635

A stipulation by the government officials of immunity from penalties or forfeitures in consideration of testimony of violations of the law will be enforced by the courts. 884

—Penalties: Actions therefor.

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The penalties prescribed in section 96, Act July 20, 1868, apply to those who knowingly or willfully do or omit to do the thing forbidden or required, only when there is no specific penalty imposed by any other section of the act. 313, 724

The penalty imposed for a violation of section 48, Act June 30, 1864, must at least equal double the amount of duties sought to be evaded, and in no case must it be less than $500. 1253

An action in personam to recover the forfeiture of $500 under Act July 1, 1862, § 54, will lie, although the seizure provided for therein has not taken place. 50

—Offenses.

Conspiracy, under Act March 2, 1867, is a combination between two or more persons by agreement, expressed or implied, to effect the illegal purpose, regardless of the manner in which it is to be done. 813

A person who, with unlawful intent, designs or directs the removal of spirits on which the tax has not been paid, is equally guilty with the one who actually carries out the unlawful object. 197

—Indictment.

Upon an indictment for removing whisky from a distillery, and sending it to another state, under a false inspector's brand, without paying the tax, the court of the latter state has jurisdiction, where the whisky was not taken from the possession of the railroad company by which it was shipped, before arrival at its destination. 1282

An indictment under Rev. St. § 3257, which describes the offense in the language of the statute, is insufficient. 1300

An indictment under Rev. St. § 3281, which describes the offense in the language of the statute, is sufficient. 1300

An indictment under Act 1866, c. 184, § 25, must allege that the still was intended to be used within the United States for distilling spirits, and that defendant failed to give the notice, etc. 742

An indictment which charges defendant with carrying on the business of a wholesale liquor dealer without the payment of a special tax therefor, at a certain place, continuously between certain dates, is sufficient without stating the means or circumstances by which he became such dealer. 409

An indictment averring the removal of spirits on which the tax had not been paid to a place other than the distillery warehouse, "and" the concealment thereof, is not bad for duplicity, under Rev. St. § 3296. 202

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An allegation that the tax on certain spirits "had not been paid" is sufficient without an allegation that it "was still due and owing". 202

On an indictment for removing distilled spirits on which the tax has not been paid, the precise quantity alleged, and that the removal took place at the precise time stated, need not be proved. 197

Under a count for removal and concealment, conviction may be had if removal is proved, though concealment is not shown. 197

On an indictment for carrying on the business of a liquor dealer without having paid the tax, evidence is admissible of a sale of liquor on a day subsequent to that named. 810

A distiller's bonded warehouse which the law requires him to provide is a part of the distiller's premises, and proof of the unlawful removal of spirits therefrom sustains the averment that the removal was from the distillery. 1144

Where indictments are found under Act June 30, 1864, both for making false returns (section 15) and for perjury (section 42), the prosecution must elect between them. 914

—Evidence.

Where rectified spirits are seized while in process of sale by a rectifier as free of tax, a claimant has the burden to show that the tax has been paid. (Act July 13, 1866, § 45.). 1085

Where defendants have rebutted the presumption of law as to the validity of the assessment, the burden of proof is shifted upon the government to establish its validity. 316

On an information to enforce a forfeiture the statute of limitations is available as a defense under a plea of the general issue. 1089

Previous fraudulent intent and previous fraudulent acts are admissible to show a fraudulent intent in a subsequent transaction. 639, 650

On the trial of an indictment against a manufacturer for making false and fraudulent returns for a given month, evidence of false returns in previous months is admissible to show a fraudulent intent. 914

On an indictment under Act March 2. 1867, § 30, the government is not bound to strict proof of the ownership of the rectifying distillery to which it is alleged the spirits were unlawfully removed. 1144

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On an indictment for a conspiracy under Act March 2, 1867, § 30, there must be satisfactory evidence not only of the conspiracy charged, but of the overt act averred, to carry into effect the object of the conspiracy. 1144

Where the evidence on a question is all one way, the court need not submit the question as one of fact to the jury. 317

To prove a conspiracy to remove whisky without paying the tax, it is only necessary to show that defendants were acting in concert, or with a mutual understanding, to effect the removal without inspection and branding according to law. 1362

—Verdict: Judgment.

Where an information, of forfeiture in different counts avers several frauds under different sections of the statute, a verdict of forfeiture will be sustained if any one count is good. 260

Under Act July 13, 1866, § 45, the judgment or decree of forfeiture relates back only to the date of the seizure, and does not affect the title of an innocent purchaser, acquired subsequent to the date of the wrongful act, and before the seizure. 1118

INTERNATIONAL LAW.

See, also, "Neutrality Laws" "War."

A combination of citizens or subjects for the purpose of overturning a government does not become entitled to the privileges of national sovereignty until a revolution is actually accomplished. 1134

The fact that the number of insurgents in a state is so great that they carry on a civil war against the government does not entitle the government set up by such insurgents to the privileges of sovereignty. 1134

INTOXICATING LIQUORS.

See, also, "Internal Revenue."

The widow and administratrix of a deceased tavern keeper cannot sell spirituous liquors under her husband's license, nor can she transfer it to another. 392

Selling less than a pint under a license to sell not less than a pint is selling without a license. 16, 370

A servant selling spirituous liquors for his master, without license, is not liable to the penalty. 470, 1072

JUDGMENT.

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A judgment rendered by a federal circuit court is a lien upon all lands of defendant within the district, without being recorded in the several counties where such lands lie. 999

A decree of forfeiture of spirits for alleged frauds on the revenue is not conclusive in a subsequent proceeding for the forfeiture of the distillery and numerous articles contained therein. 260

A judgment distributing the proceeds in the registry upon an information of forfeiture cannot be modified or altered by the court after the close of the term. 278

The federal district court, three years after rendering a decree in a confiscation case, cannot reverse the same. 1097

Judgments and decrees are not assignable at law, so as to vest the legal title in the assignee; but the latter takes only an equitable interest, subject to the equities attaching to them in the hands of the assignor. 932

JURY.

See, also, "Grand Jury."

The federal courts cannot deprive parties of the right of trial by jury by referring the issues of fact to referees. 711

The constitutional right to trial by jury may be waived by the party. 711

In a proceeding in the federal district court against property seized as forfeited under the internal revenue laws, to which a claim is interposed, the claimant has a constitutional right to a trial by a jury. 281

In forming a jury the federal court need not adopt the mode required by the state laws, when, in the opinion of the court, it is impracticable to do so. 620

The provision that jurors shall be drawn from such parts of the district as the court shall direct (Act Sept. 24, 1789, § 29) is not repealed by Act July 20, 1840. 1350

It is discretionary with the court to give, or not to give, any directions as to the place from which jurors shall be summoned; and it is no ground of challenge to use array that the marshal summoned the jurors according to his own will, where there was no application for directions. 620

A juror who has sat on the trial of a person indicted for the same offense as defendant is not competent. 1246

An objection that one of the jurors had served on the jury of the next preceding term is too late after the jurors are sworn. 477

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Where defendant accepts a juror with knowledge that he has had a conversation with a third person about the case, he cannot afterwards object to a verdict on that account. 1175

Under Act March 3, 1868, § 2, there is no right of peremptory challenge except in capital cases. 696

Peremptory challenge allowed upon an indictment for stealing a slave in Alexandria, D. C. 1363

The court will at a subsequent term order a fine against an absent juror to be struck out, where the clerk neglected to enter a similar order made at a previous term. 1148

LANDLORD AND TENANT.

A bailiff cannot lawfully force himself into a house by the outer door, although partially opened by one within, to make a distress for rent. 1349

LARCENY.

Logs in a fence are not the subject of larceny, the fence being in law annexed to the freehold. 1148

Foreign and domestic coin and bank bills are "personal goods," within Act 1790, c. 36, § 16, relating to larceny on the high seas. 11

Quære: Whether stealing a bank note is larceny, within the act of April 30, 1790, § 16. 38

A driver of a coach, who, with knowledge of the ownership of goods left therein by the owner by mistake, takes and converts them with intent to steal them, is guilty of larceny. 484

A person who procures goods under the false pretense that the owner had sent him for them, and appropriates them for his own use, is not guilty of larceny. 825

A workman is guilty of larceny where goods delivered to him for a special purpose are taken away by him with intent to steal them. 1356

Property abandoned is not within the meaning of Act March 3, 1825, § 9, against plundering or stealing property from or belonging to a vessel in distress or wrecked, lost or abandoned. 1132

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The federal courts have jurisdiction of the offense of plundering property from a stranded vessel or after it has been thrown upon the shore (Act 1825, c. 65, § 9.). 540

"Plunder," as used in such section, includes the criminal taking of the goods of another by open force, or by secret fraud, and furtively, from a vessel in distress, etc., and also an embezzlement by the master and others. 540

"One silver coin of the value of fifty cents" is a sufficient description of the property stolen. 810

An indictment charging the stealing of "notes of some bank established by a charter from the government of the United States, or of some individual state of the United States," in the language of the act, Is not sufficient. 595

The goods of the wife, in her separate shop, where not kept for her separate use, must be averred to be the goods of the husband. 36

Goods stolen from a married woman living by herself, her husband not contributing to her support, may be charged as her property. 452

An indictment alleging articles stolen to belong to owners unknown is good on its face, and the objection that the owners were in fact known must be taken to the evidence at the trial for a variance, or by special plea. 1311

On a trial for larceny, *held,* that the prisoner was entitled to a peremptory challenge of 20 jurors, under Act Va. Nov. 13, 1792. 506

A slave convicted of larceny in Alexandria county, D. C, sentenced to he burnt in the hand and whipped. 78

A slave convicted of larceny is to be punished by whipping, although not charged as a slave in the indictment. 86

LIMITATION OF ACTIONS.

The suspension of the statute of limitations provided for by Act June 11, 1864, did not continue in Georgia after the president's proclamation April 2, 1866, though no term of the federal court was held and no clerk appointed, until six months later. 18

LOTTERIES.

A scheme for the disposal of town lots, by the terms of which a purchaser has a chance of obtaining one of the reserved or prize lots as a part of the consideration, is a lottery. 233

MANDAMUS.

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Mandamus will not issue to compel municipal officers to levy and collect a tax, unless the legislature has made it their duty to levy and collect such tax.	*131
The federal circuit courts outside the district of Columbia cannot issue the writ in the exercise of original jurisdiction, but only as necessary to the jurisdiction of the court, and to enforce a judgment rendered.	1129
The circuit court of the District of Columbia has no jurisdiction to compel the superintendent to deliver certain documents to the public printer for printing.	1004
The federal circuit court has not jurisdiction in the first instance, by mandamus, to compel a postmaster to furnish the advertised letter list to the newspaper having the lawful right to the printing.	1129
The court refused the writ to compel the marshal to pay witness fees to the petitioner, an attorney of the court.	1018
MARINE INSURANCE.	
Liberty to touch at a place does not justify trading, and trading would be a deviation avoiding the policy.	467
MARSHAL.	
The marshal is bound to obey the writ as he receives it, where the statute is directory to the court or the clerk only, but in demanding bail he acts at his peril.	23
An indorsement even by the court, will not justify the marshal in requiring bail, where the statute does not require it.	23
The marshal is entitled to interest on sums due to him and not paid after demand, and must pay interest on sums due from him after demand.	1249
A marshal is not entitled to commissions on money paid to his deputies for taking a census.	1249
A marshal who pays over to his deputies or assistants, for taking a census, less funds than he received from the government, is liable to the penalty of $500 (Act March 3, 1839.).	464, 465
A sale of treasury notes by the marshal for currency at 8 per cent premium, and a payment of his deputy in such currency, is a violation of the law.	464, 465
A marshal who extends an execution on real estate for the government is entitled to his fees from the government, though the land be not yet sold or redeemed or in any way converted into money.	1249

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A marshal is not to be allowed for services as keeper or inspector of the state jails, except in a case where especially directed by the court. 1249

A charge by a marshal for distributing venires to town clerks at § 2 each is legal, but not for travel as if serving venires himself, when they are in fact served by a constable. 1249

Though the certificate of a judge allowing a marshal's account is prima facie evidence of its legality and proper amount, the treasury department may reject it, if believed improper. 1249

Rev. St. § 786, limiting the time within which actions must be commenced on marshal's bonds does not apply to actions instituted by the United States. 695

MASTER AND SERVANT.

One employed to work a day cannot lawfully quit work before the day is done. 1312

A locomotive engineer employed by the day to daily make a particular run cannot lawfully quit before the run is made. 1312

MAYHEM.

The disabling or disfiguring of any limb or member of a person need not be done by cutting, to constitute an offense under Act 1790, § 13. 999

The particular weapon, means, or instrument used is not material, providing the result is maiming or disfiguring with intent to do so. 999

MILITIA.

Const, art. 8, cl. 15, which confers power upon congress to provide for the calling forth of the militia to execute the law of the United States, and Act Feb. 28, 1795, applies to the states. 1339

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MINES.

The United States have not conveyed or dedicated the minerals in the public lands to individuals or the public. 416

MINISTER.

The privileges of a foreign minister are not extended to a person having a commission from a revolutionary government not acknowledged by the United States. 1123

If a foreign minister commits the first assault, he forfeits his immunity so far as to excuse defendant for returning it. 359

It is no defense to an indictment for an assault on a foreign minister that defendant was ignorant of his public character. 359

Upon an indictment for an assault committed on a foreign minister, proof that the person assaulted is received and recognized by the executive of the United States, is conclusive as to his public character. 359

MORTGAGES.

An assignee of a mortgage four years overdue, and wholly unpaid, is chargeable with notice of its true consideration, which inquiry would have revealed. 1358

A judgment creditor may redeem a mortgage upon land upon which his judgment is a lien, even as against an assignee of the mortgage. 1358

MUNICIPAL CORPORATIONS.

Authority to incur a debt does not carry with it the power to levy a tax to pay the debt, where other provision is expressly made for such payment. *131

Where a city exhausts its revenues in defraying current expenses, mandamus will lie to compel it to pay matured, outstanding bonds. 1308

NAVIGABLE WATERS.

The states composed from the Northwestern Territory cannot obstruct their navigable rivers, they being by the ordinance declared to be forever public highways. 91

An individual suffering special damages by an obstruction of a navigable river may have a civil redress by a suit, though the obstruction be authorized by a state, if it be contrary to, or conflict with, an act of congress. 91

Where a bridge to be constructed over navigable waters, with the draws as proposed, will not cause any appreciable obstruction to commerce, the federal courts will not act to enjoin the same. 686

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The obstruction of navigable rivers under the laws of the original states is not punishable as a crime, unless contrary to some clause in the federal constitution, or a treaty or an act of congress. 91

The circuit court has no jurisdiction to punish as a crime the obstruction of navigable tide waters by the erection of a bridge, without an express grant of authority by congress. 91

NEUTRALITY LAWS.

A federal judge has power, on just grounds of suspicion, to require a bond to observe the neutrality laws. 680

The presentation of a grand jury, charged with the duty of inquiring into the existence of the organization whose object was the invasion of the territory of a friendly power, that they believed such organization to exist, but could get no evidence, because witnesses refused to testify on the ground that their answers might criminate them, *held* sufficient ground of suspicion. 680

Act June 5, 1794, extends to warlike expeditions from this country, though not intended to aid one belligerent against another, but directed against a friendly power at peace with all the world. 367, 380

To constitute the offense against section 3, the vessel must not only have been fitted out with intent to be employed against a friendly nation, but actually armed for that purpose. 1123

An expedition, to be within Act June 5, 1794, § 5, need not to have been consummated without deviation of course. It is sufficient if it was begun and the means prepared to be carried on from the United States, though the vessel, at the identical time of sailing, was not in complete readiness for hostile engagements. 1233

To constitute the offense of beginning, setting on foot, or providing the means for a military expedition against a nation with whom the United States are at peace, under Act April 20, 1818, § 6, there must be a hostile intention connected with the act of beginning or setting on foot the expedition. 380

When connected with such hostile intent, the crime is completed either by beginning, or setting on foot an expedition, or providing or procuring the means therefor. 380

To constitute the offense, it is not necessary that the expedition should start for its destination. 380

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The guilty purpose must be proved, and the guilty acts done, within the judicial district where the indictment is found. 380

The fact that defendant set on foot a military expedition, in violation of Act June 5, 1794, § 5, with the knowledge and approbation of the president, is no justification, as the president has no authority to set on foot a military expedition against a nation with which the United States are at peace. 1192

On a trial on indictment under Act June 5, 1794, § 5, the president's message to congress, and other documents transmitted therewith, are inadmissible to show the existence of a war at the time the acts were charged to have been committed. 1233

Sufficiency of indictment for setting on foot and preparing the means for a military expedition against a foreign country with which the United States were at peace. 367

A French citizen transiently within the United States cannot be criminally prosecuted for piracies and robberies committed by the captain of a privateer owned by him, upon neutral vessels. 393

NEW TRIAL.

It is ground of new trial that the court submits as a question of fact to the jury a material fact, where the case was tried upon the assumption that such fact was admitted. 1131

Where the government has so conducted the trial that defendant is entitled to take certain facts as admitted, and does not offer evidence thereon, he is entitled to a new trial, where such facts are subsequently left to the jury. 1138

A verdict for defendant in a suit to forfeit goods for violation of the internal revenue laws will not be set aside as against the evidence, though as to a small part of the goods the court entertains no doubt that upon the evidence the verdict is wrong. 277

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The newly-discovered evidence must have come to the knowledge of the party since the trial, and must be so material that it would probably produce a different result. 1175

Newly-discovered evidence impeaching the credibility of one of the witnesses is no ground for a new trial. 604

A new trial will not be granted on the ground of surprise unless it appear that such surprise is in no degree attributable to the negligence of the applicant. 1175

A new trial will not be granted for misconduct of a juror in which the applicant participated. 927

Grounds stated upon which a court of common law may grant a new trial. 340

A motion for a new trial is too late after the case has gone to the supreme court on a certificate of a division of opinion on a motion in arrest of judgment. 1080

OBSTRUCTION JUSTICE.

A warrant of distress is not a legal process, within Act 1790, § 22, in relation to resisting officers. 47

It is an indictable offense to combine to oppose the execution of a justice's warrant, without knowing its nature, and assaulting one of the parties attempting to execute it. 237

It is not necessary that a constable should have a warrant to suppress an affray, in order to make opposition to him unlawful. 538

An attorney and client conspiring to resist an officer are equally guilty. 1161

An indictment under Act April 30, 1790, § 22, must show by proper averments that the process was legal. 1350

A commissioner empowered to issue a warrant tinder Act Sept. 18, 1850, must be such a commissioner as is particularly described in that act. 1350

An averment in an indictment for resisting such a warrant that it was issued by a commissioner of the circuit court of the United States is not sufficient. 1350

The want of an averment of the facts showing that the commissioner was authorized to issue the warrant cannot by aided by referring to the records of the court. 1350

An averment that a warrant was duly issued is insufficient. The facts constituting the due issue must be set forth. 1350

On an indictment for conspiring to resist an officer, actual violence need not be shown, but threats, and acts intended to terrify, or of a character to 1161

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terrify, a prudent officer, are sufficient, even though he be not prevented thereby from executing his process.

The taking away of a vessel by her owner after she has been attached by a marshal, but while not in his actual custody, or that of a keeper, is not an offense under Act March 2, 1831, § 2. 1010

The expressions "obstruct" and "impede," as used in the act, refer only to direct acts of violence or menace, disturbing the ordinary functions of the court. 1010

OFFICE AND OFFICER.

See, also, "Customs Duties" "Internal Revenue"; "Marshal"; "Obstructing Justice."

A person disqualified by the fourteenth amendment from holding office, by having engaged in the Rebellion after taking an oath to support the constitution of the United States, is indictable, under Act May 31, 1870, § 15, for subsequently accepting the office of sheriff. 605

Acts done under compulsion of force, or of a well-grounded fear of bodily harm, do not come within the constitutional provision. 605

Accepting and holding the office of justice of the peace under the confederate government is not of itself sufficient evidence of engaging in the insurrection. 605

The superintendent of public printing is subject wholly to the control of the joint committee of congress on printing (Act Aug. 26, 1852). 1004

Where the words of a statute prescribing compensation admit of two interpretations, they will be construed most favorably for the officer. 1

An officer cannot be allowed extra compensation for services performed, properly pertaining by law to his office. 1139

An officer with a salary payable quarter appointed for four years "unless sooner removed by the president," is not entitled to his salary to the end of a quarter during which he is removed. 1139

A surveyor of customs is entitled to commission on moneys paid to him for the treasury department, but not on moneys already in the treasury, which are transferred to him from other places of deposit. 1065

The register of the treasury, though receiving pay as such, *held* entitled to compensation as agent for disbursing money appropriated for contingent expenses of the treasury department, library of congress, and other appropriations for public purposes. 192

Salaries of officers of the territory of Minnesota. 1139

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In an action to recover a balance due from a receiver of public moneys, a claim that a certain sum had been stolen from him *held* not supported, he never having presented a claim for a credit of such amount. 783

The auditor's report of a balance due from a person accountable for public money is not evidence in an action for the debt. 462

Rev. St. § 1766, authorizing the salary of an officer in arrears to be withheld, and Id. §§ 300, 307, 308, in relation to the payment of warrants after three years from issuance, form no part of the contract with the officer's sureties. 603

United States, in an action upon a collector's bond, cannot obtain judgment against the surety for more than the penalty. 806

PARDON.

A pardon may be partial, and contain any lawful conditions. 1097

A pardon for offenses against the revenue laws cannot relieve the offenders of payment of taxes. 884

PARENT AND CHILD.

The child must partake of the condition of the mother, and where the mother is a white woman, and the father an Indian, the child will be deemed of the white race. 950

The marriage of the mother of a bastard, and the acknowledgment by the husband of the child, are prima facie evidence that he was the father. 1122

The declarations of a father as to the maternity of his child are competent evidence. 950

PAYMENT.

While a company may issue promissory notes, in the form of banknotes, in payment, they have no right to issue them for the purpose of putting them in circulation as a current circulating medium. 715

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PENSION.

An adopted child is not entitled to a pension, but a legitimated child is entitled to a pension under Act March 4, 1814. 1122

An indictment for retaining a greater sum than the statutory allowance for collecting a pension cannot he sustained where the amount was paid under a poor contract for services in causing to be removed from the rolls of the war department a charge of desertion. 1255

PERJURY.

Perjury consists in swearing falsely and corruptly, contrary to the belief of the witness, and not in swearing rashly and inconsiderately according to his belief. 1051

Where affiant stated the facts truly, and signed an affidavit on the advice of his lawyer, in whom he confided, that they were substantially the same therein, he is not guilty of perjury, though the affidavit be false. 1292

A person cannot be convicted of perjury in swearing falsely to an income tax return, where it was not made with a corrupt intention, but with the honest belief that it was correct. 1175

Although the income tax act makes no provision for compelling a person to make oath to his return, yet, as it permits him to do so, intentional false swearing therein is perjury. 1175

Where an act expressly describes the kind of proof of compliance with its requirements, it is not competent for any officer of the United States to require new oaths, so as to make the false taking of them perjury. 146

An indictment for an act which does not constitute an offense under the laws of the United States is still "a suit, controversy, matter or cause pending," in which perjury may be committed. (Act 1790.). 746

The act of 1825 in relation to perjury, being a general law, applies to all subsequent cases which come within it. 151

The bankrupt's intentional omission to state a part of his property in his sworn schedule is perjury under the act of 1825. 151

To constitute the offense of false swearing under the fisheries bounty act of 1813, there must be a willful and corrupt intent to swear falsely. 1165

The secretary of war may prescribe the contents of affidavits by drafted soldiers claiming exemption from military service, and false swearing as to such facts is perjury. (Act March 3, 1863.). 1259

A notary public is an officer authorized to administer oaths in such cases. 1259

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Whether a false oath was taken under mistake as to the law or fact involved therein is a question of fact for the jury. 1175

Upon a conviction of perjury the court may inflict the punishment of fine, imprisonment, and the pillory. 1255

PIRACY.

A commanding officer making seizures of vessels carrying contraband of war to the enemy acting in good faith under a forged commission, is not guilty of piracy. 1172

The United States court will treat as pirates all persons engaged in plundering vessels of United States citizens under authority of a government, set up by insurgents against whom a civil war is being waged. 1134

A subordinate officer, who in good faith enters a formal protest against a seizure by his vessel, is not guilty, with the others, of an act of piracy. 1172

The seizure of a vessel carrying arms and munitions of war to a port of the enemy by an armed ship, whose officers held commissions from the hostile country, is not piracy. 1172

The federal circuit court has jurisdiction of piracy on board of an American ship, committed in an open roadstead adjacent to a foreign territory, and within half a mile of the shore (Act April 30, 1700, c. 9, § 8.). 899

PLEADING AT LAW.

A demurrer goes to the first defect in pleading. 1281

The amendment of a libel in the district court will not be allowed where the same introduces a new, substantive cause of action, and a new charge against defendant. Otherwise where the new cause of action corresponds in character, and is kindred in nature, to that presented in the original libel. 291

The variance is fatal where the paymaster general of state militia is described in a suit on his bond as "principal paymaster" of the state militia. 1284

POST OFFICE.

Post routes and roads, and private letter carrying.

A person who sends a packet of letters by a passenger over, a post road, without the knowledge of the proprietors or their agents, is not subject to the penalty provided by Act March 3, 1825, § 19. 588

Officers.

A postmaster, until the action of the postmaster general, does not vacate his office by remaining out of the neighborhood. 480

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An action on a bond of a postmaster is barred after two years after the date of the last item charged against him. (Act 1825, § 3.).	1006
Offenses—Unmailable matter.	
The mailing of a postal card containing words imputing illicit intercourse to third persons, but no epithet in the form of a substantive or adjective, is an offense under Rev. St. § 3893, punishing the mailing of postal cards containing "indecent or scurrilous epithets.".	611
—Robbery: Theft: Embezzlement.	
Rev. St. § 5467, is not confined to the offense of stealing or taking things out of a letter packet or bag but includes the taking of the letter itself.	485
An employe in a post office, who steals gold dust from a letter in the mail, is liable to indictment, whether the same be mailable or not, under Act July 1, 1864, § 12.	696
No one can be convicted under Act 1825, § 21, who is not employed in the post-office department.	189
To convict a person of stealing a letter, etc., who is employed in the department, such employment must be distinctly alleged and proved.	189
To constitute the offense, it is not necessary that the letters stolen should have been taken out of the post-office building.	189
Some evidence is necessary of the genuineness and value of banknotes charged to have been stolen out of a letter.	189
A letter dropped in a post office, intended for a person at such place, is not a letter intended to be "conveyed" by post. (Act 1823, c. 275, § 21.).	232

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The stealing or taking a letter, etc., under section 22, means a taking with a criminal intent, and not a taking through mistake, or with an innocent intent. 480

A letter delivered to an authorized agent cannot be charged to have been embezzled. 949

A person who receives a letter from a letter carrier, addressed to another, without fraud or artifice, is not liable to indictment under Act March 3, 1825, § 22, where he opens the same and embezzles money therefrom. 451

In an indictment for embezzling a letter containing money (Act July 1, 1864, § 12), it is not necessary to aver that the letter embezzled was intended to be conveyed to any particular place, but only that it was intended to be conveyed by post. 231

An averment that a letter deposited in the post office at New York was addressed and directed to a person named at Philadelphia, and was intended to be conveyed by post, is not an averment that the letter was intended to be conveyed by post from New York to Philadelphia. 231

An averment as to the ownership of the money is not necessary. 231

An indictment under Act March 3, 1825, § 22, which alleges that defendant did secrete "and" embezzle a certain letter, is not defective. 949

In an indictment for embezzlement, it is sufficiently certain to charge that defendant was "a person employed in one of the departments of the post-office establishment of the United States.". 466

When the embezzlement is of a letter containing a banknote, it is not necessary to describe the note. 466

The presumption of theft arising from the disappearance of mail matter may be repelled by evidence of the miscarrying of mails sent through the same office after defendant's removal. 1307

—Obstructing correspondence.

It is an offense to open a letter, which has been in the post office, before delivery to the addressee, with intent to obstruct his correspondence, or pry into his business or secrets, though the letter was not sealed, and was written by defendant himself, and the addressee's name was not correctly given. (Act March 3, 1825, § 22.). 590

The indictment need not allege any venue of the lawful intent, nor that the opening was unlawful, nor that the addressee was a real person. 590

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Section 21, which prescribes a punishment for the detention of a letter or packet, refers to a letter or packet detained before it reaches the place of destination. 480

An intention to obstruct the mail flows from an unlawful act that so operates, although its primary object was to accomplish another purpose. 1312

Act March 3, 1825, § 22, in relation to opening letters to obstruct correspondence, etc., applies only where the possession of letters was obtained wrongfully from the post office, or from a mail carrier. 451

A person who, without artifice, receives a letter for another, addressed in his care, and opens and destroys the same, cannot be convicted of opening the same with the design to obstruct the correspondence, etc., of another. 22

A letter carrier who delivers letters from house to house is a mail carrier, within Act March 3, 1825, § 22. 451

The writer of a letter which has passed from the office where mailed has no right to intercept it, or authorize its delivery to a person other than the one to whom it is directed. 206

On an indictment for taking a letter from the post office with intent to obstruct correspondence (Rev St. § 3892) defendant may be convicted without evidence of an unlawful, clandestine, or fraudulent taking. 206

Proof of an intentional nondelivery of a letter so taken from a post office may be sufficient. 206

A person indicted for such taking of a letter with intent to pry into the business or secrets of another cannot be convicted if he knew the contents of the letter before he received it. 206

It is no defense that the letter related in part to defendant's business, or that in good faith he believed that the letter was of no value to the person to whom it was addressed, even if such be the fact, or that the letter was voluntarily delivered to defendant by the postman. 206

PRACTICE AT LAW.

A stipulation induced by misrepresentations is not binding on the court. 502

PRACTICE IN ADMIRALTY.

The practice of the federal courts in admiralty is governed by the rules of admiralty law found in the English Reports. 1027

PRESIDENT.

The president has power to call out the military in aid of the civil authorities of the District of Columbia. (Const, art. 2, § 2.). 1339

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PRINCIPAL AND AGENT.

No action will lie in the name of a principal on a written contract made by his agent in his own name, although defendant knew the agent's character. 415

PRINCIPAL AND SURETY.

See, also, "Bonds"; "Office and Officer."

The sureties on the bond of a receiver of public moneys are not liable for moneys received before the date of the bond, but during his term of office. 1281

The sureties on the bond of a receiver of public moneys are not liable for money which came into his hands the day after the expiration of his term of office. 1281

A discharge from imprisonment by the secretary of the treasury of a debtor to the United States, under the act of 1798, does not discharge his co-obligors and sureties in the bond from their liability. 1358

PRIZE.

A capture by naval forces of property stored in a warehouse near the shore of a harbor is a subject of prize jurisdiction. 1027

Where no prevarication or other improper conduct on the part of the captured vessel is shown the question of condemnation of the vessel is to be determined from the papers round on board. 1273

A captured vessel is subject to trial and condemnation for violating the law, whether the persons or means employed in making the seizure were authorized or not. 236

The destination of arms and munitions of war, and the use intended to be made thereof at the time of seizure, furnishes a test of their status as contraband or otherwise. 1087

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A United States vessel is not subject to condemnation because it carries a special pass or license from the enemy, or the enemy's agent. 1273

Seamen on board a prize captured and condemned as enemy property have no lien for wages, as against the title of the United States and the rights of the captors. 932

The absence of all papers, where the vessel was captured off a blockaded coast, far out of the route of her ostensible voyage, after a long chase, *held* a strong presumption of intentional destruction. 236

PUBLIC LANDS.

See, also, "Grant."

The state, under its power of eminent domain, may make public roads through the lands of the United States, unrestricted by the proprietary right of the latter. 686

The person commencing an improvement has a right to continue, and any one that intervenes may be considered a trespasser. 1292

On the abandonment of a military reserve by giving notice to the secretary of the interior, the same may be considered as a part of the public lands open to entry and sale as other lands. 686

An indictment will lie for cutting or removing timber from any of the public lands, though the same are not reserved for naval purposes. 726, 978

Persons occupying under the pre-emption, homestead, and mining acts, before becoming the owners of the land, may cut and use the timber thereon, so far as the same may be necessary to accomplish the purpose for which the land is occupied, but no further. 86

The cutting and sale of timber from four acres in advance of the mining operation, where the only reason assigned is that the stumps may rot and be more easily removed, *held* unnecessary, and therefore unlawful. 86

A nominal fine, only, imposed for cutting timber, where defendant had made full reparation, and there was no intention to defraud the public. 38

The term "timber" signifies the standing trees and the felled trees prepared for transportation to a vessel or sawmill, such as sawlogs or lumber in bulk, but does not embrace any article manufactured from the tree, such as shingles or boards. 978

An indictment for removing timber from public lands must state the particular section or quarter section from which the timber was taken, as a part of the description of the offense. 978

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An indictment which describes the land, in general language, as "lands of the United States," is not sufficient. 978

An indictment for removal need not allege that the timber was removed from the land on which it was grown, or from which it was cut. 978

In an indictment for trespass in cutting timber, it is not necessary to describe every kind of timber cut. 726

The grant of lands under water to adjacent proprietors, under Act N. Y. April 10. 1850, c. 283, must be confined to a line starting at the intersection with the shore, and extending at a right angle with the thread of the stream, or at a right angle into the lake, without any regard to the course or direction of the line upon the land. 911

A person obtaining a grant in violation of the statute will be restrained, at the suit of a proprietor of adjacent lands entitled to the grant, from making erections upon the lands. 911

RAPE.

An attempt by a slave to ravish a white woman is punishable by death. 460

RECEIVING STOLEN GOODS.

The receiving of stolen goods in one jurisdiction with knowledge that they were stolen in another is an offense in the former jurisdiction. 3

RELEASE AND DISCHARGE.

While a defendant is charged in execution, the debt is considered as satisfied, and a discharge of one co-debtor is a discharge of all. 411

RIOT.

To constitute a riot, three or more persons must assemble with intent by force and violence to do some unlawful act, and mutually to assist each other against anyone who should oppose them in doing such act; and the act must be done in a violent and turbulent manner, to the terror of the people. 477

Premeditation and conspiracy, or promises of mutual assistance, are not necessary to constitute a riot. 477

A man may be convicted of a riot, who was not actively engaged therein, if he was present and ready to give support if necessary. 477

Three or more persons who act in concert, by prior arrangement, in a violent and turbulent manner, in opposing a public officer in the performance of his duty, *held* guilty of riot. 1339

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The previous intent and agreement to do the unlawful act may be inferred from the doing of the act accompanied by the declaration of an intent to do it. 1347

A person convicted of assault and battery committed in a riot may still be tried and convicted of the riot. 477

ROBBERY.

To constitute robbery, there must be fear or force. 1080

SALE.

A usage in the grain trade in a certain locality to deliver barley in sacks may be shown, when nothing is said in the contract as to the mode of delivery. 871

Where the seller notifies the buyer that he regards the contract as rescinded, and will make no more deliveries under it, the purchaser may treat the contract as wholly broken, and at once recover damages upon the entire contract, without demand. 871

SEAL.

The common-law rule that a seal must consist of wax, or some tenacious substance, does not apply to a bond taken under an act of congress; and, under the general usage, a scroll is sufficient to make the instrument a sealed instrument. 1305

SEAMEN.

Shipping articles to a certain port and a market are sufficiently definite. 1290

The statutes requiring bond for the return of all the crew do not apply to foreign seamen shipped at their own home for a particular cruise, ending where it began, and discharged there according to the terms of their contract. 452

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Under the statutory bond to exhibit the crew list and produce the persons named therein, the master is bound to exercise all his lawful authority for the purpose of banging back the persons named therein. 406

It is the duty of the master to find and apprehend all deserters or seamen leaving the ship openly. 406

The master is not exonerated from his covenant by merely showing physical inability subsequently accruing on his part to perform it, or that others, whose consent and concurrence were necessary, would not permit its performance. 406

The master should be considered as relieved from the performance of the condition of the bond when, by reason of sickness, or by being superseded in a foreign port, he becomes unable to perform the conditions. 406

In an action on a bond for the safe return of the crew, parol evidence is admissible of the contents of a consul's certificate authorizing the discharge of one of the men, on proof that such paper has been lost. 452

A voyage from A. to B., or some other port, and return to the United States, is not ended on arrival at the first port of the United States, unless it be the port of discharge. 1166

The master has authority to confine his seamen in a common jail in a foreign port for offenses and misconduct, in extreme cases, where the proper correction or punishment cannot be effectual on shipboard. 912

To complete the offense of maliciously and without justifiable cause forcing an officer or mariner on shore, or leaving him behind in a foreign port (Act 1825, c. 276, § 10), it is not necessary that he should be in a condition to return, and willing to return. 89

It is an offense, under such act, to leave behind a seaman imprisoned by the master for using abusive language on the refusal of his application for a discharge. 89

The offense of maliciously forcing a mate on shore at a foreign port, and leaving him there, may be committed, although no physical force was used, as in the case where the mate left the ship under a well-grounded fear of his life had he remained on board. 809

The forcing a mariner on shore must be done both without justifiable cause, and maliciously, to justify a conviction under Act 1825, c. 65, § 10. 912

"Maliciously," in such statute, means, with a willful disregard of right and duty, or doing the act against a man's own conviction of duty. 912

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A mere intention to give pain, or to torture the person assaulted, will not support an indictment against the master for an assault on the mate with intent to kill.	809
The owners may change the master after the seamen have shipped.	210
The master has authority to displace the mate and all other subordinate officers during the voyage.	966
The mate is a seaman, within the act of 1790, c. 36, § 12.	966
One who secretes himself on board before sailing, and discovers himself after the vessel is at sea, is not one of the crew, though the master requires him to work, as a condition of his having food, and he does work.	1128
Seamen of the United States, put on board a vessel, of the United States by a consul, are bound to the same obligations, which exist in cases of articled seamen.	1041
A distressed American seaman, sent home on board an American vessel, his fare being paid by the American consul, is bound to do duty as a seaman when called upon by the mate of the vessel.	930
Foreign seamen on board American vessels are as much subject to punishment for acts of revolt, or attempts to commit revolts, as Americans.	515
Where a registered vessel has entered on a whaling voyage without surrender of her register, she is not an American ship, within Act 1835, c. 40, and an indictment will not lie against her crew for an endeavor to make a revolt.	890
A revolt, under Act March 3, 1835, c. 40, consists, not only in an attempt to usurp the command from the master, or to transfer it to another, or to deprive him of it, for any purpose, by violence, but in resisting him in the free and lawful exercise of his authority.	515
The crew have no right to disarm the master, though using a deadly weapon, if they are in a mutinous state, and exercising personal violence to resist his lawful command.	515
Seamen who, with good reason, believe a vessel to be unseaworthy before the voyage is begun, may lawfully refuse to go to sea in her.	210
An endeavor to make a revolt, within Act April 30, 1790, c. 9, § 12, is an endeavor to excite the crew to overthrow the lawful authority and command of the master and officers of the ship.	1166
A combination by the crew to prevent the vessel from going to sea pursuant to the order of the master is an attempt to commit a revolt.	210

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To constitute an endeavor to commit a revolt (Act 1790, c. 36), there must be some effort or act to stir up others of the crew to disobedience of the master.	966
A seaman who comes on deck to ascertain the cause of a disturbance, and refuses to go below when ordered by the master, may be punished for an endeavor to make a revolt.	822
Any confinement of the master, whether by depriving him of the use of his limbs, or by shutting him up in the cabin, or by intimidation, preventing him from the free use of every part of the vessel, amounts to a confinement, under Act April 30, 1790, § 12.	1246
To constitute a confinement of the master (Act 1790, c. 36), it is sufficient that there is a personal seizure or restraint, although it may be for the purpose of inflicting personal chastisement.	966
Any confining of the master, whether by force or intimidation, is a confinement, within 1 Stat. 112.	1041
The master cannot be confined by the officers and crew, except in a clear case, to prevent his committing acts which might endanger the lives of all on board.	1041
A seaman may endeavor to escape the infliction of personal chastisement for offensive language used, and may resist for the mere purpose of protecting himself from injury.	1247
Where the master uses an unlawful weapon, or the seaman is exposed to danger of his life or limbs, he may resort to any necessary species of defense to avoid the danger.	1247
Where the master strikes a seaman, and is seized and so firmly held by him that he cannot extricate himself, the seaman is guilty of confining the master.	1247
One who joins in the general conspiracy, and by his presence countenances acts of violence, but who does not individually use force or threats to compel the master to resign the command, is guilty of the offense of confining the master.	1041

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Where seamen who request a survey, when in port or within sight of land, are treated with unnecessary severity, their remedy is at law after their return, and not a resort to violence, unless in danger of the actual loss of life, and then at their peril, as the result may turn out.	1290
A vessel lying on the sea outside of the bar of a harbor of the United States, within three miles of the shore, is on the high seas.	1166
A vessel lying in the mouth of a river a mile and a half wide is on the high seas, within Act April 30, 1790.	1240
A vessel lying in a harbor, fastened to the shore by cables, and communicating with the land by her boats, and not within any inclosed dock, or at any pier or wharf, is on the "high seas," outside of low-water mark on the coast.	1002
The federal circuit court has jurisdiction of the offense of endeavoring to make a revolt on board of an American ship in an inclosed dock into which ships are floated on high tide, in the port of Havre.	822
An indictment for confining the captain, for an assault in a foreign port on a vessel belonging to a citizen of the United States, need not negative the fact that defendant was tried and convicted or acquitted by the foreign tribunal.	1325
Seamen are not liable criminally, where, on going on board, and after examining the vessel, they refuse to serve on the ground that she is unseaworthy, though she was not in fact unseaworthy; otherwise where they refuse to continue after commencement of service.	1290
The crime of endeavoring to make a revolt is one against the master, and it is sufficient to charge it in the words of the act of 1835 to give the court cognizance of it, even within the requirements of Act March 3, 1825.	1002
On an indictment for an endeavor to make a revolt (Act March 3, 1855, § 2), it is not necessary to give documentary proof of the national character of the vessel.	1002
To render a vessel American, so as to punish offenses on board of her, it is enough to show that she sailed from and to an American port, and was apparently owned and controlled by citizens of the United States.	515
The log book kept by the master is not evidence in an indictment for a revolt and confining the master.	1041
Where there is a verdict of guilty on two counts,—one for a revolt, and another for an attempt to excite it,—the judgment will not be arrested.	515

SEIZURE.

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

The provisions of Act May 8, 1792, § 4, requiring the marshal to take custody of all goods seized by revenue officers, were abrogated by Act July 18, 1866, § 31. 248

Reasonable cause sufficient to justify seizure means probable cause, and imports a seizure under circumstances which warrant suspicion. 315

Where probable cause of seizure is shown, claimants have the burden of showing by a fair preponderance of evidence that the illegal acts charged were not committed. 1092

The seizure of a vessel which, under a codfishing license, has incidentally caught mackerel, is a municipal seizure, expressly provided for by acts of congress as justifiable if a certificate of probable cause is given. 758

A certificate of probable cause will be given if the officer making the seizure acts in good faith, and has reasonable grounds to suppose that the law has been violated. 758

A certificate of reasonable cause for seizure will be granted where it appeared that the collector acted under the instruction of the former officer in making the seizure, upon a construction of the statute adopted by the secretary of the treasury in conformity with an opinion of the attorney general. 723

It makes no difference whether the collector acted under a mistake of facts or of the law. 723

A reasonable ground of suspicion is reasonable cause for a seizure. 723

A lapse of two years *held* no bar to the application, but the laches were sufficient to east the costs of the action against the collector upon him. 723

SET-OFF AND COUNTERCLAIM.

Claims against the government are not admissible as a set-off which have not previously been presented to and disallowed by the proper accounting officer, except in the case of absence from the United States, or unavoidable accident preventing such presentation. 1139

The rejection of a claim by an officer authorized by special act to settle the same on equitable principles does not preclude its being set up as a set-off. 1139

In a suit by the government on a marshal's bond to recover moneys collected on execution, defendant cannot set off accounts which had been presented as a charge against the government in another claim to which they have a good defense under the statute of limitations. 613

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SHIPPING.

See, also, "Fisheries."

An enrollment and license duly executed does not require delivery to give it validity. 544

The vessels included within Act 1831, § 3, are not subject to forfeiture under Act 1792, § 16, relating to sales to foreigners without delivering up the certificate of registry. 987

A vessel which has been enrolled and licensed under the act of 1831, but whose license has become void by a subsequent sale, is no longer a licensed and enrolled vessel, so as to be subject to forfeiture by her sale in whole or in part to a foreigner in violation of section 32. 987

A vessel enrolled and licensed under the act of 1793 for the coasting trade and fisheries is not subject to forfeiture under the act of 1792, § 16, for false swearing on application for registration. 987

The master is not liable for the penalty for the nondelivery of the temporary register (Act 1793, c. 52, § 3) unless there be an arrival at the port to which the vessel belonged, not by accident or from necessity, but intentionally, as one of the termini of the voyage. 1038

The mere touching at a port to land passengers when on the way to another port will not make a case within the act. 1040

To work a forfeiture of a vessel for having been engaged in a trade other than that for which she is licensed, the old employment must have been abandoned, and a new trade must be permanently and exclusively pursued. 758

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A libel under Act Feb. 28, 1793, § 32, need not specify the particular trade in which the vessel was engaged at the time of the seizure. 454

A canal boat without motive power of its own, towed through a canal by horses, and on navigable waters by a steamer, does not come within Act Feb. 18, 1793, in relation to vessels employed in the coasting trade. 219, 494

The exception in section 42, Act Aug. 30, 1852, applies to a vessel built and used as a ferryboat, and employed one day only in carrying passengers three miles distance to a state fair. 386

A steamboat employed in transporting passengers between ports in the same state is not within the inspection law of August 30, 1852. 1021

A passenger steamer navigating the Ohio river between Pittsburg and Gallipolis, having but one licensed pilot on board, the captain acting also as pilot, has not the number of pilots required by law. 986

The captain may temporarily supply a deficiency in the complement of pilots which arises during a voyage without his consent, fault, or collusion, but he cannot begin a new voyage with a deficiency. 986

A master who, without being licensed, performs the duty of pilot to make up the required number, is liable to a penalty of $100 (Act Aug 30, 1852), besides subjecting the boat and its owners to a penalty of $500 (Act July 7, 1838, § 1.). 986

Where a mate appointed master in a foreign port knowingly sails with a larger number of passengers than that allowed by law, he is liable for the fine of taking an excessive number of passengers on board, though the agreement of shipment was made by the former master. 4

The penalties provided for by the passenger act of 1848 can only be recovered by an action of debt on the common-law side of the court. 89

SLAVERY.

A slave charged with simple larceny is to be tried and punished by a justice of the peace. 1080

History and construction of the statutes in relation to slave trade. 78

Construction of Act May 10, 1800, in relation to the transportation of slaves from one foreign place to another. 1158

Act April 20, 1818, § 1, does not apply to a case of a colored person born and reared within the United States sailing to a foreign port or place on an American ship, and returning to a port of the United States. 218

Sufficiency of indictment founded on the slave trade act. (April 20, 1818, c. 86, §§ 2, 3.). 1167

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Prosecution and punishment under Maryland acts for enticing a slave to run away. 625

Quære. Whether an indictment will lie at common law for enticing away a slave. 590

Sufficiency of indictment under Act Md. 1796, c. 67, § 19, for giving a pass to a slave. 625

Congress has power to pass the acts of 1793 and 1850, providing for the rendition of fugitive slaves. 990

A member of a vigilance committee formed to prevent the arrest of a fugitive slave is liable for aiding, assisting, and abetting in his escape. 918

On a prosecution for aiding in the escape of one arrested under lawful process as a fugitive slave, it is not necessary to show that he actually was the slave of the person at whose instance the process was issued. 918

The rendition of fugitive slaves under the acts of 1793 and 1850 is an executive, and not a judicial, proceeding, and trial by jury is not necessary therein. 990

STATES.

On the admission of a state into the Union, the United States parts with jurisdiction over land owned by them therein, so far as the general purposes of government are concerned, except as to such jurisdiction as is expressly reserved and accepted. 1288

Jurisdiction which a state has once exercised cannot be withdrawn from it, and conferred on the general government, without the consent of the state. 1288

STATUTES.

Where a statute of the United States makes any provision upon a subject within the scope of the powers of the general government, the state laws upon the same subject cease to operate. 23

Where any part of a state law is not applicable to the case at the time of the enactment of an act of congress referring to the laws of the states as rules of decision, the whole statute is inapplicable. 23

The title of an act of congress, when at variance with its provisions, will not be considered, except to explain doubtful meanings. 709

A penal statute will not be given a retroactive effect unless the intention is clearly expressed. 1296

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In the construction of a penal statute an offender who is protected by its letter cannot be deprived of its benefit on the ground that his case is not within the spirit and intention of the law. 684

Repeals by implication are not favored, particularly in revenue laws, and will be only held to exist when the repugnance is positive, and then only to the extent of such repugnance. 303

The provision in a subsequent act providing a limitation for a prosecution, "any law or provision to the contrary notwithstanding," repeals prior provisions on the same subject. 546

Where a subsequent statute expressly substitutes a different tribunal to determine a question, it impliedly repeals the former statute. 244

The repeal of a statute pending proceedings to enforce a penalty or forfeiture under it will bar further proceedings, where there is no saving clause. 1089

Where a statute makes it a felony to steal the notes of any particular incorporated bank, the act of incorporation becomes a public statute, and may be proved by the statute book. 595

The unwritten law of a foreign government may be proved by parol evidence, hut the written law can only be proved by itself. 359

The statutes of England may be proven by the printed publications thereof obtained from the queen's printer. 276

The construction of a foreign statute by those whose duty it is to apply and administer it will be followed, unless it appear clearly that it has been misinterpreted. 1062

SUBROGATION.

Where a debtor gives his co-debtor a mortgage to secure the latter against the debt of their creditor, the mortgagee will be considered in equity a trustee for the creditor. 1358

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TERRITORIES.

Act July 20, 1868, imposing a tax on distilled spirits, being a general act, and passed since the acquisition of Alaska, is in force there. 1021

TRADE-MARKS AND TRADENAMES.

The fact that the eagle is the national emblem of the United States does not prevent its appropriation by private parties for use as a trade-mark, especially when there is but slight resemblance in the figure of the eagle so used to that of the national emblem. 1303

The right of the proprietor of a trade-mark to its exclusive use, and to protect and enforce such right by proceedings in chancery, exists by virtue of the common law, and independently of the trade-mark acts. 875

A person cannot imitate the trade-mark of another by using any of its prominent and distinguishing words, where calculated to deceive the cautious and careful purchaser. 875

The certificate of the commissioner of patents as to the registration of a trade-mark *held* admissible in evidence under Rev. St. § 4940, and prima facie evidence of proper registration. 1303

TREASON.

The going from the enemy's squadron to the shore for the purpose of peaceably procuring provisions for the enemy is not an act of treason; otherwise where provisions are carried towards the enemy with intent to supply them, though such intention is defeated. 628

TRIAL.

See, also, "Continuance"; "Criminal Law."

The construction of the federal constitution by the supreme court is binding on the jury as well as the court. 1063

The constitutionality of an act of congress is not a proper subject for the consideration of a jury. 1065

If a contract is to be made out through a correspondence, the question of its construction is one for the court, regardless of its extent. 1046

Where, after a jury is sworn, it appears necessary to examine and determine accounts between the parties, the jury will be discharged, and the case sent to an auditor. 895

The court has no right to give the jury any direction upon questions of fact, but should call their attention to particular points, and observe upon the tendency, force, and comparative weight of conflicting testimony. 958

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A verdict is nugatory in so far as it finds facts not put in issue by the pleadings. 255

Under Act Sept 24, 1789, § 32, the court may give judgment as the right appears, without regarding any imperfection or want of form in the verdict. 663

Where a cause of action against three is joint and several, and two join in their plea, and the other pleads severally, but no finding is made as to one of those pleading jointly, it is no ground of arrest of judgment against the other. 217

TRUSTS.

A broker for an army paymaster, who accepts his official checks in payment for stock transactions, is charged with notice of the trust which a suitable inquiry would have revealed, and is liable to the government for property thus embezzled. 585

UNITED STATES.

On the admission of Kansas into the Union, jurisdiction within forts of the United States within the state was not excepted, and the consent of the state is necessary to the exercise of federal jurisdiction therein. 1288

A suit prosecuted in the name and for the benefit of the United States will not be recognized in the federal courts unless they are represented by the district attorney, or someone designated by him. 1350

No property belonging to the United States can be disposed of except by authority of an act of congress. (Const, art. 4, § 3.). 149

A contract made with the secretary of the navy cannot be rescinded by the chief of the bureau having charge of such contracts. 1046

The acts giving the United States preference in cases of insolvency will not be so construed as to destroy prior legal liens. 1065

An assignment, to entitle the United States to their priority (Act March 3, 1797, § 5), must be an assignment of all the debtor's property, but it need not be for the benefit of ail his creditors. 6

The United States is not entitled to a priority, under Act 1799, c. 128, § 65, out of funds in the hands of assignees, unless there be a general assignment by the debtor of all his property. 32

An assignment by partners of all their effects for the payment of their debts, for which the partnership estate is inadequate, is an act of insolvency which will give the United States preference in the payment of their debts against the firm or its members. 1056

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The fact that a creditor gave up his intention of levying in consideration of a general assignment in trust, first to pay his claim, and then the debt of the United States, will not prevent the assignment being fraudulent and void as against the United States. 6

WAR.

See, also, "Limitation of Actions"; "International Law";"Neutrality Laws"; "Prize."

The power of making war is exclusively vested in congress, but the president has power to repel invasions by hostile forces, even when congress has not declared war. 1192

The condition of peace or war, in a legal sense, must be determined by the political department of the government and the courts are bound by that decision. 284

The conditions of war and peace are purely for political determination, and courts will not take judicial notice that hostilities of the late Civil War ceased, and peace was restored, by the surrender of any particular army. (Reversing 324.). 325

The prescriptions of the federal government impose no legal or moral obligation, and obedience is justified only on the ground of deadly coercion by violence or threats. 325

The principle of the law of nations, that where a war exists between two distinct and independent powers there must be a suspension of all commercial intercourse between their citizens, is not applicable to the war of the Rebellion. 1087

Assumpsit will lie by the United States, after the return of peace, to recover against a person indebted for money had and received to one of the insurgent state governments, as on a common-law obligation. 1163

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Under Act July 13, 1861, and the president's proclamation in pursuance thereof, citizens of the rebellious states prima facie become, for purposes of commerce, quasi enemies, and cannot sue in the federal courts.	292
A granting of a license to trade by the secretary of the treasury restores the standing of the grantee, so as to enable him to be heard in the federal courts.	292
Every inhabitant of a state in rebellion during the Rebellion is considered as an alien enemy, and incapable of appearing in a federal court as a claimant of property libeled therein.	334, 335
In determining the status of rebel persons and property, the federal courts are guided by municipal, and not by international, law.	292
The concession of belligerent rights by the government of the United States to the Confederate States did not operate to suspend the revenue laws, so as to relieve goods imported in a port under control of the insurgents from the payment of duties to the United States.	1293
Nor was such effect produced by the proclamation of April 19, 1861, declaring a blockade of certain ports.	1293
Upon a libel of information to condemn certain railway shares of an alien enemy, the railway company cannot become a party without showing that it is the true and bona fide owner, and that no other person is the owner of the property in dispute. (Admiralty rule 12.).	335
The confiscation act (Aug. 6, 1861) is constitutional, and applies to real estate.	781
A forfeiture of property is imposed by Act Aug. 6, 1861, only where it is employed, with the knowledge or consent of its owner, in aid of insurrection.	337
A federal district court in New York cannot acquire jurisdiction in rem to declare a forfeiture under the confiscation acts of August 6, 1861, and July 17, 1862, of shares in the capital stock of an Illinois corporation.	337
Under such acts the proceedings to condemn enemy property when seized must conform to the proceedings in admiralty and revenue cases.	337
An alien enemy has a right to appear as claimant, and to answer and defend the suit under such acts.	337
Act July 13, 1861, is not a penal, but a revenue, statute, and is to be construed liberally, so as to accomplish its proposed object.	284
Goods are "proceeding to" the interdicted port (Act July 13, 1861), and the shipper is guilty of an "attempt" to transport them in violation of law	284

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(Act May 20, 1862), when he procures a permit by the use of fraudulent invoices.	
A license to trade in the rebellious states, obtained through error, mistake, or fraud, will not prevent the forfeiture under Acts July 13, 1861, and May 20, 1862, the same being prohibitory acts.	292
Merchandise at sea, consigned to merchants in an insurrectionary state, but assigned to creditors in New York, to cover previous advances, three days before the proclamation of August 16, 1861, and passing into the custody of the assignees on its arrival, *held* not subject to confiscation.	271
A sale of contraband property by a citizen of one belligerent country to a citizen in the other belligerent country is a breach of allegiance.	284
The mere existence of a law prescribed by an insurrectionary government in itself is not sufficient to justify a sale to it, and prevent a forfeiture of the property sold, under Act Aug. 6, 1861, (Reversing 324.).	325
In a proceeding under Act Aug. 6, 1861, to forfeit an interest in a vessel, the pleadings and proceedings are subject to like rules as in ordinary cases of prize of war; and the mere charge of the offense is all the specification that need be made in a libel alleging that the property was seized as prize.	527
A pardon and amnesty do not annul past transactions, so far as to invalidate a previous judicial confiscation and sale of a claimant's property.	1097
Forfeitures incurred under Act July 13, 1861, during the continuance of hostilities, might be enforced afterwards.	1329
Forfeitures declared under Acts July 13, 1861, § 5, Aug. 6, 1861, May 20, 1862, July 17, 1862, can only be enforced by seizure of the property.	1329
The establishment of the provisional court for Louisiana by the president, as commander in chief of the forces of the United States, while they held the territory in which it was to exercise its functions, was an act warranted by the law of nations.	768
Such court continued rightfully to exercise its functions so long as its commission remained unrevoked, and the power of the United States continued to support it in the exercise of them.	768
The agreement of capitulation between Generals Sherman and Johnston was a mere military parol, terminating with the war, and the persons included were liable to arrest for treason after the war.	911
The seizure of enemy property by the United States as prize of war on land, jure bell, is not authorized by the law of nations, and can be upheld only by an act of congress.	337, 1329

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WASTE.

The working of a gold mine is the taking away the substance of the estate. 416

A court of equity will, in some cases, enjoin the removal of the fruits of past waste. 416

On a motion for injunction to enjoin waste, complainant, on bill and answer, cannot read affidavits in support of his title. 416

WITNESS.

A person convicted of an infamous crime is restored to competency by a pardon. 918

On a joint indictment of three persons for a riot, where one only is put upon trial, the others, who have forfeited their recognizances, cannot be examined as witnesses for him. 918

Free-born negroes, not subject to any term of servitude by law, are competent witnesses in all cases. 20

A slave is a competent witness for a free black man on a criminal prosecution. 1072

A slave is not a competent witness for a free mulatto in a public prosecution. 1379

Competency as a witness of a negro generally reputed to be free. 79

The wife of the owner of stolen goods is not a competent witness for the prosecution, unless the husband has released to the United States his share of the fine. 1072

The owner of goods stolen by a slave, being entitled to one-half of the fine, is not a competent witness for the prosecution. 794

The person whose name is forged may testify for the prosecution under a charge of forgery. 479

The person defrauded is a competent witness for the prosecution upon an indictment for the fraud. 595

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Upon an indictment for usually, the borrower, is a competent witness for the prosecution, if he has paid the money, and be not the informer.	18
An informer is a competent witness, although he may receive part of the penalty.	464, 465
A person who has been convicted of a conspiracy to defraud the creditors of an insolvent debtor is incompetent as a witness.	595
Upon an indictment of a husband for assault and battery upon his wife, the wife may testify for the government.	1131
A particeps criminals, where the statute of limitations has run in his favor, may be compelled to testify against the defendant.	1158
Jurors should not disbelieve a witness unless for good reason.	1312
A witness is not bound to answer the question whether he sold certain stolen goods to defendant.	5
In a criminal prosecution, the officer who apprehended defendant will not be compelled to disclose the name of his informant.	5
Persons who are material as witnesses for a party in a federal court may be compelled to appear, though they are members of the cabinet of the president of the United States.	1192
Quære: Whether an attachment should issue for refusal of federal cabinet officers to obey a subpoena in a case where their testimony would not be legally admissible.	1192
The power to issue an attachment to punish a person for failure to obey a sunpæna is incident to courts of justice.	1192
Where a witness living in another state and district fails to obey a subpæna, and an attachment is issued for him, such attachment should be directed to the marshall of the court issuing it.	602
Where a witness arrives before services of an attachment for not attending, and makes a reasonable excuse, the attachment will be countermanded on payment of the costs of issuing it.	975
An attachment for contempt for not attending must not be served in the court-house.	975