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Stockholders of an insolvent corporation who are also creditors cannot be allowed to deduct the amount due them from their respective proportions of the unpaid capital. 1189

—Procedure.

The absence of a claimant, which will render a proof of debt by an agent admissible, must be "from the United Sates" nor will the oath of an agent that he is better acquainted with the facts than his principal render the deposition of the agent alone admissible as proof of debts. 1129

Proof of debt may be made by an agent who has had exclusive charge and control of the same, and knows personally all the facts required to be sworn to in proving it, the creditor himself having no personal knowledge of the facts. 419

A claim is not duly proved, and must be rejected, unless it appears from the statement of the deponent thereto that a debt exists which the creditor has a present right to have paid out of the bankrupt's estate. 127

Proof of a debt in the case of a bankrupt firm should show with reasonable certainty whether it was contracted by the firm or the individual partners. 127

Proof of a debt against a partnership should not be joined with proof of a debt against an individual partner. 127

The court will not grant leave to withdraw a proof merely for the purpose of allowing a creditor to continue an arrest of the bankrupt which was made before commencement of the proceedings in bankruptcy. 1154

Objections to proof of a claim must be made by written allegations, specifying with reasonable certainty the ground of such objection. 125

Payment of debts: Priority: Dividends.

Where the same partners carry on the same business at different places, under different partnership names, there are not two distinct firms. The assets of both nominal firms are equally applicable to the payment of all the creditors of both. 1329

Where property once belonging to a partnership has, by a bona fide contract, ceased to be partnership property, and become the separate property of one of the partners, who afterwards becomes a bankrupt, the partnership creditors are not 1238

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entitled to any preference over the bankrupt's individual creditors in relation to such property.	
The partnership creditors have a preferred claim against the assets of a bankrupt firm, and the separate creditors have a preference against the separate assets.	266, 1321
A fund recovered in virtue of the rights of the bankrupt's creditors generally must be distributed to them generally, and not given to one.	1020
Debts arising out of internal revenue bonds, signed by the members of a firm as sureties, are not entitled to the priority of the United States out of the firm assets, but only against individual assets.	493
Costs: Fees: Disbursements.	
The allowance of reasonable compensation to the assignee for his services is discretionary with the bankruptcy court. Rev. St. § 5099	962
Assignees intending to charge for services beyond the fees mentioned in Rule 30 must notify creditors of their intention in the notices of the meeting at which their account is to be presented.	962
Counsel for assignee allowed $350 for services .	301
The trustee authorized to pay to the sheriff $50 for the care and protection of property levied on from the time of obtaining the judgment, which was subsequently set aside.	1325
Where it appears that attachment proceedings were merely auxilliary to the bankruptcy proceedings, the costs and expenses thereof will be allowed.	160
The omission of the attachment creditors to commence proceedings in bankruptcy is not sufficient to rebut the positive averment in their petition that the attachment proceedings were not taken to defeat the operation of the bankrupt act.	160
The expenses of creditors in attending the first meeting of creditors disallowed.	160
The charges of a deputy sheriff for attempting to arrest the debtor, for which there was no apparent necessity, disallowed.	160
The costs and expenses of the bankruptcy proceedings are entitled to. priority of payment out of the funds in court derived from the sale of the property.	1030
A creditor's petition for an adjudication of bankruptcy is the same as a creditor's bill against a deceased insolvent. All creditors must contribute pro rata to the expenses of the suit. Whether counsel fee shall be allowed as well as the measure of such fee rests with the court, and is a question addressed to its equity.	1324
There must be some positive and unequivocal act of acceptance before the assignee will be *held* liable on a lease of the bankrupt.	307

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If the assignee occupy leased premises after the day of adjudication, he, and not the estate, is liable for the rent. When, however, his occupancy is for the benefit of the estate, he will be credited by the rent he is obliged to pay. 494

Where the assignee holds a store for the purpose of keeping and storing the goods of the bankrupt until they can be sold, the rent is chargeable as a part of the assignee's expenses . 132

The assignee is not bound for the rent in a lease of premises used for the storage of the bankrupt's goods of which, he had no knowledge. 307

Where a lease of premises made by the bankrupt is not accepted by the assignee, he is not liable thereon, but if the premises are used by him the estate will be held liable for the value of such use. 877

Discharge—Proceedings to obtain.

The application for a discharge must in all cases be made within one year from the adjudication in bankruptcy. (Act 1867, § 29.) 423

Where the delay is not sufficiently accounted for, the application will be dismissed. 423

Where there is no opposing counsel, on an application for discharge made more than two years after the adjudication, and after Act June 23, 1874, and the assent of majority creditors has not been obtained, the court will refer the case to a register to report. 423

To entitle a bankrupt to discharge, the proceeds of his property to be delivered among his creditors must be equal to 50 per cent. at the time of the hearing of the application for the discharge before the register. 494

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Under the amendment of 1874, in any case where there were no assets equal to 30 per cent., if the bankrupt secured the assent of one-fourth of his creditors in number, and one-third in value, he is entitled to his discharge, without regard to the time when the debts were incurred. (Reversing 876.) 878

The pendency of a prior petition for discharge which was not seasonably made is no ground of objection to the jurisdiction of the court on a subsequent petition. 966

—Acts barring.

A discharge will be refused where the assent of a creditor has been influenced by the purchase of a debt of another creditor for more than its value by a relative of one of the bankrupts. 1068

Where the assent of a creditor is procured by a pecuniary consideration moving from a third person with no conceivable motive but to benefit the debtor, there is a strong presumption that the payment was made in behalf of the bankrupt. 1068

A pledge, payment, transfer, assignment, or conveyance made when a debtor's liabilities exceed his assets, and he has ceased to meet his indebtedness as it falls due, is an act of bankruptcy, and a sufficient ground for refusing a discharge. 230

Where members of a firm are also members of firms in a foreign country, which, being threatened with legal proceedings, mortgaged their property for advances to carry on their business and to secure payment of prior debts, *held,* that such transfers were not preferences. 966

Where a bankrupt, in pursuance of an arrangement with a certain creditor, omits his debt from his schedule, such creditor will not be permitted to object to the bankrupt's discharge on that ground. 921

A bankrupt who is a tradesman is not entitled to a discharge under the bankrupt act if he has not kept an invoice or stock book. 966

It is the duty of the court to refuse a discharge to the bankrupt where, upon an inspection of the record, it appears that he has done those acts which prevent his receiving a discharge, although no objections are interposed by creditors. 1253

—Scope and effect.

A judgment for tort is discharged under the bankrupt law. 1156

A bankrupt arrested under a ca. sa. issued upon such a judgment will be released by this court, even though the state court had refused so to do. 1156

A debt created by fraud is not affected by the discharge, although reduced to a simple judgment for money. 243

A stipulation between the parties after judgment, by which plaintiff waived his right to execution against the body of defendant, does not affect the question of discharge. 243

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A discharge of a member of a firm releases him from liability for his joint as well as his separate debts, and binds his partners. 1248

A plea of bankruptcy which sets out the certificate and discharge as required by section 4, Act 1841, is good. 1019

Prohibited or fraudulent transfers.

Where a petition is filed on March 14th, a payment theretofore made on November 14th will be held to have been made more than four months before the bankruptcy. 275

Charging notes or other obligations as they become due to a banker against the obligor's deposit account as customary, may become an unlawful preference on the bankruptcy of the depositor. 230

The mere fact that debtors had some time previously compromised with creditors at 45 cents on the dollar is not reasonable cause to believe that they intended, by suffering execution to be levied, to give the creditor a preference. 284

A bank which takes the checks of an insolvent firm is put upon inquiry by their nonpayment . 284

A trader is insolvent who is unable to pay all his debts in money as they become due in the ordinary course of business, without reference to the value of his property. 523

Inability of a merchant to pay commercial paper in the due course of business is insolvency. 287

Knowledge of the nonpayment of the commercial paper of a merchant at maturity furnishes reasonable cause to believe that he is insolvent. 287

Where an insolvent debtor allows a suit to proceed to judgment and execution with certain knowledge that it will effect a preference, he is guilty of suffering a preference. 287

A confession of judgment, followed by a seizure of the debtor's property upon execution, if made by an insolvent with a view to prefer the creditor, is an unlawful preference . 523

Where, on an exchange of property, the creditor receives property of much greater value than that surrendered by him, the transaction will be deemed a preference if an original transaction would, under the circumstances, be so treated. 228

If an insolvent debtor does an act which operates as a preference, he is presumed to have intended such result until the contrary appears. 523

A creditor has reasonable cause to believe his debtor insolvent when he has knowledge of such facts and circumstances as are calculated to put a prudent man upon inquiry. 523

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A fraud upon the bankrupt act is not necessarily what is popularly known as a "fraudulent act," but one by which its provisions are evaded or avoided. 523

A disposition of property by an insolvent debtor, not made in the usual and ordinary course of business, is evidence of fraud until the contrary appears. 523

If a creditor has reasonable cause to believe his debtor insolvent when he takes a preference from him, it is immaterial what he thinks or knows about the latter's intentions in giving such preference. 523

An attorney, with knowledge of the debtor's insolvency, defended a suit on a just debt, and he also obtained, as attorney for another creditor, a judgment by default against such debtor in a suit brought later, before judgment could be obtained in the prior suit. *Held,* that the attorney had reasonable cause to believe that the debtor intended to give a preference to the creditor in the later suit, and his knowledge was to be imputed to his client. 1174

Where a debtor is sued for a just debt, and interposes a groundless defense in such manner that another creditor, who brings suit later, is enabled to obtain a prior judgment and the appointment of a receiver, an intent to give a preference to the creditor in the latter suit must be inferred. 1174

Suits and proceedings in relation to the estate.

The United States district court has power to fully administer the bankrupt act. 434

The district courts in bankruptcy are authorized by summary proceedings to administer all the relief which a court of equity could administer under the like circumstances upon regular proceedings. 65

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The plenary proceeding common to suits in equity is not necessary in the exercise of the equity power of the district court in bankruptcy. 65

Notice of an application for an injunction in bankruptcy need not be given unless specially directed, the provision in Act March 2, 1793, not being applicable. 65

A suit by the assignee to collect debts or claims due to the estate must be brought within two years from the time when the cause of action accrued to the assignee. 57

Where the action was commenced within two years, but the assignee directed the clerk not to issue the summons, and it was not issued or served until more than two years from the time the cause of action accrued, the action is barred. 57

The assignee may recover at law or in equity, as the nature of the case requires, from a solvent partner what is due from him by the articles of copartnership. 1248

On the bankruptcy of the general partner in a limited partnership, where, under the local law, the special partner is liable for all sums drawn out by him, with interest, the assignee can recover from the solvent special partner the sums withdrawn by him during the continuance of the firm. 1248

The assignee stands in the position of an attaching or judgment creditor to impeach a chattel mortgage by the bankrupt as void under the local law. 704

Rev. St. § 5128, is not a penal law, and does not impose a forfeiture, and in an action thereunder after the amendment of June 22, 1874, to recover a payment made before March 14, 1874, it is sufficient to lay the payment as made within four months of the bankruptcy, and to charge that defendant had reasonable cause for believing that the payment was made in fraud of the provisions of the bankrupt law. 275

On awarding to the assignee the proceeds of an unlawful preference obtained by judgment and levy of execution, the sheriff was allowed legal fees and costs of suit, which were charged on the creditor. 287

The assignee will be allowed costs in a suit to set aside a conveyance as fraudulent, where the case was clear, and the creditor contested it to the end. 271

Review.

The review of an interlocutory decree of the district court in a suit to set aside an illegal preference can only be had by appeal under section 8. Act 1867, and cannot be had by petition for review under section 2 286

Arrangement with creditors: Composition.

Corporations, as well as natural persons, have the right to avail themselves of the provisions of the bankrupt law pertaining to composition. 531

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After a motion to confirm a compromise has been brought on for final hearing, the judge has power to refer the matter back to the register to report all the facts of the case touching the proposed compromise. 110

A resolution of compromise which is palpably opposed to the best interests of all concerned will not be confirmed. 531

In deciding a motion to confirm a resolution of compromise, the court will take into account the relations of the creditors favoring the compromise to the debtor, and the relative number of creditors whose individual opinions are expressed in person by the resolution, as compared with those who dissent . 531

In deciding whether a composition should be approved or rejected, it should be compared with what the creditors would receive through an assignee, not with what the debtor might possibly be able to pay them. 929

The objection that the estate could pay more will not avail unless very clearly made out, and the disparity is evident. 619

The fact that the schedules stated the real estate of the bankrupt as of unknown or uncertain value is not a good objection to a composition. 619

The decision of the majority creditors is conclusive as to the amount of the compromise where their judgment is exercised in good faith, and there is nothing to indicate fraud, accident, or mistake. 536

Though there are indicia of fraud in composition proceedings, the court should not refuse to record the resolution without giving the debtor and majority creditors an opportunity to be heard. 536

The presence and vote of a creditor who is not lawfully to be counted as such, in favor of a composition, will not nullify the proceedings unless the absence of his vote would change the result. 110

The satisfaction by the bankrupt of claims at large discounts, and the purchase by his brother of other claims, where the transactions are open, is no reason for refusing confirmation of the composition where two-thirds in number and amount of the other creditors consent to the composition. 110

BANKS-AND BANKING.

The safety fund law of Michigan, which prohibited all banks subsequently established from issuing notes except they are payable on demand, and without interest, applies to a bank charter granted on the same day. 572

And where notes are issued in violation of such law, they are void. 572

A cashier without special authority cannot bind his bank by an official indorsement of his individual note, and the onus is on the payee to show the cashier's authority. 831

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Under Act Mich. March 15, 1837, the directors are liable in their individual capacities in the first instance if the debts of the institution exceed three times the amount of stock paid. 1016

The directors are liable for all excess of debts above three times the amount of capital stock paid, and also for all deficits occasioned by the insolvency of the bank. 1016

A bank is answerable for the acts of its agent; and it is immaterial how notes get into circulation, if they come into the hands of the holder bona fide. 1019

If a director protested against certain loans at the time they were made, he is not liable, as director, in his individual capacity for such loans. 1016

Where the plaintiff seeks to make the directors liable for excess of loans, etc., the declaration must aver the amount of such excess. 1016

A plea to an action against the directors which avers the notes on which the action was brought were fraudulently put into circulation is no answer to the declaration. 1019

The proceeding by the bank commissioners under the statute is no bar to an action against the directors to make them personally liable. 1019

A bank which receives from a customer a box for safe-keeping, without any special compensation therefor, is liable for gross negligence only. 1008

One depositing in a bank without notice of its by-law that special deposits for safe-keeping shall be at the risk of the depositor is not bound thereby. 1008

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A bank which received a special deposit of a box for safe-keeping has the burden of showing that the loss thereof is not due to its fault. 1008

A bank which received a special deposit of a box for safe-keeping, though responsible therefor if it is delivered to a wrong person, or is lost or mislaid by the carelessness of an officer or employe thereof, in the course of business, is not responsible, proper care having been observed in the selection of officers and employes, if it is lost through any act of theirs not within the scope of their employment. 1008

Although, under the New York law, a corporation cannot interpose the defense of usury, a national bank which makes a loan to a corporation at a greater rate than 7 per cent. per annum forfeits the interest under Act June 3, 1864, § 30 1211

BILLS, NOTES, AND CHECKS.

It is not necessary that the various parties to a negotiable instrument should be different persons in order to render it a bill of exchange. 1226

A promise to accept a nonexisting bill of exchange, payable after date, and not after sight, taken by the holder upon the faith of such promise, amounts to an acceptance of the bill when drawn in favor of the holder. 1226

A note given for the assignment of the time of an apprentice, being for an illegal consideration, is void. 32

The blank indorsement of a bill of exchange passes all the interest therein to every indorsee in succession, discharged from any obligation which might subsist between the original parties, but which does not appear upon the face of the instrument itself. 1263

A transfer of a negotiable note and mortgage to the plaintiff, to indemnify him, he agreeing to transfer them if indemnified, *held* not a legal mortgage, but a conveyance in trust. 273

A foreign bill of exchange must be presented within a reasonable time, and what is a reasonable time depends upon the circumstances of each particular case. 67

The reasonable time within which a foreign bill of exchange; payable after sight, ought to be presented, must be determined with reference to the usage among merchants as to the delays in the negotiation and transmission of such bills. 72

A bill of exchange payable 60 days after sight; drawn in Havana upon London, need not be sent direct to London, and may be sent for sale to the United States. 67

A copy of the protest for nonacceptance need not accompany the notice of dishonor. 67

The question of the residence of the indorser, and whether the notice was sent to the nearest post office, will be left to the jury. 1089

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The usages of an office, as regards the service of a notice, cannot make that evidence which is in itself not so. 1031

If new notes are taken by the holder of a note, and time given without consent of the indorser upon the old note, he is discharged. 997

If the indorser of a promissory note accept an order from the indorsee for the amount of the note in favor of a third person, a subsequent attachment of the money in the hands of the indorser by a creditor of the indorsee will not avail him. 920

If a draft, not negotiable, be accepted by the drawee, with an agreement to pay the amount to any person to whom it is assigned, the assignee, alter notice, may maintain an action for money had and received to his use against the acceptor. 815

The right of action on a bill of exchange is complete by the nonacceptance, protest, and notice, and, where these facts are averred and proved, subsequent averments of presentment for payment, nonpayment, and notice thereof need not be proved. 67

In an action against the last indorser of a promissory note, it is not necessary to prove the prior indorsements. 1125

The maker of the note, having acquired the equitable interest of the assignor, may use it in his defense to an action at law on the note. 273

The difference of exchange cannot be recovered in an action on a promissory note, where there is no allegation in the declaration to cover the rate of exchange. 571

BILL OF LADING.

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

A bill of lading, in so far as it is a contract, cannot be affected by parol, though subject to explanation as a receipt. 626

A factor consignee who is in advance to the shipper acquires, by the execution and delivery of a clean bill of lading, a property in the goods, and a right to their delivery by the ship, which cannot be divested by any subsequent acts of the shipper and the master. 1155

Consignees under clean bills of lading are not bound by clauses in a charter party relieving the ship from the duty to properly protect the cargo. 1241

BONDS.

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

Where bonds contained a provision for semiannual interest "on the presentation of the respective coupons hereto attached, both principal and interest payable at the principal office of said company in the City of New York," *held,* that the coupons might be sued without previous presentation for payment. 261

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Pledgees of bonds payable to bearer hypothecated to secure a debt are legal holders, and are entitled to demand payment of coupons which "fall due before the maturity of the debt which the bonds were pledged to secure. 261

Where a suit on a bond is brought in the name of the obligee, it is not material to the obligor that he is not the person interested. 91

BOTTOMRY AND RESPONDENTIA.

It is essential to a bottomry transaction that the money lent should run the hazard of the voyage. 1288

The master may bottomry the ship for necessaries in a foreign port when he cannot procure the necessary means from the funds or credit of the owner, whether he has sufficient funds of his own on board to meet the expenses or not. 1288

Charleston, S. C, is, in respect to hypothecation, a foreign port to New York. 1288

A bottomry bond given by the owner of less than half interest in a vessel, but holding the legal title, covering the whole value of the vessel when only one-third of the sum was actually due, *held* fraudulent as against the other owner. 1285

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Where a bottomry bond covering the whole vessel is void in toto against a part owner of the vessel for fraud, it cannot be good in part against a purchaser from him, with knowledge that part of the debt secured by the bond was originally good. 1285

In an action to recover advances made upon a bottomry bond, it is necessary for the libellant to exhibit an account of particulars, and establish the necessity of the advances. 1288

BREACH OF MARRIAGE PROMISE.

The proper plea to a count on a breach of promise of marriage is "non assumpsit," and not "not guilty" and a plea of "not guilty" will be stricken out, on special demurrer, as bad. 1266

A plea of the general issue, in an action for breach of promise of marriage, may be treated as a nullity, under Rule 26, if not accompanied by the affidavit and the certificate required by that rule. 1264

A special plea in such an action may be treated as a nullity, under Rule 27, if not accompanied by the certificate required by that rule. 1264

Matter pleadable in bar in such an action, if intended to show that the plaintiff had no subsisting cause of action when the suit was commenced, can be given in evidence under the general issue. 1264

In such an action, evidence of acts of misfeasance, immediately connected with the cause of action, or evidence showing an equitable defense arising out of the cause of action, if admissible at all, can be given in evidence in mitigation of damages under a plea of the general issue. 1264

In such an action, matter, in a plea, which attributes to the plaintiff habits, disposition, temper, and acts in such wise as would warrant an action for libel against whoever should publicly make such charges by printing or writing, is irrelevant, impertinent, and scandalous, and will be stricken out on motion. 1264

CARRIERS.

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

A carrier which keeps a warehouse for the storage of goods until called for by the consignee is liable only as a warehouseman for goods stored therein after the carriage is ended. 1004

Where liquors in the hands of a carrier for transportation are seized, forfeited, and destroyed in conformity to the state law, the shipper cannot recover of the carrier. 669

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Articles which it is usual for persons to carry with them from necessity or convenience or amusement, and also money not exceeding a reasonable amount, fall within the term "baggage" 106

A gold watch and gold spectacles *held* necessary to the traveler's personal convenience. 106

CHARTER PARTIES.

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

Under a charter for the carriage of steerage passengers, providing that the charterers shall "find breadstuffs, berths, water casks, water and fuel," etc., the charterer is liable for all articles of diet, both during the usual voyage and while detained in a port of distress through springing a leak in a gale. 819

The giving of bond by the master conditioned to perform all the requirements of the British passenger act created no privity between the owners and the passengers, and did not, as between owners and charterers, impose on the owners a liability for victualing 819

The ship was liable, in such case, for the expense of landing and embarking the passengers at the intermediate port, and for housing them on shore, during the period of detention, while the ship was being repaired, this being a substitute for room on shipboard. 819

The charterers were liable for the reasonable and necessary cost of raising such money at the port of distress as was spent by the master for their account. 819

In a charter to carry a cargo of hides, the clause "the charterer furnishing the lining hides and bones for dunnage only" does not relieve the ship from the duty to properly protect the cargo. 1241

The owner of the ship who charters her to another tacitly agrees that she is in suitable condition for the use to which she is to be put. 703

A charter for a gross, sum to carry all lawful goods placed on board to the entire capacity of the vessel means all goads not contraband nor diseased, and as many as the vessel can in safety carry. 807

Where, before the ship is full, the cargo sinks her as low as is usual and proper without extra danger, the master may refuse to carry more. 807

If the vessel took on board in weight nearly double her measured tonnage, and was in good repair and well manned, she was not a defective or imperfect vessel, though she would not bear filling up entirely with cargo, most of which consisted of such heavy articles as saltpetre and linseed. 807

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A survey of the vessel by other sea captains, who report and swear to the truth of the result, is not conclusive as to her proper depth, but is a sound measure of precaution in a dispute between the master and the charterers. 807

The inclination of courts should be to sustain what seems prudent and watchful over life and property in such cases by a master, if it be done openly, after full notice of other party, and under circumstances not indicating either groundless timidity or selfishness. 807

Though the honest opinion of a competent master that he has taken on board all the cargo his vessel will safely carry is not absolutely binding on the charterer, it is entitled to very great weight, and can be controlled only by decisive evidence of a mistake on his part. 804

Freight contracted for in gross for a voyage out and return cannot be apportioned and recovered for a part of the cargo or a part of the voyage unless expressed in or implied from the contract. 807

Where the charter contains no exceptions as to perils of the seas, and the vessel, meeting heavy weather, puts back, and a part of the cargo damaged by sea perils is taken out and sold, and the balance is carried forward and delivered to the consignees under bills of lading excepting perils of the seas, no part of the charter money is recoverable. 1284

Where the freight on a cargo of flour out and a cargo of coffee back is to be paid at a certain sum per barrel on the flour, the charterer has no lien for freight on the coffee, purchased with the proceeds of the flour by one who took an assignment of the bills of lading for advances, except to the extent of the surplus. 496

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Where goods are landed at the wrong place by the master, and then reloaded, the expenses must be borne by him or the owners; otherwise, where landed at the request of the supercargo or agent of the charterers. 807

If there is a defect in the ship by which she becomes disabled, even though it may not be apparent upon examination, the charterer cannot recover the charter money, and he will be liable for damages occasioned by the defect. 703

CITIZEN.

A citizen of the United States cannot expatriate himself without the consent of his government; and no consent is to be implied from the policy of the United States to permit the naturalization of foreigners without inquiring whether their allegiance to their native countries has been dissolved. 1330

CLERK OF COURT.

The clerk is not bound by the acts of his deputy where not in the ordinary course of business. 616

COLLISION.

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

Nature of liability: Contributive fault.

Any negligence, inattention, or want of skill in the navigation or care of a vessel resulting in injury to others will entitle the sufferer to damages. 199

An error or fault of one vessel will not justify the other in inflicting an injury which she might, by due diligence, have avoided. 764

Where no fault can be found on either side, the collision will be deemed an inevitable accident . 181

A tow which is itself without fault is not liable for damages resulting from a collision caused by the fault of the tug. 797

Rules of navigation.

When two vessels are approaching each other, and the character and course of either cannot he determined by the watch on board, the vessel should be slowed or stopped until the character and course of the other can be ascertained. 169

Where vessels are approaching each other with berth enough to exclude the possibility of their coming together, porting the helm, under such circumstances may be a fault. 199

Between sail vessels.

Where two sailing vessels on opposite tacks are on crossing courses, the one on the port tack must keep away. 639

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A vessel sailing free *held* liable for a collision with one close hauled on a crossing course, which missed stays in going about, fell off, and went astern, and was struck by the former. 742

Between steam and sail.

The mere proof that a steamer collided with a sail vessel, unaccompanied with circumstances exonerating her, raises a prima facie presumption of fault in the steamer. 362,691

Where it is the duty of a steamer to avoid a sailing vessel, the onus is on the steamer to show, in case of collision, that the sailing vessel did not keep her course, or to show some other fault on the part of the sailing vessel that contributed to the collision. 772

The law casts upon the steamer the obligation of using effectively and promptly the extraordinary means she possesses to prevent a collision. 362

The steamer is in fault when, seeing a sail vessel and the danger of collision, she changes her helm in ignorance of the course of the sail vessel. 774

The law requires a sailing vessel in a narrow channel to beat out her tack, and to come about with all possible dispatch on the other, leaving to an approaching steam vessel the responsibility of being in a position to enable her to do so without danger. 1087

A sailing vessel in Hell Gate cannot be asked to check her headway to enable a steamboat to pass her at Hallett's Point. 1087

The steamboat cannot be excused for holding her way upon the hypothesis and belief that the sailing vessel cannot, with safety to herself, keep her tack, but must go about or come into the wind before they meet. 362

when a steamer sees the green light of another vessel directly ahead, it is nearly certain that, if both keep on their courses, there can be no collision, and, in such case, starboarding by the steamer, out of abundant caution, though unnecessary, is not reprehensible. *691

Where the change of course by the sailing vessel is made under impending danger, and in extremis, the steamer is responsible for it. 772

Between steam vessels.

The general rule of navigation is that where two steamboats are approaching each other in opposite directions it is the duty of each to port her helm and pass to the right. 335, 338

The rule which requires two steamers approaching each other to port their helms, and so pass on the starboard hand, must be acted on when there is any possible chance of collision by keeping their courses. 894

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It is not enough for the party who departs from the Rule to show that they would have gone clear if each had kept its course; he must also show the other party ought to have perceived there was no possible chance of collision by so doing.	894
Where steam vessels are approaching each other, and from the darkness or fog there is the least uncertainty as to the course, or position of the other, it is the duty of each instantly to check her speed, and then, if necessary, to stop and back.	199
Overtaking vessels.	
The overtaking vessel must avoid the vessel ahead, but the latter must not suddenly change her course, so as to embarrass the vessel behind.	855
A sail vessel will be *held* in fault for a collision with an overtaking steamer, where the latter took due precaution to avoid a collision, but the sail vessel failed to run out her tack, and came in stays just after crossing the steamer's bows.	477
Vessels moored, etc.	
A large vessel which places herself outside a small one in a slip, and refuses to move to let the other out when the weather becomes such as to make her position dangerous, is liable for the injury inflicted.	121
The fact that it would be necessary to run a line across the slip temporarily, which is forbidden by ordinance, will not excuse the larger vessel, as the spirit of the ordinance would not be violated in such an emergency.	121
A pilot boat at anchor is not required to show a white light at her masthead, and a flare-up light every 15 minutes (article 8), but must show the white light in a globular lantern provided for by article 7	148

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A tug anchored at night without a light inside a boom used in a channel for the protection of dredging vessels will be *held* in fault where she is injured by collision with a schooner navigated with due care, and having no notice of the boom. 1281

Tugs and tows.

In the case of a raft towed by a steamer, the steamer, and not the raft, will be *held* liable for damages for a collision. 855

A floating derrick without motive power, moving in tow of a tug, *held* free from fault where she drifted against a vessel moored at a dock. 1410

A tug acting under the direction of a naval officer *held* not liable for a collision of a floating derrick in tow drifting with the tide against a vessel moored. 1411

River and harbor navigation.

If a steamer, owing to any cause, cannot see its way clear in entering a harbor at night, it is its duty to stop. 166

A steamer entering the harbor of Chicago at night at a speed of four miles an hour *held* in fault for collision with another steamer, in the act of turning just above a bend in the river, for too great speed. 166

A steamer, in entering the harbor of Chicago, which attempts to pass in a narrow place between a schooner ahead and a pier without any considerable abatement of speed, will be *held* in fault for an ensuing collision. 180

A steamer must slacken her speed when passing through a fleet of sail vessels anchored at the mouth of a river at night. 181

On the western rivers, the ascending boat may indicate a preference as to her course, and descending boat is bound to conform thereto. 764

Speed: Fogs.

A rate of speed in steamers which, under the circumstances, necessarily endangers the property of others, is unjustifiable, and makes the owners responsible for the consequences. 181

If the night was either so dark or so foggy that the steamer, by slowing, stopping, and backing as soon as she discovered the schooner, could not avoid the collision then the steamer was moving at too great a speed. (Affirming 770.) 774

Lights: Signals, etc.

Vessels approaching each other, and seeing the lights of each other, not only have a right, but are bound, to assume that the lights seen are properly set and screened. *691

A boat which has missed its landing in a fog, and is turning around to return to it in the fair way of other boats navigating the river, should blow three whistles, as provided in Rule 10 of pilot rules. 88

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Lookouts; officers, etc.

A schooner running in a harbor under shortened sail to anchor in a wind so violent that she was unable to keep her side lights burning is in fault in not keeping a vigilant lookout. 148

The lookout of a steamer must be a person who makes the lookout his exclusive business, and he should be stationed at the forward part of the vessel, and not in the wheelhouse. 199

The mate who has command of the deck is not a sufficient lookout. 199

The absence of a lookout justifies a prima facie presumption of fault, and makes it incumbent on the party against whom the presumption arises to repeal it by clear proof that the fault was on the other side. 764

Particular instances of collision.

Between brig and schooner, where the latter, being closehauled on her starboard tack, was *held* solely in fault for a change of course after the brig had taken proper measures to avoid her. 709

Between steamer and schooner in daytime, where former was *held* in fault for absence of lookout. 583

Between steamer and schooner at night, where the latter was *held* solely in fault, having, by changing her course, thwarted prudent and proper measures which the steamer had taken to avoid her. (Reversing 685.) *691

Between steamer and schooner, where the former changed her helm in ignorance of the latter's course, and was *held* solely liable. 770,774

Between steamer and brig in English channel in fog, where both were *held* in fault, the former for running 8 miles an hour, the latter for failure to continually blow her fog horn. 828

Procedure.

A libel may be maintained jointly against a tug and tow for an injury inflicted by a collision of the tow with another, vessel; and the fact that one of these vessels may be found on the evidence to be free from blame does not vitiate the libel as against her co-defendant. 1412

A libel to recover damages to a vessel struck, while moored at a dock, by a moving vessel, need not set out in detail the movements of the colliding vessel; nor, being incapable of movement herself, need she allege any matter in excuse of her own connection with the accident. 1412

Omission of the libel to state facts in relation to the course and position of the vessels, made cardinal points at the hearing, is faulty pleading. 639

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In the case of a collision between a steamer and sail vessel, fault of the latter in an attempt to come about abruptly, and falling off and drifting against the steamer, is not admissible under an answer alleging fault in holding her course when she should have come about. 362

Where defendants are not in fault, they may, by cross-libel, set up the damages they have sustained, and have a decree in their favor. 199

The presumption is against the proper management of a vessel whose pilot was not a licensed pilot, and had never before acted in that capacity. 335

On a libel by the owners of a steamer against a steam vessel, the libelants must not only show fault in the sail vessel, but that they took all precautionary measures to avoid the danger to which she was exposed. 181

Protest of the captain and crew, made the morning after the collision, is admissible as corroborative testimony when it corresponds with the testimony of the witnesses. 181

The testimony of a witness should not be rejected because, in a hurried conversation immediately after the collision, he gave a different statement as to a particular fact from that positively sworn to in court. 181

Where there is a doubt on the evidence, the doubt will be construed against the vessel which was not properly officered and manned. 338

Evidence of conversations with the crew of the injured vessel, where inconsistent with their cotemporary act, and denied upon the stand, are entitled to but little weight. 1087

The testimony of persons on board a vessel respecting their own acts will be considered as outweighing the statements of persons on the other vessel. 1087

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A tender or offer of payment relied on to bar costs should be set up in the pleading, and should be a continuing offer. 123

Where each party had made an offer of settlement, libelant is entitled to costs where he recovered more than he was offered, though much less than he had demanded. 123

Where a libel which fails to convey any idea of the manner in which the collision occurred is not excepted to, and is dismissed at the hearing, no costs will be given. 269

Rule of damages.

The compensation for injuries to a vessel caused by collision is to be determined by the market price or value of the services of the vessel for the time during which she is detained from her business for repairs. 266

The full amount which she might have earned should not be allowed as compensation for time lost. 855

The owner of a yacht, for his own use, may recover, as damages for the loss of her use while repairing, the price at which he could readily have let her for pleasure parties. 123

The party repairing should show positively that he has only reinstated the vessel in the condition she was before the collision. 855

Full charges for repairs should not be allowed when the boat was old and somewhat decayed. 855

The injured vessel is not bound to employ, to make repairs, the persons recommended by the owners of the vessel in fault, and offers to make repairs made after others are employed are not conclusive as to the amount of recovery. 583

Where a vessel has been released on stipulation for her value, the amount of damages recoverable cannot exceed her actual value, though the bond is for a greater sum. 642

Division of damages.

Where a collision occurs from inevitable accident, without the negligence or fault of either party, each should bear his own loss. 181

Where one vessel is clearly at fault, and the evidence leaves it doubtful whether the other was at fault, the damages will not be divided. 180

Review.

The decree will be reversed where there is a direct conflict between the testimony of the crews on the colliding vessels, and the testimony of witnesses on other vessels is opposed to the finding of the lower court. (Reversing 639.) 638

COMPOSITIONS.

See, also, "Bankruptcy."

Page

A secret promise to pay one creditor a greater per cent. than another will not vitiate tie composition where each creditor is separately compounded with. 997

COMPROMISE.

See "Bankruptcy"; "Compositions"; "Payment."

CONFLICT OF LAWS.

The transfer of personal chattels is governed by the law of the owner's domicile if the contract of transfer was made there, though the chattels may be, at the time, in another state, by the laws of which the transfer would be void. 1142

CONGRESS.

The power given by congress to the corporation of Washington to pass by-laws for the government of the city is not a delegation of the power of exclusive legislation given to congress by the constitution of the United States. 345

CONSTITUTIONAL LAW.

The provision that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states does not apply to corporations. 294

Rev. St. § 1361, providing for the punishment by court-martial for offenses committed during confinement under sentences of court-martial is not in conflict with Const. Amend, art. 5 1232

An act making liens given thereby on certain property prior to all mortgages placed on the property subsequent to the passage of the act is not unconstitutional. 39

CONTEMPT.

See, also, "Patents."

The question whether a contempt has or has not been committed does not depend on the intention of the party, but on the act done. 303

Contempt is a conclusion of law from the act, and disobedience to the legitimate authority of the court is, by law, a contempt, unless the party can show sufficient cause to excuse it. 303

A party is guilty of contempt in parting with an alleged trust fund while the question of its disposition is pending before the court. 303

The master of a foreign vessel who refuses to obey a citation, and is sued in a suit by a seaman for wages, and confines him in irons on his return from court, giving as his excuse that our courts have no jurisdiction over him, is in contempt. 591

Where a person attached for contempt in failing to obey an order directing certain moneys in his hands to be brought into court has transferred all his property to a trustee in insolvency, he will be discharged. 303

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A person guilty of contempt for failure to obey an order in an action is not entitled to be heard on any motion, or to proceed in any manner, until the contempt is purged. 303

CONTINUANCE.

A motion for a continuance on account of absent witnesses will be overruled if the facts which the party states he expects to prove would not be admissible. 158

The court will not, on motion of the defendant, continue a cause because the costs of non pros, have not been paid. 862

CONTRACTS.

See, also, "Sale"; "Specific Performance"; "Vendor and Purchaser."

Mutuality is essential to the validity of a contract. 133

Where an illegal contract has been executed, a balance of account of moneys received thereunder can be recovered upon a new promise, the receipt of the moneys being a good consideration for such promise. 35

A promise in writing without consideration is void, but the burden of showing want of consideration is on the defendant. 431

A contract between a railroad company and a telegraph company that the former will allow no other telegraph company to construct a line along its road, is not inoperative, as against public policy. 791

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In equity, the court may give effect, upon equitable terms, to the valid part of a contract which is fraudulent in part. 944

The laws of a foreign country, where a contract is made, govern as to its obligation and its discharge. 553

Where two instruments are executed at the same time, between the same parties, relative to the same subject-matter, to effectuate one object, they are to be taken in connection, as parts of the same instrument. 1233

The construction of a written contract is determined entirely by the writing. 837

Every instrument is to be interpreted by a consideration of all its provisions, and Its obvious design is not to be controlled by the precise force of single words. 312

A payment in goods at "factory prices" means the prices at which such goods are sold at factories . 939

Construction of contract for sale of stock in a cotton compress manufacturing company and certain presses, where payments were to be made in installments. 897

Where a party creates a duty or charge against himself by express contract, he is bound to make it good, notwithstanding any accident, through necessity, as he may have provided against such in the contract. 729

The rule of damages for the nonfulfillment of a contract for the delivery of property is the difference between the price at which it was agreed it should be delivered and its actual market value at the time and place of delivery specified in the contract. 978

Where the word "penal" or "penalty" is used in a contract, it must be construed as being so intended by the parties, but where a sum named is called "liquidated damages," it will be *held* as a penalty if it seems from the contract that it was so intended by the parties, and the justice of the case requires such a construction. 978

CONVERSION.

See "Trover and Conversion."

CONVICTS.

See "Pardon"; "Witness."

COPYRIGHT.

A delivery of a copy of the book to the secretary of state (Act 1790, § 4) is a condition precedent to the right of copyright. *862

A delivery of 80 copies of reports, as required by the reporters act of 1817, is not a compliance with Act 1790, § 4 *862

In the United States there is no common-law right of copyright. The protection of authors rests exclusively upon the statutes expressly enacted by congress for that purpose. 863

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Some similarities and some use of prior works, even to copying small parts, are tolerated in some kinds of books, such as dictionaries of all descriptions, gazetteers, grammars, maps, arithmetics, almanacs, concordances, cyclopædias, itineraries, guide books, and similar publications. 511

A dictionary of flowers *held* not infringed by a much smaller dictionary on a different plan, copying 20 out of 148 definitions. 511

Where the violation is clear, and the part copied can be easily separated, an injunction is usually proper against that part. 511

In a suit in equity for the violation of a copyright, brought by the assignees of copyright, the assignments, although not recorded, are still valid a 3 between the parties, and as to all persons, like the defendants, not claiming under the assignor. 511

Where the bill alleged that plaintiffs are citizens of the United States, and this is not denied in the answer, it must be considered as admitted, although no other evidence of citizenship is offered. 511

CORPORATIONS.

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

Where the due organization of a company is disputed, the record of the organization, and not the oath of one of its officers, is the best evidence. 246

A contract made in behalf of a corporation by officers who have a secret interest therein is fraudulent as against the corporation, and may be repudiated by it, though long acted upon and recognized by the officers who made it. 211

The order for an appeal by a corporation need not be under its corporate seal. 345

Where an investment in stock by a corporation was ultra vires, the corporation will not be held liable as a stockholder. 1189

In a suit for the repayment of the amount paid for stock alleged to have been illegally issued, an injunction will not be granted restraining defendant from disposing of so much of its property as would indemnify plaintiff, where the moneys received from a sale of the stock had not been kept separate. 918

The equitable owner of stock who permits the holders of the legal title to manage the affairs of the corporation is estopped by their acts as to innocent person. 744

The person holding stock for the common interest of himself and associates will be restrained in equity from voting it in violation of the orders of an executive committee, appointed by the joint owners of the stock under a contract by which it is held for the common good. 1165

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A transferee of stock in a bankrupt company is liable to the assignee in bankruptcy in respect to such stock; but, where the transfer was not accepted by the transferee, the transferror alone is liable. 1189

A certificate reciting the ownership of bank shares "which are transferable at the bank in person or by attorney" means transferable only at the bank under cognizance of its officers. 1376

Where shares are transferable only at the bank, the bank is not liable to a purchaser who never applied for a transfer, where it permits their attachment as the property of the person in whose name they stand on the bank books. 1376

In the ordinary case of a solvent private corporation, there is no liability of the stockholders to pay the capital until an assessment, but, in the case of insolvency, payment is compellable at the suit of the creditors, though no assessment may have been made. 1189

The ordering of an assessment against the stockholders of an insolvent corporation is not essential to the existence of their obligation to pay the capital. 1189

Construction of provision in articles of association in relation to assessments upon stockholders and the method of payment. 1189

When a corporation refuses to bring a suit in a proper case in a controversy between classes of stockholders, a stockholder may bring such suit. 914

Sufficiency of complaint in action against directors of company in depressing market value of stock inducing plaintiff to sell at a loss. 580

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Under a statute declaring that, if any corporation shall neglect to carry on its business for sis months, its corporate powers shall cease, such neglect does not terminate the existence of the corporation as by lapse of time, out it is only a cause of forfeiture of which the state may take advantage. 85

The authority of directors to dissolve the corporation given by the majority stockholders under a statutory power to authorize the dissolution of the corporation, and the settling of its business and disposition of its property, and dividing of its capital stock, carries with it the incidental power to collect and distribute its assets and wind up its affairs. 83,85

A vote of the stockholders authorizing a dissolution does not of itself dissolve the corporation, nor compel the directors to do so, but the act of dissolution must proceed from the directors who alone can exercise the corporate powers. 85

A vote of the directors declaring the corporation dissolved only operates to prevent it from engaging in new business, and the corporation continues to exist for the purpose of collecting and distributing its assets and winding up its affairs. 83, 85

Corporations have no right to establish themselves or transact business in other states under the constitutional provision that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states. 294

COSTS.

It is discretionary with the court to allow or refuse costs upon reversal of a judgment of a justice of the peace. 210

If the court had jurisdiction of the cause when the action was commenced, the repeal of the law which gave the jurisdiction will not affect plaintiff's right to costs. 56

Where an injunction is refused, but the plaintiff still has a right to proceed at law if the plaintiff stipulate not to proceed at law, costs will not be awarded to either party. 501

Assumpsit will not lie for the costs of appeal against the person for whose use the appeal was prosecuted. 1365

Plaintiffs are not entitled to traveling expenses and fees for testifying in their own case. 290

Where the plaintiff's attendance is important, he will be allowed his travel fees for the several times when he attended. 933

Where the testimony of a witness residing in another state or country is necessary, his fees for actual travel and attendance from his place of residence are taxable. 933

A witness is entitled to his fees taxed during the whole time of his actual attendance during the trial, although the examination on both sides has been closed or the trial suspended by illness of counsel. 933

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COUNTIES.

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

Where the county court is authorized to issue county warrants of a prescribed form for all sums of money found due from the county, it has no implied authority to fund outstanding warrants by the issue of negotiable bonds. 1128

A recital in a railroad and bond that it was issued to pay for a subscription to a certain railroad will estop the county, as against a bona fide holder, to assert that the subscription was not made. 742

The same is true of a recital that the subscription was authorized by a two-thirds vote, as required by the constitution, and that the vote was duly taken. 742

It is no defense to a suit on coupons to county railroad and bonds that, intermediate the vote for the bonds and their actual delivery, the road had consolidated with another, and that such consolidation was unlawful. 293

COURTS.

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

In general.

Where a dispute exists between two independent countries as to the right of sovereignty over a particular territory, the courts of justice of each country are bound to consider the claim of their own government as rightful, it being a subject of political and diplomatic negotiation, and not of judicial cognizance. 1402

The rule of comity always observed by the justices of the supreme court in cases which admitted of being carried before the whole court was to conform to the opinions of each other, if any had been given. 312

Federal courts—Jurisdiction in general.

A proceeding under the right of eminent domain, to condemn land for a railroad, is not a case in which the state is a party, and the federal courts may have jurisdiction. 290

——Grounds of jurisdiction.

The court will not be deprived of its jurisdiction arising from the citizenship or alienage of parties by the joining of a mere nominal party, who does not possess the requisite character. 167

The circuit court has no jurisdiction of suits between citizens of different states, except where one of the parties is a citizen of the state where the suit is brought. 1015

The circuit court of the United States has jurisdiction of a suit in chancery commenced on behalf of an infant who is a citizen of another state against a citizen 1394

Page

of the state where the suit is brought, although the next friend of the infant complainant be a citizen of the same state with the defendant.

A bill to enjoin a judgment in the circuit court is not considered an original bill between the same parties, as at law, but as growing out of, and as auxiliary to, the suit at law. 1361

But if other parties are introduced, and different interests involved, it is to that extent an original bill, and the jurisdiction of the court must then depend on the citizenship of the parties, and one of the parties must be a citizen of the state where the suit is brought. 1361

There is no jurisdiction to entertain a bill to enjoin a judgment at law in the circuit court, brought by a citizen of Tennessee, not a party to the judgment, against a citizen of Mississippi, the plaintiff in the judgment. 1361

The circuit court has jurisdiction in equity in the district of Maine, over a respondent, a citizen of New Hampshire, found in its district, and there served with process, when all the orators are citizens of other states, and all the other respondents are citizens of Maine. 1165

A citizen of the District of Columbia is not entitled to sue in the circuit court of the United States. 709

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For the purposes of federal jurisdiction, a corporation is conclusively considered as if it were a citizen of the state which created it. 1377

If a company he incorporated by two states, a citizen of one of the states may sue it in a United States court in the other state in which it is incorporated. 914

A corporation organized in one state is not suable as a citizen of another state, under whose laws it has purchased, and is operating a line of railway therein. 1377

Under Act 1789, § 11, the assignee of a chose in action may sue in the federal court if the assignor might at the time suit was brought have there prosecuted the suit if no assignment had been made; and this, although the assignor was, at the time the assignment was made, a citizen of the same state with the maker. 1022

An assignee of a right to an account or the proceeds of sales of mortgaged property cannot maintain a suit in the circuit court of the United States, in a case where his assignors were not competent, on the ground of citizenship, to sue the defendants. 1269

A transfer of a note to a nonresident to secure a prior debt, made merely for the purpose of bringing suit in the federal court, will not support the jurisdiction of such court. 620

The circuit court has no jurisdiction, under Act 1789, § 11, of an action brought by an assignee on a bond which is filled up and declared upon as payable to order. *1028

In order to give jurisdiction to the circuit court of an action of an assignee of a bond under seal made equally negotiable with a promissory note under the local law, it must appear that the title, being made capable of passing by delivery, did so pass from the first taker after the act went into operation. *1028

The federal courts will not take jurisdiction of a suit between two aliens where the cause of action arose in their country. 141

A native-born American citizen carrying on trade in a foreign country, where he is domiciled, can maintain a suit as an alien against a citizen of the state of his birth in a federal court in said state. 1224

The federal circuit courts have jurisdiction of suits on marshals' bonds without reference to the citizenship of the parties. 844

—Circuit courts.

The circuit court of a state in which testator left real and personal property, and in which administration was granted, has jurisdiction of a bill for an account of trust funds received by testator for complainant, although testator died in another state, in which his will was proved. 7

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The circuit court has jurisdiction to review a judgment or decree of distribution made by the district court among various claimants of the informer's share in a forfeiture after condemnation and sale of the forfeited property. 872

A foreign corporation transacting business in a state, and amenable to the process of the courts of such state, is "found" within the state, in the sense of the judiciary acts, and may be sued in the federal courts therein. 1362

Act April 3, 1818, § 6, declaring that the original jurisdiction of the circuit court for the Southern district of New York shall be confined to. causes arising within said district, does not exclude jurisdiction of causes arising out of the state. 901

—District courts.

The district courts of the United States have a general admiralty jurisdiction in rem in suits brought by material men against foreign ships, and in cases of domestic ships where the local law gives a lien. 1130

Under Act May 23, 1872, the district court, sitting at Cleveland, has no jurisdiction to perform a judicial act in respect to a cause pending in the court at Toledo. 1400

—Administration of state laws.

The act of Ohio abolishing imprisonment for debt except in certain cases, having been adopted by congress, can only affect proceedings in a case subsequent to its adoption. 1180

Since the Illinois statute of February 16, 1874, the United States circuit courts in that state have, in proper case, jurisdiction of actions of forcible entry and detainer. 880

Such action is a "suit of a civil nature," within the meaning of the act of congress of 1789 (1 Stat. 73) 880

Where a state statute has received a construction by the supreme state courts, that construction is binding upon the federal courts. 1130

The court will follow the ruling of the district court of another state as to the construction of a state statute. 1015

An adjudication of bankruptcy having been held by the courts of Indiana to have the same effect upon the wife's claim to dower as a judicial sale of the husband's real estate, the federal courts will follow that Rule in regard to land in that state. 227

On commercial questions, the courts of the United States are not bound by the decisions of the state courts. 1402

The decision of the supreme court of the United States declaring a state statute valid under the state constitution will control the federal circuit court, as against a later decision by the supreme court of the state to the contrary. 742

—Procedure.

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Under a state law directing or authorizing all suits to be brought in the name of the real party in interest, such party has the right to sue in actions at law in the federal courts sitting in such state. 573

Under Act June 1, 1872, § 5, the provisions of the state statutes as to pleading and practice in purely legal actions are in the main applicable to such actions in the circuit court of the United States. 573

Local courts.

The orphans' court of the District of Columbia may adopt the practice of the court of chancery as to the manner of issuing commissions, or it may establish rules of practice for itself in this respect. 109

COVENANT, ACTION OF.

Only so much of the covenant as is essential to the cause of action should be set forth. 1204

Distinct breaches of separate covenants may be assigned in the same count. 1204

It is sufficient to assign a breach of the covenant according to its legal effect, or in words which contain its sense and substance. 1204

The performance of a condition precedent must be averred, but matters of defense need not be anticipated and negatived. 104

The plea of covenants performed with leave to give in evidence everything which amounts to a legal defense permits defendant to give in evidence anything which he might plead, and which, in point of law, can protect him from plaintiff's claim. 559

Where the covenants are independent, evidence under the plea of covenants performed with leave, etc., cannot be given of other breaches either by way of bar, offset, or in mitigation of damages. 559

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Where the covenants are dependent, the plaintiff cannot support his action as to them without showing performance of every affirmative covenant on his part, and in such case it is competent for the defendant to prove a breach of such as are negative. 559

CREDITORS' BILL.

In a proceeding to set aside a sale of real estate, the plaintiff must possess a judgment lien or lien by levy. 645

The objection that plaintiff has no lien is waived, unless taken in the answer. 645

Execution cannot be required as preliminary to a creditors' bill where at law the property cannot be reached. 1272

A proceeding in a state court by attachment, where a garnishee is summoned, cannot be set up in bar or abatement to a creditors' bill. 1272

The courts of the United States can take jurisdiction where property has been fraudulently conveyed to defeat creditors, and proceed under a state statute, where a judgment has been obtained, and execution has been returned nulla bona. 1272

CRIMINAL LAW.

See, also, "Bail"; "Extradition" "Pardon" "Witness."

A person arrested by military force for the violation of Act June 30, 1854, §§ 20, 21, is not a military prisoner, subject to the articles of war, but a citizen charged with a nonmilitary crime, and must be removed for trial by the civil authorities within five days from his arrest or discharge, and his detention thereafter under any circumstances is unlawful. 412

A person under arrest as above stated may be confined in the military prison, but he cannot be lawfully required to labor or perform any duty other than taking care of his person. 412

No person can be detained upon a commitment which does not show sufficient cause upon its face. 1316

CUSTOMS DUTIES.

Customs laws.

An act imposing additional duty on wool imported from certain places *held* repealed by a subsequent act which provides, "in lieu of the duties now imposed by law," certain specified duties on ah wool "imported from foreign countries." 366

Goods liable to duty.

Goods saved from a wreck and brought within the United States are subject to import duties, under Acts April 20, 1818, and March 1, 1823. 399

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An anchor and chain cable which is bona fide a part of the equipments and appurtenances of an American vessel is not, on being brought by her to the United States, subject to duty. 614

An anchor and chain cable purchased abroad to be bona fide a part of the equipment of a vessel must not have been purchased under a necessity occasioned by any fault of her masters or owners in not properly equipping her originally for the voyage. 614

Rates of duty.

A change which renders an article substantially different as an article of commerce, and adapts it to all the uses of another article, on which a higher rate of duty is levied, destroys its legal identity, and is a material change, under the revenue law. 1259

When the question is whether samples bore a particular name in commercial transactions, it is necessary they should have been so known generally, and not in particular places, to the exclusion of others, or to particular persons only. 1259

Act 1832, c. 227, § 2, cl. 25, includes all bindings, whether they are worsted or woolen. 1055

Cardboard, on which is imprinted in colors an ornamental design or pattern for the purpose of showing the method of embroidering the pattern upon canvas, is a manufacture of paper. 595

Pattern books consisting of sheets of paper stitched or folded together, upon which designs or patterns are printed in colors, are dutiable as printed matter. 595

Perforated cardboard, on which are printed sentences or mottoes to be filled in with embroidery, are manufactures of paper, and not printed matter. 595

Rice grown in a country beyond the Cape of Good Hope, and imported into England in an uncleaned state, and thence imported into the United States, is liable to duty as the growth or production of a country beyond the Cape of Good Hope, and also to the duty imposed on cleaned rice. (Act July 14, 1862, §§ 8, 14.). 1355

Slipper cases consisting of cotton canvas embroidered with beads are dutiable as embroidered manufactures of cotton, and not as bead ornaments. 595

Slipper patterns made of cotton canvas embroidered with worsted, and designed to be filled with more embroideries, are dutiable as embroidered manufactures of cotton, and not as manufactures of worsted. 595

Invoice: Entry: Appraisal.

The costs and charges of transportation from a blockaded port in lighters to another port, from which shipment can be made, cannot be added as part of the dutiable value. 1188

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Expenses of land transportation to get merchandise on shipboard are dutiable charges. 280

Whether the commission, which is to be added as a dutiable charge, is to be cast on the foot of the invoice, with or without the addition of the charges, depends on usage, and is not fixed by law. 280

The collector is bound to order an appraisement of the damage of goods on the voyage on reasonable evidence of such damage. 1170

A survey of goods damaged on the voyage need not be made previous to an appraisement of the damages for the purpose of an abatement of duties. 1170

Where such appraisement is refused, the deterioration of the goods may be proved by witnesses in an action for the excess duties. 1170

An error of the importers in designating the appraising officers in an application for an appraisement will be disregarded. 1170

Under Rev. St. § 2931, the decision of the collector is final and conclusive against all persons interested upon the questions necessarily decided, and irregularities in the mode of appraisement cannot be shown. 441

The appeal to the secretary from a decision of the collector (Rev. St. § 2931) must be taken after such an ascertainment and liquidation of the duties as would be final and conclusive if no appeal had been taken . 441

Payment: Protest.

Under the description "goods consigned to me by the manufacturer thereof, maintaining that they are not liable to a penalty under the laws for the reasons stated," *held,* that the importer could not show that the goods were owned and imported by the manufacturer, and so not liable to the penalty for an undervaluation. 157

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A notice at the close of a protest that it is to apply to all future similar importations does not dispense with the necessity of a protest in reference to those importations. 280

A valid prospective protest against the payment of duties, made on particular importation of merchandise, and expressing the intention of the importer that the protest shall apply to all future similar importations made by him, is valid as to subsequent importations of similar merchandise, on which like duties are exacted by a succeeding collector. 845

Actions for duties.

In suit by the United States to recover duties as liquidated, proof of an appeal before the liquidation cannot affect the operation of the liquidation, nor can proof of a protest, unless followed by an appeal taken after tie liquidation. 441

Actions for duties illegally exacted.

A collector who has compelled an importer to pay a higher rate of duty than that imposed by law on such articles as are named in the invoice has the burden of proof to show the authority under which such higher duty was exacted. 1259

Violations of law: Forfeiture.

Where a person is selling goods in his possession which he concedes to have been smuggled, he is guilty, under Act March 2, 1799, of keeping or storing goods with knowledge that they were landed without license. 107

The remedy for the penalty incurred in keeping or storing goods with knowledge that they were smuggled may be by information or debt. 107

If the information be filed by the district attorney on behalf of the United States, though expressed to be for the benefit of the collector and all concerned, it will be sufficient. 107

Customs officers.

Under Act May 7, 1822, c. 107, § 9, providing for the salaries of collectors and naval officers, the necessary expenses of the office are first to be paid out of the receipts, and the government is not liable if the balance is not sufficient to make up the salary. 701

DAMAGES.

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

"Where a sum of money has been lost to plaintiff by the negligence of defendant, the jury can only give as damages the sum which plaintiff has been deprived of. 54

Where a wrong is done to a right, and no substantial damages proved, the jury may give as damages counsel fees and necessary expenses fairly incurred beyond the taxed costs. 934

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Where the actual damages for nonfulfillment of a contract are susceptible of computation in money, a sum named in the contract as a penalty or forfeiture for a violation is to be viewed as a penalty, and not as liquidated damages. 978

Where a personal injury is of a character to impair the ability of a person to labor, his condition in life and pursuits may be considered in estimating the damages. 1177

DEATH BY WRONGFUL ACT.

$5,000 *held* not excessive damages for the death of a person who was a superior woman as wife, mother, and member of society. 1111

DEBT, ACTION OF.

A former recovery may be given in evidence upon nil debet. 685

A former recovery upon a count for goods sold and delivered may be given in evidence in an action of debt upon a promissory note, with evidence that judgment was confessed in the former action upon and for the note now declared upon. 685

DECEIT.

Where the declaration sets forth, as the cause of action, fraudulent representations inducing a sale on credit, the averments of fraud will not be stricken out on motion of defendant, so as to make the action one of assumpsit for goods sold and delivered. 13

DEED.

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

Where a deed purports to be executed by the trustees of a town, there must be evidence that the persons who signed it were trustees, and that they had power to make the conveyance. 74

A conveyance by a devisee of a life estate at a time when she is disseised of the premises is inoperative. 547

An exception of that part of the lot granted which the grantor has theretofore sold to a certain person by deed is inoperative where there is no evidence of such prior deed. 612

By the registry act of Rhode Island, the recording of the deed is necessary to pass real estate as against third persons, but not as between the original parties or their heirs. 718

Registration of a deed in the county in which one of several grantees resides is not sufficient, under Act N. C. 1788 430

The assignment of a bond of defeasance of a deed is good in Rhode Island, as between the parties, though not attested by witnesses. 718

Recitals in a deed are binding on the parties to it, and those claiming under them, but not strangers. 714

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DEMURRAGE.

A shipper cannot recover from one vessel demurrage which he paid another, which was detained by the failure of the former to arrive with the cargo on time, unless the shipper show that he was legally liable for such demurrage. 1246

DEPOSITION,

This court will not grant a commission in a civil action at common law to take the deposition of a witness residing in Virginia within 100 miles of the place of trial, because he may be summoned to attend personally . 621

Executors who are parties in the cause cannot be examined as witnesses without an order of the court, and such order will not be given if they are interested in the event. 43

Equity Rule 67 authorizes the court to appoint examiners for the taking of depositions orally, outside as well as inside its territorial jurisdiction. 747

A deposition, taken more than six months after replication, in a chancery suit, cannot be read at the hearing unless taken by consent or by order of the court, or out of the district. 1169

Under the law of Virginia respecting the taking of depositions, notice to the attorney at law of the opposite party is not sufficient. 862

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A deposition which has been altered to correct an error must be resworn to before it can be filed. A deponent cannot confer upon another the power to alter a sworn paper. 124

It is a fatal objection to a deposition taken under the act of 1789 that the names of some of the parties do not appear in the caption or some part of the deposition. 307

Where the examination of witnesses is made by counsel, and not by the examiner, the depositions will be suppressed. 747

The fact that witness heard the interrogatories in advance *held* not a ground for suppressing the depositions. 747

Parol evidence is not admissible of a different cause of caption than that certified. 862

The objection to the incompetency of a witness for interest which appears upon his cross-examination is not waived by pursuing the cross-examination upon the merits of the case. 43

If, upon the return of depositions, the opposite party except "to the caption as well as to the substance of them," he may specify his objections at the hearing. 43

The deposition of a witness who is at the place where the court is held, if objected to, cannot be read if the witness be able to attend the court. 570

If the deposition of a witness who is attending in court is read without objection, he may be examined in chief by the party who read his deposition. 1074

Testimony taken under a commission not issued under any practice or Rule of the court or of any other court, or in accordance with a statute, is not admissible in the orphans' court. 109

In suits in equity in the circuit court in the District of Columbia, depositions taken under the act of 1789 cannot be read in evidence. 43

DESCENT AND DISTRIBUTION.

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

One heir or next of kin suing for a distributive share of an estate must make the other heirs or next of kin parties, or show that they are within some exception to the Rule requiring all persons materially interested to be made parties. 718

The administrator of an estate where personalty is concerned is a necessary party to such a bill in ordinary cases. 718

DISCOVERY.

See, also, "Creditors' Bill."

Where, after goods are selected, inventoried, and set apart under an agreement in payment of a creditor's claim, other creditors come in with the consent of the debtor, and take the whole stock, the former creditors may maintain a bill for 59

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discovery for the inventory to enable them to support their action at law for the goods.
When an execution has been issued, and no property found on which to levy, the judgment creditor is entitled to the and of a court of equity to discover and apply the debtor's property to the payment of the judgment. 175

DOMICILE.

See "Courts"; "Prize"; "Removal of Causes"; "War."
Domicil of origin is not lost, for purposes of succession, by very long residence abroad, and mere doubt—even very strong doubt—of a real intention to return. 982

DOWER.

The widow is not entitled to dower in lands of which her husband died possessed, but to which he had no legal title, although he had paid the whole purchase money. 1356
A wife's inchoate right of dower in Indiana becomes absolute upon the judicial sale of her husband's real estate, and she is entitled to immediate possession. 227
But this Rule does not apply to land in which the husband has only an equitable title. As to such lands, an adjudication of bankruptcy against the husband passes his title to the assignee free from any claim of the wife. 227

EJECTMENT.

Notice to quit is not necessary where the relation of landlord and tenant does not exist. 410
If, by the terms of the deed of trust, the grantor is to retain the possession until a sale should be made under the deed, his tenancy ceases upon the sale, and no notice to quit is necessary. 410
A purchaser under a deed of trust need not give notice to quit before bringing ejectment against the grantor of the trust deed. 410
A claim to land is not barred by lapse of time where the right has been asserted at various times, and possession has been.
taken of a part of the land. 133
There is a prima facie presumption of a fee-simple estate in the devisor of land, and the devisee in ejectment need to go beyond such person in deducing title. 714
Possession is not adverse so as to bar ejectment after 20 years unless founded upon color or claim of title. 1244
A plaintiff in ejectment may recover without showing a possession or a right of possession, or an entry or a right of entry, in his lessor within 20 years; no adversary possession being shown. 1244

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With the leave of the court, the plain-tin: in ejectment may amend his declaration by a count upon a new demise, which count will be considered as the commencement of the suit as to the title-claimed under that new demise. 1244

Judgment by default and habere facias possessionem executed set aside; the service not being made on the tenant in possession) but on the landlord. 729

The value of improvements made in good faith by an occupying claimant under the color of title is allowed to him by Iowa Revision, c. 97, in the manner and to the extent therein provided. 675

The Iowa statute in relation to occupying claimants construed, and applied to an occupant of lands falling within the Des Moines river grant. 675

ELECTIONS AND VOTERS.

Instructions to the supervisors to take from a person who asks to be registered as a voter his certificate of naturalization are unauthorized by the statute. 103

The circuit court will not remove a chief supervisor of elections for issuing instructions which are the same as those previously issued and shown to have been approved by the district attorney and circuit judge. 103

EMBARGO AND NONINTERCOURSE.

A vessel sailing to an interdicted port, unless by permission of the president, on the public service, was liable to forfeiture, under Act June 28, 1809, c. 9, § 3. Under the same act, British ports were permitted ports. 368

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A vessel obliged, from irresistible necessity, to put into a foreign port, and sell her cargo, is not guilty of a violation of the embargo laws. 1300

An entry in a port of the United States by a derelict vessel, brought in by salvors without the consent of her owner or master, does not work her forfeiture under Acts April 18, 1818, and May 15, 1820, as such acts apply only to a voluntary entry. 399

ENTRY, WRIT OF.

See, also, "Ejectment."

A tenant in fee simple cannot maintain a writ of entry founded upon his supposed seisin of a freehold only, but must count upon his seisin in fee simple. 547

EQUITY.

See, also, "Courts"; "Creditors' Bill"; "Discovery"; "Injunction"; "Pleading in Equity"; "Practice in Equity."

Where defendants dispute an account stated by them which has been accepted by complainant, the latter may maintain a bill in equity for an account and discovery. 36

Equity extends its control, not only over the acts of trustees, but over the acts of those who have any agency in enabling the trustees to violate their trust. 95

A mistake as to the value of the consideration given for the conveyance of land is not a sufficient ground for setting aside the conveyance, where the vendor had means of avoiding the mistake by inquiry, and no fraud or falsehood was used to influence his judgment. 246

Where the vendor of land is clearly shown to have been overreached in a material degree by imposition, concealments, or misrepresentations made by the vendee, on which he properly relied, he will be relieved in equity. 246

An entire failure of consideration is sufficient to rescind a contract. 246

To set aside a conveyance made by an agent for inadequacy of consideration, the price must be so small as to strike the mind as grossly inadequate, and to raise the conviction that the property was sacrificed. 21

Equity has jurisdiction to decree the surrender of negotiable notes unconscientiously withheld by the defendant. 997

A court of equity may direct an equity to be sold, but in such case the interest sold should be ascertained, and made known at the time of the sale. 709

As the federal circuit court can issue a writ of mandamus only in those cases in which it may be necessary to the exercise of its jurisdiction, such court may entertain a bill in equity in cases where mandamus would be an ample remedy in a state court, if it is not a necessary remedy in the federal court. 914

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Where the and of a court of chancery is indispensable to obtain discovery of the important facts in the case, an application for relief can be sustained in connection with such discovery in the federal circuit court, notwithstanding section 16 of the judiciary act. 246

As between parties who enter into a fraudulent combination against an individual, no relief will be given either at law or in equity. 158

Lapse of time does not operate against minors, especially where they reside in a different state, and had no knowledge of their rights. 221

Mere delay in enforcing equitable rights is not a defense to a suit except in cases where the statutes of limitation apply, or where the party has slept upon his rights, and acquiesced for such a length of time that his claim has become stale. 1358

Length of time, short of the statute of limitations, is not a bar if fraud exists, or if the delay is accounted for, or if such a course would work injustice. 246

Where, in a suit to rescind a contract on the ground of fraud, neither party can restore the property in good condition, damages may be given. Relief will not be denied complainant because the inability to restore is due to him if he was not aware of the fraud. 246

A bill of review is brought for errors apparent on the face of the decree, and the time in which the bill may be filed is limited to five years by analogy to the limitation of the writ of error. 1058

ESTATES.

Where a devisee in remainder in fee purchases the life estate, he becomes tenant in fee simple, and the life estate becomes merged in the remainder. 547

The renunciation or disclaimer of a life estate will not destroy subsequent remainders, but they immediately take effect and preserve contingent remainders. 547

A conveyance of a remainder in default of issue of a grantee to the surviving sons and daughters of the grantor *held* to mean those surviving at the-death of the grantee. 732

EVIDENCE.

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

The indorsement of a clerk, in the office of a notary, on the protest of a note for nonpayment, that notice was duly served, is not evidence. 1031

If the subscribing witness to a note be not within reach of the process of the court, it is not necessary to produce him or to prove his handwriting, but the defendant's handwriting may be proved. 621

The testimony of a subscribing witness cannot be dispensed with because he resides in another state. 853

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Conversations of a party with other persons on a subject of a kindred character near the time of the transaction, and illustrating his intention, are competent evidence for the other party.	246
The admissions and statements of an insolvent in relation to his property after conveyance to his assignee in insolvency are not admissible against the assignee.	922
Declarations of an agent, so far as they constitute part of the res gestæ, may be given in evidence to affect his principal. What constitutes a part of the res gestæ.	736
The jury are not bound by the opinions of experts, but may follow their own judgment.	930
A written instrument over 40 years old is admissible as an ancient document without strict proof of execution.	133
Extracts from the notarial book of a deceased *held* admissible to prove demand of payment of a promissory note and notice to the indorser.	1089
In an action against an indorser of a promissory note, a record of a judgment upon the same note between other parties cannot be given in evidence unless the note itself be produced, and the defendant's indorsement proved.	684
The Rule that parol evidence is inadmissible to vary or contradict a written instrumentdoes not apply as against persons who are strangers to the instrument, and not in privity of estate or interest with the parties there to, and such strangers may always show that any statements or recitals therein prejudicial to their rights are false.	1134

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EXECUTION.

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

The court will not, upon motion, quash the return of a fi. fa. levied upon an equity of redemption. 226

In Missouri the power to sell continues after the return date as to land duly levied upon. 560

Where land is sold under execution upon a judgment of the federal circuit court, such court will not, upon a motion to that effect, appropriate the proceeds to an older judgment of a state court. 1043

The title under a sheriff's deed, although such deed does not convey a title until recorded, relates back to the time when the deed was made. 81

EXECUTORS AND ADMINISTRATORS.

See, also, "Descent and Distribution"; "Wills."

An executor having no specific power given by will cannot assign a military warrant or a certificate on which a warrant was obtained, and where such assignment appears on the face of the warrant, and is copied into the patent, the assignee or the patentee takes with notice. 221

Where a legatee takes from the executors a bond and mortgage from a purchaser of the estate for a greater amount than his legacy, agreeing to pay back the excess, he is liable for such excess, though the obligor became insolvent, and a sale of the mortgaged property did not produce the amount of the legacy. 357

EXEMPTIONS.

See, "Bankruptcy."

EXTRADITION.

The court has no power to review the finding of a commissioner who had before him legal and competent evidence. 1153

FACTORS AND BROKERS.

See, also, "Principal and Agent."

A factor has no property or interest in the goods beyond his commission, and cannot control the right of the principal over them. 117

FALSE IMPRISONMENT.

Exemplary damages are recoverable where an officer causing the arrest and detention of a person is influenced by any motive other than an honest discharge of his official duty.

FORFEITURE.

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

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To give the court jurisdiction to adjudicate upon a cause of forfeiture, the property must have been seized by process within its territorial jurisdiction, or brought within its limits, where the seizure is upon the high seas. 336

A libel of information against a vessel, to procure her forfeiture for a violation of the revenue laws, must aver that she has been seized for the offense, and that the seizure still subsists. 336

The seizure is a jurisdictional fact, and the absence from the libel of any averment of such seizure is a defect of which advantage may be taken at any stage of the cause. 336

FRAUDS, STATUTE OF.

An auctioneer's memorandum or entry in his sales book of a sale of lands is not sufficient to take the case out of the statute of frauds if it does not sufficiently describe the land and the terms of sale. 1410

FRAUDULENT CONVEYANCES.

See, also, "Bankruptcy."

A failing debtor may pay any debt justly due, and secure any indorser against liability, if done in good faith. 5

The fact that time notes given to secure accommodation acceptances were surrendered, and demand notes taken, upon which suit was at once instituted and property attached, does not make the transaction necessarily fraudulent. 922

GAMING.

A note given as indemnity to a bail who has paid a judgment for a gaming debt for which he was liable is not a note the consideration of which was money or other valuable thing won at gaming. 617

The judgments which are made void by the Virginia statute against gaming are judgments voluntarily confessed by way of security for a gaming debt, not judgments rendered in invitum. 617

Under the by-law of the corporation of Washington of August 16, 1809, a person who suffers and permits a faro table to be set up and kept in his house is liable to a separate prosecution for every day he shall so have suffered and permitted it to be set up and kept. 356

A warrant upon the by-law of the city of Washington of January 12, 1830, § 1, for setting up a faro table, must state it to be "for the purpose of gaming for money." 344

GRANT.

See, also, "Public Lands."

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A survey made by the board of property merely to mark the boundary of land claimed by the person for whom it is made, and not in execution of a warrant issued for the land, is not such a survey as will give title. 677

A party cannot set up a title to land by settlement prior to the day stated for the commencement of his settlement in the warrant issued to him for the land, but he may prove the land was never in the possession of the party who claims it from him by the right of settlement. 677

GUARANTY.

See, also, "Bills, Notes, and Checks"; "Principal and Surety."

Upon a guaranty for future advances it is the duty of the parties making the advances to give notice to the guarantor of his acceptance thereof, and his consent to act under the guaranty, and to make the advances; but this doctrine does not apply where the agreement to accept is cotemporaneous with the guaranty. 1226

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It is not necessary that a further distinct notice should he given to the guarantor of the amount of the advances actually made, or the terms upon which they were made after the transactions are complete. There are, however, certain exceptions as when the advances are contingent, or there is a contiuning guaranty. 1226

If, after credit has expired, and the amount become due under a guaranty, a demand he made upon the debtor, and there he a default of payment, notice thereof must be given to the guarantor within reasonable time; but a demand is not necessary if the debtor be insolvent at the time when the debt becomes due, and the credit has expired. 1226

In order to discharge the guarantor, there must not only be a want of such notice, but there must also be some loss or damage sustained by him in consequence, and then there will be a pro tanto allowance. 1226

GUARDIAN AND WARD.

See, also, "Infancy."

A guardian is liable for wasteland entitled to credit for permanent improvements, and the education of the children. 1356

The guardian of the person and estate of an infant appointed by a probate court has incidental power to sell personal property of.

A statute (Gen. St. Mass. c. 109, § 22) providing that certain courts may authorize or require a guardian to sell personal property and invest the proceeds does not take away the power of the guardian to sell without an order of court. 74

The legislature may by special act authorize a guardian to sell real estate of a ward. 194

Under petition by a guardian Jo sell a ward's land to a town, "to erect a pest-house upon," leave was granted by special act to sell the land "for the said purpose," by deed which should vest in the purchaser all the right, title, and interest that the parent of the minor had in the estate. *Held,* that the guardian was authorized to sell the estate without conditions. 194

Under a deed of the land "to erect a pest-house upon" to enjoy "in the manner aforesaid," where the granting clause purported to be an absolute and full conveyance of the land without condition, *held* that the words quoted were not intended as a condition or a limitation of the estate conveyed. 194

HOMESTEAD.

See, "Bankruptcy."

HUSBAND AND WIFE.

The promise of a feme covert is void, and her subsequent promise when sole, without a new consideration, is also void. 431

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The statute of Connecticut in regard to the personal property of married women, construed. 1369

An agreement of separation, under which the husband transferred property to trustees to pay the income to the wife upon condition that she relinquish her claims of dower, is enforceable in equity. 7

A provision for the continuance of the agreement should the parties subsequently elect to cohabit does not render it invalid, nor is it suspended while they live together. 7

Acceptance by the wife of the provisions made for her in the husband's will is not inconsistent with her claim under the agreement of separation. 7

On a bill by husband and wife to recover property of the wife, the court will direct a settlement on the wife unless satisfied, upon a separate examination of the wife, that it is voluntarily waived. 162

A debt contracted for the purchase of property which goes into the actual or constructive possession of the purchaser is a debt contracted for the benefit of her estate. 1369

Where a married woman who has a separate estate enters into a contract for its benefit, or for her exclusive benefit, it will he presumed that such contract was made upon the credit of her estate. 1369

Under the Connecticut married woman's act of 1872, a married woman may be sued at law for a cause of action on which she would previously have been liable in equity. 1369

INFANCY.

See, also, "Guardian and Ward."

In an action by a minor to recover wages as seaman, the respondent is not entitled to require the appointment of a guardian ad litem or next friend for the libelant. 542

Equity will not decree against infants without full proof, though their guardian ad litem confesses the ground of action. 133

INFORMERS.

As between two sets of informers, one who furnished the first information, and one who collected valuable evidence, without which it was doubtful if any considerable sum would have been realized, the former is entitled to the informer's share. 544

If the information be in writing, the party may nevertheless give parol proof or other information given, leading to the seizure of articles not mentioned in the written information. 736

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The right of the informer to his proportion is not defeated by his misconduct in dealing with the property seized which is trusted to his care. 736

In case of money brought into court under a sentence of condemnation, the court, before it is paid over to the collector, may decree to the informer his proportion. 736

After the money brought into court under the condemnation is paid over to the collector, the court has no power to decree in favor of the informer against the collector in personam, or against money of his in court arising from some source other than the admiralty proceeding. 736

Notwithstanding a compromise of actions for estimated duties and criminal proceedings for frauds upon the revenue is invalid, sums paid into court as duties upon confession of judgment belong to the United States, as against informers claiming to share therein as penalties. 542

The record in a friendly action of debt for penalties after compromise of criminal proceedings for frauds on the revenue and an action for estimated duties is not conclusive of the rights of the parties, and the character of the fund. 542

INJUNCTION.

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

A party may proceed in equity to enjoin a diversion of a water course, where no actual damage has occurred, as a means of establishing and protecting his right. 506

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An order for an injunction or a receiver will not be made in an improper case, even on the consent of both parties to the suit, more especially where the rights of third parties may be concerned. 918

An injunction will not be granted, or a receiver appointed, where it is not apparent that the ultimate determination of the suit in favor of the plaintiff is reasonably probable. 1255

Complainant cannot fix a time "for "hearing the motion for an injunction so far ahead. as to embarrass defendant. 146

Notice of a motion to dissolve an injunction must be given, unless the cause has been set down for dissolution, in a reasonable time before the motion is made. 1252

A writ of injunction cannot be the foundation for an attachment against any person, except perhaps a defendant served with the bill of complaint, where it refers merely to the bill for a description of the thing enjoined. 938

A motion for attachment for violation of an injunction will be denied where the question whether the writ was or was not served is left in doubt. 938

INSOLVENCY.

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

The common printed form of the deed from an insolvent debtor to his trustee under the insolvent act is sufficiently certain to convey to the trustee a title to slaves. 431

A discharge of the person under the insolvent law of a foreign country, where the contract was made, leaves the contract still in force. 553

INSURANCE.

See, also, "Marine Insurance."

A person who is the general agent of an insurance company under a state statute requiring the appointment of such an agent for the service of process oi foreign companies is not necessarily the general agent of the company as to the execution of contracts with the company. 964

Where an insurance agent is furnished with blank policies which he is authorized to fill up and deliver and make binding until canceled, his authority to make this larger completed contract includes an authority to make a preliminary executory contract to enter into it. 581

When the policy provided that it should take effect when countersigned by a certain agent, a delivery by him will render the contract valid without such countersigning. 964

An intention on the part of the company to deceive cannot be presumed from the fact that some portions of the policy are printed in smaller type than other portions, the former being referred to in the latter. 1038

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A policy issued by a foreign insurance company through a general agent in the state, who acts purely in a ministerial capacity, *held* not a contract governed by the law of such state.	964
A parol agreement for insurance must include the subject of insurance, the time, amount, and premium.	581
Where, under the circumstances, the policy would have been binding if one had issued, the agreement to insure will be binding.	581
Where an insured is entitled to a paid-up policy, the insurer cannot object to signing a written policy tendered by him because not its printed blank, unless it tenders a policy made on such blank.	444
In an action for damages for failure to issue a paid-up policy after the tontine period, and before arrival at the age at which the whole amount is payable to the insured, the beneficiaries must be made parties plaintiff to entitle the insured to more than nominal damages.	444
Act Mo. March 23, 1874, in relation to misrepresentations in obtaining policies of life insurance, extends to all policies deliver in the state after the act went into effect, and irrespective of provisions of the policy.	1011
Where a life insurance policy contains a condition that if the statements in the application shall be found in any respect untrue it shall be void, untrue answers to specific questions avoid the policy, although relating to matters not materially affecting the risk, and not made with a view to deceive the company.	1268
The insured is not entitled to recover if he was in apprehension of incendiarism at the time of taking out a policy, but stated that he was not.	1126
If the insured grossly exaggerates the value of his property at the time of taking out his policy, he is not entitled to recover.	1126
Any specially inflammable or hazardous condition due to the presence of flour dust must be presumed to be known to the insurers of a flour mill, if incident to the business.	330
The burden of proof is upon the insurer to show violation of the conditions of the policy.	1126
The exception of loss by "explosions "of any kind whatever within the premises" does not include the case of a destructive are, followed shortly by an explosion which, together with the fire, completely destroyed the property.	308, 329, 330
A nose bleed may be regarded as an "external and visible sign" of the injury, within the meaning of a provision that the insurance snail not extend to any injury of which there is no such sign.	1038

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Where true answers are given to the questions in the application, the company will be estopped to take advantage of the mistakes and omissions of its local agent in reducing the answers to writing. 1268

A mortgagee who, by the terms of the mortgage, is entitled to have the property insured for his benefit, has no right to the proceeds of insurance taken out by other creditors in their own names to secure their own names to secure their debt, though they have no insurable interest. 896

Where a policy should have issued, pursuant to agreement, but was refused, such refusal is a waiver of the conditions in such policies requiring proof of loss within a certain time. 581

An objection to paying a loss on other pounds than irregularity in the proofs of loss furnished waives all objections thereto. 1126

A refusal of the assured to submit to an examination on oath, or to answer material questions as to the loss, as required by the policy, *held* not to work a forfeiture, but only to suspend the right to payment until the answers are given 594, 1149

False swearing by the assured in preliminary proofs or in an examination under oath required by the policy in any material matter, with intent to mislead, avoids the policy but honest mistakes do not have this effect. 1149

False statements on oath by the assured, with intent to deceive the company, relative to the terms of settlement with other companies having risks on the same property, are material, and will defeat any right on the.
part of the assured to recover. 594

Where the assured, after the loss, with intent to deceive the company, exhibits to it books of accounts containing false entries of a material nature, he is guilty of a fraud which will defeat all right to recover upon the policy. 594

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The fact that the company made an autopsy on deceased body is no evidence of fraud when the right to do so is given by the policy. 1038

INTEREST.

Interest from the commencement of the suit is recoverable as a matter of law in an action upon a money demand, even though interest is not claimed in the petition. 961

INTERNAL REVENUE.

See, also, "Informers."

Money collected by a collector of internal revenue under Act March 3, 1791, and paid over by him to the inspector, cannot be recovered back by the collector as money had and received to his use. 674

The complainant, as collector of internal revenue, *held* not entitled, by way of subrogation, to the rights of the United States as a preferred creditor. 1253

The terms "income or articles or objects charged with an internal tax" (Act July 13, 1866) include "gross receipts" of express companies or stage proprietors. 679

The returns of gross receipts under Act June 30, 1864, § 109, must state whether the amount is stated in legal tender currency or coined money, and the duty is to be paid acccording to the values in coined money when reduced to their equivalent in legal tender currency. 679

The assignees of a bankrupt manufacturer selling his goods in the course of their trust in the condition in which they found them Are not bound to pay the tax imposed by Act March 31, 1868, on sales by manufacturers. 944

The words "five gallons," as used in Act April 10, 1869, § 44, defining what constitutes a wholesale dealer refers to "win" gallons and not to "proof" gallons. 154

Spirits in a bonded warehouse at the time of the passage of Act March 7, 1864, are subject to the additional duty imposed by section 7. 795

Under that act, such duty is to be collected in such manner as the secretary of the treasury may direct, and he has power to direct it to be paid to a collector of internal revenue. 795

JUDGMENT.

Where no process was served on the defendant, and there has been no appearance, the judgment is a nullity. 794

An admiralty decree is not a lien on land. 175

A judgment of a court having jurisdiction of the subject-matter is conclusive between the parties until reversed or set aside on the ground of fraud. 158

The decree of title in one state to lands in another state cannot operate so as to vest the legal tide. 446

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A decree in Kentucky, for the conveyance of land in Ohio, though executed by a commissioner under the statute, in pursuance of the decree, can give no title. 446

A judgment, to operate as a bar, must be final . 947

Where the plaintiff in actions on contract is authorized to sign judgment against defendant when he omits an affidavit of defense, if the amount be undetermined, the judgment is only interlocutory, and becomes final only when the amount is legally determined. 947

Where defendants, by the misrepresentation of their agent, procured the deputy clerk to receive an assignment of a judgment and depreciated paper in payment of a judgment, for which he gave a receipt, the plaintiffs are not bound by it, and may issue their execution. 616

The court will not issue an attachment upon a decree for payment of money, but will leave the complainant to his remedy by fieri facias, or ca. sa. 1002

In an action on a judgment of another state, the plea of nil debet is bad on demurrer. 794

Nul tiel record is the only proper plea in such a case. 794

In a suit on a judgment of another state, whatever pleas would be good to a suit thereon in such state, and none other, can be pleaded. 294

It is a good plea to a suit on a judgment of another state that it was obtained by fraud. 294

It may always be shown in defense to a suit on a judgment of another state that the court had no jurisdiction either of the parties or subject-matter. 294

Where it appears, from the record, that process was served, or that there was an appearance, the fact cannot be controverted. 794

It is a good defense to an action or a judgment of another state for deficiency in an attachment case that the court had no jurisdiction of the person. 294

JUDICIAL SALES.

Bonds given for deferred installments of the purchase price are within the terms of the decree directing the officer to bring the "proceeds" of sale into court. 95

Where bonds for deferred portions of the purchase price are made payable to a marshal of the court, he has a right to collect them, and will be considered as a trustee for the creditor. 95

But he has no right to discount legal interest, and receive only a part of the debt. 95

Where no fraud or unfairness is alleged, a court will not set aside a judicial sale on the ground of inadequacy of price. 714

JUSTICES OF THE PEACE.

Page

A justice of the peace for the county of Washington has jurisdiction of offenses against the by-laws of the corporation of Washington, although the amount, of the penalty be discretionary within certain limits. 340

LANDLORD AND TENANT.

The provision that, in default of the payment of the yearly rent, the lease is to be void, and the property is at once to revest in the lessor without notice to the lessee in the same manner as if the lease had not been given, *held* to constitute a condition, and not words of limitation. 1233

To work a forfeiture under a lease for nonpayment of rent, there must be a demand of the precise sum due. 1233

ATI assignment by the lessor during the term without attornment does not prevent the lessor from distraining. 1015

Upon the issue of "no rent arrear, the plaintiff in replevin will not be permitted to show that the defendant "had nothing in the tenements." 1015

In replevin for goods distrained for rent, the defendant cannot give evidence of the value of the use and occupation. 1015

LARCENY.

The animus furandi and the fact that the taking was without the consent of the owner are essential elements in the crime of larceny. 823

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LIBEL AND SLANDER.

A publication without justification or lawful excuse, and calculated to injure the reputation of another, and expose him to hatred or contempt, is, a libel. 1091

The words are to be taken in their ordinary sense, and if directly calculated to degrade a man in the estimation of his acquaintances, and to injure his business character, they are actionable per se, without proof of malice or special damages. 1091

An account of an assault and battery, if correctly given as an item of news, is not libelous, but the writer cannot add reflections on the personal and business character of the aggressor unless the strictures are true. 1091

The declaration for a libel must set-out the very words; it is not sufficient to give the substance and effect. 955

The truth of the publication is a good answer, but the justification, to be complete, must be coextensive with the libel. 1091

Where defendant pleads not guilty and a justification, the admission of the libel contained in the latter plea cannot be used either to estop defendant to insist on his denial, or as evidence to prove the publication on the issue joined on the former plea. 955

The plaintiff is presumed to be of good character until the contrary is shown, and it is only his general reputation which is in issue. 1091

Defendant may show that plaintiff's reputation sustained no injury because he had none to lose. 1091

If mitigating circumstances are offered in evidence, to repel the presumption of malice it must be shown that the defendant knew of them at the time of making the charge. 1091

LIMITATION OF ACTIONS.

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

The statute of limitations does not operate in cases of trust. 133

The statute of limitations of a state is no bar to a suit on the admiralty side of the courts of the United States. 1275

The statute of Anne, limiting suits in the admiralty for seamen's wages to six years, is not a bar to such suit in the courts of the United States. 1275

State statutes of limitation have no application to cases affecting statutory rights, cognizable exclusively by the federal courts. Such rights can be affected only by laws of congress. 835

The suspension of the federal court in Mississippi by reason of the Rebellion suspended the running of limitations as to persons having a right to pursue their remedies in that court. 1053

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LOTTERIES.

Eights of holders of tickets in Washington lottery. 360

MALICIOUS PROSECUTION.

Malice, in the sense of the law, does not presuppose personal hatred or revenge, but may, under certain circumstances, be implied either from a total want of probable cause, or from gross and culpable omission to make suitable and reasonable inquiries. 1157

Any act is malicious which is wrongfully and willfully done, with a consciousness that it is not according to law or duty. 1157

To support an action for a malicious prosecution, it must appear that the prosecution was both malicious and without probable cause. 1157

A verdict for $1,500 will be set aside as excessive where plaintiff admitted that defendant acted without bad motives, although rashly and improperly. 1157

MARINE INSURANCE.

See, also, "Average."

An exception if the vessel should be condemned as unsound or rotten is not operative where the report of the surveyors states that many of her timbers were rotten, and adds other reasons for condemning her. 431

If the immediate cause of a loss is a peril insured against, it is no defense that it was remotely caused by the negligence of the master or crew. 1383

But the insured cannot recover for a loss occasioned by his own wrongful act, or by that of any agent for whose conduct he is responsible. 1383

Where the fire is one of the enumerated risks in a policy on a steamboat, etc., a loss by fire will charge the underwriters, though occasioned by the negligence of the officers or crew. 415

If the negligence be so gross as to authorize the presumption of fraud, which would constitute barratry, the underwriters are not liable unless the policy expressly insures against barratry. 415

The master is not bound to break up his voyage upon an illegal threat of confiscation, and is not guilty of misconduct in persisting in the voyage, although the vessel be seized and condemned therefor. 1402

An insured vessel was chartered by the government as a transport, but not to go to any place where there was not sufficient depth of water for her to go in safety, and was sent to Hatteras Inlet, and was lost in the rash and hazardous attempt to cross the bar, acting under orders of the military commander of the expedition. *Held,* that the insurers were not liable. 1383

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If a ship is seized under such usurped authority, and recaptured by the crew, they are entitled to salvage, and the decree of an American court in rem will be deemed conclusive on the right unless fraud is shown.	1402
Where, in consequence of such an illegal seizure and recapture, the voyage is lost, the owners may abandon for a total loss.	1402
Where a captured vessel is recaptured by the mate and part of the crew remaining on board who bring her home and libel her for salvage, the insurers are liable as for a constructive total loss.	1406
The necessary sale of a vessel in the course of a voyage to defray salvage creates of itself a total loss of the vessel for the voyage.	1406
Where the object of the voyage is entirely defeated, and the vessel is obliged to return home, it cannot be treated as a case of a voyage to a port of necessity for repairs, but there is a total loss.	1406
Where a vessel comes to anchor off the port of destination when she might have gone directly in, it is a deviation discharging the insurers.	713
The amount of a bottomry bond should be deducted from the real value, and not the agreed value, in the policy, where the latter is less than the actual value.	433
It is sufficient, on a question of seaworthiness, if the vessel was fit to perform the voyage insured, as to ordinary perils. The underwriters are bound as to extraordinary perils.	432
If the insured lay a rational ground for the disability of the vessel by proving severe gales during the voyage, and seaworthiness on a, preceding voyage, the burden of the proof of the want of seaworthiness lies on the insurer.	432

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Aliter, when a disability happens from stress of weather, without any sufficient cause. 432

The report of a survey, made upon an examination of a vessel for the purpose of ascertaining her situation after a disaster in a foreign port, is not evidence of the facts stated in it, but only that such survey was made. 431

A party who reads a certificate of survey only to prove the fact of a survey and condemnation is not estopped to impeach the credit of the surveyors whose depositions have been read. 432

MARITIME LIENS.

See, also, "Admiralty"; "Bottomry and Respondentia"; "Charter Parties"; "Demurrage"; "Salvage"; "Seamen"; "shipping"; "Towage."

The right to a lien.

Mere advances of money to the owner of vessel do not create a lien on her in favor of the lender, in the absence of any agreement for a lien upon the vessel, though the money be applied to the payment of liens upon the vessel. 1287

A person contracting with the owner to float a vessel driven upon a beach is not the agent of the owner, so as to give laborers and material men a lien on the vessel. 945

The fact that a vessel which is repaired or supplied is not in her home port, in the absence of other circumstances, makes a case of apparent necessity for the credit of the vessel. 363

This apparent necessity may be dispelled by proof of other circumstances showing that the necessity for the credit did not exist, and did not appear to the material-man to exist, at the time of his employment. 363

An agreement to do the work on the personal credit of an agent of *the* vessel would be sufficient to defeat the claim of the material-man against the vessel. 363

Supplies sold in New York on the credit of a vessel hailing from a British port, carrving the British flag, and intending to proceed to a foreign port to be sold as a British vessel, create a maritime lien, although it appear her owner resided in New York. 60

Priority and enforcement.

So far as the remedy in admiralty is concerned for repairs and supplies, there is no distinction between a port in this country other than the home port and the port to a foreign country. 1061

There is no sufficient laches to prevent enforcement of the lien as against a bona fide purchaser for value where the vessel proceeded on a foreign voyage, and was libeled immediately upon her return. 60

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A libel to enforce an alleged hen for necessary materials and supplies furnished to the master in a foreign port, where no funds of the owner were available, need not specify the particulars and amounts which make up the claim, and the evidence by which they are to be proved. 1061

An admission in the pleadings that the vessel was in a foreign port is an admission of an apparent necessity for the credit of A vessel for alleged supplies furnished, though the answer avers that the owner was in good credit in such port. 365

Waiver: Discharge: Extinguishment.

Ah unaccepted draft given by an agent some time after repairs were made is not payment, and is not evidence that the work was done on the personal credit of the agent 363 Liens under state laws.

Liens under state laws.

Acts Ohio Feb. 26, 1840, and Feb. 24, 1848, do not create a lien, but only afford a remedy. 1130

"Ship chandlery" includes everything necessary to furnish and equip a vessel so as to render her seaworthy for the intended voyage, and, besides stores, stoves, hardware, and crockery, may include arms and ammunition. 489

The person in rightful possession running a vessel, though lessee, mortgagee, or parol vendee, and not the registered owner, will be considered the owner for the purposes of enforcing a lien under the state laws. 489

The federal district court may enforce the lien given by Act Pa. June 13, 1836. 489

Liens given by state law can be enforced in admiralty. 1015

Under the twelfth Rule in admiralty, a libel in rem may be maintained for repairs and supplies furnished at the home port upon the credit of the vessel. 1115

MARRIAGE.

See "Breach of Marriage Promise."

MARSHAL.

If a defendant arrested upon a capias ad respondendum be discharged under the insolvent act, before the return of the writ, and fail to appear, the marshal cannot he amerced. 1362

A judgment entered for the penalty of a marshal's bond remains as security for all persons injured by default of the marshal. 844

MASTER AND SERVANT.

Where a person employed under contract by which the employer was to have the benefit of all inventions made during the term of service continues after the expiration of the term in the contract, without any new agreement, the employer 1242

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is entitled to the exclusive use of all inventions made while the person was in his service.

A railway company managing its trains by telegraph failing to provide a suitable telegraph line, so equipped with telegraph stations and operatives as to properly and safely control the movement of its trams, is liable for injuries sustained thereby to one of its train servants. 29

The contributory negligence of a fellow servant will not defeat an action for injuries caused by the negligence of the master. 29

MECHANICS' LIENS.

Under Act March 2, 1833, a debt will not remain a lien upon the house for more than two years from the commencement of a building unless an action for the recovery of the debt be instituted or the claim filed within three months after furnishing the material. 93

MORTGAGES.

In the case of a mortgage, the property may be sold on execution before default in payment as the property of the mortgagor, and to affect a title under a mortgage a judicial sale must be had, but the same rules do not apply to a deed of trust. 1252

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A decree of sale of mortgaged premises is a final decree. 1058

In Louisiana a sale at the suit of a holder of a note under a mortgage securing several notes for a sum sufficient to discharge the mortgage does not discharge the lien of the mortgage as to the other notes. 486

Where the evidence upon a motion for injunction raised gave doubts on the question whether the bondholders in whose behalf the trustee was about to make a sale were bona fide holders, an injunction to restrain the sale was allowed. 744

An injunction to restrain the sale of mortgaged premises by a trustee on the ground that the bonds are invalid will not be refused because possibly a favorable chance to sell the property will be lost by delay, where the sale would entirely destroy complainant's rights. 744

A confirmation of the sale of mortgaged premises on the return of the commissioner, if erroneous, affords no ground on which to reverse the original decree. 1058

MUNICIPAL CORPORATIONS.

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

Under the power to "regulate ordinaries, taverns," etc., *held*, that the corporation could not prohibit the sale of liquors to guests at the bar of a tavern, or at their meals. 705

The corporation of "Washington, under its charter, has power to prohibit ordinary keepers to sell spirituous liquors to free colored persons. 353

The corporation of Washington, D. C., has no right to require a livery-stable keeper to take out a license. 341

The corporation of Washington had authority, under the charter of 1802 (section 7) to pass a by-law to regulate and license hackney coaches. 359

An ordinance against the unnecessary shooting of firearms within the limits of the city is within the power to prevent and remove nuisances, and to provide for the prevention of fires. 345

The corporation of Washington, under its authority to prevent nuisances, may prohibit the keeping of a dog in the city without payment of a license fee. 353

Under the power to prevent nuisances, and to superintend the health of a city, it has the right to prohibit the erection and use of brick kilns without a license. 210

Burning bricks in a clamp is not a violation of a by-law, making it penal to burn bricks in a kiln. 359

A keeper of a wood-yard in Washington is a retailer, within the meaning of that clause in the charter which authorizes the corporation "to provide for licensing, taxing, and regulating auctions, retailers, ordinaries, and taverns, hackney carriages," etc. 343

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No penalty was prescribed by the bylaw of July 19, 1804, against hawkers and peddlers, for not taking out a license. 356

Taxation of slaves of nonresidents under by-law of Washington, D. C. 918

A warrant is too vague and uncertain which charges that the defendant "did, on or about the 20th of July inst., own, harbor, or keep a female of the dog kind in Washington city, in the county aforesaid, without having a license therefor, contrary to the act or acts of the mayor, etc., on that subject made and provided" 353

Commitment for failure to pay fines in Washington, D. C. 1316

The author of a dangerous nuisance on the public streets is equally liable with the city for the injuries caused thereby. 224

A municipal corporation, created by legislative act for public purposes, is not dissolved by its failure to elect officers. 608

Where a municipal corporation had no property on which an execution could be levied, and was without officers to levy and collect a tax to pay a judgment against it, the court appointed its marshal a special commissioner to assess, levy, and collect the requisite tax. 608

Municipal corporations with power to make contracts, and to sue and be sued in respect thereto, may, in the absence of special legislative restriction, compromise a disputed claim, and the settlement is binding on the municipality and its taxpayers unless it can be impeached for fraud. 282

A taxpayer cannot overhaul or question the settlement, fairly made by a municipal corporation, of a disputed claim arising under a contract not ultra vires. 282

The fact that the consolidation of a company to which bonds were voted with one to which they were issued was illegal is no defense to a suit by a bona fide holder for value, without notice, where they recite due and legal consideration. 309

NATURALIZATION.

See "Aliens."

NEGLIGENCE.

The storing of gunpowder in a house located in a city where there was danger from fire is negligence, as matter of law, in regard to other goods stored therein. 1004

Where the presence of gunpowder in a warehouse in the case of a fire hinders and prevents the firemen from saving other goods, the powder will be regarded as the proximate cause of the loss. 1004

Though a contractor be not an unskillful or improper person if a nuisance necessarily occurs in the performance of the work, the employer is liable for all injuries resulting from carelessness or negligence. 224

NEUTRALITY LAWS.

Page

A native American who has become naturalized under the laws of France still remains subject to indictment in the United States courts for serving on a French privateer engaged in committing hostilities against a power at peace with the United States. 1330

NEW TRIAL.

A verdict will not be set aside in a case of tort, for excessive damages, unless it clearly appear that the jury committed some gross and palpable error, or acted under some improper bias, influence, or prejudice, or have totally mistaken the rules of law by which the damages are to be regulated. 934, 978, 1177

The court will not set aside a verdict on the ground of excessive damages, if the action is on a contract, unless they exceed the legal liability of the defendant under the contract. 978

A verdict will not be set aside as against the evidence unless there be strong ground to believe that the jury acted under some gross mistake of law or of fact, or under some improper bias, or undue influence. 1157, 1257

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A mere difference of opinion as to the weight and effect of the evidence is not sufficient to justify the court in setting aside a verdict. 417

A new trial will not he granted for surprise on account of new evidence, whenever, by reasonable diligence, it could have been previously obtained. 312

A new trial will not he granted for the purpose of introducing evidence which, although newly-discovered, is merely cumulative, or which was either known before, or might, by due diligence, have been discovered before, the former trial. 1157

The court will not grant a new trial on the ground of newly-discovered evidence unless satisfied that, if a new trial was had, a different result would follow. 978

Where counsel for the plaintiff, in the closing argument, adverted to facts not in proof, but the remarks were checked by the court, and the jury were instructed to confine their attention to the evidence in the case, the course of the counsel was *held* not to be sufficient ground for a new trial. 1177

In the case of a loss of a sum of money by defendant's negligence, the court will not set aside the verdict for plaintiff because the jury did not allow interest. 56

On motion for a new trial in an action of tort on the ground of excessive damages, the plaintiff may be required to remit the excess, instead of being requited to submit to a new trial. 282

NOTARIES.

No right of action exists against a notary public for an official malfeasance, incorruptly and falsely certifying to the execution and acknowledgment of an assignment of an interest in real estate, by other than the person to whom the assignment was made, and whose title was thereby invalidated. A purchaser from the assignee cannot maintain the action. 357

OFFICE AND OFFICER.

Where a collector of taxes is charged with the duty of collecting arrearages, his bond is liable for all such collections made by him after its date.

PARDON.

The president of the United States has the power to grant a conditional pardon for a capital offense. 636

The president has the right to commute punishment for a capital offense by directing imprisonment in the United States penitentiary, though there is no law directing imprisonment therein for such offenses. 636

The recital of a specific, distinct offense in a pardon by the president limits its operation to that offense, and such pardon does not embrace any other offense for which separate penalties and punishments are prescribed. 597

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A pardon from sentence for conspiracy to defraud the revenue does not entitle the defendant to demand cancellation of a judgment of forfeiture for fraud upon the revenue. 597

PARTIES.

Where, in equity, a decree against a party is essential to the relief sought, he is not a mere nominal party. 167

It is a general Rule in equity that all persons materially interested in the matter of the bill as plaintiffs or defendants ought to be made parties to it, however numerous they may be. 718

But there are exceptions to the rule, as where the other party is without the jurisdiction, or in case of a creditor suing in behalf of all creditors, etc. 718

The maker of an order on a general fund, or his assignee after bankruptcy, where acceptance has been refused, is a necessary party to a suit in equity on such order. 49

An objection to the want of parties not set up in the answer in equity cannot avail on final hearing unless the case is one in which the court cannot proceed to a decree between the parties before it without prejudice to the rights of those who are proper to be made parties, but are not brought m. 74

A person for whose benefit an action is brought, but who does not appear to be a party upon the record, nor to be interested in the event, cannot appear and plead in his own name. 607

PARTNERSHIP.

See, also, "Bankruptcy."

A joint purchase with a view to a joint sale and a communion of profit and loss, though for a single transaction, will constitute a partnership. 266

The fact that two firms share in a certain venture, keeping their bank account in the name of one firm, adding the word "Co.," in which form they draw checks, does hot make them partners. 233

A loan to a person engaged in trade on condition of a rate of interest in proportion to profits or a share of the profits does not constitute the lender a partner. 158

A contract to remunerate a servant or agent of a person engaged in trade by a share of the profits does not render such servant or agent liable as a partner. 158

A partnership in buying and selling lands, as to third persons, may be proved by the same evidence as a partnership in buying and selling merchandise. 266

Notes made jointly by partners, if understood to be partnership transactions, and in fact so used, will be binding on the farm. 266

Where bills drawn in the name of one partner, and accepted by the other, are in fact partnership transactions, and so understood, the firm will be liable thereon. 266

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The confession of a silent partner, not known in the proceedings, may be given in evidence. 570

PATENTS.

Patentability.

A patent is not grantable for a principle merely, but only for an application of a principle, whether previously known or not, to some new and useful purpose. 1070

To sustain a patent, it is not necessary that the inventor should have reduced the invention to practical use. It is sufficient if the invention is perfected, and the proper specification, drawings and model furnished. 881

A patented invention is deemed useful if it is not frivolous. The want of utility is good cause for not granting the patent, but not for setting it aside. 1074

On the point of the utility of an invention, the question is not whether the machine invented is the best one known to the community, nor whether it does its work better or faster than any other machine in the same department of labor, but whether it is to a certain degree useful. 1181

It is not necessary to the patentability of a device that it should have, in itself, apart from any connection with, or application to, other known devices or instrumentalities, capacity to produce practically useful results. 881

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A machine cannot be pronounced useless or impracticable because it is susceptible of improvement, which, will obviate or prevent embarrassments to its most perfect operation. 881

The distinction between patentable combinations and aggregations considered. 1394

What constitutes the identity or diversity of two machines, so as to give or take away the right to a patent. 1123

If a machine produce several different effects by a particular combination of machinery, and these effects are produced in the same way in another machine, and a new effect added, the inventor of the latter cannot entitle himself to a patent for the whole machine. 1123

A combination is to be regarded as a unit, and, if all its essential elements have not before been embodied and employed together, it is to be taken as an original invention, though the elements are all old. 429

Where a change from previous devices and its consequences, taken together and viewed as a whole, are considerable, there is patentable invention. 100

It is sufficient anticipation if the prior inventor performed the operation substantially upon the method which the patentee claims, and with the degree of success which demonstrated its usefulness, though not with the degree attained by the patentee. 407

The mere fact that a prior inventor ceased to use his invention because he had no occasion to do so will not prevent its being an anticipation. 407

Using a machine with a view to an experiment to test its value is a using, within section 6 of the patent act (1 Stat. 318) 424

A patent which covers the discovery of another that had been in use is too broad, and therefore void. 424

Who may obtain patent.

The person who has made a model of the invention before another inventor has made a model or drawing, though he has previously described it to others, first perfects the invention. 28

The inventor who first perfected the invention did not apply for a patent until 14 months later, and nearly a year after another had applied for a patent, and after a patent had been issued to him. *Held,* that he was not entitled to a patent where no excuse was given for his delay. 28

Whoever finally perfects a machine, and renders it capable of useful operation, is entitled to a patent, although others may have had the idea, and made experiments towards putting it into practice, and although all of the component parts 312

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may have been known under a different combination, or used for a different purpose.

Where an invention is voluntarily broken up and laid aside, a subsequent independent inventor who reduces the same to practice, and applies for and takes out his patent, and introduces the invention into public use, must be regarded as the original and first inventor. 969

The first inventor has the prior right only where he has used reasonable diligence in adapting and perfecting the invention, within the meaning of Act 1836, § 15 969

While the suggested improvement rests merely in the mind of the originator of the idea, the invention is not completed, within the meaning of the patent law, nor are crude and imperfect experiments sufficient to confer a right to a patent. 969

The employer is the inventor where he conceives the result, and employs others to carry the conception out, even though the latter use inventive skill in the details. 628

The prima facie proof that the person who made the first machine was the inventor is rebutted by proof that he allowed his employer to obtain a patent, and did not, until six months thereafter, himself make application or claim the invention. 256

Suggestions made by another as to form or proportions of the machine will not invalidate the patent, although incorporated in the specifications. 424

Prior public use or sale.

The prior knowledge and use of the invention which avoids a" patent relates to the time of the application, not the discovery, and to public use with the knowledge and privity of the patentee, not to a private or surreptitious use in fraud of the patent. 1074

The fact that a patent has been issued by the United States for an invention does not, of itself, prove the introduction of the invention into public and common use in the United States. 825

Prior description or foreign patent.

If the invention has been previously described, it is not material, as against a subsequent inventor, that it was not patented. 930

A prior description of a part cannot invalidate a patent for the whole. 798

A previous conception of the possibility of accomplishing a certain result, arising out of experiments, but not reduced to practice, or embodied in a distinct form, will not anticipate a printed publication. 521

Where a foreign patent, granted before the application-of the American patentee, is relied upon to destroy the novelty of the American patent, the patentee may prove that his invention was made prior to the granting of the foreign patent. 969

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Rules governing the proper reading of a disputed translation of a foreign patent. 969

Abandonment: Laches.

After two interferences, decided in favor of the patentee, in which the applicant's attorneys acted also as attorneys for the patentee, the application was withdrawn, and shortly afterwards a new one was filed. *Held,* that it was a continuation, and there had been no abandonment. 826

A delay for three years after an invention was perfected *held* not an abandonment where the inventor, during such delay, was in the employ of a person who held a prior and controlling patent, which prevented the use of his improvement. 969

Seven years' delay after withdrawal of application before its renewal, where the invention has in the meantime been put into public use by another inventor, *held* an abandonment. 1134

The action of the office in twice returning the specifications and drawings to the applicant because they did not conform to the regulations of the office is not to be construed as a rejection of the claims, and does not relieve the inventor of the duty of prosecuting his application with due diligence. 1134

The withdrawal of an application and the return of the fee is not of itself an abandonment of the invention to the public. 1134

Poverty is not to be accepted as an excuse for delay when it appears that during the period of the delay the inventor was able to find money and friends to prosecute other applications for patents both in this country and England, and even to go to England himself to urge his claims. 1134

The commissioner has jurisdiction, under Act 1839, § 7, over the question of the abandonment by an applicant of his invention to the public. 1134

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If an inventor make a gift of his invention to the public, and suffer it to go into general use, he cannot afterwards resume the invention, and hold a patent. 1123

Application and issue: Interference.

An agreement that all testimony taken before certain commissioners before a given date "shall be heard and considered by the commissioner of patents, whether the same be filed" before a certain date or not, operates as a waiver of objections to the competency of witnesses. 256

One who was present at the examination of witnesses by consent cannot complain that he was not notified of such examination. 28

Appeals front commissioner's decision.

The court has no jurisdiction of an appeal by a patentee from a decision by the commissioner in interference proceedings awarding priority to the applicant, and granting him a patent. 943

The granting or refusal of an extension of time for the hearing upon an affidavit of one of the parties stating the grounds therefor is a matter within the discretion of the commissioner, and from which no appeal lies, unless in cases of gross abuse, which is not to be presumed. 628

Validity.

A patent is a contract with the public in the terms of the law, which must be complied with in the same good faith as other contracts, but, as it gives a right of property, it ought to be protected by a liberal construction of the law and the acts of the patentee. 1074

The presumption in favor of the validity of a patent does not obtain where the records and papers of the patent office show conclusively that essential statutory provisions have been disregarded. 1044

If the oath required by the patent act previous to the issuing of a patent be not taken, still the patent is valid. 1120

The invention and mode of using it must be so pointed out by the patent, specification, drawing, model, and machine improved upon as to be intelligible to persons skilled in the subject. 10

It is not necessary that the disclosure of the invention be such as to enable the public to use it after the patent has expired. 1074

No defect or concealment in any specification is sufficient to avoid a patent unless it be with intent to deceive the public. 1070

A mere error of judgment in describing the invention is not sufficient to invalidate the patent. 1070

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Certainty and definiteness in the description is required that the public may know precisely what the invention is, and, after the expiration of the patent, may have an unerring guide to the construction of the patented invention. 473

If competent machanics, skilled in the business, testify there would be no difficulty in constructing the machine from the specification and drawing, the assumption of vagueness and uncertainty in the description is repelled unless it clearly arises from the language used by the patentee. 473

A patent does not become void if the patentee does not, after the patent is granted, put the invention into practical use. 881

Where a combination is claimed, the patentee cannot abandon part of said combination and maintain a claim to the residue nor prove any part thereof immaterial or useless without destroying the whole. 800

A claim for the devices described, which are alleged to produce a specified result, is not rendered invalid by proof that, under special circumstances, and on exceptional occasions, such result is not produced. The claim will be construed as describing the general Rule of the operation of the device. 881

Extent of claim.

Both a process and the product may be covered by one patent; but in such a case the description of the invention in the specification and claims should disclose that the inventor had both results in his mind. 625

If a person be the inventor of an improvement only, and not of the whole machine, he is entitled to a patent for no more than his improvement. 1123

A claim for an effect or function, in the abstract, cannot be sustained. The means by which the effect is produced, or the function performed, must be specified. 910

The concluding part of the application where the applicant sums up what he claims as new will control. The court looks at the other parts only in case of doubt. 930

The claim will be construed to be co-extensive with the invention as shown by the specification if it can be done without doing violence to its language. 940

The words "substantially as described" must necessarily be implied, and, being so implied, they involve a reference to, the specification. 798

The words "in such machine" *held* to refer to the machines improved upon, and not the improved machines. 813

The patentee need not comprehend the extent of his improvement or the capabilities of his machine to give him all the rights and benefits of his invention. 658

A patentee may claim a combination of mechanical elements which of themselves will not produce a new and useful result, when his specification shows how the 658

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patented combination, used with or supplemented by other devices and instrumentalities therein described, will produce such result.

Drawings not referred to in the specification of a patent may be treated as part of the specification, and used to explain and enlarge it. 312

Where the specification of a patent for a product fully describes the machine, and the process by which the product is produced, such patent may be good, even though the same specification, annexed to a patent for the machine, may not fully secure the patentee against the use of his actual invention because of a defect in the claim of the latter patent. 385

The words "substantially as described and shown," in the claim of the patent, *held* to relate only to material features of the combination specified, to be ascertained by considering the purpose of the machine, and what are the elements of the combination which constitute its distinctive character, and are effective in producing the peculiar result for which the contrivance is made. 385

Repeal of patent.

A circuit court can give a judgment declaring a patent void only in the cases provided for in section 6, Act 1793. If the patent is defective for any other cause, the court can only render a general judgment for the defendant. 1074

Reissue: Disclaimer.

A patent for a combination which is not itself useful and practicable may be reissued for the several parts if separately new, useful, and practicable. 881, 905

The decision of the commissioner granting a reissue is not re-examinable in the circuit court unless it is apparent upon the face of the patent that he has exceeded his authority. 646, 658

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An oath that the original patent "is not fully valid and available" is not such an oath as is required by law, and a reissue founded thereon is not valid. 1044

The reissue of a patent so as to make the invention apply to machinery the claim to which had been raised in the original application and abandoned is void. 1147

If the reissued patent does not, upon the face of the patent, embrace anything not substantially described or suggested in the original, the reissue is valid. 648

The patentee, in obtaining separate reissues for the several devices contained in a patent for a combination, may give the same identical description in the specification of each reissue of each and all of the devices included in the original. 905

In the case of separate reissues for the several devices of a combination for which the original was issued, where part only are extended, the monopoly is not ended as to all the devices. 905

Duration.

The effect of Act March 2, 1861, §§ 16, 17, was to give to an American patent a duration of 17 years from the date of a foreign patent previously granted to the patentee for the same invention. 825

An English patent dates from the time of its publication. 825

Extension: Renewal.

The right to use a machine embodying the patented invention granted during the original term is protected during an extension. 837

The right to use a patented process during the original term of the patent, under Act 1836, § 18, re-enacted in Act 1870, does not authorize the use of it after the patent is extended. 837

An infringer cannot defend upon the ground that the extension of the patent was obtained by means of fraud and per jury. 1105

Assignment.

A patentee cannot divide his right into parts, so as to give one person the right to use it for one purpose, and another the right to use it for another purpose, and restrict the right of the purchasers from either " 332

The words restricting the grant to such patents as the grantor "holds in his own right" apply to such as he was the apparent, but not the real, owner of, and a patent of which he holds only a part interest will nevertheless pass under the conveyance. 837

The assignment of all right, title, and interest in letters patent, and "the invention thereby secured," does not import a conveyance of the right to an extended term, and the assignee cannot convey such right. 408

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The words, "all patents and processes which he has or has in contemplation to obtain," merely serve to individuate the patents, and do not convey the extended term. 837

An employment to invent and perfect machinery for a particular purpose, while it will operate as a license to the employer to use machines invented by the employe, and put in use under such employment, will not, of itself, confer upon the employer any legal title to the invention itself or to the letters patent protecting it. 1059

Licenses.

A license to use an invention "for the whole term of the patent which may be granted," given before the patent was issued, does not authorize the use of it under the extended term. 837

A lease of premises and machinery by which a patented process is carried on with a right to use all patents for such process *held* only a license to use such processes on the leased premises. 837

Where a machine is licensed for use in a particular territory, the use of it by subsequent purchasers in other territory is unlawful. 1133

The mere fact that the agent of the patentee, after the transfer of the machine to the unlicensed territory, demanded of the purchasers the back royalties due upon it for use in the licensed territory, conferred no right to use it outside the territory named in the license. 1133

Where a patented machine, not practically useful, is perfected by the inventor while in the employ of another, and at the latter's expense, he is entitled to a license for its use. 1242

Infringement—What constitutes.

The making of a patented machine fit for use, and with design to use it for profit, in violation of the patent right, is of itself a breach of the patent right, for which an action lies. 1120

Where an inventor assigns his invention under a verbal agreement that the assignee shall pay the expense of obtaining a patent for a half interest therein, and the patent is issued to him, the manufacture of the patented article by a person to whom the inventor assigned his equitable interest is not an infringement. 1059

Where a structure consisting of several parts is patented as a combination, one who manufactures and sells some of the parts, they being useless without the residue, with the understanding and intent that such residue shall be supplied by another, and the whole go into use in its complete form, is liable as an infringer of the patent. 74

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If the patented means were new, and the defendants have used them, they have infringed, although they may have used another device, not patented by the plaintiffs, by which the result is accomplished in a more perfect and satisfactory manner.	395
A decision that defendant's machine is not an infringement as complainant's patent then exists, will not protect defendant in the use of such machine where a reissue is subsequently granted.	658
The inventor of an improvement on a patented machine cannot use the original invention in connection therewith.	798
A patent for a device cannot be avoided by dividing the device into two parts, which, when combined, produce the same result, in substantially the same way.	881
The defendant, having employed all the parts in combination covered by the claims of the patent, cannot escape liability for infringement because of the employment of others in addition.	1358
A patent for a combination is infringed by the use of a similar combination, although one of the elements is omitted, and another substituted for it, unless the substituted device is a new one, or was not known at the date of the patent as a proper substitute for the one omitted.	554
A device is not less an equivalent of another because, superadded to all the functions of such other, it may perform a further office, or because, besides all the functions of such other, it performs some one of the offices more effectively or better, so long as it performs them in substantially the same way, and uses substantially the same means.	881
A patent calling for smooth or plain surfaces is infringed by surfaces having slight in equalities, but which are sufficiently smooth for all practical purposes and operate substantially as the patented surfaces.	940

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A saw having its fleam teeth of the usual triangular form, with intervals between them, does not infringe a patent for a saw having its fleam teeth arranged in pairs, with only a perpendicular slit between them. 910

A patent for a saw, claiming in combination clearing teeth hollowed out in front, so as to plane out the wood between the scores cut by the fleam teeth, is not infringed by a saw in which the wood is rasped out by clearing teeth, which are straight and perpendicular in front. 910

Placing red-hot car wheels in a pit with alternate layers of charcoal, which is ignited thereby for the purpose of annealing, *held,* equivalent to placing them in a previously heated furnace, within the meaning of the patent. 1095

In a combination of a machine for making kettles, a tool carriage moved by a rod connected with a cam acted on by a gear wheel actuated through a crank by the hand of a workman is an equivalent of a tool carriage moved by a screw connected by a gear wheel with the power moving the lathe. 385

A hat-body machine, in which it is claimed that the fur is projected by a rotary picker downward against a surface, by which it is guided upon a former, is an infringement of a patent for a like machine, in which the fur is blown by such a picker upwards against the upper side of a tunnel, through which it is carried on the former. 658

—**Preliminary injunction.**

Where infringement, priority, novelty, and patentability are not questioned, and the patentee's claim has been acquiesced in by the public, an injunction will be granted without a trial at law. 826

Where a judgment sustaining a patent is acquiesced in or affirmed by the supreme court, questions as to the originality of the invention or validity of the patent will not be considered de novo. 646

But where a writ of error is pending, the court in another circuit will consider the errors alleged to have been committed at the trial, and will disregard the judgment where there was radical error. 646

In a case of long and exclusive possession, an injunction will be granted without obliging the patentee previously to establish the validity of his patent by action at law; otherwise, where the patent is recent, and defendant asserts its invalidity. 312

The presumption of novelty and usefulness arising from the issue of a patent may be rebutted by affidavits on an application for an injunction if the patent is not ancient. 1134

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Denied, after decision by supreme court in favor of defendant, though after a reissue the same machine was *held* to be an infringement in another circuit, and plaintiff alleged infringement by a similar machine with slight alterations. 664

Denied where defendant claimed openly to have manufactured under a patent of prior date, where complainants delayed for many years to enforce their rights, though their inventions antedated the patent under which defendants manufactured. 1110

The question of violation of an injunction was retained until final hearing on defendant's showing that alleged articles were not within the claim of the patent as construed by the court. 625

— **Procedure.**

A joint action lies by the patentee and an assignee of a moiety of the patent right for infringement (Act Feb. 21, 1793, c. 11.) 1120

A grant of a right to construct and use 50 machines within certain localities, reserving to the grantor the right to construct but not use others therein, is of an exclusive right, and suits are to be brought in the name of the assignees. 312

Where there is privity or connection between the different defendants, they are jointly liable on a bill for infringing a patent. 658

The owner of infringing machines and a lessee from him may be joined as defendants in a suit for infringement. 658

A declaration for the infringement of a patent, commencing in case, and concluding by demanding actual damages in gross in compensation of the wrong, is good. 1220

It is not necessary in the declaration to aver at what specific time the invention patented was made. It need only be before the application for the patent. 1220

A declaration which avers the patent and specification to be "in language of the import and to the effect following," and then sets them forth in hæc verba, is sufficient, and is not open to the objection that the patent is not set forth according to its legal tenor and effect. 1220

An averment that the patent and specification are "ready in court to be produced" is equivalent to a profert in its most formal terms. 1220

The grant of letters patent is itself sufficient evidence that all the preliminary steps required by law were properly taken by the patentee, and it is not necessary, in a declaration, to plead the taking of any of those steps. 1220

A declaration must tender an issue on the novelty and utility of the discovery patented. 1220

A defense in a suit in equity that the patentee has, since he obtained his patent, abandoned or dedicated it to the public use, must be set up in the answer. 1358

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A special plea setting forth matters of which notice might have been given under Act July 4, 1836, § 15, will be stricken out on motion. 1219

The 30 days' notice of special matter of defense must be given 30 days' prior to the beginning of the term of trial. 800

The 30 days' notice of special matter of defense need not specify the particular portion of the patent to which it is designed to apply. 800

Amendments to an answer sought to be made a year after plaintiff's proofs were closed by setting up two years prior public use, and anticipation by a prior patent, not allowed, where the excuse was mistake of counsel as to the law governing the case, and no knowledge as to such prior patent. 562

The meaning of technical words of art in commerce and manufactures, used in a patent, as well as the surrounding circumstances, which may materially affect their meaning, are to be interpreted by the jury. 312

Where several prior inventions are offered in evidence to defeat a patent, the jury should agree on each separately, and, in order to find a verdict for the defendants on any one of them, they must agree on that one. 407

Where an interlocutory decree in an equity suit inadvertently provides for the recovery of both profits and damages, it is no ground of exception to the report of a commissioner that damages could not be recovered in such suit, but in such case the court will resettle the interlocutory decree. 1372

—Evidence.

The patentee is prima facie the inventor of that for which the letters patent were granted him. 312

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The validity of plaintiff's patent is admitted by defendant's patent referring to the former, and disclaiming those parts of the invention found therein. 395

Every doubt upon the question of utility should be resolved against an infringer who uses the patented process. 1105

Parol evidence is not admissible to show at what time a patent was applied for, as the patent office contains written evidence of such fact. 477

The presumption of originality arising from the grant of a patent only extends back to the time when the application was filed in the patent office. 969

Defendant must rebut the presumption of originality arising from the patent by proof that it was not the invention of the patentee, or was previously known and in use. 473

When a defendant has shown prior knowledge and use, the burden of showing prior invention is on the plaintiff. 563

Patents may be given in evidence to show the state of the art without notice, but printed publications cannot. 800

The file wrapper, and contents of the application for the patent is not admissible evidence for the purpose of limiting the construction of the patent. 800

The testimony of experts is admissible only to show the operation of devices, not the object of a patent, or whether it has been infringed. 395

—Injunction and its violation.

Where the president of defendant corporation was served with the injunction, and devised and practiced the transgressing process, an attachment will be awarded against Turn. 832

Where the violation is willful, the summary method of correction is imperative, and will not be arrested by the fact that the things used by defendant are in some respect different from those interdicted. 832

On a motion for an attachment for the violation of an injunction to restrain the infringement of letters patent, affidavits to show that the patentee was not the first and original inventor of the thing patented are immaterial and irrelevant. 938

Where the injunction has been violated, and the defendant is protected from the consequences only by a defect in the service of the writ, no costs will be allowed to him on a denial of a motion for an attachment for such violation. 938

—Accounting: Damages.

Where the patentee gave his consent to the manufacture of some of the alleged infringements by defendants, he can recover no damages for these; for those afterwards manufactured he is entitled to manufacturer's profits. 800

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The infringer is in equity a trustee of the patentee of the gains derived by him from the infringement.	835
In an action for a violation of a patent right, the plaintiff can recover for actual damages only, and not for a vindictive recompense.	1123
If there be a mere making and no user proved, nominal damages are to be given to the plaintiff.	1120
If a user of the patented machine be proved, the measure of damages is the value of the use during the time of the user. Neither the price nor the expense of making the machine is a proper measure of damages.	1123
The plaintiff, in a patent suit for making and selling, is entitled to the actual damages he has sustained by the infringement, or, in other words, to the profits the defendant has made thereby.	1181
In taking an account where profits and damages are estimated upon the extent of use of the patented machine in manufacturing an article, complainant must show affirmatively the amount actually produced. Profits and damages cannot be given upon the estimated capacity of the machine.	557
The entire profits of infringing car wheels were allowed where such wheels could not have been made without infringing the patented process, though other equally valuable wheels could have been made at less cost by other processes.	1105
In the case of the infringement of a patent for a process of annealing cast-iron ear wheels, the case was referred back to the master to report whether the infringing wheels could have had any market value without the infringing process, and, if so, the amount of value derived from the use of the patented process.	1102
Where the infringed patent is for an art, a fair measure of the infringer's actual profits is the saving in cost of production by the use of the appropriated invention over the cost of production by the use of cognate means, used and available.	835
In computing damages for infringement of a patent for washboards, the increased facilities in making them, due to inventions since the patent, are to be excluded.	473
Where the patented machine is an improvement over an existing machine, increasing its productive capacity, the profits are to be ascertained upon a consideration of the increased production only.	557
The infringer of a patented process of reducing zinc ores for the production of white oxide cannot be charged with the value of an increased residuum, obtained by using the process, available for renewed treatment, which residuum fluctuates with the varying richness of the ore, and results from its inherent natural properties, and is not imparted to it by the direct operation of any contemplated function of the process.	835

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Where, in the case of an infringement of a patented process, the infringer used a furnace specially adapted thereto, and there were no data from which its contributory value could be estimated, the court treated the furnace and process as co-equal, and allowed one-half the profit.	835
In an accounting for profits, the defendant cannot be credited with a sum of money as a salary earned by and paid to himself while engaged in the business which earned the profits.	1372
In arriving at profits as the basis of damages, the jury must take into account the interest on capital, the risk of bad debts, and expenses of selling.	1181
The actual damages sustained include all necessary and proper expenses in protecting the violated rights.	312
Counsel fees for prosecuting the suit are no proper item of damage in an action for violation of a patent.	1120
Profits are in the nature of damages which, up to the date of the final decree, are unliquidated, and interest should not be allowed before the time.	557
In an equity suit brought before the passage of Act July 8, 1870, §§ 55, 111, both profits and damages cannot, be recovered.	1372
In an action on a patent right, the jury are to find single damages, and the court will treble them.	1123
An order requiring defendant to file a monthly account of all "iron safes hereafter manufactured or sold by him" is sufficiently complied with by giving the inside dimensions of the safes, without stating the prices or the names of the purchasers.	1219
It is not proper, upon a motion to confirm or reject the master's report, to consider open any question which was foreclosed by the decree by which the case was referred to the master.	1105

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Marking unpatented article as patented.

A person who marks as patented an tin-patented article is not liable to the penalty-prescribed by Act Aug. 29, 1842, § 5, unless he does so knowing that he has no right to do so, and with the intention of deceiving.

the public. 31

In an action for the penalty for marking an unpatented article as patented, the question of the intention of deceiving the public is for the jury. 31

Various particular inventions and patents.

Armor. Heaton's patent of April 14, 1863, for improved defensive armor for ships and other batteries *held* void for want of novelty., 521

Bark mills. Montgomery's and Harris' patent for an improvement in a mill for breaking and grinding bark *held* valid and.

infringed. 1181

Blind slats. No. 199,948, for improvement in connecting, *held* infringed. 1068

Boots and shoes. No. 49,572, for an improved mode of cutting soles, *held* invalid. 45

Centrifugal machines. Reissue No. 2,845 (original No. 63,770), for improvement in centrifugal machines for draining sugar and other substances, *held* valid and infringed. 813

Cloth. Nos. 10,986, 106,101, and 124,180, and reissues Nos. 5,004, 5,186, for improvements in cloth-cutting machines construed, and *held* not infringed. 302

Composition covered rings. No. 37,941, for improvement, construed, and *held* valid, and infringed. 622

Cotton presses. Brooks' patent for improvement *held* void for want of novelty. 1147

Firearms. No. 12,648, for improvement in repeating firearms, *held* valid and infringed. 969

Fire arms. No. 12,648 for improvement.

in repeating firearms, *held* infringed. 981

Gas-burner. Walsh's invention of an improvement *held* patentable. 100

Ginning machines. Patent to Whipple for improvement *held* valid and infringed. 940

Harvesters. Reissues Nos. 875, 877, 878, 879, 2,610. and 2,632, for improvement, *held* valid. 881, 905

Hats. Reissue No. 2,942, for machine for making hat bodies, *held* valid. 648

Such patent *held* not infringed. 648

Such patent *held* infringed. 645

Headlights. No. 35,122 (reissued No. 2,133), for improvement in locomotive lamps, *held* valid in part and infringed. 1358

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Hoop skirts. Nos. 34,026 (reissued No. 1,518) and 37,124, for improvements in machinery for fastening clasps or spangles to the hoops and tapes of hoop skirts, *held* valid and infringed. 1205

Kettles. No. 8,589, for machine for making kettles and articles of like character from disks of metal, *held* valid. 395

Kettles. Reissues Nos. 3,995, 3,996, for improvement in machine for making kettles, and improvement in kettles, *held* valid and infringed. 385

Lamps. No. 49,984, for improvement, construed as a combination of a burner and chimney, and *held* infringed by a sale of the burner alone. 74

Looms. No. 130,961, for improvement, *held* infringed. 554

Such patent *held* invalid. 563

Preserving jars. No. 07,920, for improvement, *held* valid. 429

Skirt and bustle stiffening. Reissue No. 501 (original No. 17,602), for improvement, construed and *held* not infringed. 727

Wheels. Whitney's patent for an improvement in the process of manufacturing cast-iron railroad wheels *held* valid and infringed. 1095, 1102, 1105

White oxide of zinc No. 13,806, for process for making, *held* infringed. 832

PAYMENT.

Taking a bill of exchange is only prima facie evidence of a satisfaction and extinguishment of an antecedent debt. 67

A note is not payment unless it be expressly received as such. 572

A receipt is only evidence of payment, and may be explained or contradicted by parol. 572

Application of payments in case of long-running account between parties of notes, acceptances, etc. 341

Money paid for a license to carry on a business in a city which the city had no right to exact cannot be recovered back. 925

PILOTS.

See, also, "Salvage."

Admiralty has jurisdiction of suits for pilotage. 453, 464.

The jurisdiction of the admiralty courts of cases of pilotage services is not exclusive of the state courts, in the absence of any legislative provision on the subject. 464

Congress having adopted the New York laws relating to pilots previous to the passage of the judiciary act, the admiralty courts have no jurisdiction of cases for pilotage services thereunder. (Reversing 453.) 464

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A state statute exempting vessels owned wholly in the state from payment of any pilotage unless a pilot is actually employed does not violate Rev. St. § 4237, but is in violation of Const, art 1, § 9, el. 6, providing that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another state". 1373

A pilot for the port of Charleston, S. C., must be thoroughly acquainted with the bar at the mouth of the harbor, and the practicability of crossing it at a given time. 354

A vessel owned by a resident of Maine, and sailing under a fishing license, is not liable for half pilotage as either a "foreign vessel" or "vessel under register," within the New York pilot law. 488

A pilot was allowed $100 extra pilotage for navigating into the port of New York a passenger ship discovered 60 miles outside Sandy Hook in disabled condition. 270

PLEADING AT LAW.

Where a statute declares that a certain suit shall not be brought without certain allegations, such allegations in the declaration are essential to the plaintiff's right to sue. 32

An Objection that a declaration shows that the cause of action is barred by the statute of limitations cannot be taken by demurrer. 1266

A variance between the writ and the "declaration cannot be taken advantage of by a demurrer. 1220

A special demurrer will not be permitted on setting aside an office judgment. 920

A plea to the jurisdiction on the ground that a demand has been colorably assigned in order to evade a discharge in insolvency is not to be treated as dilatory and captious, like some pleas in abatement. 72

When leave is given to amend on payment of costs, the payment is not a condition precedent, unless so specially expressed in the order. 1156

Where an amended declaration, filed 20 days before the commencement of the term, was removed from the clerk's officeby plaintiffs counsel, the court refused to compel defendant to plead during the term. 34

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A bill of particulars appended to a petition to recover money paid as usury, which sets forth the usurious payments as general indebtedness for cash paid by the plaintiff to the defendant, is sufficient. 961

Where a plaintiff is called on to furnish a bill of particulars, he is limited in his proof to the items thus made out. 1401

A copy will be received as over when a profert has been made of the original, and, if a copy is offered, the defendant may demur. 621

Two affirmative facts in a plea and replication may be so contradictory as to make an issue, as where the plea averred diligence in the prosecution of a suit, and the replication charged negligence. 32

The plaintiff cannot give evidence of a consideration different from that alleged in the declaration. 431

Although a party under a plea of former recovery be precluded from giving the record in evidence because of variance, yet he may avail himself of it under the general issue. 947

In, pleading a record, its precise words need not be observed, but the record produced must conform strictly to the plea in matters of description, though it is not necessary that they should have been stated. 947

After verdict for plaintiff, the court will not grant a new trial for defects in a declaration that might have been amended when substantial justice-has been done.

Under the system of pleading adopted in New York, judgment at trial, in a suit at law, is to be rendered, in accordance with the facts pleaded and proved, without regard to the form of the pleadings or the theory on which they were prepared. 850

PLEADING IN ADMIRALTY.

See, also, "Collision"; "Maritime Liens' "Salvage"; "Seamen."

Where the answer to a libel for seaman's wages sets up payment in full and a release under seal, the particulars of the release need not be set out, as it is only evidence. 770

When the respondent wishes to avail himself of any particular matter of defense, he must present it with proper averments in his answer or by plea. 1303

Objections to defects of form in a libel in admiralty should be raised by special exception under Rule 24. If the exceptions in an answer are not insisted upon at the opening of the trial, they will be considered as waived. 1015

Evidence of special damage may be given under a general allegation. 729

There are no technical variances or departures in pleadings in admiralty. 729

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Allegations in pleadings are admissions by the pleader, and need no proof unless denied and put in issue, and, as against the pleader, will be taken as matter conceded. 181

PLEADING IN EQUITY.

A bill cannot be sustained in equity which is multifarious and embraces distinct matters, affecting distinct parties, who have no common interest in the distinct matters. 718

A bill by a trustee of a bankrupt praying that a transfer of an undivided half in a vessel be adjudged void, but, if it be declared valid, for an accounting and a sale of the vessel and a distribution of the proceeds, is multifarious. 1255

Where, to a complaint alleging fraud as a ground of relief, an answer is filed setting up the statute of limitations, complainant will be allowed to amend by alleging that the fraud was discovered within six years. 855

Where a bill to set aside a conveyance calls for answers under oath as to the date of a contract relied upon, an answer that it was not executed until a day much later than its date is responsive, and must be overcome by two witnesses, or by one witness and strong corroborating circumstances. 21

It is only an allegation of some fact which is presumed to be within the knowledge of the party answering that can be taken as true simply because it is not denied. 1020

It is irregular to file, without special leave of the court, two pleas to a bill in equity. 901

A defendant may plead facts to show that he has no interest in the subject-matter of the suit. 1362

Where the allegations of a plea to a Din in equity are qualified by a reference to a paper annexed to the plea, the plea must be read as if the paper were introduced, in its very terms, into the body of the plea. 901

A controversy between co-defendants to a bill in equity cannot be the matter of a cross-bill unless its settlement is necessary to a complete decree upon the case made by the original bill. 486

The court will not allow the theory or defense set up by the original answer to be changed in several important particulars merely on the ground that defendant filed the answer under a mistake, when no new facts are alleged, and there is no request to have a single fact in the bill changed. 406

A material amendment of a bill after answer must be on payment of all costs, including the solicitor's fee. 83

PLEDGE.

A delivery of the thing pledged where actual delivery is possible is necessary to render the pledge valid. 1237

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The pledge of a note at the tune in the lawful possession of a third person may be valid without actual delivery to the pledgee. 1237

A pledge or mortgage made to secure a debt previously incurred, but still subsisting, or to indemnify against a present liability arising out of a past contract, is made on a sufficient consideration. 1237

A person advancing money on the pledge of a policy of insurance on goods is entitled to the proceeds as against a surety on a bottomry bond given by the pledgor to the insurance company. 1161

POWERS.

Where a power has been completely executed, but with the addition of something improper and inconsistent with its purpose, if distinguishable, the execution is good, and the excess is void. 257

Courts always lean in favor of the execution of the power if it can be supported, even if it should disappoint the person executing it. 257

PRACTICE AT LAW.

The court will refuse to strike out a plea of the statute of limitations filed after the Rule day where the attorney, just admitted to practice, was ignorant of the Rule requiring such plea to be filed strictly within the rule day. 846

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The legal plaintiff has a right to dismiss a suit brought in his name by order of a person who claims to be his assignee of the right of action, and the court will not interfere to protect the assignee unless the evidence of the assignment is clear. 606

PRACTICE IN ADMIRALTY.

A person may sue in admiralty without giving security for costs on proof of inability. 861

A seaman may be required to give security for costs on appeal unless he prove by satisfactory affidavits that he is unable to do so. 861

The court has no power to order back into the custody of the marshal a vessel which has been fairly discharged from arrest on a stipulation. 1052

A motion to discharge respondent from arrest on the ground that the libelant has no legal cause of action against him, will not be granted where the affidavits read upon the motion in behalf of the respective parties are contradictory as to the merits of the cause. 1146

If libelant's proctor negotiates the postponement of the trial, he cannot thereafter allege ignorance of the fact that the answer was on file. 261

The supreme court has power to regulate the practice of the courts of admiralty, and to frame rules in relation to execution, and other process to be used therein. 175

The decree in admiralty must correspond with the issues in the pleadings, and the opinion of the court on collateral matters should not be incorporated therein. 192

The decree cannot be attacked by exceptions to the commissioner's report thereunder. 407

Admiralty decrees can only be enforced in the federal courts in the mode and by the process properly ordained by acts off congress and rules of court for their execution. 175

An admiralty decree can be enforced only by an attachment or a capias against the person of the defendant, or a fieri facias against his goods and chattels. The admiralty court has no power to issue an execution against his lands. 175

PRACTICE IN EQUITY.

A cross-bill should be stricken from the filed if filed without notice to the solicitor of the defendant. 568

Where the defendant on a bill for injunction is merely nominal, the court will, on the application of the party really interested, direct the answer of the nominal party to be taken under a commission, and notice of such application is not necessary. 1252

The court cannot enter a final decree in case of default and decree pro confesso during the term when the default was taken. 146

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Witnesses may be examined orally at the trial merely to verify some document referred to in the pleadings, or to establish some fact of a formal character which has been inadvertently omitted in the testimony. 747

PRINCIPAL AND AGENT.

See, also, "Factors and Brokers." '

The agency of a real-estate agent and his duty to his principal ceases upon delivery of the title papers and payment for the property, and thereafter he may deal for the property as any other person. 21

The agency is not continued by the fact that notes for the unpaid purchase price and a mortgage securing the same were le with the agent in escrow to await the delivery of a quitclaim deed from a third person, which the vendor was to furnish. 21

An agent who does not comply with his instructions is liable for the loss occasioned thereby, although the services were gratuitously rendered. 54

A contract by an agent made subject to the principal's ratification will be *held* ratified by the principal's entering it on his books, and corresponding with the other party in regard thereto as a subsisting contract. 873

A settlement of accounts made by an agent abroad, and acquiesced in for four years, *held* should not be disturbed. 1198

An agent having a balance in his hands of a fund used to make purchases is not liable for interest until a demand is made therefor. 1357

An agent is a competent witness to prove his own authority if not in writing, and is not incompetent by reason of his liability to either of the parties. 606

PRINCIPAL AND SURETY.

A surety is entitled to the protection of a court of equity; also sub modo to the benefit of ail the securities which the creditor has. 1161

The election of a creditor to retain or recover a debt from one of two parties, or out of one of two funds, cannot vary in a court of equity their rights inter sese. 1161

Contractors for the building of a railroad, having stock of the railroad company as security for their contract, hold such stock for the common benefit of themselves and others whom they have admitted to share in their contract, and must deal with such stock accordingly. 1165

In an action against a surety in a bond to perform a decree, it is not necessary that notice of the decree should have been given to the principal. 1026

Judgment will not be rendered on motion of one surety against another unless the insolvency of the principal be fully proved. 1025

Money not paid for a principal before action brought cannot be recovered by a surety as money paid unless on a special valid promise to pay it previously. 925

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PRIZE.

See, also, "War."

Coin taken in a vessel which was captured in the act of breaking a blockade is liable to condemnation, though belonging to a neutral, and not intended to be used in trade. 153

The amount of money sufficient for the necessary expenses of the master of a vessel captured in breaking a blockade, while detained as a witness, will be allowed him out of coin belonging to him found on board. 153

Cargo sent in by another vessel, the captured vessel being appropriated by the United States, condemned on the evidence of a person present at the capture. 463

A vessel, after her capture, appropriated to the use of the United States, and not sent into port, where none of her company are sent in as witnesses, will be discharged for want of legal arrest and prosecution. 463

The rules of practice in admiralty are the basis of practice in prize in our national courts. 462

On a libel of a captured vessel, a settled course of trade in violating the blockade, and the employment of the vessel before in such trade by the same owner, may be considered. 1307

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Vessel and cargo condemned for an attempt to violate the blockade. 1307

Vessel and cargo condemned as enemy property, and for an attempt to violate the blockade. 418

Vessel and cargo condemned as enemy property, and for a violation of the blockade. 462

PUBLIC LANDS.

See, also, "Grant"

The term "tide lands" (Act May 14, 1861) means lands covered and uncovered by the tide, and does not include lands lying below low-tide mark, and permanently covered by the navigable waters of the bay or ocean. 36

The alcaldes of San Francisco had no power to grant lands below low-water mark, covered by the navigable waters of the bay. 36

As between the heirs at law and the assignee of a military land warrant, a court of equity will investigate the proceedings under which the assignment and warrant were obtained. 221

Where a decree locating a grant rests on the idea of conforming as near as may be, and in a general way, to the supposed, intention of the grantor, the court is not precluded from thereafter modifying in a slight degree the directions of the lines so as to obtain a location by which existing rights acquired in good faith may be protected. 527

In locating a grant, the court cannot be controlled in establishing the lines by the fact that the survey, which it regards as conformable to the grant, will include part of lands falling within the limits of a subsequent grant, which has not yet been confirmed. 528

Where a grant is of a certain quantity of land to be taken in the form of a square, and at the place delineated on the diseño, but no boundaries are named, the condition as to quantity and shape must control, as against any natural objects represented on the map. 528

Decision of conflicting claims to lands upon the evidence in a suit in equity to prevent the issuing of certain scrip. 51

QUI TAM AND PENAL ACTIONS.

A qui tam action is not the proper remedy where no part of the penalty goes to the party suing for it. 345

RAILROAD COMPANIES.

See, also, "Carriers"; "Corporations."

The fact that the right of a company to consolidate is limited under its charter does not deprive it of the right to consolidate under the general laws of the state. 293

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The consolidation of a railroad company, on whose road there is a vendor's hen, with another company, does not discharge the lien. 747

The city of Baltimore had no power to appoint new directors in the Baltimore & Ohio Railroad on an increase of stock de-rived from stock dividends. 914

It is no defense against railroad bonds in the hands of a bona fide holder that they were exchanged for state bonds, which were used for purposes not contemplated by the statute authorizing the exchange. 747

Where state bonds issued in exchange for railroad bonds secured by a statutory mortgage are declared invalid, the holders of the.
state bonds may in equity enforce such mortgage for their own benefit. 747

The trustee of a railroad mortgage has the right to decide in the first instance as to the right of bondholders to have the property sold to pay the bonds, but persons representing the railroad company may appeal to the courts. 747

Where the lien of bondholders on railroad property is created by statute, the statute regulates their rights, notwithstanding the fact that, without its aid, a resulting equity would have arisen in their favor. 747

Where, by the negligence or misfeasance of the mortgagor, railroad property has been wasted so as to jeopardize the security of the mortgage, a court of equity may take possession, notwithstanding Act Jan. 8, 1853 747

Where a railroad is placed in the hands of a receiver at the instance of mortgage bond holders, the claims for operating expenses are prior liens. 747

The company is liable for the death of a person lawfully riding on an engine having the right of way, caused by collision with another engine negligently dispatched to meet it on the same track. 1033

A rule that "no person shall be allowed to ride on the engine without the permission of the engineer," placed in the hands of an engine driver, authorizes him to permit a person to ride upon the engine. 1033

It is not, as matter of law, negligence preventing a recovery by a person injured at a railroad crossing in a city to stop and look and listen before attempting to cross. 1111

The running of a freight train over a crossing at an unlawful rate of speed is not the proximate cause of an injury to persons who attempt to cross after the train has passed, and are struck by a train on an adjoining track. 1111

The failure to ring the bell of a switch engine at a crossing where a freight train has just passed on an adjoining track is negligence. 1111

REAL PROPERTY.

See, "Adverse Possession"; "Deeds"; "Ejectment"; "Estates"; "Grants"; "Public Lands."

RECEIVERS.

Page

Where a mortgage provided that on certain conditions the trustees might, upon the request of any bondholder, take possession and sell the property, *held* that the fact that the condition existed which authorized such possession, and the refusal of the trustees, were sufficient grounds for the appointment of a receiver. 261

REMOVAL OF CAUSES.

See, also, "Courts."

Right of removal.

The fact that one of the parties to a suit is a national bank is no ground for removal from a state to the federal court. 1222

To authorize a removal on the ground that the suit involves a question arising under the constitution and laws of the United States, it must clearly appear from the record that a federal question is presented, and must be passed upon in the disposition of the case, and the laws referred to and the facts relied upon as affected by these laws must be fully and clearly set out. 1222

It is only when some state law, statute, ordinance, regulation, or custom hostile to the rights of the petitioner, and their enforcement, is alleged to exist, that the petitioneris entitled to a removal under Rev. St. § 641 633

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An allegation that a state law for the selection of jurors, which is on its face-fair, will be so administered as to secure a jury inimical to petitioner, and that there is a general prejudice against him in the minds of the court, jurors, officers, and people, is not sufficient. (Rev. St. § 641.) 633

A motion under 1 Wag. St. Mo. p. 291, § 13, for execution against a stockholder, is not removable to the federal court as a "suit at law or in equity." (Act 1875, § 2.). 525

A proceeding by mandamus to compel defendant corporation to register transfers of certificates of stock *held* by plaintiff is a suit of a civil nature at law. (Act March 3, 1875.). 360

A proceeding under the right of eminent domain to condemn land for a railroad is a suit of civil nature, and may be removed. 290

A suit in a state court which falls within the description of suits removable into the federal circuit court may be removed, although it could not originally have been brought in the federal court, and this principle is not changed by Act March 3, 1875, § 5 260

A proceeding by petition of a citizen of the state against a citizen of another state to restrain the execution of a judgment obtained in the state court by the latter against the former is removable (Act March *3,* 1875, though federal courts are prohibited by Rev. St. § 720, from granting an injunction to stay proceedings in a state court. 426

The postoffice laws of the United States are "revenue laws." within the meaning of Act March 2, 1833, § 3, providing for removal of a suit brought against a person for an act done under the revenue laws, or under color thereof. 255

An action against a postmaster for a wrongful refusal to deliver a letter to plaintiff is removable under such act. 255

Where the assignee of a contract made between citizens of the same state is a citizen of another state, a suit against defendant in the state of his residence may be removed. (Act March 3, 1875.) 378

Where there are several defendants entitled on appearance to remove a cause, some of whom have appeared and others not, those who have appeared cannot alone remove the cause where the judgment or decree must be joint. 167

Time for removal.

Where, in a suit to recover money, defendant pays the same into court, and a third person, claiming the sum, is made defendant, and a new complaint filed, the suit is to be regarded as having been commenced when such substitution is made. 589

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The petition for removal must be filed at the term at which the case can be first tried and before trial thereof, and not after such term. 1210

If the term at which the cause could otherwise be first tried is one which occurs during the time a trial of the cause is stayed by an order of the state court, it is not such a term as is meant by the statute. (Act March 3, 1875, § 3.). 260

Proceedings to obtain.

The provisions and conditions of the statute as to removals must be strictly complied with. 1210

The state court may examine into the sufficiency of a petition presented thereto for removal under Rev. St. § 641, but the federal court may assert its jurisdiction by proper process, directed to the state court, which must yield obedience thereto. 633

No notice of the application for a removal is necessary, and the state court can require it or dispense with it. 589

It is not necessary, in order to remove a suit under Act March 3, 1875, §§ 2, 3, that it should appear that the parties were citizens of different states when the suit was commenced. 589

A state court cannot cause an appearance to be entered nunc pro tune, so as to entertain a motion for removal. 167

Effect of removal: Subsequent proceedings.

Defendants can remove the cause or appear in the federal court at different tunes, where their appearance is entered at different times in the state court, but an original appearance cannot be entered in the federal court. 167

Where a cause has been removed at the instance of defendants who have appeared, the federal court can remand it in case the defendants do not all eventually appear. 167

In cases properly removed under 1 Star. 79, § 12, the defendant is not in default for not having answered or pleaded in the state court before or at the time of filing his petition for the removal. 547

Where objection to the jurisdiction is raised after removal, the court will protect the rights of the parties pending decision of the question. 278

REPLEVIN.

Plaintiff may recover according to the extent of his title proved. 32

RIGHT, WRIT OF.

The appropriate remedy of a tenant in fee tail, is by a writ of formedon, and not by a writ of entry. 547

RULES OF COURT.

Rules made by the circuit courts may be varied or dispensed with in special cases. 72

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SALE.

See, also, "Vendor and Purchaser."

The delivery of a bill of lading amounts to a transfer of the property subject to the right of the seller if the consideration be not paid to reclaim the property before it comes into the actual possession of the purchaser. 117

A bona fide sale by a factor of the goods of his principal for a valuable consideration by assigning over the bill of lading is valid against the principal if the bill of lading has been received by the factor. 117

A bill of sale of personal property is valid between the parties to transfer the legal title, although the possession and the beneficial interest remain with the vendor. 359

Where bank notes are taken in payment of goods sold with the understanding that they are to be returned if not current, the seller cannot sue for the price without returning the notes unless it appear that the buyer knew the notes were worthless when he made the bargain. 1270

SALVAGE.

Jurisdiction.

Courts of admiralty in the United States have jurisdiction over claims for salvage up-on waters within the ebb and flow of the tide, though within the body of a state. 453

Admiralty has jurisdiction of salvage services on a river navigable from the ocean for vessels of 10 or more tons' burden. 1365

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The jurisdiction of the federal district court in cases of salvage is not confined to American property or to cases occurring in American waters. 777

Right to salvage compensation.

Services performed in righting a wreck after it is saved from immediate danger and has reached a port of safety, are not compensated as salvage service. 480

Service rendered after reaching a port of safety in towing to a port where repairs could be made are towage, not salvage. 480

Where a box of bullion is taken from a vessel abandoned at sea, and transferred while at sea to another vessel, to be taken to its destination, the service of the second vessel is not a continuation of the salvage service. 1359

The owner of a vessel can come in as a co-salvor only where his vessel has been the direct means of rendering the service for which salvage is awarded. 379

The owner of a vessel is not entitled to salvage where his ship master pledged the owner's funds to procure another vessel with which to render the salvage service. 379

The ship owner is not entitled to recover from the master a share in an award for saving property from an island, where it had been landed by the passengers of a wrecked vessel. 379

Salvage to seamen, pilots, or passengers is only allowed for extraordinary exertions beyond their duty. 464

A salvor is one who, without any particular relation to a vessel in distress, proffers useful service, and gives it as a volunteer adventurer, without any pre-existing covenant that connected him with the duty of employing himself for the preservation of the vessel. 464

If a pilot goes beyond the duty imposed upon him by law, and renders meritorious services to a vessel in distress, he becomes a salvor, and may sue in admiralty for salvage, though the service be performed upon pilotage ground. 453

Where the state laws make it a part of the official duty of pilots to assist vessels in distress, they are not entitled to salvage for rendering such service. (Reversing 453.) 464

A pilot who is part owner of a pilot boat should not be allowed, on the ground of public policy, to recover salvage for towing in a vessel which received an injury by thumping on the bar while going out of the harbor under his charge as pilot. 354

Contracts for salvage services.

An agreement for a specified sum is binding upon the salvor, and limits his compensation to such amount. 946

Where the right to compensation of persons assisting a salvor who has agreed to render the service for a certain amount is dependent upon success, they may 946

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maintain a libel for salvage compensation, but the owner will be protected beyond the amount agreed upon.
The stipulations of a written contract are not enforceable against the person for whom the salvage was rendered except so far as they accord with the conscience of the court. 1365
A libel in rem for salvage services will be sustained, though the contract was for a per diem compensation, not contingent upon success. 1342
Forfeiture of salvage.
The want of good faith may be such as to reduce the salvage to a very small sum, or to destroy all claims to it. 777
Amount.
The nature of salvage considered, and the principles regulating its amount enumerated. 399
The amount is discretionary with the court, and is dependent on the labor, perils, and dangers incurred by the salvors, and the good faith that they exercise towards the owners of the property saved. 777
The principle of salvage compensation is not confined to mere quantum meruit as to the persons saving, but is expanded so as to comprehend a reward for the risks of life and property, labor, and danger, as well as a premium operating as an inducement to similar exertion. 215
The salvors will be entitled to share to a greater or less degree in the benefit received from the service, when it is sufficient to.
warrant it. 848
Salvage services rendered by professional wreckers on the Florida coast are to be more liberally rewarded than like services would be if rendered in other places, and by persons and vessels pursuing other avocations. 113
The promises of the master in respect to the amount of salvage are not to be regarded when made in time of distress, but the reward must be measured according to circumstances. 215
In awarding salvage upon a foreign vessel, courts in this country will regard the rates of allowance in the courts of the owner's country. 399
Delays for saving ships, goods, or mariners, producing uncommon risks, are deviations which are not excused under policies of insurance, and the increased risk incurred by the owner is to be considered in determining the amount of salvage. 215
It is not a deviation for a vessel to go out of her course three miles to speak another at sea, on seeing a signal for that purpose, nor to delay three hours to take 1359

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from a foreign ship, bound to a foreign port, shipwrecked mariners of the United States, for the purpose of bringing them direct to the United States.

Ships forsaken through fear of enemies or loss of life are not legally derelict, so as to warrant full right by occupancy. 215

Property found in a vessel abandoned in a harbor on an uninhabited coast comes within the maritime definitions of derelict property, unless it appears that there was an intention to return to the vessel on the part of.

the officers and crew. 1350

The rate of salvage in cases of derelict is seldom more than one-half of the net proceeds of the property saved. Two-thirds of the whole proceeds have sometimes been allowed, but the whole proceeds are never allowed unless their amount is so small that less would be an inadequate compensation. 399

An agreement by a pilot boat to tow into port, for $2,500, a dismasted brig in distress, worth, with cargo, $3,800, made under threats to leave the brig, where the service occupied nine days, held inequitable, and $1,500, allowed. 847

$10,178 allowed professional wreckers for getting ship and cargo of cotton off the Florida reef, being one-fourth of the net value. 113

$850 allowed, being one-half gross amount for bringing into port in pleasant weather derelict found in accustomed track of coasters and fishermen. 480

One-third part awarded as salvage in a case where the vessel was lost and part of the cargo saved, and where the salvage was not attended with extraordinary hazard or difficulty. 579

One-third the proceeds of merchandise, and one-eighth the value of plate and moneysaved, awarded to a vessel for standing by another in a helpless condition at sea. 215

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$1,700 allowed a valuable steamer for going in search of, and towing to place of safety, a disabled schooner, worth, with cargo, $11,000 848

Remedies for recovery.

There is no lien for salvage services performed under a contract for a fixed sum, to be paid at all events. 945

An action in personam will lie by one salvor against a co-salvor to recover a proportionate share of the salvage compensation, when the whole is received by the latter, and he withholds the share of the former. 379

The owner of a vessel which is employed in a salvage service may recover compensation for such employment out of the salved property, either as co-salvor, by uniting with the officers and crew of the salving vessel in the suit, or by bringing it himself in his own right in case they refuse or neglect to join. 379

An action will lie in rem to recover a salvage compensation against the proceeds of salved property converted into specie, provided the same action would lie against the property itself. 379

Admiralty courts have jurisdiction to order a survey and decree a condemnation and sale of the ship, but the judge should be satisfied that the application is made in good faith, and that the vessel is so damaged that no prudent man would think of repairing her. 113

An action in rem will not lie against money earned by a shipmaster and supercargo as a salvor, whilst in the general employ of the libelant as owner of the vessel and cargo. 379

The agent of the owners of the lost property, having purchased the claim of part of the salvors, is allowed from the sum awarded as salvage the amount he paid for the claim, and no more. 480

Import duties upon wrecked property are to be paid out of the gross proceeds, before deducting salvage, and are not to be charged exclusively on the owner's share of tie salvage . 399

Costs will be awarded salvors, though their claim was inequitable, where claimant offered no particular sum. 847

Apportionment.

The relative claims of the actual salvors, and of the owners of the salving vessel and of its cargo, considered. 399

The owners of cargo thrown overboard to make room for the salved property have not a prior lien on the proceeds of such property for reimbursement. 1330

Master allowed only the share of a common seaman, where he greatly weakened his own vessel to render the salvage service. 399

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Right to property or proceeds.

No length of time divests the original owner of property found derelict at sea. It will be restored upon payment of salvage according to circumstances unless there be proof of an intention to abandon wholly. 1247

SEAMEN.

The contract of shipment.

The master of a vessel prepared by her owners for a fishing voyage with intent to secure the bounty has no implied authority to engage seamen for wages merely, instead of upon shares. 852

Where shipping articles have been signed by a seaman and delivered to the master, and the amount of wages is omitted by mistake or accident, without fraud, it is competent to either party to show, by parol testimony, what the contract was in relation to wage. 1140

Under shipping articles describing the voyage as "from,"; "to,"; "thence," and "finally" certain ports named, for a period not exceeding 12 months, the seamen are not bound for 12 months unless the vessel went to the ports in the order named. 1309

Where the master, without any new agreement, undertakes a voyage other than that originally agreed upon, the seamen may demand their wages. 591

Where a whaling vessel did not return home as she ought, a seaman was allowed compensation for his expenses in returning, and his time, calculated at the rate of his last lay, deducting what he earned or might have earned but for his own negligence. 1315

Where a seaman has different lays during the same whaling voyage, he is to have such proportion of each lay, for the whole voyage, as the time he served under such lay was of the time of the whole voyage. 1315

A seaman during a whaling voyage, being appointed a ship keeper, is thereafter entitled to the lay of that station. 1315

The measure of compensation for the services of a person who shipped as an able seaman, but was in fact only competent to perform the duties of a green hand, is not the wages of a green hand, but only what his services were actually worth to the owners. 861

Where seamen on a foreign vessel have been treated with uncommon cruelty, and, after presenting their grievances in court, were confined and threatened, the contract will be *held* to be discharged. 591

The refusal of a fireman to accept orders from any engineers or superintendents except the engineer in chief will justify his discharge. 112

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Where a seaman is left or put on shore, his reasonable board and wages must be paid by the ship. 142

When the ship is properly furnished with a medicine chest, the seamen must pay for surgical or medical advice and assistance. 142

The master is not a competent witness to prove that a medicine chest was on board, for the purpose of throwing the expense of medical advice on a seaman. 1303

When the sufficiency of the medicine chest is questioned, the proper evidence to be produced is the testimony of some reputable physician who has examined it. 1303

Conduct of master or mate in respect to seamen.

A master who procures his men to be imprisoned without good cause will not be exempted from his liability to them for damages by showing that the imprisonment was ordered by the consul. 1303

A counsel has no authority to order American seamen to be imprisoned in a foreign port. 1303

In fixing the amount of damages for an assault on a seaman by the master, the court will consider the situation of the parties. 1073

Wages—Right to.

In case of wreck, the seaman is entitled to wages out of the goods saved for the time served before the loss, and thereafter in caring for the goods saved. 579

Where it appears that the master used his best judgment in abandoning a ship loaded with railroad iron and leaking in heavy weather, seamen will not be allowed wages for the whole voyage on the ground that the vessel was fraudulently abandoned. 968

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The seamen of a captured neutral vessel, if they remain by her, are entitled to wages to the time of condemnation. 1277

Where a vessel is captured and finally acquitted, seamen are entitled to full wages, including the time of detention, even though the master offered to discharge them, and send them home, and they refused. 709

If during the voyage there be a capture and final restitution decreed, the right to wages is not complete until the restitution. 1275

A mariner on a neutral vessel, carried off by captors on the arrest of the ship for adjudication, participates in the general circumstances of all the crew as to the fate of the ship, and if she is discharged by the court of the captor he is entitled to his wages. 435

A sailor on a neutral vessel, who is impressed, while the ship is permitted to proceed, cannot recover his wages from the vessel unless he thereafter rejoins her. 435

Where a captured vessel is recaptured and restored on payment of salvage, a seaman taken therefrom, and unable to rejoin the vessel, is entitled to full wages, less a deduction for salvage. 1368

Where a vessel is condemned as unseaworthy at an intermediate port, and sold, and the cargo is transshipped by order of the shipowner's agents, and reaches its destination, the seamen are entitled to wages. 81

Where an American vessel is condemned as unseaworthy, and voluntarily sold in a foreign port on that account, seamen are entitled to two months' extra wages, under Act Feb. 28, 1803, § 3 673

American seamen discharged in a foreign port on loss of the vessel from unseaworthiness existing at the inception of the voyage may recover, under Rev. St. §§ 4582, 4583, from the owners three months' extra pay. 697

Where a seaman on a wrecking vessel was to receive compensation only by a share of the profits, he acquires no right to wages by the fact that after the owner's death the vessel is carried off by the master to a foreign port. 1407

A seaman, left sick in a foreign port, who refused to rejoin the ship when able to do so, will not be allowed wages beyond the time of such refusal. 1365

The administrators of a seaman who shipped for the whole voyage, and died before the return of the vessel, may recover wages to the end of the voyage. 142

—Remedies for recovery.

A contract to work at a certain rate per month in port in putting in machinery will not give the person a lien for wages as a seaman. 112

Page

Where wages are not stipulated in the shipping articles, the seaman may either prove them by parol, or recover under Act July 20, 1790, § 1, the highest rate payable, etc. 299

The seaman may maintain a suit in personam or against the freight for wages immediately upon completion of his service. 1309

A seaman who hires for a trading voyage for a specified time cannot sue for wages until the expiration of the time unless there be proof of his actual or constructive release. 299

The remedy given to seamen by Rev. St. §§ 4546, 4547, as preliminary to the filing of a libel for wages, is not exclusive, but cumulative merely. 470

A libel for seaman's wages may be filed, and process for the arrest of a vessel obtained, without resort to the preliminary proceedings authorized by said sections. 470

Though a warrant be issued under a certificate of sufficient cause of complaint for admiralty process, conformably to the statute (Act July 20, 1790), the owner may intervene by answer, and bar the action by proving that libelant had no right to sue. 299

It is optional with the seamen whether to resort to the preliminary measure of summoning the master, or to make direct application for admiralty process; and the judge may order process against the vessel without previous summons to the master. 1310

In the absence of the judge, the clerk may issue process according to rules prescribed, or instructions given by the judge. 1310

The seaman may sue the vessel for his wages within the 10 days after the right to wages has accrued, either where a dispute has arisen, or the vessel has departed from the port of her discharge, or is about to proceed to sea. (Act 1790, c. 29, § 6.) 1309

A libel for wages by a foreign seaman, whom the master has charged with desertion, *held* should be dismissed where the master offered to take the seaman home, and give him a certificate of forgiveness for past offenses. 1283

Where the two-months wages are due, and have not been paid to the foreign consul, as provided by the act, the seamen may recover them in an action against the master in their own names. 673

In a libel against a vessel for wages, the master is incompetent to prove any matter of defense which originates in his own acts, for which he is responsible. 1303

A seaman is not entitled to wages unless he show the contract of shipment, and that he performed the voyage, or a legal excuse for not having done so. 1198

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Where the payment of a seaman's wages is refused unless he signs a receipt containing a release of all complaints against his officers, no attention whatever will be paid to such release. 1073

Receipts procured by improper conduct imposing on seamen, or deceiving, overawing, or misleading them, will be disregarded, but when given with due deliberation and full explanation of circumstances will not be set aside on light grounds. 1051

Seamen cannot recover the penalty provided by Rev. St. § 4529, for the nonpayment of wages then due them, when the net proceeds from the sale of the vessel are insufficient to pay the officers and crew, and it does not appear that the master could have raised a sufficient sum for the purpose. 697

—Deductions: Extinguishment, etc.

Deductions from wages may be made for voluntary and unfaithful absence from duty, even where the seamen are again accepted on their return to duty. 1051

The master of the vessel is bound to see that the loss from the misconduct of seamen is made as small as possible. 1293

Where seamen obtain their discharge by the consul at a foreign port through concerted misrepresentations, but ultimately return to the home port in the vessel, they will not be allowed wages during the time of detention at the foreign port. 1293

When the crew insist on a survey of the vessel, alleging that she is unseaworthy, if there be reasonable cause for a survey, the owners cannot charge the expense to the seamen. 1303

No wages will be allowed during a sickness which arose from the fault or vice of the seaman. 142

Wages *held,* not forfeited by mutiny which was quelled by severe measures of repression and punishment, where the voyage was thereafter performed; as the seamen had been sufficiently punished. 1293

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Embezzlement of pieces of the cargo by a seaman does not necessarily work a forfeiture of all his wages, and, if the amount of his wages exceed the value of the things embezzled, he will be decreed the excess. 1416

Where the services of a seaman are accepted under the old contract after forfeitures are incurred, such forfeitures are remitted. 1051

Where seamen are received on board after they have been entered in the log book as deserters, the forfeiture of their wages is waived. 1126

SEIZURE.

See "Forfeiture."

SET-OFF AND COUNTERCLAIM.

A debt due by the plaintiff to one of two . joint defendants cannot be set off against the joint debt to the plaintiff. 410

After the assignment of a claim upon an open account, the debtor cannot, in an action brought for the use of the assignee, set off a claim against the assignor arising after notice of the assignment. 594

A debtor, after notice of an assignment of the debt by the creditor, who purchases a claim, against the creditor, cannot set off the same in a suit brought in the name of the creditor for the use of the assignee. 961

An account for work and labor cannot, at the trial, be given in evidence upon non assumpsit as a set-off, unless the account has been filed and notice given. 920

SHIPPING.

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

Public regulation.

The legal title in a registered ship may, consistently with the acts, exist in one person, and the equitable title in another, and the disclosure of such equitable title is not required by the acts unless one party be an alien. 815

The ship registry acts of the United States have not changed the common law as to the mode in which ships may be transferred, but only take from any ship not transferred according to these acts the charter of an American ship. 815

Title to vessel.

By the general maritime law, a transfer of a ship should be evidence of a bill of sale. 815

The master.

Where a bill of exchange is drawn by the master by authority of the owners in his own name for cargo supplied by the owners, the latter are liable, and are en- 67

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titled to the same defense against the bill in case of dishonor that they would be as drawers.	
Where a master signs a bill of lading for goods not received, or for more than are received, fie acts beyond his authority, and the owner is not liable either to the original shipper or any assignee of the bill of lading, whether he makes advances on the faith of it, or gives value for it, or not.	626
An agreement by the master or mate of a freighting vessel to tow floating stages, and to look after their safety, is beyond the scope of his employment, and neither the vessel nor owners are liable for their loss.	105
A master carrying goods or freight has no right to pledge or sell them at an intermediate port except for necessary repairs and expenses to enable him to perform the voyage. If he break up the voyage at an intermediate port, he has no right to sell the goods for the benefit of the vessel.	438
A master can, in a foreign port, hypothecate his vessel for the payment, without maritime interest, of money advanced by a stranger for necessary repairs, and to secure the payment of a bill of exchange drawn by him on the owner of the vessel for those advances, although he is himself owner of cargo more than sufficient to pay for the repairs, and is solely concerned in interest in the voyage.	1288
To render a sale valid made by a master of a vessel under the general authority vested in him, and convey a good title under it, there must be a necessity for such sale, and entire good faith on the part of the master.	1292
The master as well as the owners of a vessel is a common carrier, and is personally responsible for his own negligence and misfeasances.	1022
The owners are liable for the wages of the master of a captured neutral ship after the capture, and until the condemnation, which are ultimately to be borne as a general average.	1277
Under the peculiar customs of the Chinese trade, *held,* that the master was entitled to compensation in the nature of a present from the persons with whom he dealt.	1198
The master of a ship may maintain a suit in the admiralty in personam against the owner for his wages, but not in rem against the ship, for he has no lien.	1275
The master of a vessel exclusively engaged in navigating the interior waters of one state may maintain a libel in rem for his wages and advances, when a lien therefor is created by the state law.	1093
No suit for services performed by the master as a factor, or in any other character except that of master, is cognizable in the admiralty.	1277

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Shipping articles, being the proper and usual documents of the ship for the voyage, are in the admiralty always admitted as evidence of the terms of hire, even of the master, or his apprentice, but the evidence is not conclusive. 1277

Any loss to the owner caused by the smuggling of the master is to be compensated out of his wages. 1277

The carrying off of a vessel by her master after her owner's death, to a port of a state other than that of the owner's residence, is an act of barratry, even if it be for the purpose of delivering her to persons.

supposed to be the owner's heirs. 1407

Employment of vessel.

A person who ships cargo by barge which he knows must be towed to her place of destination is bound by the terms of towage which the barge agrees on with the tug which the barge procures to tow her. 585

A vessel which takes from a salvor vessel at sea a box of bullion saved from a wrecked vessel, and carries it to its destination, is entitled to a quantum meruit compensation, and may proceed therefor in rem. 1359

The right to such compensation is not lost by a delivery of the bullion to the master of the wrecked vessel. 1359

Stowage of hogsheads of sugar upon their heads is sanctioned by usage. 1382

Whether, stowage of goods under a poop deck is a stowage under deck, within the meaning of a bill of lading, is not dependent upon whether or not the poop deck was built when the ship was originally constructed, but upon whether it afforded sufficient protection to the goods. 1382

In the absence of a special contract or circumstances from which an agreement tocarry goods on deck may be implied, it is conclusively presumed that they are to be carried under deck. 626

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Under an ordinary bill of lading, the carrier is liable for goods stowed on deck and necessarily jettisoned. 626

Ship *held* liable for damage done to a cargo of tea by defacement of the labels by cockroaches. 830

Blowing is one of the ordinary occurrences on a sea voyage, and the ship is bound to take proper precautions to guard against injury therefrom. 1241

The vessel is not liable under a bill of lading for nondelivery of a cargo sold by the master of a vessel driven ashore by a peril of the sea to pay salvage. 1241

The presumption of seaworthiness is rebutted by proof that the vessel is old and has suddenly failed in a vital part without any apparent cause. 703

The absence of the "note in writing" (Act March 3, 1851, § 2) does not discharge the shipowner's liability on a contract of affreightment where the true character and value of the enumerated articles appear in the bill of lading. 447

The ship is not liable for damage done to cargo in unlading by stevedores appointed by the consignees under an express provision therefor in the charter party. 830

The mere landing of goods on a wharf, not separated from the rest of the cargo, or accepted by the consignee, where reasonable time and opportunity for removal is not given does not constitute a delivery. 258

Where a carrier suffers goods of a consignee, on being discharged from the vessel, to become mingled with the rest of the cargo, and to be carried off, by persons claiming to be entitled to similar goods, he is liable to the owner of the goods carried off, whether by fraud or mistake. 258

Interest is allowable on damage occasioned to cargo by the fault of the ship, and the court may enter a decree for such interest on the coming in of the master's report, although the interlocutory decree did not provide for interest. 830

A soldier transported under contract with the government, and discharged at sea during the voyage, does not thereby become a passenger in such a sense that the master is liable for allowing him to be subjected to military discipline. 1022

The vessel is liable for loss of baggage by theft from a stateroom in the lady's cabin which was properly fastened, where time and opportunity were given for a thief to enter such room without detection. 106

Liabilities of vessels or owners.

Where a master hires a vessel "on shares" under an agreement to victual and man the vessel and employ her in such voyages as he thinks best, having thereby the entire possession, command, and navigation of the vessel, and the relation of principal and agent not existing between the master and owners, the master thereby 501

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becomes the owner pro hac vice during such time as the contract exists, and he, and not the general owner, is responsible for necessary supplies. (Reversing 505.)

Limiting liability.

A steamer used in the upper Mississippi river is not within Act March 3, 1851, limiting the liability of shipowners, and the district court will not therefore restrain claimants from suing the owner at common law to recover the full value of freight lost by fire. 225

Under act March 3, 1851, § 3, the personal liability of the shipowners on a contract of affreightment ceases upon a total destruction of the vessel and loss of freight before the completion of her voyage, though the actual damage to or loss of the goods to be carried, as in the case of theft, has taken place prior to the time of the destruction of the vessel. 447

The limitation of liability under act March 3, 1851, § 3, is not affected by the fact that the vessel has been insured, and the insurance has been paid or become payable. 447

SLAVERY.

The vessel is liable to forfeiture where her master, as such, fits her out with intent to employ her in the slave trade, although her owner never authorized any such illegal enterprise, and is ignorant of the master's intention. 150

It is not necessary, in order to subject the vessel to forfeiture, that the fitment should be complete, or that it should be peculiarly adapted to the slave trade, if the legal intent be otherwise shown. (Act 1818, c. 91, § 2.) 150

Sufficiency of evidence and conclusiveness of judgment in a suit for freedom. 1286

Slaves cannot be manumitted in Washington county, D. C, by last will, if over 45 years old at the time the manumission is to take effect. 1179

Liability of persons for aiding and abetting escape of fugitive slaves, and rights of owner to arrest and detain slaves, stated in charge to jury. 599

The question of identity of a fugitive slave can be proved only by inspection of the person, and such proof will prevail against doubtful proof of incompatible circumstances. 1334

In action upon the statute of Virginia (pages 192, 374) for carrying away the plaintiff's slave, evidence will not be permitted to be given that the slave had hired himself as a free man to another master of a vessel in previous voyage. 359

SPECIFIC PERFORMANCE.

The specific execution of a contract cannot be decreed unless the relation of vendor and vendee exists. 133

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Where the contract is for a good and operative title, the court will not compel The party to accept a defective title. 446

STATUTES.

See, also, "Constitutional Law."

Statutes cannot, by any fiction or relation, have any effect before they are actually passed . 294

When no time is fixed, statutes take effect from date. 294

An act takes effect from the day of its approval by the executive, and includes that day, unless its operation is postponed by its own terms. 572

Fractions of a day are not to be noticed in determining the time of a passage of a law of congress. The law goes into effect from the beginning of the day of its date, unless otherwise provided. 681

The time when an act of congress which is approved and signed by the president of the United States takes effect must appear by the act itself. 681

The lien given by an act which provides that it shall have priority over mortgages placed on the property "subsequent to the passage of" the act takes precedence of a mortgage placed within the 90 days after the passage of the act which a general statute provides shall elapse before acts of the legislature shall take effect. 39

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The phrase "subsequent to the passage of this act" *held* to mean subsequent to its approval by the governor. 39

The proviso in Rev. St. § 1954, should be placed at the end of it, and riot in the middle of the second clause of it, as now printed. 411

A later statute repugnant to a former one on the same subject-matter, so that they cannot stand together, repeals it by implication. 714

A claim for money taken as usury while "a law forbidding usury was in force is not destroyed by the repeal of the law. 961

The legislature cannot impose upon the courts a construction of statutes previously passed . 862

Consent is essential to guilt, and the legislature is supposed to pass all penal laws with the understanding that courts will not inflict the penalties for such violations as are unintentional. 1300

The laws of an isolated country may be proved by parol and by persons not jurisconsults if they testify directly and positively. 1198

TAXATION.

See, also, "Internal Revenue."

A provision for the taxation of railroad property (Laws Vt. 1874, Act No. 1) is not invalid by reason of the fact that lands improved by having a railroad built on them are not made taxable until they have been so improved 10 years. 643

A memorandum on the books of the town clerk that certain persons were "sworn to office" as assessors, signed by the clerk as a justice of the peace, and not as town clerk, *held* a sufficient certificate of the official oath under the Maine statutes. 219

Where the taxpayer dose not present a complete schedule, the tax will not be rendered illegal if the assessors tax for property not contained therein. 219

Whether Rev. St. § 3224, which provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court," applies to a suit in a federal court to restain the collection of a state tax, quere. 643

Under the Arkansas statutes, a tax deed which shows by its recitals that two or more separate town lots were sold en masse for a gross sum is void on its face, and cannot be contradicted by evidence aliunde. 40

The annulment by decree of court of a tax sale of premises mortgaged to secure notes held by different parties inures to the benefit of all such holders, and not solely of the holder at whose suit the decree was made. 486

TELEGRAPH COMPANIES.

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A railroad cannot grant to a telegraph company the sole right to construct a line over its right of way, so as to exclude other telegraph companies. (Act July 24, 1866.). 790

A telegraph company having a grant from a railroad of such exclusive right to construct a line along the right of way is entitled to an injunction against actual interference with its line, but not against such interruption of its business as results from mere competition by other companies constructing rival lines along the same railroad. 790

When a railroad is in possession of a receiver of the United States court, a telegraph company can acquire no title to its right of way by condemnation proceedings in a state court. 791

If the receiver ratifies a contract previously made with the company, the rights under such contract are not affected by the foreclosure proceedings. 791

TERRITORIES.

There is no law in the United States requiring persons to be licensed to trade in Alaska, even with the Indians. 411

Alaska is not "Indian country," in the technical sense of that phrase, but only so far as the introduction and disposition of spirituous liquors is concerned, and, subject to this restraint, it is open to occupation and trade generally. 411

The repealing clause of Rev. St. § 1954, did not repeal the provision of Act March 3, 1873, extending sections 20 and 21 of the Indian intercourse act over Alaska, it being local in character. 411

TORTS.

A right of action for a tort is not assignable, and an action for damages resulting from a tort can only be sustained by the person directly injured thereby. 220

TOWAGE.

See, also, "Collision"; "Salvage."

A tug is liable for the loss of a tow in a sudden squall where she does not complete the contract of towage at one trip, unless she shows that between the time when the tow was left at an intermediate place and when she was taken up again there was no time when the towage contract could have been safely performed. 568

A tug engaged to tow a schooner from one anchorage in New York harbor to another is not responsible for the safe transportation of the schooner over sunken rocks, provided she exercise ordinary care and skill in directing the movements of the two vessels. 1031

Contracts for towage, made between masters of tugs and persons in charge of a wreck, should be scrutinized by courts of admiralty, and annulled if it appears 480

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that undue advantage was taken of the necessities of the persons in charge of the wreck to procure unreasonable recompense.

The full sum fixed by the contract for towage service will not be allowed, but only a quantum meruit, if it appears that the service did not accomplish the result agreed to be performed. 480

Where cargo is shipped by a barge, and lost by contact with ice while the barge is being towed by a tug, the owner of the cargo must show negligence on the part of the tug to recover against it for a loss. 585

To make a tug liable for keeping on through running ice, it must appear that the error was one which a careful and prudent navigator would have made in the circumstances. 585

A contract exempting a tug from responsibility for injury to her tow by ice does not relieve her from liability for damage resulting from her own negligence while towing in the ice. 1413

Towage services constitute a lien upon the vessel .: 169

TRADE-MARKS AND TRADE-NAMES.

A trade-mark signifies anything that has become in time adopted as the prima facie means of detecting the goods, wares, or properties of certain proprietors. 366

The words "Stoga Kip," as applied to boots, indicate neither ownership nor origin, but merely designate quality, and are not the subject of valid trade-mark. 47

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The term "Yankee" applied as the name or label upon soap *held* to be a valid trademark. 1349

The owner of goods is entitled to the exclusive use a trade-mark devised and applied by him, although he is not himself the manufacturer, and the name of the manufacturer is used as a part of the trademark. 138

The privilege of a party to the exclusive enjoyment of a trade-mark does not rest upon a right of property therein, but on its prior use and application in the manner in which it has been imitated and employed by defendant. 138

Abandonment of a trade-mark is not made out by showing numerous infringements in which the owners of such trade-mark have not acquiesced. 1349

The assignee of a whole right in a trademark, and of the property in the goods to which, it is attached, may enjoin its wrongful use by others to the like extent as his assignor. 138

The certificate of the registration of a trade-mark need not include a certified copy of the declaration filed with the trade-mark. 45

Where the representations employed bear such resemblance to plaintiffs trademark as to be calculated to mislead the public generally who are the purchasers of the article, and to make it pass with them for the one sold by him, such representations will be enjoined . 138

The owner of a trade-mark for goods which he manufactures under a patent is not entitled to enjoin the use thereof by a dealer purchasing his goods from a manufacturer licensed under the patent. 47

A person has no right to mark his goods with any words or terms indicating that they are manufactured under a patent which he does not own and has no right to use, and the courts will restrain him from such action. 331

And in such case the defendant will not be allowed to defend by denying the validity of the patent. 331

Exemplary damages are recoverable for an injury from counterfeiting plaintiff's trade-mark. 266

TREATIES.

A treaty with a country giving its subjects the same privileges that are granted "to the most favored nation" does not include rights granted by special convention. 591

TRESPASS.

A constable is not justified in breaking into a dwelling house by a warrant from a justice of the peace to search for goods clandestinely removed by the tenant to deprive his landlord of his remedy by distress for rent. 657

TRIAL.

Page
See, also, "Appeal and Error"; "Continuance"; "Depositions"; "Evidence"; "Judgment"; "New Trial"; "Witness."
Where several actions on policies of insurance are brought by the same plaintiffs against different companies, and the questions are the same, the evidence the same, and the counsel the same, the court may order them all to be tried to the same jury. 1149
If the bill be found to be erroneous, after the jury to try the case are impaneled, the plaintiff will have to suffer a nonsuit. 1401
A nonsuit will be set aside, in the discretion of the court, where justice requires it. 1401
If there has been surprise, or the plaintiff has equity, the nonsuit will be set aside. 1401
In replevin, the court will not order a non pros, on defendant's motion after the jury is sworn. 32
It is not too late, after the jury is sworn, to call for the books which the court has ordered to be produced at the trial. 94
Where a party calling for books in possession of the opposite party inspects them, he makes them evidence for the other party 94. 1244
The defendant, by introducing evidence in defense, waived its request, made at the close of the plaintiff's evidence, that the court direct a verdict for the defendant. 1033

TROVER AND CONVERSION.

In trover, a mere demand and refusal is not in all cases evidence of conversion. Where the demand is made by an agent, and the refusal is for defect of authority in the agent, or for a refusal to show authority, it is not evidence of a conversion. Otherwise, where there is no request to see the authority, and the refusal to deliver the property turns on other distinct grounds. 438
A person who tortiously converts goods temporarily landed at an intermediate port from necessity for the purpose of repairing the vessel is not entitled to a deduction from the damages of the amount of duties payable. 438

TRUSTS.

Under an agreement of separation between husband and wife, property was transferred to trustee* to pay the income to the wife, it being provided that the agreement should continue notwithstanding the parties elected to cohabit. *Held,* that the husband, subsequently receiving the income under an agreement to invest it for the wife and her children, became a trustee of the wife. 7

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In a court of equity, a party holding an equitable title cannot be ousted of his equitable rights by the holder of the legal title, who in such case stands in a court of equity as trustee for the use of the party beneficially interested.	1059
If a cestui que trust under an assignment for the benefit of creditors buys a right of property which the assignees were empowered to sell in the execution of their trust, he must claim as a purchaser under them, not as a cestui que trust.	1269
Where money is paid to a trustee, a co-trustee who joined in the receipt is not liable unless the trustee had no right to receive the money.	95
Where trustees sell on credit, and receive the money before it is due, discounting legal interest, it will not operate in equity to discharge the lien.	95
The written declaration of a trustee in a conveyance by him of the trust property to a third person is not admissible against the creator of the trust to show the intent of the parties in the original conveyance to the trustee.	408
Where trust funds are fraudulently used by the trustee to purchase stock in a railroad company which is subsequently consolidated with another company, the beneficial owner, having prior knowledge of the misappropriation, must seek his remedy against the stock of the consolidated company in the hands of the trustee.	747

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VENDOR AND PURCHASER.

See, also, "Bankruptcy"; "Deed"; "Fraudulent Conveyances"; "Grant"; "Sale"; "Specific Performance."

Representations respecting the value of what was taken for the consideration, made by the vendee, or by another in his presence, which were false in material points, and which influenced the vendor to sell, whether the vendee knew them to be false or not, will vitiate the sale. 246

A contract to convey a certain tract of land so soon as a suit then pending for the title shall be decided gives to the party that agrees to convey all the time necessary to close the litigation in all the forms it may assume. 446

Unforeseen circumstances and embarrassments may excuse the performance at the day if the party act in good faith. 446

In Indiana a title bond is assignable. 446

Certain parties purchased a railroad, and received a deed therefor, but left a part of the purchase price unpaid, and then procured an act of the legislature by which they, as purchasers and owners, were incorporated. *Held,* that the company so formed took the railroad subject to the vendor's lien for the unpaid purchase money. 747

Open, notorious, and exclusive possession, making valuable improvements for 16 years, constitutes implied notice to an attaching creditor of a deed to the person in possession, though the same is not recorded until after the levy. 612

WAR.

See, also, "Prize."

A capture of a steamer, within the insurrectionary district, by the forces of the United States, vested in the government of the United States an absolute title to the property, without the necessity of any legal condemnation. 1025

The fact that the libelant, who was at the time of the capture resident in the district in insurrection, afterwards came into the United States, and took the oath prescribed by the acts of congress, could not divest the title of the government. 1025

A bill of exchange, drawn by a bank in Mobile while that city was in possession of the Confederate forces, on a bank in New Orleans, after that city had surrendered to and was occupied by the Federal forces, is void. 1380

Such a bill is void, even though the payee of the bill, at the time he received it, supposed the city of New Orleans was still occupied by the Confederate forces. 1380

In such case, the payee, acting in good faith, without knowledge, may recover from the drawer under the money counts the amount paid for the bill. 1380

WAREHOUSEMEN.

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Putting 160 kegs of gunpowder in the same warehouse with plaintiff's goods is negligence rendering the warehouseman liable for a loss resulting therefrom. 1004

WASTE.

The federal court will grant an injunction restraining waste pending decision of the question of its jurisdiction after removal from a state court. 278

WATERS AND WATER COURSES.

Proof that the natural flow of a stream was changed by a person not having a legal right to do so will entitle a riparian proprietor to recover nominal damages, though there has been no actual injury. 934

Where there is a mere fugitive and temporary diversion of water, without damage, and without pretense of right, a court of equity will not interfere, by way of injunction. Quære, where there would be any redress at law. 506

In the case of mills owned in severalty on the same milldam, one cannot divert the water to his mill by means of a canal into the pond above the dam, though he takes less than he would naturally use at his mill on the dam. 506

No riparian, proprietor or mill owner has a right to divert or unreasonably retard the natural flow of water to the parties below; and no proprietor or mill owner below has a right to retard or throw it back upon the lands or mills above, to the prejudice of the right of the proprietors thereof. 506

WILLS.

Where a will is ambiguous in its words, and contains no reference to anything which can make it certain, or on its face admits of no construction, it is void. 234

A will cannot be proved by witnesses who were appointed by a testator as guardians to testator's infant children. 1417

Instructions given to a solicitor for the preparation of a will are not admissible to control or contradict its plain terms, nor to supply an omission, unless there is something on the face of the instrument to connect them therewith. 234

An express limitation in a bequest or devise will not be *held* to be controlled by implications drawn from other provisions in the will, if the latter, by any fair intendment, can be reconciled with the former. 162

A power of disposal by will does not enlarge an interest in the donee of the power beyond what is expressly limited. 162

A devise of a fee to trustees and their heirs, with authority to sell, is consistent with an executory bequest with a fee to.

others after a life estate. 162

"Issue" prima facie means heirs of the body, and refers to all lineal descendants. 854

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To take a case out of the Rule in Shelley's Case, the intent of the testator to change the primary meaning of the word "issue," and employ it in an unusual sense, must manifestly appear in the will itself. 854

The Rule in Shelley's Case is not applicable to a devise of an equitable estate for life to the ancestor, and a legal estate after the termination of the life estate to the heirs. 162

A devise to a person for life with the remainder to his issue and heirs of the issue, does not give a mere life estate to the first taker unless there are also in the devise of the remainder words of distributive modification. 845

A renunciation or disclaimer by a devisee must be evidenced by some solemn act or acknowledgment in writing, or by some open and positive act which will operate as an estoppel. 547

A mere nonpossession of real estate by the devisee under a devise, short of the period prescribed by the statute of limitations to bar a right of entry, does not amount to a positive renunciation or disclaimer of the devise, or to proof thereof. 547

A devise of a mill with appurtenances conveys, not the buildings merely, but the landunder and adjoining which is necessary to the use, and is actually used with it. 1108

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WITNESS.

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

A pardon does not restore the credit of a person convicted of an infamous crime, and such a person is not a witness entitled to full credit. 88

A witness is not rendered incompetent by having received a copy of the interrogatories before the time of testifying, without any comments or any influence used to affect his answers. 246

A witness is not rendered incompetent by having received a letter from one of the parties requesting him to tell the whole truth, without any suggestion as to what the writer considered the truth to be. 246

Where a witness is protected from liability by the act of limitation, he is competent without a release. 94

An objection on the ground of interest may be supported either by examining the witness himself, or by other independent evidence, but not by both such methods. 372

A witness is not incompetent because he feels himself bound in honor to indemnify the party who calls him as a witness in case the judgment should be against him, if he has made no promise to indemnify him, nor is bound in law so to do. 352

A co heir or co nest of kin is not a competent witness for the plaintiff in a suit brought for an account of a trust fund created for the benefit of all the heirs or nest of kin. 718

The maker of a note is a competent witness, not to prove its original invalidity, but the improper use afterwards made of it, and that time was given him without the consent of the indorser. 997

A paid legatee is a competent witness where payment has been made by the executor, voluntarily, with knowledge of the claim sued upon, and without a refunding bond, and a long time has elapsed since the death of the testator. The length of time is regulated by analogy to the statute of limitations. 1198

If there be reason to suppose that the perjury or prevarication of one witness is the result of subornation, it affords a reasonable ground in doubtful case for suspecting the testimony of other witnesses adduced by the same party. 628

The interest of a party in the result should be considered on the question of his credibility. 1008

Under Act Md. 1791, c. 68, § 8, an attachment for contempt can be issued against a witness who refuses to obey a summons issued by a justice of the peace. 345

WRITS AND NOTICE OF SUITS.

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In cases of injunctions to stay proceedings at law and in cross suits in equity, and in no others, will the court direct service of the subpoena to be made on the attorney at law, or upon the adverse solicitor in the cross suit.	207, 208