

INDEX

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

30FED.CAS.

30FED.CAS.—89

30FED.CAS.—90

30FED.CAS.—91

Page

ABATEMENT AND REVIVAL.

The filing of letters of administration by the administrator of a deceased party *held* a “proceeding” in the case, under act Md. 1785, c. 80, § 1 129

In a suit in equity against the members of a firm, a demurrer will not lie to a bill of revivor to bring in the representative of a deceased partner. 215

An exception to the jurisdiction of the federal circuit court by a denial of the fact of citizenship, which is properly averred, can only be taken by plea in abatement. 447

Rule 23 of the supreme court, in equity, is inapplicable to such objections as are in abatement only. 447

ACCOUNT STATED.

An account may be a stated or settled account, though not signed by the parties. 821

The presumption of a promise to pay arises when the account is rendered and received without objection made in a reasonable time. 821

ACKNOWLEDGMENT.

The acknowledgment of a deed before a person who styles himself a justice of the court of common pleas is prima facie evidence that he was such; and it is not necessary to produce the commission of the justice until evidence is given to render the fact questionable. 62

ACTION.

Upon a joint shipment and orders by three persons, the master of the vessel is not liable to an action by two for a breach, in the absence of an express promise. 841

“Where plaintiff has several causes of action which may be joined, and brings a separate suit on each, the court will compel a consolidation at his costs. 417

ADMIRALTY.

See, also. “Affreightment”; “Average”; “Bill of Lading” “Bottomry and Respondentia”; “Charter Parties”; “Collision”; “Demurrage”; “Maritime Law”; “Maritime Liens”; “Pleading in Admiralty”; “Practice in Admiralty”; “Salvage”; “Seamen”; “Shipping.”

Admiralty has jurisdiction in the case of a tort which originated in port, but did not become a completed act until carried out upon navigable tide waters. 781

	Page
The admiralty jurisdiction of the federal courts in no way depends upon the residence or citizenship of the parties.	939
A contract to furnish materials for the construction of a vessel built upon the shores of tide waters, and designed for use upon navigable waters, is not within the admiralty jurisdiction of the federal courts.	859
If the subject-matter of a contract concern the navigation of the sea, it is a case of admiralty and maritime, jurisdiction, although the contract be made on land.	909
A contract for wages on board of a steamboat, plying between ports of adjoining states, on a navigable tide river, may be enforced by a suit in rem, in the admiralty.	149
“The pilot, deck hands, engineer, and firemen on board of a steamboat are entitled to sue in the admiralty for their wages.	149
Furnishing an air pump to a water craft (a “chuncker”) used for pumping water out of dry docks is a maritime service, and the lien given therefor by the local law may be enforced in the district court in admiralty.	308
A contract to tow a canal boat in New York Harbor is a maritime contract, and gives rise to a lien enforceable in admiralty.	405
A contract for an excursion trip by steamer between Philadelphia and Cape May is a maritime contract, and within the admiralty jurisdiction.	609
The nature of a contract or service, and not the question whether the contract is made, or the service is rendered, on the land or on the water, is the proper test in determining admiralty jurisdiction.	648
Admiralty has jurisdiction of a claim for services in hauling a vessel on ways and for a per diem while she is on the ways, and being repaired by another person	648
barring.	
The forcible deportation of a citizen to a foreign country in an American ship, commanded by an American master, in pursuance or execution of a sentence of banishment of an illegal and self-constituted body of men, is a maritime tort, of which admiralty has jurisdiction.	781
In cases in which a common interest has been promoted by services of counsel which a mere selfish consideration of his client’s interest would not have induced him to render, a part or even the whole of his compensation may occasionally be allowed from the general fund arising from the sale of the vessel.	653
“Where an arrested vessel in any manner again comes into possession of the owner, he cannot defeat a lien against her, on the ground that the contract out of which it arose was made, and the consideration for it rendered, while the vessel was in the custody of the law.	395

YesWeScan: The FEDERAL CASES

Page
“Where, on an appeal by both parties from a decree finding them mutually in fault in a collision case, the decree below was affirmed, no costs were given to either party. 299

AFFIDAVIT.

“Where a clerk certifies the mayor, it is not necessary that the mayor should certify the clerk. 670

AFFREIGHTMENT.

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

A contract to transport goods, and collect and return the money therefor, is one of affreightment, and the consignee has a lien against the vessel for money so collected. 939

On a libel to recover damage to cargo proved to have been shipped sound and delivered damaged, defendant has the burden of accounting for such damage. 941

The French Code de Commerce does not differ from the general maritime law in respect to liens on the ship for damage to the cargo. 940

ALIENS.

An executor may recover rents for the use of the heir who is an alien. 388

Under Act Md. Dec. 1791, § 6, no alien can take by descent the real estate of an alien or naturalized citizen, but he can take real estate by deed or will., 1076

The personal property of an alien or naturalized citizen dying intestate will be distributed according to the law of the domicile of the deceased. 1076

ANIMALS.

Where cattle are impounded for damage feasant, the badness of plaintiff's fence is no justification of pound breach, but may be given in evidence in mitigation of damages. 845

APPEAL AND ERROR.

An appeal will not lie except from a final decision or judgment; and, where none is given, the appellate court has not jurisdiction. 967

A decree in a suit in rem on a bottomry bond referring the case to a commissioner, to ascertain the amount, and report to the court, with liberty to either party to move to frame the decree thereon, is not final and appealable. 891

In a suit in equity by or against an assignee, an appeal to the circuit court is allowed only upon final decrees of the district court where the sum in controversy exceeds 8500 947

Where a case has been improperly taken out of the hands of a magistrate through a writ of certiorari, on a motion presented to the court by way of a writ of error coram nobis, the court will issue a writ of procedendo. 966

In computing the time within which an appeal in bankruptcy must be taken, Sunday is to be counted, except when the last day would fall on Sunday. 814

If the appeal is prayed on the day of trial, notice is unnecessary, and the appeal bond may be given at any time within 10 days. 965

Instructions will be presumed to be correct where the evidence is not spread upon the record by exception or otherwise. 967

If, on the whole record, the judgment of the inferior court is correct, it will not be reversed because improper evidence was admitted. 951

Where a specific relief is asked for, even though there be a prayer for general relief, the circuit court, on appeal in admiralty, cannot grant a relief which is inconsistent with, or entirely different from, that which is prayed. 125

APPEARANCE.

See, also, "Removal of Causes."

A defendant who voluntarily appears in a suit in this court waives his right to urge, as an objection to the jurisdiction of this court, that he was not found or served with process in this district. 265

The court will not order defendant's appearance to be struck out, so as to charge the marshal. 434

APPRENTICE.

The father of an apprentice who binds himself is liable upon the indentures, by reason of his signature and seal, although there be no express words of covenant binding the father. 517

ARBITRATION AND AWARD.

An award may be good in part and void in part. 387

ARMY AND NAVY.

Persons who have been accepted as volunteers (Act Feb. 6, 1812) are not entitled to be discharged as alien enemies. 131

The place of service of volunteers may be changed notwithstanding the insertion in their enrollment of the officer's name under whom they were to serve. 131

Congress has constitutional power to provide that crimes, even of a capital character, committed on board a naval vessel, by persons who formed part of the naval forces of the United States, shall be tried exclusively by courts martial. 1160

The fact that manslaughter is not named in the naval code as an offense punishable by court martial is no ground for holding that the civil courts of the United States have jurisdiction thereof. In the absence of any statute conferring jurisdiction upon these courts, it is sufficient in any case, to exclude such jurisdiction, that the accused is charged with the offense, in taking the life of a seaman belonging to a naval ship, in the exercise of what was claimed to be his rightful authority as an officer in command. 1160

The circuit court of the District of Columbia has no power, by habeas corpus or otherwise, to revise or correct the error of a court martial The appeal must be to the president. 965

ARREST.

Where a defendant has knowledge that the officers of justice are in pursuit of him for an offense committed by him against the law, he will not be justified in resisting such officers, even though such officers do not exhibit to him the warrant, or inform him of the particular cause of his arrest. 1067

ASSIGNMENT.

Where an assignee of a claim takes no steps to enforce the same, he will lose his right as against a subsequent assignee in good faith. 1098

In the case of separate reports on a reference of all matters of difference between the parties on which executions were issued, *held*, that an assignee of one of the parties before issue of the execution took subject to the right of set-off of one execution against the other. 428

ASSUMPSIT.

Assumpsit will not lie at common law on a parol demise. 386

ATTACHMENT.

See, also, "Bankruptcy."

Under the Georgia law no attachment lies for the recovery of unliquidated damages consequent upon the breach of a contract. 930

In a chancery attachment in Virginia, the court may order the attached debt to be paid over to the plaintiff, on his giving security to refund, etc., although the plaintiffs right may be doubtful. 120

Assignees of British bankrupt allowed to be made parties to defend a chancery attachment against the bankrupt, on certificate of foreign notary public certified by Americonsul. 224

An order for the attachment "of the property of" a defendant named, issued as a provisional remedy, prior to judgment, under the provisions of Code Prac. Ky. § 223, gives the sheriff no authority to seize property which has been conveyed to another, on the ground that such conveyance was in fraud of creditors; and such a seizure, if made, does not carry the property into the custody of the court. 1111

A personal judgment cannot be rendered against defendant on a foreign attachment under the Indiana statute of 1838 where defendant was not personally served with process, and did not appear; and the judgment in such cases should be for a sale of the property attached. A sale on fieri facias issued on such judgment is void. 748

ATTORNEY AND CLIENT.

The appearance of an attorney in a cause is received as evidence of his authority, and no additional evidence is required. 956

AVERAGE.

Libelants who might otherwise be entitled to contribution under general average may lose it by laches in enforcing their claim, as against a mortgagee whose debt was a maritime lien before he waived it for the mortgage security. 474

BAIL.

The marshal is bound to take sufficient bail for the appearance of defendant, and he is judge of tie sufficiency: 343

In ordinary cases of libel, special bail is not required without some special reason other than the publication of the libel itself. 402

In Virginia, special bail in an action of debt upon judgment rendered in one or the other states cannot be required by the indorsement of an attorney. 653

An affidavit to hold to bail must be positive, and the indebtedness must be stated from the knowledge of the affiant, and not on information and belief. 668

	Page
Sufficiency of affidavit to hold to bail in an action for money lent.	856
Sufficiency of affidavit to hold to special bail in an action for breach of an agreement.	863
Special bail for the stay of execution before a justice of the peace become liable to pay the debt in case it is not paid by the principal, or made out of his property', on the issuing of execution at the expiration of the stay; and nothing can discharge the bail except payment of the judgment.	121
After scire facias returned, the bail will be exonerated if the principal be confined in the penitentiary of one of the states before any execution returned against him, and so continue to be confined until the return of the scire facias.	639

BANKRUPTCY.

Operation and effect of bankruptcy laws, and of proceedings thereunder.	
The provisions of the bankrupt act of 1867 apply to railroad corporations.	329
The publishers of a daily paper and proprietors of a book and job printing office are manufacturers, within the meaning of the bankrupt act.	90, note.
Where the creditors do not all become parties to an assignment before the debtor files his petition under the act of 1841, subsequently passed, the assignment is invalid.	294
A deed of trust recorded on March 2, 1867, the date of the approval of the bankrupt act Is not avoided thereby.	752
When the United States courts, under the bankrupt act, have acquired jurisdiction of the bankrupt's estate, the state courts lose jurisdiction of all claims against him provable under the bankrupt act.	600
Whether a claim for a homestead exemption under a state law is provable in bankruptcy can be determined only by the bankruptcy court.	600
The district court, in bankruptcy, will enjoin a judgment creditor from committing the bankrupt to prison on execution for a debt.	375
No lien can be acquired or enforced by any proceeding in a state court commenced after petition is filed in bankruptcy, though, in cases where jurisdiction has been previously acquired by state courts of a suit brought in good faith to enforce a valid lien upon property, such jurisdiction will not be, divested.	752
It is no ground of withdrawal of the property of a deceased bankrupt from the bankruptcy court that the only debts are apparently barred by the statute.	661
Jurisdiction of courts.	
Where a partnership has been dissolved more than a year, and a partner files his individual petition in bankruptcy for an adjudication against himself and his late partnership, no partnership assets appearing, the case is not within Act 1867, § 36	624
Register—Certifying questions.	

	Page
A question, in order to be properly certified to the judge, must arise regularly in the course of proceedings before the register, and between the parties having the legal right to raise it.	662
Commencement of proceedings—Voluntary bankruptcy.	
A proceeding in bankruptcy by a partner against his co-partner is not an involuntary proceeding, within Act 1874, c. 390, § 9	97
An amendment will not be allowed as to jurisdictional facts not required by law.	422
—Involuntary bankruptcy.	
A debtor, if unable to meet his engagements as they accrue, is insolvent, though his assets greatly exceed his liabilities.	529
A party may purchase a claim in good faith, in order to join in an involuntary petition, and make the necessary number.	492
If the sale of a claim is void for fraud or want of consideration, the claim is to be deemed to belong to the assignor.	492
Creditors whose claims are under 8250 are not to be counted in computing the number who must unite in an involuntary petition, if one-fourth of the creditors whose claims are above that sum join in the petition.	492
In computing the amount of creditors, all the claims must be counted, irrespective of the amount.	492

	Page
A petition founded upon the suspension of payment of commercial paper need not negative all the circumstances which might excuse the nonpayment.	88
Acts of bankruptcy.	
An executory agreement by a railroad company to transfer certificates of its stock is not an act for which it can be forced into bankruptcy.	329
The issue at par of the stock of a railroad company, not theretofore issued, in payment of the bona fide debts of the company, is not an act of bankruptcy.	329
But, where paid-up stock is disposed of to creditors under circumstances to give them an illegal preference, it will be an act of bankruptcy.	329
A debtor who directly or indirectly assists or facilitates the obtaining of a judgment on which an execution has followed is guilty of procuring or suffering his property to be taken in execution.	529
Mere honest inaction on the part of an insolvent' debtor, who is sued on a just debt, and who allows judgment to go against him, and his property to be levied on, is not an act of bankruptcy, within Act 1867, § 39	672
Payment of wages to employes, though made in the regular course of business, is an act of bankruptcy if done in contemplation of insolvency.	90, note.
The recording after the passage of the bankrupt act of a deed of trust made before such passage cannot be held to be an act of bankruptcy, but the consequences flowing from the act of the grantor attach as from the date of its execution.	752
It is not an act of bankruptcy, under Act 1867, § 39, as amended July 14, 1870, for a railroad company to suspend, and not resume payment of its commercial paper, for a period of 14 days.	329
There is no suspension of payment of commercial paper, within the bankrupt act, where a note payable 1 day after date remains unpaid for 40 days, where no demand is made.	406
The nonpayment by a merchant for 14 days, without legal excuse, of a single piece of "commercial paper, is an act of bankruptcy, without reference to whether he is actually insolvent.	88
The owner of oil lands who divides them into leaseholds, and receives the rent in oil, is not a trader, within the meaning of the bankrupt law, as he deals only in the product of his land.	529
Adjudication.	
The adjudication is an essential prerequisite to an assignment of the estate to the assignee.	678
Assignee.	

	Page
An election of a near relative of the bankrupt as assignee will be set aside, and the appointment by the register according to the rules of the district will be confirmed.	935
The assignee has only the right of the bankrupt except in cases of transfers in fraud of creditors 320,	323
Assignment.	
A register has the right to convey the estate to the assignee when there is “no opposing interest,” although the title to the property is in dispute.	731
Property of bankrupt—What constitutes.	
A claim for the destruction of a vessel for which an allowance is made under the Geneva award will pass to the assignee.	9
The assignee in bankruptcy will receive the benefit of the state statute avoiding all deeds of trust as to creditors except from the time of recording them.	752
Where the bankrupts collect from their under tenants rent accruing before the bankruptcy, and secured by a lien upon crops, the district court has jurisdiction of a petition filed by the landlord to recover such fund.	732
The nature of the title to real estate held by partners cannot be changed to the prejudice of the rights of separate creditors by their classification thereof in their schedule.	947
—Exemptions.	
The state exemption laws, as interpreted and settled by the adjudication of its highest courts, are controlling on the bankruptcy court.	733
Where there are no individual assets, the members of a bankrupt firm are entitled, under the Missouri laws, to an exemption of § 150 each out of partnership assets.	835
The homestead exemption under the Virginia constitution exists only against debts contracted after the constitution took effect, and is by its terms subject to mortgages, deeds of trust, pledges, or other security thereon, notwithstanding article 7, § 32	733
An insolvent merchant cannot sell his homestead and transfer the exemption to his store into which he moves his family.	660
The amendatory act of June 8, 1872, is prospective, but it may be availed of in all pending cases where assets are undistributed and the exemption can be granted without prejudice to the interest already vested before the passage of the act.	733
—Liens.	
An assignee in bankruptcy takes the property of the bankrupt, subject to all legal and “equitable claims of others.	9
A prior lien gives a prior claim, and the district court in bankruptcy may ascertain and liquidate such a lien.	303
Judgments obtained against a debtor, at the time insolvent, by creditors having no reason so to believe him, are enforceable in the bankruptcy court.	663

	Page
Where a mortgagee takes possession of chattels on a default in payment of the mortgage, the mortgagor has no interest therein subject to levy on execution.	717
The fact that plaintiff sued out his execution immediately upon the rendering of the judgment, and defendant filed his bankruptcy on the same day will not affect the lien of the execution where there was no collusion.	404
The adjudication relates to the filing of the petition, and works a dissolution of an attachment before then levied upon the bankrupt's goods from that date.	917
Judgments whereby a creditor of an insolvent obtains an illegal preference are voidable, but not void per se.	904
A purchaser at sheriff's sale, after proceedings commenced in bankruptcy, where the levy was made prior thereto, will acquire a good title, notwithstanding that the judgments under which the sale took place are afterwards declared void as in fraud of the act.	904
The landlord's lien given by Code Va. c. 128, § 12, is independent of proceedings by distress warrant or attachment.	752
The right of an execution creditor or a landlord, upon a warrant of distress, is paramount to that of the assignee in bankruptcy, where the execution or warrant of distress was issued before the commencement of proceedings in bankruptcy.	116

—Sale.

Where a creditor is secured by a mortgage which is valid under the state law and the bankrupt act. the court has no jurisdiction to order a sale of the property, unless the creditor comes into the bankruptcy proceeding. 793

Proof of debts—What is provable.

Money actually paid on “puts“ and “calls,” which are void as wager contracts, may be proved as claims against the estate of the party from whom they are taken. 828

—Secured debts.

A creditor having a lien on property is admitted as a creditor only for the balance of the debt after deducting the value of the property. 303

—Set-off.

One to whom a bankrupt is indebted for money advanced, and who, before the bankruptcy, has purchased a note of the bankrupt, having in his possession at the time of the bankruptcy goods of the bankrupt, consigned to him for sale, may sell the goods, and, as against a claim for the proceeds, set off his claims against the bankrupt, under Rev. St. § 5073 1051

Payment of debts.

An assignment to attorneys of a portion of a claim for their compensation will be enforced in the bankruptcy court. 1051

Examination of bankrupt, etc.

The assignee has no right to examine the bankrupt under section 26, Act 1867, after he has obtained his discharge. 403

The bankrupt’s wife must attend before the register, and submit to an examination, the same as any other witness, under Act 1867, § 26; and she may be punished for contempt, under section 7, if she refuses to answer. 602

A witness who claims to have acted as counsel for a bankrupt cannot, on that ground, refuse to be sworn as a witness in the bankruptcy proceedings. 541

A bankrupt summoned at the instance of a creditor who has proved his claim cannot refuse to be sworn and examined on the ground that the claim is not valid, unless such invalidity has been proved. 306

A bankrupt who refuses to be sworn and examined under the advice of counsel will not be punished for contempt or amerced in costs other than those of the certificate. 306

Creditors cannot interpose to prevent the examination of the bankrupt summoned at the instance of another creditor. 306

On the examination of the bankrupt, a creditor who has filed proof of a debt, claiming that it was contracted by fraud, cannot inquire as to the facts constituting the fraud. 656

	Page
Costs. Fees. Disbursements.	
A regular taxation by the clerk should be made of all the fees and disbursements in each bankrupt case.	1057
The fee of the register for taking an ordinary proof of debt is \$1.87½	1070
For examining and filing a proof of debt taken before any other officer, 50 cents allowed.	1079
The sum of \$50. deposited with the clerk, is not a fund in court for general distribution among creditors, but is to be disbursed under the supervision of the court.	1057
The sum, or such portion of it as may be necessary, may be appropriated to the register in the first place.	1057
Where a bankrupt is relieved by order of the court from further payment of fees, the \$50 deposit will be distributed pro rata to the register, clerk, and marshal.	1057
Where a flock of sheep belonging to the bankrupt were taken on attachment prior to the filing of the petition, <i>held</i> , that the officer was entitled to compensation from the assignee for keeping such sheep until claimed and received by the assignee.	917
Discharge—Proceedings to obtain.	
The bankrupt may apply for a discharge within 60 days after the adjudication, where debts have been proved, but no assets have come to the hands of the assignee.	609
Where there are proved debts and assets, a discharge cannot be granted where not applied for within a year after the adjudication.	87, 422
A member of an existing firm having firm debts and firm assets cannot be discharged on his individual petition unless the firm is also declared bankrupt.	302
A partner who is in bankruptcy upon the petition of his co-partner cannot obtain his discharge without the assent of creditors or the amount of assets required in voluntary proceedings.	97
Under Rev. St § 5112, the assets coming into the hands of the assignee in bankruptcy, exclusive of exemptions, must be equal to 30 per cent, of the claims proved against the bankrupt's estate, to entitle him to a discharge.	96
Where the bankrupt was about to lose all remedy by the repeal of the bankrupt law, the court permitted a default to be opened on terms.	833
On the death of the bankrupt, after his uncontested application for a discharge had been submitted to the court, and a favorable report of the master had been made, the court has power to order the discharge to be entered nunc pro tunc.	865
The presumption that the final oath required by section 29, Act 1867, was duly taken, is not overcome by the mere fact that such oath is not upon file.	865
—Acts barring.	

YesWeScan: The FEDERAL CASES

	Page
It is no ground of opposition to a discharge that a debt is created by fraud, for the discharge does not operate thereon.	663
A single debt due in a fiduciary capacity will not prevent a decree as to all other debts.	834
The concealment of assets and false swearing in the affidavit connected with the schedule must appear to have been intentional, to preclude a discharge.	97, 719
The bankrupt is not chargeable with false swearing or fraud in omitting from his schedule a judgment held by him which he honestly regards as worthless, or in unintentionally omitting a debt which he considers of value as an asset.	317
Slight inaccuracies and a want of recollection will not warrant the belief of willful false swearing or false entries, where the bankrupt, a speculator in stocks, was obliged to rely mostly upon statements of his brokers.	542
The law only requires that the books of account shall be an intelligent record of the merchant's or trader's affairs, kept with that reasonable degree of accuracy and care which is to be expected from an intelligent man in the business. Casual mistakes will not prevent a discharge.	317
A speculator in stocks is not a merchant or tradesmen within the law requiring the keeping of proper books of account.	542
An entry of notes upon the fly leaf of the blotter is sufficient.	317
A chattel mortgage given to secure a debt need not be entered upon the account books.	317
The contents of account books kept by a trader before he becomes such need not be carried into the books which he keeps as a trader.	317

A conveyance constituting a preference made 14 months before the commencement of bankruptcy proceedings will not prevent a discharge, as it cannot be said to have been made in contemplation of becoming bankrupt. 415

—Scope and effect.

The discharge will bar actions brought against the bankrupt by foreign creditors, though it might not be recognized as a bar against foreign creditors in courts of their own country. 916

Debts due to persons arising out of the fact that the bankrupt, while register of the land office, converted to his own use money deposited with him by private parties for the purchase of public lands, are not discharged. 655

Section 21, Act 1867, is inapplicable to debts which by section 33 are excepted from the operation of a discharge. 656

The question whether a debt is fraudulently contracted, and therefore not affected by a discharge, can only be raised and determined in a suit to collect the debt in which the discharge is set up as a bar. 656

Prohibited or fraudulent transfers.

Any lien or incumbrance which would be void for fraud as against creditors if no petition had been filed or assignee appointed will be equally void against creditors represented by the assignee. 752

A creditor will not be held to be unduly preferred by a bankrupt unless he understands at the time that he is dealing, with a bankrupt or with his avowed agent for security or payment out of the funds of the bankrupt. 320

The payment of a duebill to induce the holder to become a party to a general assignment in favor of creditors which never took effect, made by a person who either did not act as agent for the debtor, or, if he did, concealed such agency from the creditor, is not a fraudulent preference. 320

A transfer in execution of a contract made when there were no circumstances to impeach it as an intended fraud upon the bankrupt act will be protected. 423

A merchant or trader who cannot pay his debts in the ordinary course of his business is insolvent. 114

A bill of sale by a bankrupt to a person who had knowledge of his insolvency in payment of a debt *held*, a fraudulent preference. 540

Knowledge of the insolvency of a debtor will not be presumed to a creditor because of the knowledge of his attorney. 663

A creditor who knows that his debtor cannot pay all his debts in the ordinary course of business has reasonable cause to believe the debtor to be insolvent. 114

	Page
Knowledge that a party is embarrassed in carrying out his business for want of means is not sufficient to fix on a grantee in a trust deed knowledge of his insolvency, if he fully believed that his property is more than sufficient to pay all his debts.	752
The preference is illegal where a judgment is entered upon a warrant of attorney to confess.	904
Where the sale is not made in the usual and ordinary course of business, the burden of proof is on the purchaser to sustain the validity of the purchase.	225
Suits and proceedings in relation to the estate.	
Property transferred by an insolvent partnership to a partnership creditor, by way of preference or otherwise, where the firm has never been declared bankrupt, cannot be recovered by an assignee of the surviving partners after the death of one of them.	402
An assignee, in alleging title to property, must allege an adjudication in bankruptcy.	678
The circuit court has not jurisdiction of suits brought by the assignee of the bankrupt, simply to collect the assets assigned.	533
The jurisdiction of the bankruptcy court of a suit brought by the assignee to recover property fraudulently mortgaged or conveyed is not exclusive of the state courts, and the court which first obtains jurisdiction will have the right to decide the matter.	793
Where the creditor commences suit in the state court to foreclose the mortgage before the assignee files a suit to set it aside as a fraud upon the law the state court will have the right to decide the matter, to the exclusion of the federal courts.	793
Review.	
The decision of the district court upon an application to confirm a sale of a bankrupt's estate is not within the general supervisory jurisdiction of the circuit courts. (Act 1867, § 2.)	814
The circuit court has no supervisory jurisdiction in the case of a suit brought by the assignee or a creditor pending the bankruptcy proceedings, or on the rejection or allowance of a claim, but has such jurisdiction in all other classes of cases.	814
When questions of policy and expediency have been fairly before the creditors, and disposed of by them, and their action has been approved by the register and the district court, such action will not be interfered with by the circuit court, on review.	93
The circuit court will not set aside the appointment of an assignee by the district judge where the only error claimed is in holding that no election had been made by the creditors, there being no allegation against the fitness of the person appointed.	531
On a review in bankruptcy, the circuit court cannot consider objections to a proceeding in composition that were not taken in the district court.	93
Arrangement with, creditors: Composition.	

	Page
In composition proceedings, the debtor, though present, may, by a vote of the creditors present, be excused from examination on account of illness.	98
The bankrupt is not required to attend any meeting of the creditors but the first one.	718
The debtor may be excused by the creditors from answering inquiries, even though he is present at the meeting of creditors (Act June 22, 1874. § 17.)	93
A person is not disqualified as trustee, or as a member of a committee of creditors, because related to the bankrupt or a creditor or a proposed member of the committee of creditors.	934
It is no valid objection to a composition that it is unsecured and payable in installments, and that the property of the debtor is restored to him, to be dealt with at his pleasure.	93
A composition of 20 per cent in money, secured by time notes, leaving certain realty in the hands of the assignee, to be converted into money, and paid to the creditors, is a lawful composition.	718
The question as to the time for the payment of the composition is one for the creditors to settle, and their judgment will not be reversed except for valid reasons.	98
Security for the payment of the composition is not always essential to its validity.	98
The fact that security provided for a composition does not certainly secure the full payment of the composition does not make the composition uncertain.	98
The circuit court, in the exercise of its supervisory jurisdiction, will not interfere, except in a very clear case, where the district court has affirmed the action of majority creditors.	718

Where a composition has been approved by the creditors, the register, and the district court, the circuit court will not interfere, unless specific errors in the action of the creditors or the court below can be pointed out, which, if sustained, would change the judgment. 718

BANKS AND BANKING.

Where a draft is drawn on time, and is sent, together with the bill of lading for goods shipped to the drawee, to a bank at his place for collection, the bank is not liable for delivering the bills of lading to the drawee on the acceptance of the draft. 597

A national bank may borrow money for the purpose of lending the same again to others with a view to making a profit. 1121

A national bank may lend money in good faith, without any fraudulent intent, to its directors as well as to others, provided the amount so loaned does not exceed the limitation of one-tenth of the capital stock actually paid in. 1121

One national bank, which loans money to another, knowing that the latter intends to loan the same to its directors, may recover the same from the borrowing bank, if it had no knowledge of any fraudulent intent in making the loans to the directors, even though the directors failed to repay the same. 1121

The assignee in bankruptcy is the “legal representative” of the borrower, within section 30 of the national banking act, and as such can maintain an action to recover back the penalty for taking usurious interest. 673

The provisions of the general banking law for winding up national banks under the direction of the comptroller of the currency are not exclusive of the remedy by creditors’ suit, and the appointment of a receiver. 679

BILLS, NOTES, AND CHECKS.

A receipt, not negotiable, and intended as a memorandum of indebtedness by the maker thereof to the holder, does not come within the rule of law in Massachusetts that one who indorses a note, not being a holder of it, is an original promisor. 654

The transfer of property by the maker of a promissory note to the indorser for the express purpose of paying the debt will dispense with notice of nonpayment, if the amount of property thus assigned be sufficient to satisfy the liability; not otherwise, although all the property of the maker may have been thus assigned. 487

If, however, the assignment to the indorser is in trust for general creditors, and sufficient only for the payment of a small portion of the debts of the maker, such transfer, although including all the debtor’s property, is not sufficient to excuse the want of notice to the indorser. 487

If the plaintiff obtain possession of the defendant’s acceptance by a fraudulent practice, he cannot recover upon it. 119

A bank which discounts a note for a partner, who drew the same in the name of the firm, and forged the name of the payee, cannot sue under the assignment, but may sue in the name of the payee for its benefit. 824

An indorsement for collection merely may be disregarded, and the suit be brought by the indorser. 1086

A declaration on note indorsed by one as agent in his own name should show that the note was made payable to such person as agent. 155

In an action against a bank on a promissory note taken for collection, the burden of proof rests with the bank to show that the rotary made the proper demand on the maker of the note, either at his place of business or at his residence. 1078

In an action on a note, judgment may be given for interest from its maturity or in damages. 952

BILL OF LADING.

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

Although the bona fide holder of a bill of lading is entitled to the proceeds, the consignee has the right to deduct his commissions, and also the charges and insurance advanced by him. 412

A recital in a bill of lading that the goods were received in good order may be contradicted by showing that the cask, case, etc., in which they were packed was insufficient, and the injury to the goods was caused thereby. 932

It is not sufficient for the carrier to show merely that the packages were insufficient and that the defect was not discovered by him, but he must show that the loss actually resulted from such insufficiency and from no fault of his. 932

BONDS.

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

A valid bottomry bond can be made to procure a loan to pay for repairs made in a port of distress on the credit of the vessel. 892

A bill for the services of a stevedore in the necessary unloading of a vessel to ascertain the extent of the damages may be included in the amount of the bond, as also a charge for commissions in procuring the loan. 892

The lender upon bottomry in good faith, and under circumstances which justified the loan, cannot be held responsible for the reasonableness of the charges in the repair of the vessel. 892

A recital that the master was necessitated to take the sum loaned upon the vessel, her cargo and freight, will not control the actual hypothecation clause confined in terms to the vessel and the freight. 928

	Page
An omission to include the cargo in the hypothecation, if by mistake, may be reformed.	928
The lender must receive the amount of his bottomry bond at the place where payable, though a bill of exchange is given for the same, payable at another place.	928
Freight pledged means the freight of the whole voyage, and not the freight for that part unperformed at the time of giving the bond.	928
The bottomry lien attaches from the date of the bond, although the ship, by reason of the default of the parties procuring the loan, never performs the voyage described in the bond, but undertakes a different voyage; and the principal of the loan may be recovered in an action in rem, after the completion of that voyage, and as against a claimant who purchased the ship with knowledge of the facts.	84

BRIDGES.

See, also, "Navigable Waters."

A drawbridge over navigable water, although it unavoidably occasions some delay in passing it is not necessarily such an obstruction to the navigation as to amount to a nuisance.

BUILDING AND LOAN ASSOCIATIONS.

The loans by building associations under an arrangement whereby the members bid for the amount and pay a premium are not usurious. 1090

CARRIERS.

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

A steamboat bill of lading for the delivery of goods at a certain point, specifying the rate of freight to a more distant point, is a through contract, and binds the carrier to deliver at the latter point 554

In the absence of a special contract, the carrier can only relieve himself from liability for injury to goods by proving that it was the result of some natural and inevitable necessity superior to all human agency or control, or of a force exerted by a public enemy. 922

A common carrier may, by special contract, limit his common-law liability to that of an ordinary bailee for hire, but he cannot exempt himself from liability for misconduct or negligence. 826

The exception from fire liability inserted in a bill of lading does not excuse the carrier in all cases of destruction by fire. He is, notwithstanding, bound to use reasonable care and vigilance, such as an ordinarily prudent man would exercise over his own property 554

Though liability for fire is excepted, the carrier is bound to do all that reasonable and prudent men could do to prevent the entire destruction of the property after it has caught fire 554

The measure of damages for the loss of property shipped is its net value at the point of destination, with interest, deducting freight 554

CHARTER PARTIES.

See, also, "Demurrage"; "Shipping."

An agreement for the hire of a vessel for a given term at a certain rate per month, the vessel being manned and victualed by the owners, the hirer paying port charges and pilotage, makes the hirer owner pro hac vice. 346

In a charter party under seal there is an implied covenant that the vessel is seaworthy, and fit for the service for which she is hired, and the charterer may aver such warranty, and declare on it in covenant. 128

In the case of separate charter parties for successive voyages, a breach of the first charter party in refusing to accept the vessel at the agreed rate, where she subsequently sails the voyage at a lesser rate, will not release the vessel from the other charter parties. 691

CHATTEL MORTGAGES.

See, also, "Shipping."

Under Rev. St. Mass. c. 74, § 5, it is not necessary, as between the parties, that the mortgage should be recorded. 323

CVIL RIGHTS.

The thirteenth amendment gave to the freed slave no right of protection from the federal government superior to that of his white fellow citizens, and no exemption from the power of state control which might be exercised against others. 1005

The provision of the fourteenth amendment that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," prohibits the action of the state alone. It gave congress no power to legislate against the wrongs and personal violence of citizens. 1005

The privileges and immunities which this clause forbids the states to abridge are only that limited class which depend immediately upon the constitution of the United States, such as the right to pass from state to state and to the national capital, to protection upon the high seas and in foreign countries, and the like. 1005

Congress has no authority, under the thirteenth and fourteenth amendments or otherwise, to declare it a crime for any individuals to deny to negroes the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of the theaters and inns of a state. 1005

A state officer, empowered by law to select jurors to serve in the courts of the state in the trial of civil and criminal cases, who for a series of years selects only white jurors, and fails to select colored jurors, is amenable to indictment in a court of the United States, under Act March 1, 1875, § 4 (18 Stat. 335), entitled "An act to protect all citizens in their civil rights"

In North Carolina, the equal rights, in inns and public conveyances, of all persons without distinction of class, are fully protected by state statutes, and existed as to inns at common law; and the "Civil Bights Bill" was unnecessary in the state, and its only effect is to give jurisdiction of wrongs committed against citizens on account of class to the federal courts. 999

These laws, state and national, were intended to secure political and legal equality of rights to all citizens, but were not intended to establish social equality, or to enforce social intercourse between different classes of citizens. 999

CLAIMS.

The proof of an assignment of a claim for indemnity cannot be by parol. 961

COLLISION.

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

Between sail vessels.

Failure of a sloop running before the wind in the East river to foresee the point at which an approaching schooner will run out her tack so as to keep out of her way 305 when she comes about, is a fault barring recovery for an ensuing collision.

Between steam and sail vessels.

A sail vessel will be held in fault for collision with a steamer where, when sailing on parallel courses, with ample space between them, she changes her course to cross 36 the steamer's bows, so near that the latter could not, by reversing, avoid her.

If the collision "is occasioned by an alteration of the course of the sailing vessel, it devolves upon her to prove the propriety or necessity of such movement. 36

Mere apprehension of danger, not then imminent, is not sufficient to justify a change 328 of course by a sailing vessel meeting a steamer under way.

	Page
In an action for damages to a sailing vessel by collision with a steamer, the burden of proof lies in the first instance on the libelant.	36
Vessels moored, etc.	
A vessel cast oft from a tug in a tideway at fault for collision with a vessel moored cannot recover for increased damage from the fact that the latter's anchor was atrip.	122
Tugs and tows.	
Tug <i>held</i> in fault for starting out with a tow in a tide so strong that she could not control her maneuver, and was forced against a vessel lying at a pier.	1
A steamer is liable for a collision with a scow, caused by the steamer suddenly changing her course to avoid being run into by a sailing vessel, unless it is proved that the steamer was without fault in getting into a position which made the change of course necessary. (Reversing 969)	970
Lookouts.	
The fact that the master of a vessel was acting as wheelsman and lookout will render the vessel liable where the proofs leave it doubtful whether such fact contributed to the collision.	872
The failure of a lookout to report a vessel which he sees is evidence of negligence in the performance of his other duties.	685
Particular instances of collision.	
Between sail vessel just coming to anchor off the Battery at New York, and steamer descending the river, where both were held at fault; the sail vessel for want of a lookout, and the steamer for traveling too near the shore, in the night, at too great speed.	299
Between steamer and schooner at sea, where both were held in fault; the former for not taking prompt measures to avoid the collision, and the latter for not seeing the steamer before changing her course.	936
Between scow cast off from tug in tideway and with a sheer and vessel at anchor, where former was held solely at fault.	122
Procedure.	
A joint action for collision cannot be maintained in rem against one vessel and in personam against the owner of another.	869
Where the blame for a collision is found to lie with the libelant alone, the costs will be taxed against him.	305

CONFLICT OF LAWS.

Where a policy of insurance is written at the home office of the insurance company, and transmitted to an agent in another state, who had authority to receive applications	704
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for policies and payment of premiums, and through whom losses were paid, the contract is governed by the laws of the state of the domicile of the company.

Where the contract was that the purchasers should pay the sellers in England, and the uniform mode of payment was to remit bills of exchange on England, the contract will be *held* be governed by the laws of that country. 821

CONFUSION OF GOODS.

An agent who, without authority, mixes his principal's goods with his own, so that he cannot distinguish them, must lose what he contributed. 787

CONSTITUTIONAL LAW.

The limitation in the fifth amendment "when in actual service in time of war or public danger," refers only to the militia, and does not apply to the regular land and naval forces. In respect to the latter, the power of congress is irrespective of the actual condition of the country, and the same in time of peace as in time of war or public danger. 1160

The power of controlling navigation is incidental to the power to regulate commerce, which the constitution confers upon congress; and, consequently, the power of congress over the vessel is co-extensive with that over the cargo. 239

Under the power to regulate commerce and to make all laws necessary and proper for carrying that power into effect, congress has authority to give full protection to commerce by its criminal jurisprudence. 997

Statutes passed by congress in pursuance of this power are of paramount authority, and cannot be invalidated or impaired by the action of any state or states. Any law, ordinance, or constitution made by them for that purpose is wholly nugatory, and can afford no legal protection to those who may act under it. 997

A state law providing that a note whose consideration is the right to make, use, or vend a patented invention, shall bear upon its face the words "given for a patent right" and that such note shall be subject to the same defenses in the hands of a third person as in the hands of the original owner, impairs the value of patent right property, and is unconstitutional. 603

CONTINUANCE.

If, after a plea of nil debet by the appearance bail, the principal gives special bail, and pleads the same plea, plaintiff is entitled to a continuance of course. 387

The court will not continue a cause for the absence of a witness who has been summoned, if no attachment has been moved for, if the witness resides within 100 miles of the place, although he resides out of the district. 536

CONTRACTS.

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

Although a letter of retraction of an offer of sale be actually on the way at the time that letter of acceptance is mailed, yet the contract is closed unless such letter of re- 373 traction be received prior to the mailing of the letter of acceptance.

A contract between the heir contesting a will, which excluded him, and the executor, for a division of the estate between them if the heir was successful, is void as against 135 public policy.

Where, on a contract for the sale of grain, the parties do not contemplate delivery, but expect simply to settle the differences as established by future prices, the contract 828 is void as a wager contract.

If a purchase or sale of grain for future delivery, made in the form of a contract, is in fact simply a bet or wager on differences, the form it assumes does not affect its *38 invalidity.

A contract for the sale or purchase of grain for future delivery, legitimate on its face, cannot be held void as a wagering contract merely by showing that one of the parties *38 so understood it. To render it void, it must be proved that both parties regarded it simply a wager on differences.

“Puts,” or the privilege, for a nominal, consideration, of delivering a large quantity, of grain within a certain time at a specified price, when taken of persons notoriously 828 running a “corner,” are wager contracts, and void as against public policy.

A custom or usage of paying debts in Confederate notes in the insurrectionary states during the war of the Rebellion was illegal, and cannot be sanctioned as of any binding force. 17

A bond given in 1869, payable in "dollars" generally, was payable in gold and silver only; but, after the passage of the legal tender acts, it could lawfully be discharged by legal tender notes. 17

The performance of a contract to deliver teas of the first quality is not excused by the fact that no such teas can be obtained in the market. 887

A subsequent agreement to diminish the quantity and the price, of certain goods contracted to be delivered does not excuse the contractor for a violation of the contract as to quality. 887

In an action for damages for a breach of contract, no evidence of fraud is admissible. 55

Damages for a breach of contract for the delivery of goods do not bear interest. 887

On breach of a contract to haul all the stone which defendant had contracted to supply for certain work, where plaintiff, after part performance, was not allowed to complete, he is entitled to recover the contract price for the material hauled, together with the profit he would have made had he been allowed to complete the contract. 1085

In an action on a note for the price of goods, where defendant sets up damages for a breach of contract, the same should be allowed as at the date of the verdict, and not at the date of delivery of the goods, so as to carry interest. 888

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CORPORATIONS.

See, also, "Banks and Banking"; "Building and Loan Associations"; "Municipal Corporations"; "Railroad Companies."

Two states may, by concurrent legislation, unite in creating the same corporate body. 73

Under Act Mass. March 3, 1809, providing that the "corporation may, * * * at any legal meeting called for that purpose, assess" each share, etc., the power to assess cannot be delegated to the directors. 312

A by-law authorizing the directors "to take care of the interests and manage the concerns of the corporation," does not import an intention to delegate to the directors the power to lay assessments. 312

An unauthorized assessment of the same amount as a dividend previously declared, made payable on the same day, cannot be collected out of such dividend, without consent of the stockholder. 312

The capital stock of a bank is a trust fund for the payment of the bank notes; and where any portion of it, before the expiration of the bank charter, is divided among 435

	Page
its stockholders without providing funds which ultimately are sufficient to pay the outstanding bank notes, the fund may be followed into the hands of the stockholders.	
A bill in equity for such purpose might be maintained by some of the holders of the bank notes against some of the stock holders, the impossibility of bringing all before the court being sufficient to dispense with the ordinary rule of making all parties in interest parties.	435
In such case the decree against the stockholders before the court should be only for their contributory share of the debt, in the proportion which the stock held by them bore to the whole capital stock.	435
In New York, a receiver appointed under a judgment creditors' bill may recover unpaid subscriptions to the capital stock without a previous call by the corporation.	265
A stockholder may sue to enjoin the collection of a tax against the corporation, making the directors parties defendants to the bill.	606
A manufacturing corporation is not liable upon a note or evidence of indebtedness indorsed by an officer for the accommodation of a third person.	654
The authority of an officer to sign and indorse promissory notes for the company does not imply authority to sign or indorse notes for the accommodation of third persons.	654
In a bill against a foreign corporation by a judgment creditor for a sequestration of its property and the appointment of a receiver with power to collect unpaid subscriptions to stock, it is a sufficient statement of the amount of such unpaid subscriptions to state that they are more than sufficient to pay the judgment.	265
The fact that such corporation has no property in the district, and no property anywhere but the demands for such unpaid subscriptions, is no objection to the jurisdiction of the court, and no defense to such suit.	265
COSTS.	
See, also, "Witnesses."	
As to the allowance of costs in the federal courts prior to the fee bill of 1853, see Act March 3, 1847, regulating costs in admiralty proceedings in rem where less than 8100 is recovered, is repealed by Act Feb. 26, 1853	1058 879
Full costs will be given in an action of covenant, though the verdict be for one cent only.	517
Where, in a suit in equity for infringement of a patent, defendant was held to have, infringed one claim, and another claim was held to be invalid, no costs were allowed to either party.	776
The amount of the costs of a suit in New York may be proved by parol.	552

	Page
The acts of congress in relation to costs in the case of a cause removed from a state court to the federal court apply only to such costs as accrue after the removal.	406
A bond for costs, which omits the name of the nonresident plaintiff about to institute suit, is defective, and the suit should be dismissed.	8
Nor can bond be given after the institution of suit, so as to prevent dismissal.	8
Witnesses who attend without being summoned are voluntary witnesses, and their fees cannot be taxed against the losing party.	518
Models of the invention described in the plaintiff's patent, and procured by the defendant in good faith, may be included in the taxation of costs, but not other models.	518
Copies of patents, either that of the plaintiff or others, procured by the defendant, cannot be taxed as costs to the plaintiff.	518

COUNTIES.

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

A county which, in disregard of the limitation upon the power given it by statute to issue bonds, issues them absolutely payable to bearer, is liable thereon to a bona fide holder for value, who bought them in the market in the course of trade. 426

In the case of bonds issued in pursuance of the authority of an ambiguously worded statute, the court will adopt a liberal construction in order to sustain them, though it would have prevented their issue had application been made therefor in season. 493

An election which results unfavorably to the subscription for stock in a railway company does not exhaust the power of the county board to subscribe, but the question may again be put to vote. 544

COURTS.

See, also, "Admiralty"; "Bankruptcy"; "Criminal Law of Causes." "Equity"; "Judges"; "Removal."

Comparative authority of federal and state courts: Process.

The fact that a state law provides a mode in which a third person may intervene when his property is attached on process against another does not prevent such person maintaining replevin in the federal court where his property is attached under process of a state court. 1111

In the case of an inseparable railroad line running through two states, the court of the place of residence of its principal office may appoint a receiver of its entire property. 73

In the case of two suits between different parties having different purposes in view, commenced in courts of co-ordinate jurisdiction, where possession of property which is the subject of the suit is necessary to the relief asked in each case, that court which first seizes the property acquires jurisdiction over it to the exclusion of the other, no matter when the suits were commenced, or process in personam was served. 73

The court, on a bill filed by railroad bondholders to construe a trust deed and to compel trustees to take possession, or for the appointment of a receiver, on service of a subpoena and a restraining order, obtains constructive possession of the trust property, and possession taken under process of another court in subsequent proceedings is in contempt of the former, though the latter court first obtains actual possession. (Per Woods, C. J.) 73

Federal courts—Grounds of jurisdiction.

An alien assignee of a judgment obtained by a nonresident can maintain a suit thereon in the federal court, though his immediate assignor was a citizen of the same state with defendant. 122

	Page
The mere allegation that a party is an alien is not sufficient to give jurisdiction. There must be an allegation that he is a subject or citizen of some one foreign state.	116
In the case of a corporation, it must be alleged that all the corporators are citizens of some one or more state or states of the United States.	116
A citizen of lone state may sue in the federal circuit court of another state to restrain acts which, if consummated, would do irreparable injury to his property in the latter state.	626
If the jurisdiction of the court could be ousted by making all the parties concerned in interest plaintiffs, those who are citizens of the same state with the real defendants may refuse to join in the suit, and may be made defendants.	388
—Circuit courts.	
The circuit court has jurisdiction to aid in enforcing the judgment of a state court.	116
A state cannot maintain as plaintiff an action in the circuit court of the United States.	382
Act Feb. 28, 1839, does not enable the federal circuit courts to make a decree in equity which may affect a resulting interest in the subject of controversy vested in a party not before the court.	331
Where an objection for the want of such a party has been sustained at a final hearing, the court, instead of dismissing the bill, usually retains the cause, in order that he may be made a party.	331
A proceeding to bring into court a person who becomes a necessary party in consequence of an act performed by himself, after the commencement of the suit, though supplemental as to the former parties, is original as to the new party, and, though the former suit was commenced before the passage of Act May 4. 1858. it may, if afterwards instituted, be, within the meaning of the law, a suit brought after its enactment.	331
Under that act, and under the previous law and practice of the circuit courts in equity, a subpoena issued in such a case, out of the circuit court for either of two districts of a state, may be served in the other district of the same state.	331
The holder of bank notes payable to bearer is not an assignee of a chose in action within the judiciary act of 1789 (section 11). limiting the jurisdiction of the circuit court.	435
A foreign corporation doing business in Illinois is liable to be sued there in the federal court, though there be no express provision of statute in regard to service.	253
Such a corporation is to be “found” there, within the meaning of the United States statutes, which provide that no suit shall be brought against any person in any district other than that in which he is an inhabitant, or where he is found.	253
—District courts.	

	Page
The district court in one state has no jurisdiction in personam against a citizen of another state, not served with process in the former state.	125
The eleventh section of the judiciary act of 1789 applies to the courts of the United States sitting in admiralty, as well as when sitting in equity and common law.	150
Jurisdiction cannot be obtained on libel in personam, in admiralty, by process of foreign attachment, where respondent, being a nonresident, is not found within the district.	150
—Administration of state laws.	
The federal courts follow the rules of construction of state statutes established by the highest courts of the state.	606
On questions touching the tenure of real estate the federal courts are to be governed by the laws and decisions of the courts of the country where such real estate is situated.	947
The federal circuit courts will follow the decision of the highest state court as to the admissibility of evidence and the force and effect of deeds defectively acknowledged.	707
—Procedure.	
A state law regulating the practice of the state courts does not apply to the federal courts unless adopted by such courts or the act of congress.	792
The federal court, in granting writs of mandamus for the purpose of compelling a municipal corporation to levy a tax, will conform as much as possible to the state practice in similar cases.	385

Local courts.

The orphans' court of the District of Columbia has no jurisdiction, by virtue of Act Md. 1789, subc. 12, § 3, and Id. subc. 15, § 12, or otherwise, to inquire whether a father be a fit person to be intrusted with the personal custody and education of his children. Its jurisdiction, as to him, extends only to the due care and management of the infant's estate.

CRIMINAL LAW.

See, also, "Arrest"; "Grand Jury"; "Habeas Corpus"; "Indictment and Information"; "Treason."

Congress has not, by the crimes acts of 1825 and 1835 (4 Stat. 115. 775), given to the civil courts any jurisdiction over the crime of murder, when committed on board a United States ship of war, and triable before a court-martial under the navy regulations.

Quære, whether Act Sept. 24, 1789, § 11, conferring on the circuit court concurrent jurisdiction with the district court of all crimes and offenses cognizable therein, applies to jurisdiction subsequently conferred on the district court in specific terms under the fugitive slave law.

The federal criminal laws are to be enforced by the federal judiciary without any regard to the criminal laws of the state in which the court is sitting, or the nature of the crime under the state laws.

Under the constitution, treason or other crime committed within the limits of the United States can be tried only within the state and judicial district within which it is committed, and the accused has the right to a trial by jury in such state or district. If, therefore, the condition of such state or district be such that the federal courts there cannot or will not perform their functions, crimes committed "there cannot be punished by the regular administration of justice.

Offenses committed without the limits of the United States, upon the ocean, must be tried in the judicial district into which the offender is first brought, or in which he shall have been first apprehended

It is an offense punishable by fine and imprisonment, under the act of 1799 (1 Stat. 618. c. 1). for a citizen of the United States, at a time when a part of the inhabitants of the United States are in rebellion against the government, to write letters to a member of the British parliament, urging that body to acknowledge the independence of the insurgents.

In cases of misdemeanor, not only those who are present, participating in the act, but those who, though absent when the offense was committed, did procure, counsel, command, or abet others to commit it, are indictable as principals.

Page

Language addressed to persons who immediately afterwards commit an offense, if actually intended by the speaker to incite those addressed to commit it, and adapted thus to incite them, is such a counseling or advising to the crime as the law contemplates, and the person so inciting is liable to indictment as a principal. 983

In a case where a jury declared that they could not agree after being kept in consultation several days, the judge gave them a binding instruction to bring in a verdict of guilty. 257

CUSTOM AND USAGE.

In order that a usage of trade shall control the method of stating accounts between two persons, it must have been continued for such a length of time as to have become generally known to those engaged in the trade, and must be so general as to have become the general rule of commercial intercourse, in the absence of any special agreement or particular course of dealing between individuals. 821

A custom among commission merchants who buy and sell grain for customers to settle the difference in margins between themselves, their customers being substituted as parties to the contracts, *held* valid, and binding. 38

Evidence is admissible of a usage to explain a clause in a contract of insurance, when the law is unsettled; and in such case the usage, and not the opinions of witnesses, must control. 376

The existence of a usage may be proved by one witness. 821

CUSTOMS DUTIES.

Customs laws.

Privateers are included within the exemption of "ships or vessels of war" from making a report and entry on arriving at a port of the United States. (Act March 2, 1799, § 31.) 239

Invoice: Entry: Appraisal.

Purchases are considered as made at the date of the invoices, and not when the orders for goods were accepted when the market rate has advanced. 138

The value of an import is determined by the appraisal, and the duty fixed by law must be assessed by the collector upon the value so determined. 70

Act July 30, 1846, did not vary the law previously in force regulating the method of ascertaining the quantity of merchandise imported. 147

The weight of the boxes, cases, or packages in which goods are imported is not the subject of appraisal, within the meaning of Act July 30, 1846, § 8 147

Where the importer does not object, an appraisal by samples taken by a sampler where the appraisers did not see the packages, *held* sufficient. 900

	Page
Where samples are fairly selected from one in ten of the packages, and are fully identified, it is of no importance whether they were drawn from the packages by the appraisers themselves, or by the official sampler of the appraisers' department.	900
An objection that the samples produced before the merchant appraisers on appeal were not identified must be taken on the appeal.	900
Payment: Protest.	
The importer should state in his protest every charge objected to.	69
Actions for duties paid.	
In an action to recover duties paid under protest, the importers cannot avail themselves of any objections to the action of the customs officers, except those specified in the protests.	138
Violations of law.	
Where a valuation of molasses in casks in an invoice is correct, but the quantity stated in the invoice is less than the actual quantity found on gauging, the case is not one for the imposition of a penalty for undervaluation, under Act July 30, 1846, § 8	903
Where an invoice of molasses in casks does not specify the number of gallons, the case is one of undervaluation, and the penalty may properly be imposed.	903

Under Act July 14, 1832, § 14, it is not a distinct and substantive ground of forfeiture that on the opening, etc., of a package of imported goods, etc., the same are not found to correspond with the entry at the customhouse. 714

Charge to grand jury on the subject of frauds upon the revenue in obtaining payment of money on drawbacks on the exportation of goods which have paid internal revenue taxes. 978

DAMAGES.

Sales of goods at auction are not conclusive evidence of the value of goods in an action for damages for breach of contract. 52

The damages in the case of a rotten and unseaworthy vessel brought in collision with a wharf, where the condition of the vessel was not the sole cause of the injury, are the natural and necessary consequences of the collision to the vessel in her actual state of repair. 525

The master of a vessel who willingly and knowingly carries into execution the sentence of banishment of an illegal and self-constituted body of men is liable for exemplary damages. 781

In actions of tort the motive of defendant may be inquired into to increase the compensation. 781

DEED.

See, also, "Acknowledgment."

A deed to A., in consideration of a sum of money paid, or secured to be paid, in the usual form of a deed of bargain and sale, is to be considered as a conveyance executed, notwithstanding a covenant by the grantor "to make a patent," which can only mean to obtain one, and deliver it to the grantee. 63

Under the resolve of the legislature of New Hampshire, approved June 22. 1831, conveyances of state lands by a land commissioner may be recorded in the office of the secretary of state at any time, and take effect only on being so recorded. 533

A curative statute, passed in a state in which a deed of land in another state was improperly acknowledged, cannot act extraterritorially and work curatively upon the deed in such other state. 707

Act Mo. Feb. 22, 1868. does not repeal Rev. St. Mo. c. 109. § 38, pertaining to the admissibility in evidence of certified copies of deeds for military bounty lands, nor does it abrogate the common-law mode of proving the execution of deeds. 707

DEMURRAGE.

The lien for demurrage is lost by a delivery of the cargo, and a receipt of the freight, without any agreement that it is to be held subject to the lien. A statement by the master that he should look to the ear-go for the claim will not preserve the lien. 308

DEPOSITIONS.

The notice of taking the deposition under Act 1789, § 30, must be given by the magistrate before whom the deposition is to be taken. A notice given by the party is not sufficient. 845

The ex parte deposition of a deceased witness, not taken by consent, cannot be read in evidence. 913

Rev. St. § 864, must be strictly complied with in taking depositions de bene esse; and the witness must be sworn to testify the "whole truth" on the entire subject of the depositions, and not as to each interrogatory. 255

As to the mode of administering the oath, it is sufficient in that respect to follow the directions of the statute law of the state of the United States where the depositions were taken. 255

The deposition of a witness, on the part of the plaintiff, who had given certificates upon which a recovery was expected to be obtained, and who expected a commission of 1 per cent, on the amount to be recovered from the defendant, but which certificates were not evidence in the cause, is admissible. 55

The testimony of a witness, taken under a commission directed to five persons, or any one of them, cannot be read in evidence if another person than the commissioner, and who was not named in the commission, assisted in taking the examination of the witness. 55

Depositions under a commission issued to a place where the commissioners are prohibited executing the commission, taken according to the law of the place, in the presence of the commissioners by the judge, are admissible. 376

The certificate of commissioners who have taken a deposition that they had taken the oath prescribed in their commission is sufficient evidence of that fact. 346

The magistrate who takes a deposition under the act of congress must certify the reasons of its being taken. 552

If all the interrogatories, either in form or substance, are not put to the witnesses, the depositions cannot be read. 376

It is no objection to reading a deposition taken abroad that the witnesses had previously been examined and cross-examined under a commission in the United States. 376

DESCENT AND DISTRIBUTION.

In a suit to obtain the distribution of property which came into the hands of the administrator of an executor, where plaintiffs claimed as heirs at law and next of kin of testator, the legal representative of the testator is not a necessary party. 388

Page

In a suit by one of the next of kin to obtain a distribution of property, the executor or administrator of a deceased next of kin, and not his devisee or heirs, must be made a party. 388

DETINUE.

Detinue lies against a person who has quitted the possession of property prior to the institution of suit. 521

A legal eviction or return of the property before suit will bar the action. 521

DISCOVERY.

A cross bill for discovery charging that plaintiff was a nominal one, and that the real plaintiff was a citizen of the same state with defendant, filed after the original bill was set for hearing, on information subsequently, obtained, must be answered before the original suit is heard. 864

A bill of discovery must set forth a title sufficient to support or defend a suit, and pray a discovery pertinent thereto; and, where it cannot be sustained as a bill of discovery, it cannot be retained for the purpose of relief, unless it makes an independent case. 841

DISTRICT ATTORNEYS.

Under the provisions of Act May 18, 1842, which are made permanent by Act March 3, 1845, the district attorneys for the Northern and Southern districts of New York are entitled to the same fees that are allowed to attorneys, solicitors, and counsel in the supreme court and court of chancery of New York, according to the nature of the proceedings, for like services rendered therein. 1074

For services rendered to the United States by those officers in civil and criminal cases, their fees must be taxed according to the latest fee bill in the supreme court of New York, in which the rate of fees is prescribed for attorneys and counsel in that court. 1074

The act of the legislature of New York abolishing all attorney and counsel fees (Laws N. Y. 1849, c. 438, § 303) does not affect the right of those district attorneys to the rate of compensation allowed to attorneys and counsel in the supreme court of New York, as it stood at the time of the passage of that act. 1074

Where there is an allowance in the supreme court or court of chancery of New York, according to the nature of the proceedings, for a corresponding service, the district attorney can have no other or greater fee. 1074

But it is not necessary, in order to entitle the district attorney to fees for a given service, that a corresponding fee for a like service should be given to attorneys, solicitors, and counsel by an existing law of the state. 1074

Where no such corresponding fee is given by any existing law of the state, the usage and practice is to refer back to some previous law of the state regulating the fees of attorneys and counsel, wherein may be found an allowance for a corresponding service. 1074

DIVORCE.

Alimony will not be granted to a wife before she answers. 951

EJECTMENT.

A warrant and survey of Pennsylvania lands, and payment of the purchase money, are sufficient to give a legal right of entry in ejectment. 62

An heir who enters upon the death of a tenant for life is an intruder, and not entitled to notice to quit. 644

Equitable estoppels in pais cannot be set up as a defense to an action at law to recover the possession of real property. 771

The death of the lessor of the plaintiff cannot be taken advantage of upon the general issue. 644

A statement in the answer of the evidence upon which defendant relies to sustain his claim of ownership is irrelevant. 766

The defendant may allege in his answer that he is the owner of the premises in controversy, but if he couples such allegation with a statement of the grounds of his title, from which it does not appear that he is such owner, the matter may be stricken out as sham. 766

A plea stating that defendant is in possession as assignee of an unsatisfied mortgage, but which does not allege that he entered with the assent of the mortgagor, is frivolous, but not sham or redundant. 398

A statement in the answer that defendant derives title from the administrators of a certain person, it not being alleged that such person ever owned or had any interest in the property, is frivolous. 766

An allegation that the property was conveyed by administrators, in obedience to an order of the probate court, where it does not appear that the order was duly or lawfully made, or that the court had authority to make it, is frivolous. 766

A counterclaim for permanent improvements should not be pleaded to the whole complaint, but only to so much thereof as to which it is an answer or defense; and it should allege the present value of said improvements, and that they better the condition of the property for the ordinary purposes for which it is used. 766

To set forth the nature and duration of an estate, license, or right to the possession, under Civ. Code Or. § 316, it is sufficient to allege that the party is the sole or part owner in fee simple or upon condition or for life or years of the premises, as the case may be; or, in case of some special license or right to the possession for a limited time or special use, to state succinctly the license or right to the possession as claimed, with the necessary facts constituting it. 398

The right to damages given by Code Or. §§ 313, 318, includes all damages to which the owner is entitled because of the wrongful occupation, as well for waste committed or suffered as the value of the use and occupation. Such right is a distinct cause of action, and, if joined with a claim for possession, should be separately stated. 766

ELECTIONS AND VOTERS.

Under Act May 30, 1870, it is a crime to counsel or advise another to vote illegally or in any way to procure or aid such vote. 991

Act May 31, 1870, to enforce the rights of citizens of the United States to vote in the several states of the Union, is not unconstitutional, on the ground of discriminating between different classes of citizens. The words “without distinction of race, color, or previous condition of servitude” are general terms, descriptive in character, and are not restricted and cannot limit the preceding words, which apply to all citizens otherwise qualified to vote. 987

A registration officer who refuses or knowingly omits to give full effect to the law, by placing the name of any citizen on the list of voters who applies for registration, and who is entitled under the state constitution and laws to be registered as a voter, is guilty of a misdemeanor, and is liable to a criminal prosecution, as well as to a civil action, by the party aggrieved. 987

EMBEZZLEMENT.

Charge to grand jury on the law of embezzlement by officers of national banks. 976

EQUITY.

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

Where there is a plain and adequate remedy at law, a court of chancery has no jurisdiction. 966

If a defendant omits to make his defense at law, equity will not afford him relief on the same grounds. 751

In the case of a sale under a decretal order in equity, where the purchaser enters into a covenant with surety to pay the purchase money, and has defaulted, the remedy at law is inadequate, and a court of equity will compel performance. 458

	Page
“Where, on the partition of lots, quitclaim deeds are given, and it is subsequently discovered that a building which represents more than 90 per cent, of the value of the property laps over on an adjoining lot, equity has jurisdiction to grant relief on the ground of mistake.	790
The bare fact that parties who hold an equitable title to land cannot sue at law does not give the court jurisdiction.	864
After the lapse of 20 years, a bill in equity cannot be maintained upon a bond for the conveyance of land, where the obligee early repudiated its obligation, though the obligor considered the bond worthless.	674
A rule to show cause will be granted upon a bill of review to set aside a decree only when the decree shows upon its face that it is contrary to law, or upon the allegation and prima facie proof of the existence of material facts, which, if known, would have hindered the decree, and which complainant did not know at the former trial, and could not have discovered by the exercise of reasonable diligence.	810
A bill in equity to recover lands, claiming only an equitable title thereto, which does not set up any facts tending to show that defendants were in any way affected by their equity, cannot be maintained.	864
Where a bill states a case to which the act of limitation applies, without bringing it within one of the exceptions, a demurrer will lie thereto.	388
“Where fraud is asserted as a ground of relief, as against third persons, a mere denial of all fraud in themselves and all knowledge of fraud in their grantor, is insufficient, without a denial of a knowledge of the facts from which fraud is inferred.	631
The answer is evidence in favor of defendant only so far as it is responsive to the allegations of the bill.	653
Where a feigned issue for trial of a fact is directed by the court, no declaration of any sort is requisite. The case is put on the trial list, and the jury sworn to try the issue, in the words of the order of issue itself.	100
ESTOPPEL.	
To constitute an estoppel, there must be some intended deception of the party to be estopped, or such gross negligence on his part as to amount to a constructive fraud, by which another has been misled to his injury.	722
Where a person, by his words or conduct, willfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.	67

A person who took a bill of sale as security, and persisted, in an action to recover the goods, in claiming the absolute ownership, is estopped from thereafter claiming them as security. 67

A plea of estoppel by conduct, not showing that the defendant was ignorant of the truth of the matter or could not have conveniently ascertained the same, nor that the defendant had acted upon the matter claimed as an estoppel, will be stricken out on motion. 770

EVIDENCE.

See, also, "Deposition"; "Trial"; "Witnesses."

The federal circuit court takes judicial notice of the public laws of the state. 590

Parol evidence cannot be given of the contents of printed cards bearing the joint names of defendants to prove partnership. 119

Parol evidence cannot be given of a transfer in writing, without proof of the loss of the writing, or otherwise accounting for its nonproduction. 249

Hearsay and reputation are not admissible to prove particular facts in a contest as to private rights, and proof that a stone monument was reputed to have been put down to designate a private grant is not admissible. 350

Declarations of a witness cannot be given in evidence, except only in answer to evidence of other declarations of the witness, inconsistent with what he had previously sworn to. 669

Parol evidence of the declarations of an auctioneer, contrary to the written terms of sale, is not admissible; but such evidence, as to the property intended to be sold by him, is proper. 669

The private opinion of a witness as to the fraud or fairness of plaintiff's conduct, derived from facts which appeared before the witness as an arbitrator, is not admissible. 913

When a witness states the grounds of his belief of a material fact, his belief, together with the reasons of his belief, are proper evidence to be left to the jury. 144

Correspondence, between the parties in a cause and others, called for by notice, but which the party who called for it does not read, cannot be read by the party producing it. 55

It is improper to allow evidence to go to the jury which would constitute the ground of a separate action. 722

EXECUTION.

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

An officer leaving property levied on in the hands of the defendant subjects it to be seized upon by subsequent creditors of the defendant. 1080

	Page
An officer of another state forfeits any lien he may have on property levied on, by allowing it to be taken out of the jurisdiction of the state.	1080
After the marshal is commanded by the writ to bring the proceeds of a sale into court, he may pay it to the plaintiff on the execution, on his responsibility, for the right of the plaintiff to receive it.	647
The court will not interfere, in a summary way, to distribute money, the proceeds of an execution, or decide on the rights of those who claim it, unless the money be paid into court.	647
Where the purchaser at the sale refuses to comply with its terms, the marshal should again offer the property for sale if he has time to do so, and, if not, by a proper return, enable plaintiff to take out an alias vend, ex.	647
The marshal makes his return to process at his peril. The court will not dictate its form.	647
The return of the marshal to a writ cannot be traversed in an action between the parties to the suit in which the writ issued.	130
The court will not, on motion, discharge a prisoner for debt, who has the benefit of the bounds, because the creditor refuses to pay the daily allowance.	88
EXECUTORS AND ADMINISTRATORS.	
Letters of administration have no operation in other states except by sanction of such states.	441

	Page
Notwithstanding the renunciation of an executor, under Act Md. 1798, c. 101, subc. 3, § 7, he can come into court and take the responsibility by complying with the law at any time before letters of administration have been granted to another.	964
An executor could renounce his right as executor after acting as such, and be relieved from his responsibility.	1078
The administration bond of an executor is liable if he fails to put in a claim against himself.	160
An action will not lie against the sureties in an administration bond until a devastavit has been established in a suit against the administrator.	849
A probate court in Oregon <i>held</i> to have no power to authorize generally an administrator to convey lands in performance of his intestate's obligations, but only to convey specific premises upon the petition of the person claiming to be entitled there to.	769
An administrator cannot acquire the title to the property of the deceased by paying his debts. The property must be sold and accounted for by him.	230
Liability of lands of decedents in Pennsylvania for debts, and practice and proceedings to sell such lands for payment.	246
An administrator has a right at law to give a preference to a creditor by confessing a judgment, and a court of equity will not interfere by injunction.	248
In actions against executors and administrators, the statute of limitations may be pleaded after office judgment.	232
In an action by an administrator upon the trial of an issue of non assumpsit, plaintiff need not produce his letters of administration.	387
On the plea of "No assets," the practice in Pennsylvania is for the jury to find for the defendant, and for the plaintiff to pray judgment de terris, etc., and of the assets, quando, etc.	130

EXEMPTIONS.

See "Bankruptcy"; "Homestead."

FACTORS AND BROKERS.

A promise by a consignor, on drawing upon the consignee, to reimburse him if the proceeds of the goods fall short of the amount of the draft, is a contract governed by the law of the place of the residence of the consignee, at which the amount is payable. 494

FALSE PRETENSES.

The false pretense is complete when defendant fraudulently obtained the indorsement of the prosecutor to a draft, whether the money is paid thereon or not. 958

In an indictment under Act March 2, 1831, for obtaining goods, etc., by false pretenses, it is error to aver "that by reason of which false pretense the prisoner did then and there unlawfully obtain," etc. 713

On a trial for obtaining money under false pretenses, evidence is admissible that the prisoner made false representation to other persons for the purpose of obtaining money, but not that he had obtained money by means of such representation. 713

FERRY.

The circuit court of the District of Columbia has a discretion to grant or refuse a license for a ferry over the eastern branch of the Potomac river. 838

FRAUD.

A bona fide purchaser for a valuable consideration and without notice from a fraudulent grantee will hold the estate at law against the original grantor. 445

A plea to a bill to set aside a conveyance as having been procured by fraud, which avers that defendant is a bona fide purchaser under the original grantee, but fails to aver that he has paid the whole consideration before notice of plaintiff's claim, is bad. 445

Where a deed in favor of two persons is obtained by the fraud of one, although without the privity of the other, the deed is void as to both. 156

FRAUDULENT CONVEYANCES.

An absolute bill of sale is fraudulent as to creditors, unless accompanied and followed by possession. 19

A parol gift bona fide made prior to the Geneva award for the destruction of a vessel by a Confederate cruiser is good as against subsequent creditors. 9

A parol promise by a husband to his wife for love and affection to make such a gift does not work a gift, and cannot be enforced. 9

A conveyance by an insolvent to his wife of personal property for a consideration of one-fifth of its value is conclusively fraudulent. 135

To render an antenuptial settlement void as in fraud of creditors, both parties must concur in or have notice of the intended fraud. *156

If the settlement is not bona fide, the fact that it is made for a valuable consideration will not save it. *156

If the amount of property settled is extravagant, or grossly out of proportion to the station or circumstances of the husband, and he is embarrassed by debt, and the other party knows it, this, of itself, is sufficient notice of fraud. *156

To ascertain the purpose of the grantor in a marriage settlement, evidence of fraudulent transfers by him to other persons at or about the time of the settlement is admissible. *156

Actual knowledge, on the part of the prospective wife, of the fraudulent purpose of the grantor in the marriage settlement, is not necessary to avoid the deed. A knowledge of facts sufficient to excite the suspicions of a prudent person, and put her on inquiry, amount to notice, and are equivalent to actual knowledge. *156

A deed of marriage settlement by a person in embarrassed circumstances will be set aside where the prospective wife knew of his embarrassment and demanded a marriage settlement before she would marry him. 156

In a court of law a deed cannot be sustained in part and avoided in part for inadequacy of consideration. 701

A conveyance by the husband to the wife, in consideration of the relinquishment of the right of dower of other lands worth three times as much as the dower right, is not absolutely void in a court of law. 701

GAMING.

See "Contracts."

GARNISHMENT.

The garnishment act of the territory of Arkansas of November, 1831, is not retrospective. 955

GRAND JURY

Grand jurors may, for cause, be challenged by any person to be affected by their finding. The right is not restricted to such persons as are in prison or under bail upon charges of crime; it may be exercised by one who, though still at large, has been warned by the prosecuting attorney of the court that he will be made, during the term, the subject of an indictment for perjury. 1157

Where there is reasonable excuse for the delay, challenges to members of the grand jury will be heard after the body has been fully organized. 1157

The accused party has no right to submit evidence in his behalf to the grand jury, not even with the consent of the prosecuting attorney. 1157

The grand jury are not restricted to acting upon such cases as may be brought before them by the district attorney, but may examine any other cases, as they see fit. 980

A grand jury of the United States is limited, as to the scope of its investigations, (1) to such matters as may be called to its attention by the court; or (2) may be submitted by the district attorney; or (3) may come to the knowledge of the grand jurors in the course of their investigations of the matters thus brought before them, or from their own observations; or (4) may come to their knowledge from the disclosures of their associates on the grand jury. 992

A grand jury of the United States sitting in California has no such general authority to inspect the books of officers of the United States as is exercised by the grand juries of the state in relation to the books of the state officers. 992

Grand jurors should present no one, unless, in their deliberate judgment, the evidence before them is sufficient, in the absence of any other proof, to justify the conviction of the party accused. 998

To justify the finding of an indictment, the grand jury must believe that the accused is guilty. They should be convinced that the evidence before them, unexplained and uncontradicted, would warrant a conviction by a petit jury. 992

The district attorney has a right to be present before the federal grand jury at the taking of testimony, for the purpose of giving information or advice, and may interrogate the witnesses; but he has no right to be present during the deliberations of the grand jury. 992

It is the duty of the grand jurors to keep their deliberations secret. They are not at liberty to state even that they have had a particular matter under consideration. They should allow no one to question them as to their own individual actions or the actions of their associates on the grand jury. 992

It is a crime, under the act of 1872, for a person, in violation thereof, and for the purpose of influencing the action of a grand jury, to send to them any letter or com- 992

munication relating to any matter pending before them, or pertaining to their duties, without a previous order of the court.

GRANT.

See, also, "Public Lands."

It is not necessary to produce the deed poll, from the person in whose name the application was made for a tract of land, in order to support the title of the plaintiff in an ejectment for the land, the plaintiff having obtained the warrant and paid the purchase money. 62

The entry, in the books of the land office, that the balance of the purchase money was paid by the person "to whom the patent had issued," is evidence that a patent did issue, although the patent is not produced. 63

Where, a judicial measurement and delivery of a tract of land according to fixed boundaries has been made by the Mexican government, and long acquiesced in, such boundaries will not be modified, although they include a considerable quantity in excess of the amount specified in the grant. 882

The court has no jurisdiction of an appeal from the decision of the board of land commissioners where notice, is not filed with the clerk within six months, as prescribed by the act of 1852 889

Claim to Mexican land grant confirmed upon the evidence. 885

GUARDIAN AND WARD.

In all cases where an infant is a ward of chancery, no act can be done affecting the person, property, or estate of the minor, unless under the direction, expressed or implied, of the chancery court itself. 1109

HABEAS CORPUS.

When a debtor is in the prison bounds, the court will not award a habeas corpus to discharge him on the ground that his creditor has refused to pay his daily allowance. 146

Courts will refuse the writ where no probable ground of relief is shown in the petition, or where it appears that petitioner is duly committed for felony or treason plainly expressed in the warrant of commitment. 288

But where probable ground is shown that the party is in custody under or by color of the authority of the United States, and is imprisoned without just cause, and therefore has a light to be delivered, the writ of habeas corpus then becomes a writ of right, which may not be denied. 288

Where the service of the writ was prevented by force, it was ordered to be placed on the files of the court to be served when and where practicable. 288

HOMESTEAD.

See, also, "Bankruptcy."

Where a person has acquired a right to a rural homestead under the Texas laws, the subsequent extension of the limits of a city, so as to embrace a part thereof, does not affect such right. 835

HUSBAND AND WIFE.

In the absence of consent on the part of her husband, a wife cannot dispose of her personal property by will during his lifetime. 1088

Where a husband voluntarily abandoned his wife and neglected to provide for her, she may dispose of any property she may have subsequently acquired in such manner as she may please. 1088

Where a woman, during coverture, makes a contract in reference to her separate estate, and subsequently, after the death of her husband, promises to pay the same, she is liable. 964

INDICTMENT AND INFORMATION.

The offense need not be called by its statutory name where it is set out in hæc verba. 958

INFANCY.

Infancy cannot be given in evidence upon a plea of nil debet to an action of debt on a promissory note in Virginia. 840

INJUNCTION.

See, also, "Patents."

At the time of granting an order to show cause against a motion for a preliminary injunction, an immediate restraining order may be granted, to be in force until the decision of the motion, for the purpose of preventing irreparable injury to complainant (Rev. St. §§ 718, 4921.) 896

Reasonable notice is required to be given to the defendant of the time and place for moving for an injunction 226 751

The provision of the judiciary act of 1793 requiring reasonable notice of a motion for a preliminary injunction is repealed by Act June 22, 1874 896

The defendant will be heard in opposition to the motion, and he is permitted to file his answer. 226

Affidavits will be received in behalf of both parties on application for an injunction. 226

An injunction will be refused when there has been a failure to file a bill in equity, as there is, in such a case, nothing upon which a motion for an injunction can rest. 116

A judgment in attachment will be enjoined if defendant had no actual notice, and had a good defense, and his failure to make defense was owing, not to any fault or negligence on his part, but to the fault of the plaintiff! 930

Mere negligence in an attorney, unaccompanied by fraudulent combination or connivance, is not sufficient to arrest a judgment at law. 751

A suit will lie to restrain the collection of an unlawful tax against a corporation, the remedy at law being inadequate. 606

A rule to show cause why an attachment should not issue for breach of an injunction in the federal circuit court is not the proper practice, but a motion should be made, on notice, that defendant stand committed for the breach. 622

Where an injunction has been dissolved, and afterwards reinstated, and is still pending, no suit can be maintained on the injunction bond as for a breach of it. 963

INSOLVENCY.

See, also, "Bankruptcy."

A discharge of a debtor, under a state insolvent law, does not discharge a debt due by him to a person who resides in another state at the time the insolvent proceedings take place, and who does not become a party to such proceedings. 644

	Page
That the debt has passed into a judgment before the proceedings makes no difference.	644
Nor does it make any difference that the indebtedness rests on a contract payable at a place within the state in which the insolvent proceedings take place.	644
A discharge under the insolvent law of one state bars an action for a debt contracted in another.	652
Insolvent laws of a state have no effect beyond the limits thereof, and a discharge of a debtor under the insolvent law of Pennsylvania will not protect him from arrest by a citizen of New York for a debt payable in New York or to a citizen of that state.	494
A conveyance executed under the Pennsylvania insolvent law of 1799 will not operate to bar an estate tail.	63

INSURANCE.

See, also, "Marine Insurance."

A policy lapses by failure to pay a premium in advance as it becomes due unless the course of dealing between the agent and the insured has been such as to induce a belief that the premium has been paid by the exchange of individual accounts between such persons. 301

Under Act Mass. 1861, c. 186, *held*, that a paid-up policy proportioned to the premiums paid could be obtained after forfeiture of the policy by failure to pay a premium. 285
 The right of an insured to a paid-up policy under the policy and Act Mass. 1861, c. 186, is a property right which survives to his representatives. 285

Equity could not relieve against the failure to submit notice of the claim and proof of death within 90 days, as provided by statute, so as to keep the original policy in force, though this failure resulted from ignorance of the existence of the policy. 285

A representation in the application that the applicant is "sober and temperate" does not mean that he totally abstains from the use of intoxicating liquors, or that he may not have been drunk on some occasions. It means, rather, that he is temperate in the use of spirituous liquors,—not addicted to their excessive use. 407

Under a policy conditioned to be void in case the insured should "die by his own hand," there is no liability if the insured kills himself while in the possession of his ordinary reasoning faculties, and from anger, pride, jealousy, or a desire to escape from the ills of life. 407

If, however, his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of his act, or if he was impelled thereto by an insane impulse, which he had not the power to resist, the insurer is liable. 407

Neither an act of suicide, nor an attempt nor a threat to commit suicide, creates a presumption of insanity that would be sufficient to justify a jury in finding a person insane; but such an act may be considered, in connection with the previous demeanor and conduct of the person, as evidence of insanity. 413

The declarations of the insured husband, made after the date of the policy, as to his health existing, or matters of private history occurring, prior to the date of the policy, are not admissible as evidence in a suit by the wife upon her policy. 143

Forfeitures provided for in policies are for the benefit of the insurer, and may be waived by it. 856

A forfeiture will be considered as waived where, subsequent to its accruing, the insurer, with knowledge of the facts, recognizes the contract as still subsisting, and manifests an intent not to take advantage of the forfeiture, and does no act prior to the death of the insurer indicating a purpose to claim it. 856

An agreement in the policy that no action should be sustainable at law or equity until arbitration shall have determined what amount is due is not unlawful, and in such case a reference and ascertainment of the amount-due are conditions precedent to the right of action. 808

INTEREST.

See, also, "Banks and Banking"; "Usury."

The balance found due on a statement of account may properly bear interest, though items of interest were included in the account. 821

Interest will not be allowed on unliquidated and contested claims sounding in damages. 52

Where an attachment is laid on money in the hands of a third person, interest ceases from the time of the attachment until it is dissolved; but when a debtor, who is also a creditor, lays an attachment in his own hands, interest is chargeable, during the continuance of the attachment. 55

INTERNAL REVENUE.

A beneficial interest, arising after Act June 30, 1864, was passed, under a will of a person who died before the act was passed, on the termination of a life estate, is a "succession," subject to tax under sections 127, 133 *667

A mining company assaying its own ores only, and not assaying any bullion or amalgam, is required to pay a special tax as assayer. (Act June 30, 1864, § 79, subd. 48.) 806

INTERNATIONAL LAW.

See, also, "Neutrality Laws."

An association of persons who undertake to establish a new government and assume the character of a nation may be recognized by other governments in whole or in part, or they may be utterly ignored by them. 1049

JUDGE.

When a party has been brought before a court of justice in a legal manner, and circumstances are presented requiring a decision to be made, the tribunal making it cannot be deprived of protection from personal liability therefor because it may afterwards, upon fuller investigation, turn out to have been erroneous. 1100

A judge cannot be *held* civilly liable for inflicting an unlawful imprisonment where his sentence is held illegal by the supreme court of the United States on a writ of habeas corpus by a divided court j. 1100

Resolutions and other proceedings upon the retirement of federal judges. 1285

Biographical notes of the federal judges, including a brief account of the public career of all of the federal judges appointed prior to January 25, 1894 1361

JUDGMENT.

Rendition and entry.

The act "of the circuit clerk in filing the docket transcript of a judgment is a ministerial act, and not void though done on a nonjuridical day, and the judgment creditors 641

thereby acquired a lien upon the real estate of the judgment debtor the same as if done on any other day. (Reversing 643.)

A motion in arrest of judgment will be dismissed if made after judgment is rendered and execution issued thereon. 1077

Validity.

A personal judgment or decree obtained over a nonresident who has not been personally served within the state, and has not appeared, has no extraterritorial force. 961, 1069

The question of jurisdiction is considered as having been decided by the first order or process made or issued in a case. 1111

Where the court has general jurisdiction to issue a writ or make an order, a writ or order made in a particular case in which the facts did not confer jurisdiction must be taken as valid and effectual until quashed, reversed, or otherwise superseded by a tribunal competent to review and correct the error. 1111

Lien.

A. and B. exchanged property, there being at the time a recent judgment, unknown to B., which was a lien on A.'s property, and the property for that reason was re-exchanged, the original parties being put into possession *held*, that a purchaser under an execution on such judgment against B.'s property had a title at law superior to the title of B. or subsequent purchasers from him. 409

Where a levy under a *fi. fa.* was quashed, and afterwards defendant died, *held*, that the judgment should be revived against his executors before a new *fi. fa.* could issue. 129

To a *scire facias* against an executor to revive a judgment obtained against his testator, the defendant cannot plead that there are *terre-tenants* whose lands are also bound by the judgment, so as to oblige the plaintiff to sue out a *scire facias* against them. 246

The proper remedy for persons aggrieved by proceedings under such a judgment is an *audita querela*, or by obtaining a rule of court to stay proceedings. 246

A payment which might have been pleaded to the original *scire facias* to revive a judgment cannot be given in evidence on a second *scire facias*. 130

Operation and effect.

When two or more persons are liable for a simple contract debt, a judgment obtained against one is an extinguishment of the claim on the, other debtors. 55

A judgment against one of defendants in a suit against several on an instrument on which all are jointly liable merges the instrument, and is a bar to a suit thereon against either of the other defendants. 590

The decision of a court of competent jurisdiction is conclusive wherever the same question is again raised. 669

	Page
A dismissal of a bill in equity is not conclusive in a court of law in an action brought for the same matter.	669
A judgment in a suit for freedom against a person who was kidnapped into slavery will not estop the plaintiff from a re-examination of the same question in a subsequent suit against the kidnapping party, as a valid judgment cannot be rendered against a slave.	479
A person who sues in the name of another for his use is substantially a party, and is within the rules that the judgment of a court of competent jurisdiction is final between the parties, and a bar to a subsequent suit.	824
Persons not parties to a decree, and consequently not bound thereby, cannot avail themselves of any part of it without admitting its validity.	701
An inquisition is no bar to a special action upon the case for a cause of action which accrued before the inquisition.	676
In a plea of a former judgment, in an action at law, it is a sufficient description of the cause of action in the first action to allege that it was identical with that stated in the complaint in the action pending.	770
Relief against: Opening: Vacating.	
At common law a judgment cannot be set aside on motion after the term at which it was rendered. The contrary rule in New York is not followed by the federal courts.	444

A general allegation of difficulty in procuring vouchers, or of unavoidable delay in settling an administration account, without stating from what circumstances that difficulty and delay arose, is not sufficient ground of equity to enjoin a judgment at law. Equity will not relieve against a judgment at law, upon plene administravit, on the ground that the defendant at law could not produce vouchers to support his plea, unless there be in the bill an allegation of fraud, mistake, surprise, or accident.

Of different jurisdictions.

A judgment against the plaintiff in an action does not preclude the court of another state from examining the question whether the suit was in fact brought by the plaintiff herself, or by some other persons in her name and without her knowledge or consent.

Slaves being without capacity to sue or defend, no valid judgment can be rendered against them, and a judgment of a sister state in a suit for freedom against plaintiff will not estop her from contesting the question in a subsequent suit.

JUDICIAL SALES.

See, also, "Equity."

A purchaser on a sale under a decretal order in equity will not be let off from his purchase by submission to a forfeiture of his deposit.

In the case of a covenant with surety to pay the purchase money given by the purchaser on a sale under a decretal order, a court of equity will" by attachment compel performance as against both principal and surety.

The surety in a covenant by the purchaser at a sale under a decretal order to pay the purchase money cannot take any exceptions to the title where the principal has failed to do so.

The principal and surety in a covenant for payment of the purchase price on a master's sale in chancery have no claim upon the rents and profits of the estate except from the time when the conveyance is completed.

JURY.

See, also, "Grand Jury."

The national legislature has constitutional power to prescribe the qualifications of jurors, and the manner in which they shall be selected and summoned. It may make the judicial system of the United States complete for the independent exercise of all its functions.

Qualifications of jurors in the circuit court for the District of Columbia sitting in Alexandria county.

In an action against an insurance company a nephew of a stockholder is not competent.

Page

It is not a principal cause of challenge that the juror has had conversation with some of the parties, but it is evidence for the consideration of triors upon a challenge for favor. 850

Any party to a cause, civil or criminal, may challenge for the causes enumerated in Act June 17, 1862, § 1 1157

If, under Act June 17, 1862, jurors be challenged by a party other than the government, the challenge may be disposed of by allowing those who deem themselves disqualified under section 1 to retire from the panel without any sworn evidence of their incompetency. 1157

It is a crime, under Act March 2, 1831, § 2, to endeavor to influence a juror by conveying or imparting information to him, out of the jury box, for the purpose of affecting his conduct or judgment, or to endeavor to persuade him by arguments or appeals of any kind except those addressed to him by counsel in open court. 986

JUSTICES OF THE PEACE.

In Indiana the plaintiff may reduce his demand to bring it within the jurisdiction of a justice of the peace. 404

The authority of justices of the peace in other states may be proved by parol. 343

LANDLORD AND TENANT.

See, also, "Bankruptcy."

Under a provision that the lease should terminate if the lessee should be declared bankrupt, unless within 10 days from the date of the petition some sufficient person should become surety for the rent, *held*, that a mortgage given to secure the rent covered the rent up to the time the keys were surrendered, though two months after the lessee became bankrupt. 805

Costs do not accrue, upon levying a distress for rent, unless the goods are sold. 716

Interest does not accrue on rent until demand made therefor. 388

LIBEL AND SLANDER.

Plaintiff cannot offer evidence of his general good character to disprove the truth of the words, nor to support his own character, until it is attacked by defendant. 692

Where the nature of the charge is such that the evidence given by the defendant in support of the plea of justification, though insufficient to prove that, has, if believed in part or in whole, a legitimate tendency to affect the general character of the plaintiff on the subject of the charge, he may reply by evidence of general good character in that particular. 692

Defendant may attack plaintiff's general character in respect to the subject-matter of the charge in order to reduce the damages. 692

LIENS.

	Page
See "Admiralty"; "Bankruptcy"; "Maritime Liens"; "Mechanics' Liens"; "Shipping."	
LIMITATION OF ACTIONS.	
Retrospective limitation laws, where they do not deprive parties of a reasonable time for prosecuting their claims before being barred, may be valid.	694
Those trusts which are the mere creatures of a court of equity, and are not within the cognizance of a court of law, are not within the operation of the statutes.	388
The statute of limitations does not apply to accounts between merchants, though the dealings between the parties ceased long before suit brought.	144
Where a mortgagee in possession under an absolute deed, with an agreement that the mortgagor might redeem when he found it convenient, sells the land to a bona fide purchaser, and so destroys the equity of redemption, a court of equity will treat him as a prospective trustee, so the trust is not barred till the expiration of six years from the discovery of a right to an account.	741
A mortgage cannot be foreclosed after the lapse of 20 years from the date when the cause of action accrued.	748

	Page
Lapse of time short of 20 years will not bar an action to recover possession of real property, where defendant claims under a sale by an administrator, except where the sale was made under Code Or. c. 5, § 42, to pay decedent's debts, and plaintiff claims under such decedent.	766
The Oregon statute of limitations upon actions to recover real property does not run against a woman to whom the right to sue accrues during coverture, until the removal of such disability; and this whether the action concerns her separate property or otherwise.	771
Under the Ohio statute, if, when a cause of action accrues against a person, he is out of the state, the period of limitation does not begin to run until he comes into the state.	476
In order to set the statute to running in favor of a defendant who was out of the state when the cause of action accrued, his coming into the state must either be of a permanent character, or, if not so, it must be brought to plaintiff's knowledge, or, if not, then his stay must be of such a nature that plaintiff, by reasonable diligence, can ascertain it.	476
The statute of limitations of a state does not run against one who, immediately upon coming within the state, is cast into prison, and detained there during her stay.	476
Where, immediately after a cause of action arises, plaintiff, while temporarily in another state, is seized and imprisoned, and returns to the state where the cause of action arose immediately upon his release, the statute of limitations does not commence to run until his return to the state.	476
On a debt due by an executor to his testator, the statute ceases to run from the acceptance of the trust by the executor.	160
A clause in a will directing all the testator's debts to be paid, and appropriating the rents of his real estate, does not take the case at law out of the statute of limitations, when the plaintiff does not seek his remedy under the will.	232
A declaration by defendants at the time of serving the writ that they would pay the debt is not sufficient to take the case out of the statute, where the writ did not specify the cause of action nor its amount, and the same was not mentioned to them.	868
After interlocutory decree, and an issue ordered, the court will not permit the defendant to plead the statute of limitations and to file an answer.	232
MALICIOUS PROSECUTION.	
Plaintiff must show both malice and want of probable cause, and that defendants knew that they had not probable cause.	913
In an action for malicious prosecution founded on a charge of larceny, it is not necessary for the defendant to fix the line of larceny on the plaintiff. If by his folly or	70

his fraud, he exposes himself to a well-grounded suspicion that he was guilty, the prosecution was founded on probable cause, which is a sufficient defense.

Evidence is admissible of loss in the public estimation in consequence of the prosecution, but not in consequence of reports circulated by defendant. 913

MANDAMUS.

Unless special circumstances should require it, a peremptory writ will not be issued, commanding a levy of taxes to pay a judgment against a municipal corporation at a time different from the next general levy. 385

MARINE INSURANCE.

Where the policy contained the clause "to add an additional premium if by vessels rating lower than A2," and the cargo was shipped in a vessel with a lower rating, the insured can recover, in case of loss, the value agreed in the policy, less such additional premium beyond the agreed per cent, as the underwriters might deem adequate for the increased risk. 704

A deviation, under the direction of the master and last remaining officer when dying, in order to place the vessel in charge of the American consul, is excusable. 376

A deviation for water, where the necessity really and fairly existed, and a sufficient quantity was originally taken on board, and the port at which the vessel puts in is the nearest, is justifiable. 473

The act of an American consul in whose hands a vessel is placed by the crew, after the death of all the officers at sea, in changing her cargo so as to lighten her, is not chargeable to the insured, and is no defense to the policy, unless the vessel was actually overloaded. 376

The same rule applies to the appointment of a British master by the American consul which increased the risk, making the vessel a good prize had she been taken by a French cruiser. 376

MARITIME LAW.

See, also, "Admiralty."

The admiralty law cognizable in the federal courts is not the civil law of the Roman government, but the admiralty law of Great Britain. 525

Independent of Act Feb. 26, 1845, under the constitution, the maritime law of the United States has the same application to cases upon the lakes as upon tide waters. 417

Laws of Oleron, with historical notes. 1171

Laws of Wisby, with historical note. 1189

Laws of the Hanse Towns, with historical note. 1197

Marine Ordinances of Louis XIV., with historical note. 1203

MARITIME LIENS.

	Page
See, also, "Admiralty"; "Affreightment"; "Bottomry and Respondentia"; "Demurrage"; "Shipping."	
The right to a lien.	
A maritime lien is a jus in re, constituting an incumbrance on the property, and existing independent of the process used to execute it.	873
Material men have a lien for repairs under the admiralty law only in the case of foreign ships, or ships belonging to other states.	909
A lien arises under the maritime law for materials and labor furnished in repairing a vessel in a foreign port.	525
The ports of the different states are foreign to each other, within the meaning of the admiralty law in relation to liens.	525
No lien arises under the maritime law for materials furnished at the instance of the owner to a vessel in her home port.	522
A lien arises for water casks furnished on the credit of a foreign ship.	909
A lien arises for a diving bell, air pump, and other apparatus supplied a vessel which were not necessary for her use as a navigating ship, but were indispensable for the accomplishment of the enterprise in which she was about to engage.	396
Where a British ship was adjudged forfeited to the United States, and was ordered sold by the marshal, but the purchaser failed to comply with his contract, so that a subsequent sale was necessary, <i>held</i> , that the vessel was subject to a maritime lien in the hands of the last purchaser for materials and labor expended in making repairs between the dates of the two sales.	525

	Page
Where credit is given for materials furnished, the lien is discharged, or it does not attach.	909
By the law of Great Britain, the master has no right, even in a foreign port, to pledge his vessel for necessaries, or create a lien thereon by any other form of hypothecation than a formal bottomry bond.	501
The question of a lien on a British vessel which puts into a Danish port in distress for advances to make repairs must be determined by the law of Great Britain.	501
Where a vessel, while undergoing repairs in a foreign port, is sold to her master, who resides in such port, <i>held</i> , that a lien arose for such repairs under the general admiralty laws.	134
Where a person takes drafts from the master, pledging the vessel for the amount, for repairs in a port of distress, with knowledge of a letter from the owners limiting the master's authority, he has no lien on the vessel	497
The fraud of the agent of a vessel and the master in a port of distress in making out fraudulent accounts against the vessel for repairs will not invalidate drafts drawn for such amounts, and expressed to be recoverable against the vessel, freight, and cargo, in the hands of a person who, without knowledge of the fraud, discounted them	497
The record of a mortgage in the office of the collector is not constructive notice to material and repair men.	134
Priority and enforcement.	
Maritime liens have priority over mortgages.	939
A lien for materials and repairs will have priority over a mortgage owned by one who was presented to the material and repair men as a part owner of the ship, and who, by his bearing, himself confirmed the impression that he was one of the owners.	134
The party claiming a lien on a vessel for materials must show that the contract under which they were furnished had reference to some particular vessel, in the construction or repair whereof such materials were to be used.	881
A material man whose lien is discharged by the giving of credit is still entitled, upon petition, to be paid out of remnants and surplus remaining in the registry.	909
Waiver: Discharge: Extinguishment.	
A lien against a vessel is waived, as against a purchaser, where the claimant, of whom inquiries are made by the purchaser, is silent as to his claim.	444
A maritime lien is not divested by the death of the owner of the vessel and the representation by his administrator of the insolvency of his estate.	873
Liens under state laws.	

	Page
The statute of Maine conferred on mechanics and material men such a lien on domestic vessels as the general admiralty law had previously allowed to them on foreign vessels.	873
A trench excavated in front of the launching ways of a ship for the purpose of deepening the water is not labor performed in launching the vessel, within Act Mass. 1855, c. 231, giving a lien on vessels for such labor.	604
The lien given by the law of the state of New York, for repairs to a domestic vessel has priority over a mortgage on the vessel given before the repairs were made.	34, 36
The rights of a creditor having a lien against a vessel under Rev. St. Me. c. 125, § 35, are paramount to the rights of the general creditors under the laws of the state regulating the distribution of estates of deceased insolvent debtors.	877

MARSHAL.

The marshal, being called upon by the court to bring before them any defendant arrested by him upon any original writ or mesne process, according to the tenor of his return, and failing so to do, will, on motion, be amerced to the amount of the debt, or damages and costs, and judgment will be entered therefor, nisi, the second day of the next term. 343

The legality of the service of subpoenas made by a deputy, and his right to fees, is not affected by the failure of the marshal to make a return of the appointment of such deputy to the district judge. 373

A deputy marshal is not entitled to charge for service or mileage for himself as a witness. 373

The fees for a service by a deputy marshal legally belong to the marshal, and his receipt for them operates as a discharge from liability for such service. 373

The deputy's remedy for compensation for services performed by him is against the marshal for whom he performed the services. 373

MECHANICS' LIENS.

Under the mechanic's lien law of the District of Columbia, no extra work not completed within three months preceding the filing of the claim in the clerk's office is covered by the lien. 972

Under the rule that payments made by a debtor should be applied to the debt least secured, general payments by a debtor, not directed by him to be applied to the contract specifically, may be applied to the extra work, whether completed within the three months or not, provided such extra work was completed and the money due for it. 972

MILITIA.

A justice of the peace in the District of Columbia is not an officer of the government*388 of the United States, under Act May 8, 1792, and is liable to militia duty.

MORTGAGES.

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

A covenant by a debtor with his creditor to purchase certain lands and then mortgage 699 them to him, will be enforced in a court of equity by a decree of sale.

A third person who advances the purchase price for a settler on public lands, taking the receiver's certificate of location as security for payment, and giving back a bond 699 for a deed upon repayment, will be *held* a mortgagee, and the settler or his alienee may redeem.

A deed absolute in form may be shown to have been really a mortgage, by the oral testimony of two witnesses, against the denials of the answer, where those denials are not satisfactory in themselves, and are accompanied with admissions that some 741 confidential relations existed between the parties, not consistent with the terms of the deed.

	Page
Under the Indiana Code of 1838, a neglect to record a mortgage within the prescribed time did not invalidate it, except as to a subsequent bona fide purchaser or mortgagee whose deed or mortgage was first recorded.	748
In Oregon a mortgage is a mere security, and the mortgagor, both before and after condition broken, is the owner of the premises, subject to the lien of the mortgage, and he cannot be deprived of the possession of the same against his will otherwise than by foreclosure and sale.	398
A mortgagee has no right or authority to take possession of the mortgaged premises and hold the same for the satisfaction of his debt, without the consent of the mortgagor.	398
A mortgage given to secure the payment of four promissory notes made to raise means to work a plantation is valid, and, upon the negotiation of the notes, relates back to the date of execution.	811
A mortgage to secure advances not to exceed a certain amount is good as security to its full amount to cover a balance of advances made in excess of such amount, diminished by partial payments on account.	811
Where one deed of trust is executed as a substitute for a preceding one, the former will at once cease to have any validity or effect.	752
A mortgage or deed of trust made as security for a debt will operate as a security for the same continuing debt, though the evidence of it be changed by renewal or otherwise.	752
A mortgagee of lands to which the mortgagor has no present title is entitled in equity to the benefit of an after-acquired title.	699
A mortgage given to secure a debt due and payable, no time of payment being specified, may be redeemed or foreclosed at any time.	699
Junior mortgagees may foreclose without making prior mortgagees parties, but a sale in such case will be subject to the prior mortgage.	850
In a proceeding to foreclose a mortgage, all persons holding the equity of redemption of the lands, or any part thereof, must be made parties.	748
A general notice calling upon prior mortgagees to present their claims will not make them parties or bind them, but they must be served with process or voluntarily appear.	850
Where the court has taken possession of the property by the appointment of a receiver in a suit by junior mortgagees, the senior mortgagees cannot gain possession by a suit subsequently begun until the first 3s ended.	850
In a suit by assignees of a note and mortgage, if the assignment is denied it must be proved.	748

The presumption that an equity of redemption is released after 20 years' possession by a mortgagee does not apply to a case where the mortgagee was in possession under an absolute deed, with an agreement that the mortgagor might redeem when he found it convenient; no specific time being fixed, and the mortgagee having no notice or request to redeem. 741

MUNICIPAL CORPORATIONS.

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

Under the authority to issue bonds in payment of a subscription to be made payable to "the president and directors of the railroad company, and their successors and assigns," bonds made payable to "the railroad company or bearer" are valid. 544

Negotiable municipal bonds issued under a law authorizing their issue, which recite that the conditions required by law have been complied with, are unimpeachable in the hands of an innocent holder for value. 544

A city, which has power to borrow money and has issued bonds therefor, which were void because antedated and unregistered, is liable to the purchaser of such bonds or his assignee, for money had and received, for the amount actually paid to the corporation for the bonds, with simple interest thereon. 442

In the absence of constitutional restrictions, a legislature may authorize a municipal corporation to aid in the building of a railroad in which the inhabitants are interested, and such authority may be given with or without the assent of the qualified electors of the municipality. 544

A clause in a state constitution requiring the assent of two-thirds of the qualified voters to the giving of aid to railroad companies does not apply where a debt has already been created for a subscription, and the legislature may thereafter authorize the issue of bonds to pay therefor, without submitting the question to the people. 544

Proceedings on an inquisition under Act March 3, 1805, in relation to opening, extending, and regulating streets-in Washington county, D. C. 676

A municipal corporation has no authority to take upon itself the burden of repairing a road or turnpike in which the public as well as the corporation are interested, when the same is outside the limits of said corporation. 1053

NAVIGABLE WATERS.

See, also, "Bridges."

Under the power to regulate commerce, congress have power to prevent the obstruction of any navigable river which is a means of commerce between states. 626

The paramount right of the public to use a navigable river as a highway does not prevent the state legislature, in the absence of a conflicting enactment of congress, 503

	Page
from authorizing the construction of public improvements upon the stream, although they may involve a partial obstruction or inconsiderable detention to navigation.	
Under the constitution and laws of Wisconsin, any obstruction to the use of a navigable stream by the public for purposes of navigation, which is erected without a constitutional legislative authority, is a nuisance, and liable to be abated either at the suit of an individual or at the instance of the state.	503
The right to cross a navigable water by a railroad bridge must be given by the sovereign power, by a special or general act.	626
Where a company is authorized to construct a railroad between two points, "over" a navigable water, a right to construct a bridge over that water is implied, as a necessary means of carrying into effect the power granted.	626
The decision of the acting commissioner of the board of public works, under the Ohio statutes, approving the plan or structure of a proposed bridge over navigable waters, is final and conclusive.	626

NAVY.

See "Army and Navy."

A ne exeat bond only binds the sureties to the extent of the final decree; and if defendant continually remains in the district, according to be condition of the bond, 913 they will be discharged all together.

NEGLIGENCE.

Section 12 of the act of 1838 (5 Stat. 304), which declares that every captain, engineer, pilot, or other person employed on board of any steam vessel, by whose misconduct, negligence, or inattention to duty the lives of any persons on board may be destroyed, shall be deemed guilty of manslaughter, makes the negligence, etc., in 990 question, a crime, when followed by the consequences named, without regard to the question of motive or intent on the part of the persons charged.

NEGOTIABLE INSTRUMENTS.

See "Bills, Notes, and Checks"; "Bill of Lading."

NEUTRALITY LAWS.

Act April 20, 1818, § 6 (3 Stat. 449), forbidding military expeditions by individuals 1017 against countries with which the United States are at peace, commented on.

To constitute the offense of beginning or setting on foot a military expedition against a friendly power, within section 6, it is not necessary that the expedition shall be 1018 actually set on foot. It is sufficient if such preparations are made for it as show an intent to set it on foot.

Any combination of individuals to carry on an expedition is "setting it on foot," within the meaning of the statute, and the contribution of money or anything else which 1021 shall induce such combination may be a beginning of the enterprise.

To "provide or prepare the means for any military expedition or enterprise," within the meaning of section 6, such preparation must be made as shall aid the expedition. The contribution of money, clothing for the troops, provisions, arms, or any other 1023 contribution which shall tend to forward the expedition or add to the comfort or maintenance of those engaged in it, is a violation of this provision 1018, 1021

The overt act is not an invasion of a foreign country, but taking the incipient steps in the enterprise, such as providing the means for the expedition, furnishing munitions 1021 of war or money, enlisting men, and, in short, doing anything and everything that is necessary to the commencement and prosecution of the enterprise 1020

Where a privateer was illegally fitted out and commissioned in this country by the French minister, but was afterwards dismantled and her register canceled, then sold 7 to a foreigner, and fitted out and commissioned in a foreign port, *held*, that her proceedings under the latter commission were not in violation of the neutrality laws.

To constitute the offense of accepting and exercising a commission to serve against a 1018 foreign prince, state, etc., with whom the United States are at peace, under the first

section of the act of congress, some overt act under the commission must be done, such as raising men for the enterprise, collecting provisions, munitions of war, or any other act which shows an exercise of the authority which the commission was supposed to confer.

NEW TRAIL.

Where a jury has had a case before it and disagreed, a second trial cannot be had by another jury from the residue of the panel. The case must go over, in order that it may be tried on a new venire. 101

In granting a new trial for defendant, the court will make it a condition that the verdict shall stand until another shall be rendered. 913

NUISANCE.

A person who owns properties, such as tanneries and mills, located upon a navigable steam, for which he depends in part for his trade, may sue to enjoin the obstruction of the navigation of the bay in which the river empties by a private corporation, where the same would injure his trade. 626

It is an indictable offense to inflict punishment on a servant or slave, to the annoyance or nuisance of citizens whose pleasure or business carry them near the scene of infiction. 1087

The question of nuisance or no nuisance is one of fact, exclusively for the jury to decide. 1087

OBSTRUCTING JUSTICE.

Act April 30, 1790, making it a misdemeanor to willfully obstruct, resist, or oppose an officer of the United States in serving or executing any process or warrant, embraces every legal process whatsoever, whether issued by a court in session, or by a judge or magistrate, or commissioner acting in the due administration of any law of the United States. 983

Any obstruction to the free action of an officer or his lawful assistants in the service of process, willfully placed in their way, is sufficient to constitute the offense. Actual or threatened violence is not necessary. 983

The provisions of Act 1790, § 22, apply equally to the execution of process under the fugitive slave law. 1013

PARTIES.

The court will not make a decree, the execution of which would affect the right of a party not before it, or throw a cloud upon his title; and where such party is necessary to a final decree the bill should be dismissed without prejudice. 844

In the case of a bill against a banking corporation, to account for certain property held by them, as collateral security for debts due them from a third person, and to 116

apply the surplus, after satisfying themselves, to the plaintiff's debt, the debtor is a necessary party to the bill.

A state which is an indorser of bonds secured by a statutory mortgage is not a necessary party to a suit brought by holders of the bonds to foreclose the mortgage. 850

In a suit by a creditor of a corporation to reach a fund which has been distributed among its stockholders, all the stockholders need not be made parties, the impossibility of bringing all before the court being sufficient to dispense with the ordinary rule of making all persons in interest parties. 435

In suits in rem in admiralty, all persons having claims of a like nature against the thing may join in a single libel for the purpose of having that question decided, I 879 whether the claims arise from tort or contract.

Page

“Where a vessel is arrested by a lien creditor, all other lien creditors may intervene by summary petition, without having the vessel arrested again, and have their claims allowed. 879

“Where a person is a necessary party, in consequence of an act performed by himself after the commencement of the suit, the proper proceeding to bring him into court is an original bill in the nature of a supplemental bill. 331

PARTNERSHIP.

A partner in a milling firm, who permits his co-partner to hold the firm out as a dealer in grains by the use of cards and letter heads indicating such business, will be liable on contracts for the sale and purchase of grain, for future delivery, made in the name of the firm. *38

A partnership cannot be proved by evidence of general reputation. 119

PARTY WALLS.

A party wall, though built wholly on one lot, after it has remained there 12 years cannot be pulled down by the owner of such lot and rebuilt on the surveyed line. 139

Where a nine-inch party wall is torn down, it cannot be rebuilt by a 14-inch party wall. 139

Where the defendant uses a party wall in the erection of his adjoining store, and is put to necessary expense in making the party wall fit for his use, the jury, in assessing the damages, may take into consideration such extra expense, unless the party, or those under whom he claims, waived the defects. 1073

PATENTS.

The commissioner of patents

The chief clerk is the acting commissioner as well in the necessary absence of the head of the office as in case of a vacancy de jure. 577

Patentability.

The word “useful” (Act 1836, § 6) is used merely in contradistinction to what is frivolous or mischievous 367 1060

The result alone, even when shown to be more economical, useful, and beneficial to the public, in the manufacture of a better article, is not sufficient evidence of novelty and invention. 798

A mere principle may be the subject of a patent, where embodied and applied so as to afford some result of practical utility in the arts and manufactures. 367

The date of invention is the time when the patentee conceives the idea of doing the thing in substantially the way in which he patents it. 507

The true test of invention is not whether an ordinary mechanic can make the combination, if it is suggested, but whether he would make the combination without suggestion, by means of his ordinary knowledge. 507

The principle or essential character of an invention involves two elements: (1) The object attained; (2) the means by which it is obtained; and if either of these be new, at may be the subject of a patent. 258

The claim of the art of cutting ice by means of an apparatus worked by any other power than human is a claim of an abstract principle, and void. 723

The application to railway carriages of an improvement in axles or bearings which was well known as applied to other carriages, *held* not patentable. 259

A new and improved method of producing a useful result pr effect is as much the subject of a patent as an entire new machine. 367

The fact that the inventor of a feature in a machine which anticipates the patented invention did not understand nor have in view the particular advantage of, or function performed by, such feature, will not prevent its invalidating the patent. 489

Prior machines relied upon to defeat a subsequent patent must have been working machines, which have either done work or been capable of doing it. They must not be mere experiments, afterwards abandoned. 507

The substitution in a solar microscope of a photographic lens for a microscopic lens is patentable, if the latter did, not produce the effect or perform the functions of the former. 549

An invention of a flour paste containing corrosive sublimate to prevent putrefaction, but in such small quantities in proportion to the flour that its poisonous and corrosive qualities are neutralized by the flour and the paste thus rendered innocuous, is not anticipated by a flour paste in which a larger proportion of corrosive sublimate was used for the purpose of making the paste poisonous and corrosive. 556

Where an anticipating device has been changed so that by the change the thing which is produced is practically a new structure, the new device, though subsidiary to the former one, is patentable. 907

A ruffle made by machinery at one operation, which theretofore required two or more, is not for that reason patentable. 610

A patent for a design for a reel, consisting of the making of the reel in the shape of a well-known mathematical figure,—the reel itself, as an article of manufacture, being old,—is not valid, under Act March 2, 1861, § 11 612

A patent for cooked meat put up in a solid form, in its natural state, without disintegration or desiccation, in hermetically sealed packages, cannot be sustained as a new article of commerce. 251

	Page
The method of cutting up meat preparing it with antiseptics, pressing, putting into cans, pressing afterwards, and then hermetically sealing the cans, is not patentable, for want of novelty.	251
The rule that a claim for a combination of old instrumentalities in a machine is not anticipated by a prior invention in which the combination of equivalent instrumentalities appears, when the inventor of the second patent has changed the mechanism so as to produce new and valuable results, stated.	43
The previous construction of a machine resembling that of a patent, but which proved unsatisfactory in operation, and was therefore abandoned, does not operate as an anticipation of the patent.	261
A combination, to be patentable, must disclose something new, either in the combination itself or in the result achieved.	517
Who may obtain patent.	
It is not the person who has produced an idea, but he who has embodied it into a practical machine, and reduced it to practical use, who is entitled to protection.	273
The original inventor of a machine, who has reduced his invention to practice, is entitled to a priority of patent right, although subsequently the same machine may have been invented by another person.	491
The fact that another first conceived the idea and embodied it in a machine will not prevent a later inventor obtaining a patent, where the former abandoned his experiments before the machine was perfected.	273

An inventor who does not reduce his invention to practice, or apply for a patent till after 18 months, others in the meantime having invented the same thing, and reduced it to practice, cannot recover for a breach of his patent. 258

Prior public use or sale.

An experimental use to ascertain the utility, value, or success of the thing invented by practice is not fatal to a patent 273 277

The mere using by the inventor of his patent in trying experiments, or by his neighbors, with his consent, as an act of kindness, for temporary and occasional purposes only, will not destroy his right to a patent therefor. 723

A prior public use which will destroy the inventor's right to a patent much appear to have been with his knowledge and consent. 723

Prior description or foreign patent.

If a previous patent so far describes a machine covered by a subsequent patent that any mechanic of ordinary skill could, from the description in the first patent, construct or supply all the essential parts, of the mechanism described in the second patent, the latter is void. 507

Where the description in a foreign, publication is fully as definite as the specifications in the application for the patent in this country, it is sufficient to defeat the patent. 649

A foreign patent is not admissible as evidence to anticipate an American patent of a date anterior to the enrollment of the foreign patent. 43

Abandonment: Laches.

Loss of means by one of two joint inventors, rendering him unable to prosecute his plans in respect to the invention, combined with the assurance of his co-inventor that when the latter should move in the matter of procuring a patent the former should have an equal interest therein, *held* to excuse laches. 798

Where an invention has not been abandoned to the public, and has not been in public use or on sale with the consent and allowance of the inventor, no lapse of time will bar an application for a patent, nor affect its validity when granted. 429

Caveat.

Where a caveat is precise and definite in every detail, and lie application does not vary therefrom, the patentee cannot claim that the caveat protected anything more. 527

A caveat will protect only one of several distinct patentable subjects falling within its general scope, though, in connection with other circumstances, it may furnish strong proof of his claim to priority in another invention in the same line. 527

Application and issue: Interference.

A joint patent may be issued to two persons, where each has invented a distinct improvement on the same machine, the object sought to be attained being a unit, and 217

	Page
the legal effect thereof is to vest in each of them a joint interest in both improvements.	
A single patent may be taken for two machines which conduce to the same common purpose and object, though they are each separately capable of a distinct use.	723
A single patent cannot be taken for two distinct machines, not conducing to the same common purpose or object, but designed for totally different and independent objects.	723
The fact that the first inventor of a new and useful improvement has not in its specifications described the same with the clearness and particularity required by the statute as a condition of obtaining a patent will not aid a subsequent inventor upon an interference between them.	798
The objection that one of two parties, who claim as joint inventors, is not shown by the evidence to have been in fact a joint inventor with the other, is not available to the unsuccessful party in an interference proceeding.	798
The deposition of one not a party to the interference, tending to show that he was a joint inventor with one of two parties who are claiming as joint inventors, and that the other had no part in it, though not admissible to establish the opponent's claim, may yet be considered as affecting the rights of the joint applicants.	798
Declarations of a party to an interference at any time before the contest arose, describing his invention, are admissible from necessity, and as part of the <i>res gestæ</i> , for the purpose of showing what he had invented at the date of such declarations.	798
A party who, pending an interference proceeding, assigns all his interest in the subject-matter, and remains merely a nominal party, is nevertheless incompetent to testify therein.	798
A party to an interference may from necessity, be allowed by his own oath to prove the loss out of his own custody of a paper as a foundation for proving by other testimony the contents thereof.	798
In the case of a joint invention, the deposition of one of the inventors alone may be received to show the loss of a drawing which he had made.	798
Appeals from commissioners' decisions.	
Where the commissioner's refusal to grant a patent is based upon want of novelty, the judge cannot consider a reason of appeal which is occupied mainly in a description of the object and importance of the machine, and of the comparative merits of the applicant's machine and a prior machine, which the commissioner has cited as an anticipation.	306
Reasons of appeal which state "that the decision is in opposition to a clear apprehension of the merits of the case"; "that the decision is inconsistent, as opposed in	306

affirmation to precedents which have governed such cases”; and “that the decision is adverse to the opinion of skillful and competent men,”—*held* too vague and indefinite to raise any question for the judge to pass upon.

Upon an appeal in an interference proceeding the judge is not confined to the mere question of priority, but has jurisdiction to determine the question of the patentability 798 of the alleged invention.

Validity.

When necessary to make the description of an improvement to a machine understood by a person in the trade to which it belongs, the whole machine must be described. 367

In such case the patentee must distinguish the part he claims, to prevent the patent being void for ambiguity. 367

The mechanical parts, principles, or combinations not claimed as new, but mentioned in the specification, are admitted to be old, and need not be so stated or particularly described. 269

Where a patentee claims old and well-known devices as a part of his invention, and they are essential to his improvement, the patent is invalid. 269

An inventor is bound to describe, in his specification, in what his invention consists, and what his particular claim is. But he is not bound to any precise form of words, provided their import can be clearly ascertained by fair interpretation, even though the expressions may be inaccurate. 723

	Page
A signature to the patent, and the certificate of copies, by a person calling himself "acting commissioner," is sufficient on its face in controversies between the patentee and third persons, as the law recognizes an acting commissioner to be lawful.	572
The mistake in a patent may be corrected by the commissioner who granted it without a resigning or resealing, but where it is material the letters cannot operate except on cases arising after the correction is made.	572
The correction of a clerical mistake operates back to the date of the original patent.	577
The sanction of the secretary of state to the correction of a clerical mistake in letters patent may be given by a separate writing.	577
The omission to take the oath or pay the fee will not render the patent void when granted.	1060
The fact that a blank form of oath not executed is found among the papers cannot overcome the direct recital of the letters patent that the oath was taken, or the presumption that the requirements of the law were complied with in issuing the patent.	1060
A third person cannot take advantage of the fact that the patent was obtained by fraud, but the patent must be respected and enforced until reversed or annulled by some proceedings directly for that purpose.	1060
Extent of claim.	
Where a patent is for a peculiar combination or arrangement of old devices, and not for a new device, the patentee is not entitled to insist upon mechanical equivalents.	896
The inventor of an improvement cannot entitle himself to a patent more broad than his invention.	491
The patent is not for a principle or a result, but for the means described for accomplishing the result.	295
Drawings annexed to a patent issued under the act of 1837 form no part of the specification, where no drawings were annexed to the original patent.	258
Repeal of patent.	
Where a scire facias is ordered to be issued against a patentee under Act Feb. 21, 1793, to repeal a patent, the court will not permit the United States to be substituted as plaintiffs in place of the petitioner.	485
Reissue: Disclaimer.	
Upon a surrender for reissue, the patentee or his assignee may make the reissue what he would have made the original, if he had known how.	217
The patentee can add to the claim of his original patent anything of his invention which is warranted by the description contained in the specification and the drawings connected with it.	549

	Page
In the reissued patent the patentee need not claim all that was claimed in the original patent.	1060
The surrender of the original patent by the patentee at the request of the assignees, and a reissue to the patentee, who immediately assigns the same to the assignees of the original patent, though irregular, does not vitiate the reissue.	298
The decision of the commissioner of patents in respect to accepting a surrender of an old patent, and granting a new one, is not re-examinable elsewhere, unless it appear on the face of the patent that he has exceeded his authority.	593
In the case of a joint patent the joint patentability is not res judicata, but is open to question upon an application for a reissue.	217
Extension: Renewal.	
A reissue granted to an assignee may be extended to the patentee. In judgment of law, a reissue is only a continuation of the original patent.	1060
A notice of an application to extend the original patent is a sufficient notice of an application for the extension of a reissue.	1060
An extension of the term may be granted to the administrator of the patentee	572 586
On a surrender and extension, the new letters may be issued with an amended specification.	567
A patent surrendered and renewed operates as from the commencement of the original patent, except as to causes of action arising before the renewal.	572
The functions of the commissioner in extension cases are judicial, and his judgment settles conclusively all questions of notice.	1060
Act July 4, 1836, applies to patents issued before its passage, and a prior assignee of an original term is entitled to the benefit of an extension where the contract provides that any alteration or renewal shall accrue to the benefit of the parties.	233
The assignee or grantee under the original patent does not acquire any right under the extended patent unless such right be expressly conveyed to him by the patentee.	586
A person using under license patented machines during the original term is entitled to continue the use of the identical machine during an extended term.	565, 613
The assignee of the territorial right to make, construct, and use the patented article may, during the term of its subsequent extension, continue to use and repair the patented articles; but he is not entitled to make them.	467
A licensee who, having machines in use during the end of an original term of a patent, takes a license for another year under the extended patent, waives any rights which he had to use such machines when the first term expired.	617
Assignment.	
An assignment of a patent by one of two or more administrators is valid.	367

	Page
A patentee cannot, by a surrender of his patent, affect the rights of third persons, to whom he has previously assigned his interest in the whole or a part of the patent, unless the assignees consent to the surrender.	593
License.	
Under a license to use the patented machine in certain territory, the licensee may build more than one machine, but cannot use both at one time.	565
A clause in a license restricting the use of the invention within a certain territory, and the sale of the product therein, is not repugnant to the concluding clause that the licensee "has all the rights" which the patentee has in said territory under the patent.	561
Under a license to run a patented machine, with the restriction that the product should not be made for other persons to be carried out of a specified territory and resold as an article of merchandise, the product cannot be sold out of the territory, or sold to persons to be carried out and resold as an article of merchandise.	215
A, license to manufacture and sell carriages with the patented invention attached, with a proviso that the same should not be assigned, but exercised solely by the licensees in their own manufactory, and that portions of carriages with or adapted for the invention should not be sold, does not prohibit the licensees from procuring the patented fixtures to be made by others.	483
A license to run a patented machine may be assigned, and the assignee must perform the conditions of the license.	227
A violation of a patent does not work a forfeiture of a license under the patent, except where the licensee has assumed such a hostile attitude towards the patent as to amount to a repudiation of the right conveyed by the license.	483

The forfeiture of a license may be enforced according to its terms, by reason of the abandonment or neglect of the licensee. 227

Where a licensee gives notes payable at different times under the agreement that the license should be void if any of the notes should become due and be unpaid, the license is forfeited the moment a note becomes due and is unpaid; and it is optional with the licensor either to sue on the note or to treat the license as forfeited, and enjoin the further use of the patented machine. 595

Where, in such a case, the licensor applied for an injunction, an order was made granting it, unless the licensee should, within 60 days, pay the amount of the note and other unpaid notes, with costs. 595

Where a license is revoked, and the licensee issued as an infringer, he is at liberty to avail himself of any defense ordinarily open to any defendant charged with infringement 616
ment 561

Sale of patented machine or product.

A patented machine, sold to one who had a license to use it on payment of a royalty based upon the product, was taken to pieces, and the parts sold at auction as scrap iron, on the death of the licensee *held*, that the purchaser of such parts had no right to reconstruct and use the machine. 639

Infringement—What constitutes.

The patent protects the principle applied, and it cannot be evaded by the adoption of mechanical equivalents based upon the same principle. 367

The inventor has the exclusive right under the patent to use the machine for all purposes for which it is applicable. 507

A specification in a patent of the mechanical parts or chemical ingredients includes known mechanical or chemical equivalents, but not existing equivalents previously unknown to ordinarily skillful machinists or chemists. 556

The use of chemical equivalents in place of one or more of the elements of a patented compound may infringe the patent for the compound, although in some respects the substituted equivalents are improvements. 556

The making of an improvement in a patented machine gives the inventor no right to use the original invention while the term of its patent continues. 581

The identity or diversity of two machines depends, not on the employment of the same elements or powers of mechanics, but upon producing the given effect by substantially the same mode of operation, or substantially the same combination of powers. 1060

	Page
A patent for a combination of three distinct things is not infringed by combining two of them with a third, which is substantially different from the third element described in the specification.	1060
A patent for two machines, each of which is a new invention, is infringed by the use of one of such machines.	723
A paint for preventing the fouling of ships' bottoms, similar to the patented paint, but substituting arsenite of copper for oxide of copper, <i>held</i> not an infringement.	420
A patent for increasing or decreasing the draft of a locomotive boiler by carrying the exhaust pipes of the engines to the bottom of the smoke pipe, and there controlling the discharge of the steam by plugs, is infringed by a locomotive in which a like result is accomplished by carrying the exhaust pipes to the bottom of the smoke box, instead of the smoke pipe.	261
—Who liable.	
Defendant is liable for an infringement, in the use of an infringing tool, by one who worked in his factory by the piece, furnishing his own tools.	613
—Remedy generally.	
If the patentee, after obtaining his patent, dedicates or surrenders it to public use, or acquiesces for a long period in the public use thereof, without objection, he is not entitled to the aid of a court of equity to protect his patent; and such acquiescence may amount to complete proof of a dedication or surrender thereof to the public.	723
A bill in equity quia timet will lie for an injunction upon well-grounded proof of an apprehended intention of defendant to violate a patent.	593
—Preliminary injunction.	
For the purpose of restraining the unlawful use of a patented machine out of the jurisdiction, it is only necessary that the court should have jurisdiction of the person of defendant.	215
But where it may be necessary to proceed directly against the machine itself, as in extreme cases of contumacy, or of fraudulent contrivance to evade an injunction, the proceedings must be instituted in the district in which the machine is located.	215
Where a plaintiff moves for an injunction, and it is denied on defects pointed out, it is too late for him to wait until after the defendant has closed his proofs for final hearing, before renewing his motion, on papers designed to cure such defects.	612
On motion for an injunction, the affidavit of a single witness is not sufficient to outweigh the oath of a patentee and the general presumption arising from the grant of the letters after a great lapse of time.	586
A separate affidavit by plaintiff of his belief that the patentees were the first and original inventors dispensed with where the bill contains such an averment.	846

A general allegation by affidavit, on information and belief, that the thing patented existed before, without disclosing the particulars of the information leading to the belief, is insufficient. 846

Advantage cannot be taken of complainant's delay in applying for an injunction where his suspicions of infringement were allayed by direct misrepresentations of defendant. 639

The burden of showing complainant's previous knowledge of the infringement, where the motion is resisted on the ground of laches, is upon defendant. 639

The grant of a patent, without notice to a prior patentee of the application, is no bar to a preliminary injunction in favor of the latter. 101

An injunction will not be issued against a respondent's using a machine, unless it is proved that he has used it himself, or employed others to use it for him, or at least has profited by the use of it. 572

Where long possession of a patent has existed, and frequent recoveries under it, an injunction will be issued, the originality of the invention by the patentee not being denied, unless the letters appear for some cause illegal or void. 572

An injunction will not issue where it does not appear from the record that defendant has ever made or sold the infringing articles in the district. 249

An injunction will be denied where there is reasonable doubt about the originality or novelty of plaintiff's invention, or about the substantial identity of the thing manufactured by defendant. 262

The purchasers from defendant of the alleged infringing machine, whose use by him has been enjoined, will be restrained from using the machine where the injunction remains in full force. 567

	Page
“Where a licensee has violated the restrictions of his license under a misapprehension of his rights, and has discontinued such violation, a provisional injunction will not be granted.	215
“Where the respondents deny the validity of the patent of the plaintiffs, the court will dissolve the injunction at the next term, if the suit at law is not by that time brought against them to try its validity.	567
After the neglect of an order to file testimony, and the overruling of a demurrer as bad, the case will not be opened for further hearing as to a temporary injunction previously granted, unless respondent show by affidavit that the course pursued was not for delay, and indemnity is also filed.	567
An injunction will not be dissolved on account of doubts as to the validity of a new patent issued to correct clerical mistakes in the original patent.	577
A motion to dissolve the injunction will not be heard on the same evidence on which it was granted, or new evidence improperly neglected to be offered before.	581
The injunction will be dissolved on the answer denying the validity of the patent supported by evidence, unless plaintiff file counter evidence sustaining its validity.	581
“Where, on a motion to dissolve an injunction, the evidence seems to preponderate in plaintiff’s favor, the court will continue the injunction until the right can be tried at law or by issue out of chancery.	581
The sending of circulars to parties engaged in the trade, notifying them of a preliminary injunction, is improper.	249
—Procedure.	
Prior to Act July 8. 1870, there was no statute limiting the time within which a suit must be prosecuted, either at law or in equity, for the infringement of a patent.	429
The assignee of a patent right, in part or in whole, cannot maintain any suit at law or in equity, either as sole or as joint plaintiff thereon, at least as against third persons, until his patent has been recorded in the proper department, according to the requisitions of the patent acts.	723
In a suit for infringement, defendant cannot, by a cross bill which sets up no color of title in himself, demand a discovery from the plaintiff in the original suit as to the source of validity of his title.	841
An injunction granted on an original bill, before the surrender of a patent, cannot be maintained upon the new patent, unless a supplemental bill be filed, founded thereon.	593
The defense that a reissue is invalid, on the ground that the patent does not contain a sufficient specification of the proportions of the ingredients to meet the requirements of the law, cannot be considered unless set up in the answer.	421

	Page
The defense that the patentee has dedicated or surrendered his patent to the public will not be noticed unless explicitly relied upon and put in issue by the answer.	723
No notice is required by Act July 4, 1836, § 15, of the names and places of residence of the witnesses by whom it is intended to prove a prior knowledge and use of the thing patented.	258
In a joint suit in equity by a patentee and his assignee in part, a disclaimer by the patentee alone will not entitle the parties to the benefit of Act 1837, c. 45, §§ 7, 9	723
A disclaimer after suit brought is not sufficient to entitle plaintiff to a perpetual injunction.	723
—Evidence.	
The presumption, arising from the letters patent, that the patentee was the original and first inventor, in the absence of the application for the patent, extends back only to the date of the letters patent, and in no case does it extend further back than to the time of the filing of the original application.	295
The patent and certified copies of the record and drawings deposited, with the references thereon, are prima facie evidence of the particulars of the invention patented.	269
Certified copies of the patent and specification, and of the drawings, under oath, filed under Act March 3, 1837, § 1, are prima facie evidence.	277
The evidence must leave no room for a reasonable doubt in order to sustain the defense of want of novelty.	429
—Injunction and its violation.	
A party enjoined against the use of a patent is guilty of contempt if he afterwards use another patent, similar in principle, with knowledge that the author of such patent had previously been enjoined.	581
Where reference is made to a master to take an account, an injunction was withheld until the coming in of his report.	776
The limitation of two years in section 2057 does not apply to a proceeding to review a decree in equity.	256
—Accounting: Damages.	
Though plaintiff has an established license fee, where the profits made by an infringer amount to more than such fees, plaintiff is entitled to recover such profits on an accounting.	619
Marking patented machine or product.	
The manufacturer of an article, which has been patented, can affix upon such article the word “Patented” or any other word of similar import, together with the date of the patent, after the patent has expired.	223

	Page
Such an article does not come within the meaning of the statute which prohibits the affixing of the word "Patented" upon any "unpatented article."	223
Various particular inventions and patents.	
Beds. No. 97,375, for bedsprings, <i>held</i> invalid for want of novelty.	649
Cameras. No. 16,700 (reissued No. 2,311), for improvement in solar cameras, <i>held</i> valid and infringed.	549
Cameras. Southworth's patent of April 10. 1855. reissued September 25, 1860, for plate holders, <i>held</i> valid 295; contra,	298
Canned Beef. Nos. 43,516 (reissued No. 6,451), 149,276 (reissued No. 6,370), 161,848 (reissued No. 7,923), for canned meats, <i>held</i> invalid for want of novelty.	251
Coal car. "Winan's patent <i>held</i> invalid.	*262
Cook stoves. Wilson's patent of October 10, 1834, for improvement, <i>held</i> invalid.	132
Faucet. Jenkins patent of June 27, 1865, for a self-closing faucet, <i>held</i> valid.	907
Gates. Reissue No. 2,667, for improvement in farm gates, <i>held</i> invalid.	679
Hoop skirts. No. 74,672, for improvement in springs, construed, <i>held</i> valid and infringed.	846
Leather. Woodman's patent of March 29. 1864. for an improved machine for ornamenting leather, <i>held</i> valid and infringed *507	*516
Locks. No. 32,331 (reissued No. 4,170), for improvement in locks, <i>held</i> valid and infringed.	776
Looms. No. 6,936, for improvement in looms for weaving figured fabrics, <i>held</i> not infringed.	1060
Nuts. No. 8,427 (reissue No. 666). and No. 13,118 and No. 8,322 (reissued No. 313), for improvement in the manufacture of nuts, <i>held</i> valid and infringed by machines described in Chisholm's patent of November 17, 1863, and Paton's patent of November 29, 1864	429

	Page
Paints. Reissue No. 4,598 (original No. 40,515), for a paint to prevent the fouling of ship's bottoms, <i>held</i> valid, but not infringed.	420
Such patent <i>held</i> infringed.	421
Paste. No. 52,779, for improved paste for bookbinders, construed, and <i>held</i> infringed.	556
Planing machines. Woodworth's patent of December 27, 1828, and the reissue of July 8, 1845, <i>held</i> valid 119,162	968
Planing machines. No. 138,462, for improvement, <i>held</i> invalid, as having been anticipated.	489
Power. Parker's patent of October 19, 1843, for an improvement in the application of hydraulic power, construed in a charge to a jury.	367
Railroad cars. Winan's patent of October 1, 1834, construed, <i>held</i> valid and infringed 273	277
Speaking-tube whistles. No. 103,406, for improvement, <i>held</i> infringed.	596
Thread. No. 26,415, for improvement in machines for winding thread on spools, <i>held</i> valid.	43

PAYMENT.

Bonds whose consideration had failed, previously assigned in payment of a debt, cannot be given in evidence on a plea of payment.	130
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PHYSICIANS AND SURGEONS.

Where a statute provides for a board of medical examiners, and requires a license from them as a condition of practicing medicine, a physician may maintain an action at law for his services, though he practiced without a license, if during the time of such services there was no existing board of examiners.	536
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PIRACY.

“Under the power to define and punish piracies (Const. U. S. art. 1, § 8, subd. 10), congress may declare to be piracy the service of a citizen or resident of the United States on a vessel used in kidnapping the inhabitants of a foreign country for the purpose of making them slaves, or the use of a vessel owned in the United States in such kidnapping.

Congress, under the power to regulate commerce, and to pass all laws necessary to carry that power into effect, may make depredations upon the high seas punishable as piracy, though they do not strictly constitute such crime as known to international law.

Until our country has made war, we are considered at peace with all by the law of nations, and without any treaty to that effect.

PLEADING AT LAW.

See, also, “Abatement and Revival.”

	Page
It is not necessary to aver matter of law or public statutes of which the court takes judicial notice.	850
Advantage may be taken of the failure of the pleadings to aver jurisdictional facts at any stage of the case.	447
If a count in a declaration contains sufficient averments, surplusage will not vitiate it.	747
Where goods are received to be sold at certain prices or returned on demand, and are sold and the money received, no special demand is necessary in an action for such money: but otherwise where the action is for a failure to return the goods.	747
A plea of payment admits all the allegations in the plaintiff's declaration, essential to support the action, and it is unnecessary for the plaintiff to prove them.	952
Where a plea in abatement is bad plaintiff need not demur, but may treat it as a nullity.	951
If a defendant wishes to contest the citizenship of the parties to an action In the national courts, he must do so by plea in abatement; and such a plea, if joined to one to the merits, may be stricken out, but is not liable to a demurrer.	766
The plea puis darrien continuance admits plaintiff's cause of action, and displaces all previous pleas and defenses.	386
After judgment for the plaintiff upon demurrer to the replication to the plea of limitations, the court will not permit the defendant to withdraw the demurrer, and rejoin specially, unless he can show by affidavit that it is necessary to the justice of the case.	144
After judgment for the plaintiff on the defendant's demurrer, and writ of inquiry awarded, the court will not permit the defendant to plead de novo, unless he will withdraw his demurrer.	517
Impertinences are any matters not pertinent to those points which are properly before the court for decision at any particular stage of the case.	44
A plea in bar cannot be withdrawn, after the case has been prepared for trial, in order to file a plea in abatement.	805
It is not incumbent upon joint plaintiffs to prove that they are joint partners.	560
The writ is not abated by substituting the assignee in place of the plaintiff, who is bankrupt.	387
When a substantial amendment is made in a declaration, the defendant should be allowed until the next succeeding term to plead.	722

PLEADING IN ADMIRALTY.

A joint libel against three vessels cannot be amended by substituting the name of the owner of one vessel so as to change it from a libel in rem to one in personam.	869
A libel in rem cannot be changed into a libel in personam against the owner.	869

PLEADING IN EQUITY.

	Page
A bill charging notice of the fraud against one of defendants, “that the defendant then and there, well knowing all and singular the premises,” etc., is bad.	445
A bill which requires an answer must contain interrogatories.	226
A defendant cannot file a cross bill until the original bill is answered.	951
After a special demurrer to a bill the allegations of fact on the hearing of the demurrer must be considered as true.	567
New matter inserted in a replication to meet special facts alleged in the answer in defense, not responsive to the bill, will be treated as surplusage merely.	653
PRACTICE AT LAW.	
A discontinuance will be entered without leave of court unless defendant interfere on the ground that the discontinuance is oppressive.	805

Page

When an action of replevin has been discontinued by the nonappearance of either party, the court will not at a subsequent term, reinstate the cause, unless it appears to be the fault of the clerk that the appearance was not entered. 8

PRACTICE IN ADMIRALTY.

A joint action will lie against a vessel in rem and the master in personam on a cause of action for which both are liable. 919

A proceeding in rem and a proceeding in personam may be joined in one action, where such joinder is calculated to advance the ends of substantial justice. 919

PRACTICE IN EQUITY.

The omission to make oath to the bill praying for an injunction cannot be raised by demurrer after a hearing and order to file evidence. 567

After publication of the testimony, no new witnesses can be examined, and no new evidence can be taken, except where the judge himself entertains a doubt or when some additional fact or inquiry is indispensable to enable him to make a satisfactory decree. 451

A witness may be examined to the mere credit of the other witnesses, whose depositions have been already taken and published in the cause, but he will not be allowed to be examined to prove or disprove any fact material to the merits of the case. 451

The time for publication will be enlarged after publication has past though not in fact made, on good cause shown by affidavit, such as surprise, accident, or other circumstances which repel any imputation of laches. 451

Exhibits in the cause may be proved after publication, and even viva voce at the hearing, when there has been an omission of the proof in due season, and they are applicable to the merits. 451

The court may, in the exercise of a sound discretion, allow the introduction of newly-discovered evidence of witnesses to facts in issue in the cause, after publication and knowledge of the former testimony, and even after the hearing. But it will not exercise this discretion to let in merely cumulative testimony. 451

The same rule holds in cases of bills of review and supplementary bills in the nature of bills of review. 451

PRINCIPAL AND AGENT.

See, also, "Factors and Brokers."

The appointment of a second attorney or agent to collect a debt is a revocation of the authority of the first one, and persons knowing of the second appointment are held to a knowledge of the revocation. 17

	Page
An attorney employed, not to attend to all his client's legal business, but to collect a particular debt, is a special, as opposed to a general, agent; and those dealing with him are bound to ascertain the extent of his authority.	17
A principal may be estopped by the intentional, willful misstatement of an agent.	722
Every sort of profit derived by an agent from dealing or speculating with his principal's effects is the property of the latter, and must be accounted for.	787
When the principal can trace his property in the hands of his agent, and distinguish it from the mass of the property of the latter; he is entitled to recover it from the agent, or, in the case of his failure, from his assignees.	789

PRIZE.

Where the captured vessel was destroyed because unfit to be sent in for adjudication, but the cargo was sent in, <i>held</i> , that the court had jurisdiction.	915
The title of the absolute owner prevails in a prize court over the interest of a lienholder, whatever the equities between those parties may be.	300
Property purchased at a provisional sale, afterwards confirmed by a sentence of condemnation of a duly-constituted court is not liable to restitution in a suit in personam against the purchaser's consignee.	867
The crew of the captured vessel were at their request put on shore, and the vessel was destroyed, and no person on board at her capture was sent in for examination.	915
On special leave of the court witnesses for the capturing vessel were examined.	
The costs fixed by statute for similar services in admiralty will be allowed in prize cases, where the allowance is not covered by special statute.	1058
The compensation directed to be made by Act March 25, 1862, will be computed and adjusted conformably to allowances by the laws of the United States to employes for like services under the government, or in accordance with established rules and usages of the courts in regard to their officers rendering like services.	1058
The gross costs taxed to any of the officers of the court for services in prize suits will be, in collection or payment subject to all limitations as to amounts or periods of payment, under the acts of congress in force at the time of such taxation.	1058
Compensation to the officers of court for their services will not be measured by a percentage on the amount of property involved.	1058

PUBLIC LANDS.

See, also, "Grant."

A covenant by bona fide settlers on unsurveyed lands to purchase them as soon as surveyed, and then mortgage them to a creditor to secure a debt, is not a contract in violation of Act March 31, 1830. §§ 4, 5

	Page
A deed of military bounty lands, made in 1820 by the attorney of a patentee under a power of attorney executed in 1816, where the patent was not issued until 1819, is void ab initio under Act April 16, 1816	707
A settler under the Oregon donation act acquires title from the passage of the act or the date of his settlement. The patent issued to him is only record evidence of such title.	762
A certificate and patent thereon, issued under the Oregon donation act, are parts of the same transaction or procedure, and may be read together for the purpose of correcting or explaining the patent, and where there is an absolute contradiction between them the certificate must prevail.	762
Under the Oregon donation act the surveyor general might partition the donation of a married settler equally between the settler and his wife at any point of the compass he might deem expedient, subject, under Act July 4, 1836, § 1, to the supervision of the commissioner of the general land office.	762
Where a valid objection is found in a certificate issued by the surveyor to a settler under the Oregon donation act, it should be returned to the local office for correction. It cannot be disposed of by issuing a patent contrary thereto.	762

Where a married settler under section 4 of the Oregon donation act has completed the residence and cultivation required by the act, and made proof thereof, he is entitled to a patent for his donation, and may convey the same in fee simple. 769

By virtue of the marriage the husband took an estate for the life of himself and wife in the latter's half of the donation claim, and it was not in the power of the territorial legislature to divest him of this estate, although it might exempt it from execution. 771

The wife's share of the donation under Act Sept. 27, 1850, was not her separate estate, and Act Or. Jan. 20, 1852, which undertook to declare it so, is void so far as prior settlements are concerned. 771

A Spanish grant or open concession of land in Louisiana is not valid against the United States unless the same was surveyed. 350

To constitute a survey of land under the Spanish government, there must have been 4 in actual measurement by running lines and angles with compass and chain, and designating corners and boundaries by marking trees, fixing monuments, or referring to existing objects of notoriety on the ground, giving bearings and distances, and making descriptive field notes and plots of the work. 350

A warrant or order of survey could be executed by the surveyor general of the province of Louisiana, or by any deputy appointed by him, or by the district surveyor, or by the commandant of a post, or by a private person specially authorized by the governor general or intendant; but the location of a grand cannot be made by a mere private survey. 350

The Spanish grant of June 27, 1797, of lands in Louisiana to Winter rejected, because the grant did not designate any particular land, and was not designated and ascertained by an authorized survey. 350

A list of governors of California, with notes. 1259

Table of land claims in the state of California. 1217

RAILROAD COMPANIES.

A right to change a location, "either for "the difficulty of construction, or of procuring a right of way at a reasonable cost, or whenever a better and cheaper route can "be had," does not authorize a company to relocate because a particular town on the selected route will not contribute to the road. Nor will it authorize a departure from the points named in the charter. 626

Under the authority in general terms to extend the line of road, the company is not authorized to depart from it in any other part except from its termini. 626

Under authority "to construct branched roads from the main route to other towns or places in the several counties through which the road might pass" the entire branch must be within the limits of a county. 626

	Page
An act authorizing the indorsement by the government in behalf of the state of railroad bonds bearing interest at the rate of 8 per cent, per annum authorizes the indorsement of bonds bearing such rate of interest payable in gold.	850
Bona fide holders for value of bonds indorsed by the governor in behalf of the state, referring to the act giving him authority, are not charged with constructive notice of the fact that the bonds thus indorsed were not first mortgage bonds, as required by the act.	850
The lien of the state of Missouri under Act Mo. March 3, 1857, on the property of a railroad receiving aid bonds, extends to public lands theretofore granted to aid in its construction.	111
Bondholders may file a bill, in behalf of themselves and all others who may come in to enforce the trust, without making all bondholders parties.	80
Where a railroad, being an indivisible line, runs through several states, and defaults in payment of interest on bonds, the court, after demand on the mortgage trustees, will compel them to take possession or appoint a receiver.	73
Such appointment would be made even though there was no probable deficiency of the trust property to pay the debts secured by the trust deed.	73
Where, in the case of an inseparable railroad line, running through several states, receivers are appointed by different courts in different jurisdictions, a federal court having jurisdiction will appoint a receiver for the whole line.	73
The application of the earnings of the road in completing and operating it, after default in payment of bonds, where made in good faith, on consent of the mortgage trustees and part of the bondholders, <i>held</i> not a misapplication.	12
Upon the application of a mortgage trustee for the appointment of a receiver, the company was directed to set aside half of its net earnings to the payment of interest on its bonded debt.	12
The appointment of a receiver of the property of a railroad company in the foreclosure of a mortgage is not a matter of course on default of payment of interest, but is a matter resting in the sound discretion of the court.	12
Where a railway is conveyed by a trust deed or mortgage to secure bonds, and it cannot be divided and sold in pieces without manifest injury to its value, the whole may be sold, before the principal is due, on default in the payment of interest.	80
In the case of corporations created by different states operating a continuous line of road, a decree of foreclosure made in one jurisdiction on service on the corporation residing therein and the appearance of the other, will bind the latter.	80
Where the road cannot be divided without injury to its value, the court may decree a sale of the entire property, though a large part is without its territorial jurisdiction.	80

RAPE.

The aiding, abetting, and assisting others to commit rape is punishable under the penitentiary act of March 2, 1831. (4 Stat. 448.) 1099

RECEIVERS.

See, also, "Railroad Companies."

On the appointment of a receiver who has taken possession of the property, the subject of the suit, by a court having jurisdiction, no other court can interfere with the property, or entertain complaints against the receiver, or remove him. 850

RELEASE AND DISCHARGE.

A release to one of two joint obligors extinguishes the obligation, and equity will not relieve in such a case, although it is most apparent the extinguishment was not intended by the parties. 55

REMOVAL OF CAUSES.

See, also, "Courts."

Right of removal.

Where a case is duly removed under Act Sept. 24, 1789, § 12, by defendant, the question of jurisdiction is not dependent upon any provisions of section 11 265

The amount in controversy is not material on the question of the right of removal of an action as having been commenced against a federal officer for an act done under color of the federal revenue laws. 465

A suit cannot be removed from a state court into the circuit court of the United States, where a part of the plaintiffs or defendants are citizens of the state where the suit is brought and of some other state. 111

A suit brought against co-partners to recover on a promissory note, where the only defendant served with process was a citizen of another state, and the other defendants were citizens of the state with plaintiff, may be removed to the federal court. 637

Rev. St. § 639, subd. 2, so far as it authorizes one of defendants to remove a cause as to him alone, was not repealed by Act March 3, 1875 637

Time for removal.

A removal cannot be had under Act March 3, 1875, of a suit pending at its passage, wherein a trial had been had after its passage, although the verdict was set aside, and a new trial granted. 839

Proceedings to obtain.

A petition for removal is sufficiently signed and verified by the attorney of the party. 637

Notice of the application for the removal of a cause is not necessary. 637

An order made in contempt proceedings instituted in a state court before the removal will be recognized and enforced in the federal court. 3

But where such order has been appealed from, the federal court will hold in abeyance proceedings for its enforcement until the appeal is disposed of. 3

A suit removed from the state court comes into the federal court impressed with all the rights and liabilities of the parties as to costs which accrued or attached by the laws of the state, while the suit remained in the state court. 406

Effect of removal: Subsequent proceedings.

The right to object to the jurisdiction of the federal court after removal of the cause from the state court is not waived by the failure to raise the objection at the first term of the court after the record is filed. 839

Where a suit is commenced by summons, and neither the summons nor complaint is filed, defendant may, in his petition for removal, show that the amount in contro- 933

versy exceeds \$500; and plaintiff is not entitled to a remand by afterwards filing a complaint stating the amount in dispute at less than \$500

Where a cause, is removed as having been commenced against a federal officer for an act done under color of the United States revenue laws, the question whether the defendant was acting in performance of his duty as an officer of the customs under the revenue laws is a matter of fact involved in the merits of the case, which cannot be raised upon a motion to dismiss the suit. 465

If a cause be removed from a state court by the defendant, and the plaintiff declares in the circuit court of the United States for more than \$500, plaintiff cannot, by a release of part of his debt, so as to reduce it to less than § 500, take away the jurisdiction of the circuit court. 716

REPLEVIN.

Replevin will lie for the goods of a stranger taken in execution as the goods of the debtor, if taken out of the actual or constructive possession of the plaintiff. 19

Upon the plea of property in the defendant, the burden of proof is on the plaintiff. 19

It is not necessary to the validity of a replevin bond that the plaintiff in replevin should be bound in the bond. 440

In debt on a replevin bond, setting forth the condition and averring special breaches, the pleas of general performance, non damnificatus, that plaintiff had no property in the goods replevied, of nul tiel record, where no record is averred in the declaration, and a plea to the whole declaration which is an answer to a part only, are bad. 441

Actions of replevin, in Alexandria, may, on motion, be tried at the first term. 135

The only judgment that can be issued in favor of the defendant in replevin is one cent damages and a retorno habendo. He must rely upon a suit on the replevin bond for his damages. 1080

In replevin for goods distrained for rent arrear, if the jury do not render such a verdict as will enable the court to render the statutory judgment in favor of the defendant, the court may render the common-law judgment for a return of the property replevied; and in an action upon the replevin bond, for not returning the property, the defendant may, in mitigation of damages, show that no rent was in arrear. 466

The value of the goods stated in the replevin bond is prima facie evidence of plaintiff's damages; and, if defendant should contend for a less amount, the burden of proof is on him to show it. 466

If the jury, in replevin, do not find the value of the goods distrained, their finding of the amount of rent in arrear is surplusage. 466

REPORTERS.

Notes and prefaces of the United States circuit and district courts reports. 1261

SALE.

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

Where property is in the possession of a person as agent at the time he accepts an offer of sale to him, no formal delivery is necessary to pass the title. 373

The master of a vessel, to whom its cargo of wood is offered at a certain price per cord "for the quantity shipped," is justified, in accepting the same, as meaning the quantity actually shipped, and not that as per bill of lading, though the owner intended the latter. 373

The title to machines ordered and received by persons who had the exclusive right to sell such machines in the state, with the understanding that they were to pay for them if sold within the year, and, if not, that they were "to take them for the next season," where the transaction appeared upon the invoices of the manufacturer and the books of the consignees as a sale, passes to the consignees upon delivery. 513

	Page
Where goods are to be paid for on delivery, the title does not pass where they are taken to the place of delivery and laid down, a note being offered in payment.	70
Where the seller of merchandise delivers it to the wrong vessel, which sails before the mistake is discovered, and he subsequently delivers similar merchandise to the right vessel in fulfillment of the contract, the title to the first lot continues in him.	230
Delivery of possession to the purchaser of a moiety of a vessel when in possession of the other part owner is not, in general, indispensable to pass the property.	323
As between the mortgagor and mortgagee, notice to the part owner in possession is not necessary.	323
Where goods are sold by sample, there is an implied warranty that the articles shall correspond with the samples.	55
Where there is a warranty, the examination and approval of part of the articles which are delivered is not a waiver of the contract as to the others.	55
In a contract for the sale of articles without warranty, if there be no fraud on the part of the seller, he is not answerable for the quality of the articles.	55

SALVAGE.

The relief of property from an impending peril of the sea by the voluntary exertions of those who are under no legal obligation to render assistance, and the consequent ultimate safety of the property, constitute a case of salvage.	4
A vessel, out of sight of land, amid dangerous shoals, with master and both officers sick with a deadly, infectious disease, and with no navigator aboard, flying a signal of distress, is in a position to have salvage service rendered her.	4
Leading the way safely out to sea for a sail vessel anchored among the shoals off Cape May, and in danger of going ashore if her cable should part, after an unsuccessful attempt to tow her, is a salvage service entitled to a liberal reward.	309
The court will prohibit the payment of any part of the salvage to the crew of a stranded vessel who refused to assist in getting her off after wreckers were employed except upon the promise of extra compensation out of the salvage.	818
One who recovers and carries off, against the express commands of the master, cargo accidentally fallen overboard in the salvage operation, which the authorized salvors intend to save at their earliest convenience, cannot recover salvage thereon.	893
A vessel employed for a stipulated sum by the principal salvors with the acquiescence of the master of the wrecked ship, cannot, under any circumstances, recover salvage in addition to the sum agreed.	893
Damages caused by grounding to a steamer which, being delayed by a salvage service rendered by her, reached her destination at low water, and struck in going over Pollock Pip, are too remote, and cannot be recovered against the saved vessel.	309

Where the net proceeds of a derelict towed into port by a salvor were only \$206, and the owner, after notice, failed to appear, the whole proceeds were decreed to the salvors. 917

Forty-three per cent, allowed upon gross valuation of \$41,924 for saving cargo, mainly by diving, from a vessel totally wrecked on Florida Reefs. 893

\$5,000 awarded to a steamer worth, with her cargo, \$500,000, for piloting out to sea without any considerable danger to herself, a sailing vessel worth \$122,500, from a position of considerable peril among the shoals off Cape May. 309

\$13,000 allowed upon a valuation of \$95,000 to professional wreckers for getting a ship off of Florida Reefs. 818

The master has no right to compel the mate to perform a salvage service; and if he does perform one by the order of the master, without objection, he is to be considered as a volunteer. 4

The master of a ship wrecked upon the coast has the custody and charge of the property, and, as against strangers and salvors, may make such arrangements as he sees fit for saving it. 893

SCIRE FACIAS.

A scire facias is an action to which a party may plead, and it may be executed in the same manner as a summons. 963

SEAMEN

Protection and relief.

“Vessel of commerce,” within Act Sept. 28, 1850, abolishing flogging, includes vessels engaged in whale and other fisheries. 981

The provisions of the act, imposing a penalty on masters of vessels in the merchant service for shipping seamen without articles, extend to the merchant marine upon the lakes and public navigable waters connecting the same. 417

A female shipped as cook and steward is entitled to all the rights, and subject to all the disabilities, of a mariner; and the provisions of the statute as to shipping articles apply equally to her. 417

In an action of debt, to recover several penalties under Act 1790, c. 29, § 1, against the master of a vessel for shipping seamen without articles, a single count for all the penalties is sufficient. 417

The contract of shipment.

The description of a voyage, as “from Boston to Valparaiso or other parts of the Pacific Ocean, at and from thence home direct, or via ports in the East Indies or Europe.” is not sufficiently certain, and the articles do not bind the seamen. 620

	Page
In the case of ambiguous shipping articles, the construction most favorable to the seamen is to be adopted.	620
Under shipping articles authorizing the master to touch at certain intermediate ports, "or as he may direct." he may stop at places not named, without violating the contract with the seamen.	470
Where a seaman is appointed to act as mate of a vessel, by the master, during the voyage, he may be removed by the master for incompetency, and is not entitled to any other wages than those originally contracted for.	470
A master has no right to degrade his mate in a foreign port for an alleged offense, and make him do seaman's duty; and, if the mate refuse to do duty as a seaman, the master is bound to offer him a passage home.	472
Conduct of master or mate in respect to seamen.	
The abolition of "flogging" does not prohibit corporal punishment of a different kind administered by officers of vessels to compel obedience to lawful commands, or to preserve the discipline and good order of the ship.	981
The advice of an American consul, in a foreign port, gives to the master of a vessel no justification for an illegal act.	146
The imprisonment on shore of seamen is not justified where they peacefully refuse labor from an honest mistake of their right to discharge.	620

	Page
The practice of imprisoning disobedient seamen in foreign gaols is of doubtful legality, and to be excused only by a strong case of necessity.	146
Wages—Right to.	
Where a seaman suffering from a disease when he ships dies during the voyage, his administrator cannot recover wages.	718
Where a voyage is broken up by a seizure of the vessel for the debts of its owners, one month's extra pay was allowed the seamen.	600
The master may confine a refractory seaman on board of his vessel, inflict reasonable personal correction, or discharge him without payment of his wages, according to the enormity of his offence.	146
—Deductions: Extinguishment.	
If the imprisonment of a seaman in a foreign port is improper, the expenses of it, or of the employment of a person in his stead, are not to be deducted from his wages.	146
Where a cask of wine was lost while being hoisted aboard by the mate and crew <i>held</i> , that the master, mate, and crew must share the loss with all the rest of the ship's equipage, in proportion to their monthly wages; and the fact that the master had paid off the seamen did not in any wise affect the contribution of the mate.	106
Where a seaman is imprisoned for misbehavior, he does not forfeit the wages accruing during his confinement.	470
To justify the forfeiture of a seaman's wages for absence, under the provisions of Act July 20, 1790 [1 Stat. 131], it is indispensable that there be an entry in the logbook of the fact, of the name of the seaman, and of his having gone without leave.	470

SET-OFF AND COUNTERCLAIM.

A partnership debt cannot be set off in an action by an assignee of one of the partners.	692
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SHIPPING.

See, also, "Admiralty"; "Affreightment";
 "Average" "Bills of Lading"; "Bottomry and Respondentia"; "Carriers"; "Collision"; "Demurrage"; "Maritime Liens"; "Salvage"; "Seamen"; "Towage."

Public regulation.

An American registered vessel, while at sea, sold in part to resident citizens of the United States without a bill of sale reciting her registry, and without a new registry until her arrival at her home port, does not lose her privileges as an American vessel.	46
A vessel sailing under a fishing license may touch at a foreign port, and procure supplies, without incurring forfeiture under the acts of congress.	40
Taking on board in a foreign port, and bringing into this country, two barrels, without hire or reward, but as a favor to a friend, supposed to contain crockery, but really	40

containing liquors, is not engaging in trade within the meaning of section 32 of the act of February 18, 1793 [1 Stat 316], and does not subject the vessel and cargo to forfeiture.

Title to and ownership of vessel

A bill of sale of one-half of a vessel as collateral security for a debt, with a provision that the mortgagors may keep possession and use the vessel for their own benefit 323 until default of payment, is valid as an immediate conditional sale.

The majority owners in value may fit out the vessel against consent of the minority, 50 but they must communicate their design.

A part owner, who will neither sell at a reasonable appraisement, nor make advances for outfit, cannot legally demand freight but his share of the vessel will be secured 50 to him.

The master

Where the master had leave to take his wife with him, and nothing was said about his son, five years old, he was required to pay a reasonable amount for his passage. 327

The expense of regulating the master's chronometer, where he used it for the benefit of the ship solely, should be borne by the ship. 327

It is not the duty of a mate, in loading casks of wine from a lighter, either to work at the fall, or bear off with his own hands the cask from the side, as it is about to come 106 aboard.

Trustees holding the title of a vessel, and controlling and managing her for the benefit of others, are liable for the master's wages. 327

The master and clerk of a vessel are not entitled to liens for their wages. 939

Employment of vessel.

Where, during a blockade of the Chesapeake by the British, a vessel was chartered with a Sidmouth license, though such license was not expressed in the charter party, 140 *held*, that the contract was invalid.

Notwithstanding a charter party is invalid, the charterer may, by subsequent negotiation, be liable as on a new contract to reimburse the shipowner for time and expenses incurred in attempting performance. 140

The vessel is liable for the neglect of the master to present a proper manifest preventing the owner of the goods shipped from passing them through the customhouse. 922

Vessel owners are not liable for damage to iron shipped under a bill of lading exempting the vessel from accountability for rust, unless the rust was received on 930 board, care.

In case of loss or damage to goods covered by a bill of lading, the presumption of law is that such loss or damage was occasioned by the act or default of the carrier. 33

	Page
Lightermen, to whom is committed the charge of transporting goods from the shore, and slinging them in the lighter, for hoisting aboard, are responsible for any defect or negligence in the manner of slinging.	106
The vessel is liable, where barratrously run ashore by the master, for the loss of cargo, for injury to the portion saved, and for salvage paid under a decree therefor.	33
In respect to the liability of the vessel for contracts of transportation made with the master, the law makes no distinction between passengers and merchandise.	919
Where a passenger determined, before the date of sailing, not to take passage in the ship, he cannot complain that the ship did not sail on the day as agreed, and recover back his passage money paid.	917
The vessel is liable in specie for passage money advanced, and for damages for failure to deliver goods shipped, where the master fails to perform his agreement to transport a passenger with his baggage.	919
Where the master failed to fulfill his contract to carry libelant <i>held</i> , that he was entitled to recover from the vessel the passage money paid in advance, the expenses incurred in waiting the sailing of another ship, and the sum paid to such other vessel for passage.	992

Limiting liability.

The limitation of the owners' liability by Act March 3, 1851, § 3, to the amount or value of their interest in the ship and her freight then pending, does not limit or affect their liability for loss, damage, or injury resulting through the fault of such vessel 685 to another vessel and her cargo from a collision between the two vessels. (Affirming 681.)

On a libel in personam for damages to a vessel in collision, the district court in admiralty has no power to reserve its final decree that the owners may take appropriate 681 proceedings to limit their liability where neither the ship and freight nor the amount or value is within its control.

The value to which the liability to the owners of a vessel is limited is the value immediately after the injury, and before the vessel is repaired. 659

Where a vessel is sailed on shares by her master who is not an owner, the interest of the owners in the freight in proceedings to limit their liability is only one-half such 659 amount.

SLAVERY.

The prohibition of the importation of colored persons (Act Feb. 28, 1803) does not 239 apply to colored seamen employed in navigating a vessel.

Congress has power to prohibit citizens and residents of the United States from engaging in the slave trade with or between foreign countries, both under the power to regulate commerce (Const. art. 1 § 8, subd. 3), and because citizens of the United 1026 States and those of foreign countries.

A vessel becomes liable to forfeiture because built or equipped in the United States for use in transporting slaves from one foreign country to another (Act March 22, 1026 1794), as soon as any preparation of it for such purpose is made, a completion of the equipment not being necessary.

A vessel is "employed in the transportation of slaves from one foreign country to another" (Act May 10, 1800), so as to be liable to forfeiture, when it is on a voyage to 1026 procure slaves for that purpose, though no slaves have as yet been taken on board.

Service on a voyage known to be for the purpose of procuring slaves for transportation from one foreign country to another is a violation of Act May 10, 1800, forbidding 1026 citizens and residents of the United States to serve on a vessel used in such transportation.

The history of the enactment of the "Fugitive Slave Law," and such law constructed 1013 in a charge to a grand jury, by Nelson, C. J. 1007

Under the fugitive slave law of February 12, 1793, the judge or magistrate has no 645 power to issue a warrant to arrest the fugitive, or to commit after the examination

is over and the certificate is granted, and such a warrant is wholly invalid for any purpose.

SPECIFIC PERFORMANCE.

The matter entitling the party to an amendment of his contract may be set up by way of defense to a proceeding to enforce a specific performance of the contract, where the clause omitted through mistake or accident would, if found in the instrument, constitute a ground of defense. 561

But such a defense cannot be set up where the rights of a bona fide purchaser have intervened which would or might be seriously prejudiced by giving effect to the defense. 561

STATES.

The territory of the state of Delaware within the "twelve-miles circle" extends across the Delaware river to low-water mark on the Jersey shore. 1123

The ordinance of 1787 for the government of the Northwest Territory was superseded by the adoption of the constitution of the United States, and the admission to the Union of the states formed from that territory. 503

The United States law act directly upon individuals, and are to be enforced by national instrumentalities. A state, as a political body, cannot be compelled to execute such laws. 1042

STATUTES.

To warrant a court in declaring unconstitutional a law passed by congress, the defect of legislative power must be of the most plain and indisputable character. 1160

The fact that a law of congress has been in course of execution for many years, and has been acquiesced in during that time, is a strong reason why the courts, especially those of a subordinate character, should not decide the same to be unconstitutional. 1160

The inhibition of the enactment of special laws giving effect to informal or invalid wills or deeds does not apply to a general curative statute. 707

The provisions of a statute, so far as they are inconsistent with those of a subsequent statute relating to the same subject-matter, are by implication, if not expressly, repealed by the later statute. 533

An act introduced for the purpose of validating certain bonds which did not pass the legislature by the vote required by the constitution is not construction notice to anybody of anything. 850

SUBROGATION.

The fact that the state, which had indorsed railroad company bonds, and was secured by a mortgage, could not be sued, is no reason why the holders of the bonds should not be subrogated to the rights of the state, and have the benefit of the security. 850

TIME.

When the question is as to the effect of a proceeding instituted on the same day on which an act affecting the validity of such proceeding was passed, the precise time at which the act became a law may be properly inquired into. 752

TOWAGE.

See, also, "Collision"; "Salvage."

The contract of towage implies knowledge of the channel and safe pilotage. 946

In making up a tow, vessels of heavy draft should be placed behind those of lighter draft. 946

A tug which, in towing a ship, negligently brings her against a wharf, is liable in damages, although the ship was rotten and unseaworthy, unless her condition was the sole cause of the injury. 625

TRADE-MARKS AND TRADE-NAMES.

The exclusive right to use the trade-mark of a firm does not pass to a member by implication on a sale of the business to him, but he may use the trade-mark, provided he do so in a manner not to deceive the public. 845

TREASON.

Until belligerent rights are accorded by the political department of the government to the state or people in rebellion, the judiciary must regard them as rebels and lawless aggressors, and apply to them the penal law. 997

The words "levying war," as used in the constitutional definition of "treason," include not only the act of making war for the purpose of entirely overturning the government, hut also any combination forcibly to oppose the execution of any public law of the United States, with intent to prevent its enforcement in all cases, if accompanied or followed by an act of forcible opposition to such law in pursuance of such combination 1024

If a body of men be actually assembled for the purpose of effecting a treasonable purpose by force, that is levying war. But it must be an assemblage in force,—a military assemblage in a condition to make war. 1039

And there must be some overt act done, or some attempt made by them, with force, to execute, or towards executing, that purpose. The assembly must be in a condition to use force, and must intend to use it, if necessary, to further, aid, or accomplish the treasonable design., 1046

If the assembly is arrayed in a military manner, if they are armed and marched in military form, for the express purpose of overawing and intimidating the public, and thus attempt to carry into effect the treasonable design, this will, of itself, amount to a levy of war, although no actual blow be struck, or engagement take place. 1046

If a body of men be actually assembled in force, in a condition to make war, in order to overturn the government at any; one place by force, this is levying war. It is not necessary that the assemblage should be with military arms and array; numbers alone may supply the requisite force. 1042

If any such assemblage, for the purpose of subverting the government at any place, take forcible possession of any fort arsenal, or other property of the United States, this is an act of levying war. 1042

If a convention, legislature, junto, or other assemblage entertain the purpose of subverting the government, and to that end pass acts, resolves, ordinances, or decrees, even with the view of raising a military force to carry their purpose into effect this alone does not constitute a levying of war. 1042

A conspiracy to prevent, by force, the execution of any one law of the United States in all cases, is a treasonable conspiracy; and if there be an actual assemblage of men for the purpose of carrying this intention into effect,—that is, of acting together, and preventing by force the execution of the law generally,—this constitutes a levying of war, and involves the crime of treason 1015, 1042

If there be an assembly of persons, with force, with an intent to prevent the collection of lawful taxes or duties levied by the government or to destroy all customhouses, or to resist the administration of justice in the courts of the United States, and the assemblage proceed to execute this purpose by force, this is treason against the United States.

A mere treasonable conspiracy, whether for the purpose of entirely overthrowing the government, or to prevent the execution of any of its laws, is not sufficient to constitute the crime of treason, as defined by the constitution of the United States. In addition to the conspiracy, there must be an actual assemblage of men for the purpose of carrying the conspiracy into effect by force 1015, 1032, 1034

The sudden outbreak of a mob, or the assembling of men, in order, by force, to prevent the execution of a law in a particular instance, and then to disperse, without any intention of continuing together or reassembling for defeating the law generally and in all cases, is not a levying of war such as constitutes treason 1015

The combination of a body of men, with the design of seizing, and the actual seizing, of the forts and other public property of the United States, is a levying of war against the United States, and is treason.

All persons engaged therein are by the law regarded as levying war against the United States; and all who adhere to them are to be regarded as enemies; and all who give them, in any part of the United States, aid and comfort, come within the provisions of the act of April 30, 1790, and are guilty of treason.

The meaning of the words “overt act,” as used in the constitutional definition of treason and in the statute, is an act of a character susceptible of clear proof, and not resting in mere inference or conjecture.

Words, oral, written, or printed, however treasonable, seditious, or criminal of themselves, do not constitute an overt act of treason.

In a civil war, persons who adhere to their allegiance are not, although they reside in an insurrectionary district regarded as enemies; and trade with such persons, in good faith and without collusion with the enemy, is lawful, unless interdicted by the government.

To be employed in actual service in an army raised to oppose the government in its action, or directly or indirectly to aid or assist in the levying or embodying of a

military force for the subversion of the government, are plainly acts of “levying war,” and involve the commission of the crime of treason. The constitutional definition of treason, however, is of broader signification, and includes all those who join a hostile army after war is begun.

The words, “adhering to their enemies, giving them aid and comfort,” include, in general, any act committed after war actually exists which indicates a want of loyalty to the government and sympathy with its enemies, and which, by fair construction, is directly in furtherance of their hostile designs. ¹⁰³⁶

After war actually exists, it is treasonable to sell to, or provide arms or munitions of war, or military stores and supplies, including food, clothing, etc., for the use of, the enemy; to hire, sell, or furnish boats, railroad cars, or other means of transportation, or to advance money or obtain credits for the use and support of the hostile army; and to communicate intelligence to the enemy by letter, telegraph, or otherwise, relating to the strength, movements, or position of the army. ¹⁰³⁶

Mere expressions of opinion indicative of sympathy with the public enemy are not sufficient, under the constitution and laws, to warrant a conviction of treason. ¹⁰³⁶

To constitute treason against the United States by levying war, there must be a levying of war against the United States in their sovereign character, and not merely a levying of war exclusively against the sovereignty of a particular state. ¹⁰⁴⁶

There may be treason against a state by levying war which is aimed altogether against the sovereignty of the state. 1046

Treason begun against a state may be mixed up or merged in treason against the United States. If the treasonable purpose be to overthrow the government of the state, and forcibly to withdraw it from the Union, and thereby to prevent the exercise of the national sovereignty within the limits of the state, this would be treason against the United States. 1046

If the troops of the United States should be called out by the president, upon the application of a state legislature or executive, to protect the state against domestic violence, and there should be an assembly of persons with force to resist and oppose the United States troops, this would be treason against the United States, although the primary intention of the insurgents may have been only to overthrow the state government or the state laws. 1036

If a body of men be actually assembled to effect by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered guilty of treason 1024 1049

If war be actually levied at one place, and any person in league with those actually engaged therein send them arms, money, provisions, or intelligence for the purpose of aiding them, he is guilty of treason, however distant he may be from the place of their assemblage. 1042

A person present, directing, aiding, abetting, counseling, or countenancing the violence, or if, though absent at the time of its actual perpetration, he yet directed the act, or devised or knowingly furnished the means for carrying it into effect, and instigated others thereto, he is guilty of treason. 1047

An alien resident may be guilty of treason by co-operating either with rebels or foreign enemies 1042, 1047

The expressions, "levying war," and "adhering to their enemies, giving them aid and comfort," in the constitutional definition of "treason," were borrowed from the ancient law of England, and are to be understood in the sense which they bore in England when the constitution was adopted. 1047

Direct proof of the combining to prevent the enforcement of a law may be found in declared purposes of the individual party before the actual outbreak, or it may be derived from proceedings of meetings in which he took part openly, or which he either prompted or made effective by his countenance or sanction, commending, counseling, or instigating forcible resistance to the law. 1047

Direct proof of the purpose, however, is not legally necessary. The concert of purpose may be deduced from the concerted action itself, or it may be inferred from facts occurring at the time, or before or afterwards. 1047

The constitutional provision that “no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court” (article 3, § 3), applies, it seems, only to the proofs on the trial, and not to a preliminary hearing before a committing magistrate, or the proceedings before a grand jury. 1047
Persons who have any knowledge of acts of treason, and do not as soon as possible make it known in the manner prescribed by Act April 30, 1790, § 2, are guilty of misprision of treason. 1032

Prior to Act July 31, 1861, there was no law for punishing treasonable combinations or conspiracies which were not consummated by an overt act. The statute of that date, however, makes criminal not only combinations to overthrow the government, but conspiracies or mutual agreements, whether by few or many, whether public or private, forcibly to resist, or even to delay the execution of, any law. 1049

Act July 31, 1861, was designed to punish the mere act of conspiring, which, under the constitutional definition and the act of 1790, do not involve the crime of treason, unless there is an attempt to consummate the treasonable act. 1036

Act Aug. 6, 1861, making it a high misdemeanor to recruit soldiers or sailors in any state or territory to engage in armed hostility against the United States, or to open a recruiting station for the enlistment of such persons, was intended to reach acts not deemed treasonable under the statute of 1790 1036

TRESPASS.

Trespass vi et armis lies by the owner of a slave against a stranger who beats the slave per quod servitium amisit. 138

TRIAL.

See, also, “Appeal”; “Continuance”; “Evidence”; “Judgment”; “Jury”; “New Trial”; “Practice”; “Witnesses.”

Where a juror is taken suddenly ill, the jury may be discharged and the cause continued to the next term. 850

A general finding for the plaintiff or defendant by a jury is good, and disposes of all the issues. 952

Instructions should be taken as a whole. 67

Where a case is submitted to the court special findings are not necessary. 952

A variance between the *capias ad respondendum* and the declaration is not a ground for arresting the judgment. 107

TROVER AND CONVERSION.

	Page
The fact that a party came lawfully into possession of property is not the criterion to determine whether a demand and refusal are necessary in an action of trover.	967
Where a person purchases personal property from one to whom it has been loaned by the owner, a demand of him is not necessary to support an action of trover.	967

TRUSTS.

The trustee of a family settlement in which infants are interested may be changed by consent of the parties, upon a bill filed for that purpose only.	869
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A trustee given the power to sell the trust property and reinvest in other property, when the same can be done advantageously, has not an unlimited power of sale, and a sale to his personal creditor in part payment of a debt is not a valid execution of the trust; and, where the purchaser has notice of the violation of the trust, the property is chargeable in his hands with the trust. 631

Purchasers who took with notice of an invalid execution of a trust in their chain of title, who believed their title good, where the trust is enforced against the land, are entitled to the amount of incumbrances which they have paid, and permanent improvements made, as well as advances they have made to the cestuis que trustent, to be offset against the profits. 631

UNITED STATES MARSHALS.

See "Marshal."

USE AND OCCUPATION.

In Virginia an action for use and occupation will lie although there be a parol demise for a time, and rent certain, if it be waived, and a promise to pay for the time occupied. 387

USURY.

See, also, "Banks and Banking."

The making a note payable at a place in which exchange sells at a premium does not constitute usury, nor does it render the note void in the hands of a bank whose charter prohibits the taking more than a certain rate of interest. 824

A contract not usurious at the time it is made cannot become so by any future contingency. 824

A stranger cannot set up usury as a defense. 785

Affirmative relief against a usurious contract will be granted in equity only upon condition that plaintiff pay the amount of money advanced, or allow a decree therefor. 785

VENDOR AND PURCHASER.

See, also, "Bankruptcy"; "fraudulent Con; "Grant"; "Sale"; "Specific Performance."

To constitute a purchaser without notice, it is not sufficient that the contract should be made without notice, but that the purchase money should be paid before notice. 631

The measure of damages in an action for breach of a covenant to convey lands; the title to which was not in the defendant, is the value of the lands at the time of judgment. 160

WAR.

See, also, "Prize"; "Treason."

The mayor and common council of a city in Virginia, elected under the de facto government of that state during the Civil War, during the occupation by federal forces, do not derive their authority from the military, and a suit based upon acts done by them cannot be removed into the federal court as acts done in obedience to the orders of the national authority. 537

WILLS.

It is not necessary to the validity of a will of personal property that it should have any date, that it should be in the handwriting of the testator, or signed by him, or have any subscribing witnesses, provided it was drawn at his request and according to his dictation. 1068

From 1676, when the act of 29 Car. II. was enacted, no nuncupative will can, under any circumstances, pass real estate. 1099

	Page
In the District of Columbia there must be not less than three witnesses to a nuncupative will where the amount of personal property exceeds £30	1099
Where the orphans' court in the District of Columbia passes upon the question which of two papers is the last will of deceased, and an issue from such court is pending in the circuit court, the orphans' court has no jurisdiction to pass upon the question whether another paper is the last will of testator.	953
A will is not effective until probated in the proper court.	956
A devise expressly for life or in tail cannot be enlarged into a fee by other words of doubtful import.	63
A devise to A., and, if he die without heir or issue, the estate to go to B., his brother, gives an estate tail to A. by implication.	63
A direction by a testator that his estate shall be held in trust for his daughter and her heirs, free from the control or disposal of any husband she might have, and exempt from his debts, contracts, or engagements, does not refer to the right of guardianship of the husband over the children after the death of the wife.	1069
A devise to an only daughter and her husband, "to them, their heirs begotten of their bodies, or assigns, forever, or, for want of such heirs or assigns, then to the heirs begotten by, or either of them, and to their assigns forever," gives an estate tail to the daughter and her husband, which, in the event of their death without issue, is to go to the heirs of the body of the survivor.	694
Under a devise to testator's wife of all his property, except outstanding debts, which he directs that she shall collect as executor and give to three persons as thereafter to be directed by him, where he dies without making such direction, the wife does not take title under the will to such debts or their proceeds.	388
Testator bequeathed a certain sum of money to a person in trust to invest in lands in the names of six grandchildren, to be conveyed and vested in them in fee simple, and, in case of the death of any of them, the share of the child so dying should go to the survivors <i>held</i> , that the will had reference only to a death during the lifetime of testator.	433
A devise of lands "after payment of debts" subjects the land to the payment of the debts.	716

WITNESSES.

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

The general rule of law is that a party to a suit cannot be a witness. This rule is founded on the interest the party has in the suit, and when that interest is removed the objection ceases to exist. 55

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	Page
A plaintiff who has assigned all his interest in the suit to a co-plaintiff, and has deposited a sum with the clerk to cover all costs, is competent.	55
The court will not look to remote contingencies in order to disqualify a witness from giving testimony.	55
A constable, defendant in replevin, who justifies under an execution, if indemnified by the plaintiff therein, is a competent witness.	386
The bankrupt is a competent witness where his assignee is a party, as he can have no legal interest in the decision of the case.	692
A summons to a witness to attend before a register in bankruptcy may be served outside the district but within 100 miles of the place where the witness is required to attend.	542
If a witness, whose, residence is not at the place of holding court, is summoned at the place of trial, he is allowed mileage for returning to his home, but not for coming to the court.	518